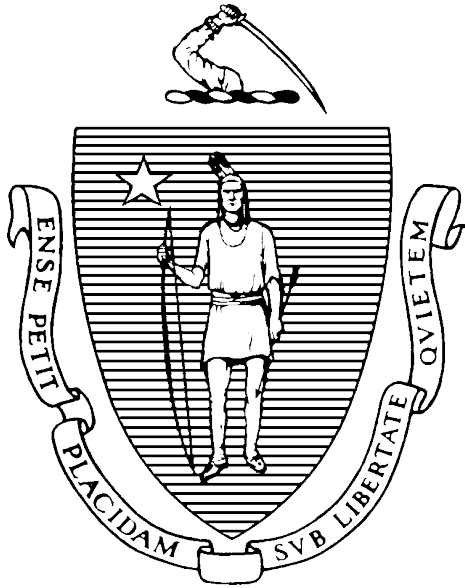




The Massachusetts Register

Published by:
The Secretary of the Commonwealth,
William Francis Galvin, Secretary

\$15.00



**UNITED STATES
POSTAL SERVICE®**

**Statement of Ownership, Management, and Circulation
(All Periodicals Publications Except Requester Publications)**

1. Publication Title COMMONWEALTH OF MA SECRETARY OF STATE	2. Publication Number 14911	3. Filing Date 09/25/2026
4. Issue Frequency SEMI-MONTHLY	5. Number of Issues Published Annually 26	6. Annual Subscription Price PRINTED \$300 ELECTRONIC
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4®) STATE PUBLICATIONS & REGULATIONS DIVISION STATE HOUSE ROOM 117 BOSTON, MA 02133		Contact Person CYNTHIA DAVIS Telephone (Include area code) (617) 727-2831

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer)
**SECRETARY OF THE COMMONWEALTH
STATE HOUSE ROOM 340
BOSTON, MA 02133**

9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank)
Publisher (Name and complete mailing address)
**Romina Bendo STATE PUBLICATIONS & REGULATIONS DIVISION
STATE HOUSE ROOM 117
BOSTON, MA 02133**

Editor (Name and complete mailing address)
**Romina Bendo STATE PUBLICATIONS & REGULATIONS DIVISION
STATE HOUSE ROOM 117
BOSTON, MA 02133**

Managing Editor (Name and complete mailing address)
**Romina Bendo STATE PUBLICATIONS & REGULATIONS DIVISION
STATE HOUSE ROOM 117
BOSTON, MA 02133**

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)

Full Name	Complete Mailing Address
SECRETARY OF THE COMMONWEALTH	STATE HOUSE ROOM 340 BOSTON, MA 02133

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box ☒ None

Full Name	Complete Mailing Address

12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one)
The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:
☒ Has Not Changed During Preceding 12 Months
☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

09/25/2026

15. Extent and Nature of Circulation

			Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (<i>Net press run</i>)			77	66
b. Paid Circulation (<i>By Mail and Outside the Mail</i>)	(1)	Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	39	31
	(2)	Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	0	0
	(3)	Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®	3	3
	(4)	Paid Distribution by Other Classes of Mail Through the USPS (e.g., First-Class Mail®)	14	11
c. Total Paid Distribution [Sum of 15b (1), (2), (3), and (4)]			56	45
d. Free or Nominal Rate Distribution (<i>By Mail and Outside the Mail</i>)	(1)	Free or Nominal Rate Outside-County Copies included on PS Form 3541	8	8
	(2)	Free or Nominal Rate In-County Copies Included on PS Form 3541	0	0
	(3)	Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g., First-Class Mail)	3	3
	(4)	Free or Nominal Rate Distribution Outside the Mail (<i>Carriers or other means</i>)	0	0
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))			11	11
f. Total Distribution (Sum of 15c and 15e)			67	56
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))			10	10
h. Total (Sum of 15f and g)			77	66
i. Percent Paid (15c divided by 15f times 100)			84	81

* If you are claiming electronic copies, go to line 16 on page 3. If you are not claiming electronic copies, skip to line 17 on page 3.



Statement of Ownership, Management, and Circulation
(All Periodicals Publications Except Requester Publications)

16. Electronic Copy Circulation

	Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Paid Electronic Copies	119	116
b. Total Paid Print Copies (Line 15c) + Paid Electronic Copies (Line 16a)	175	116
c. Total Print Distribution (Line 15f) + Paid Electronic Copies (Line 16a)	186	172
d. Percent Paid (Both Print & Electronic Copies) (16b divided by 16c × 100)	97	68

☐ I certify that 50% of all my distributed copies (electronic and print) are paid above a nominal price.

17. Publication of Statement of Ownership

☒ If the publication is a general publication, publication of this statement is required. Will be printed

☐ Publication not required.

in the 9/25/26 issue of this publication.

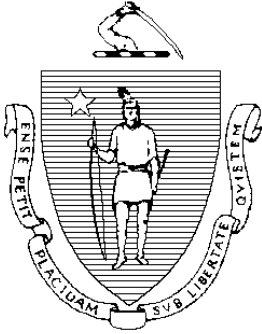
18. Signature and Title of Editor, Publisher, Business Manager, or Owner

Ramiro Bando

Date

09/21/2026

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).



THE COMMONWEALTH OF MASSACHUSETTS
Secretary of the Commonwealth - William Francis Galvin

The Massachusetts Register
TABLE OF CONTENTS

Page

THE GENERAL COURT

Acts and Resolves	1
-------------------	---

OFFICE OF THE GOVERNOR

Executive Order No. 658: Establishing Requirements for Responsible Data Center Development and Operations in Massachusetts to Protect and Support Ratepayers, Communities, and the Environment	3
--	---

DEPARTMENT OF FAMILY AND MEDICAL LEAVE

DFML Rate Notice	9
------------------	---

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

Administrative Bulletin 26-19: 101 CMR 327.00: Rates for Ambulance and Wheelchair Van Services	11
Notice of Final Agency Action: MassHealth Payment Methodology for Nonpublic Ambulance Supplemental Payment Program	13

ADMINISTRATIVE PROCEDURES

Notices of Public Review of Prospective Regulations	15
Cumulative Table	25
Notice of Expiration of Emergency Regulations	-
Emergency Regulations	-
Permanent Regulations	35
Future Date Effective Regulations	-

Notices of Emergency Expiration

There Are No Notices of Emergency Expiration

Emergency Regulations

There Are No Emergency Regulations

Permanent Regulations

101 CMR	Executive Office of Health and Human Services	
348.00	Rates for Day Habilitation Services	35
	<i>Governs the payment rates for MassHealth day habilitation services.</i>	
426.00	Rates for Certain Adult Community Mental Health Services	37
	<i>Establishes the payment rates for certain adult community mental health services provided to publicly aided individuals by governmental units. Services with rates established by this regulation are purchased by the Department of Mental Health (DMH).</i>	
446.00	COVID-19 and Public Health Emergency Payment Rates for Certain Community Health Care Providers - Correction	39
130 CMR	Division of Medical Assistance	
419.000	Day Habilitation Center Services	41
	<i>Establishes the standards for providing integrated therapies and activities that help individuals with intellectual or developmental disabilities (ID/DD) acquire, improve, or retain their maximum functional, cognitive, and psychosocial skills.</i>	
449.000	Correctional Facility Services - Compliance	43
225 CMR	Department of Energy Resources	
28.00	Solar Massachusetts Renewable Target (SMART) Program 3.0	45
	<i>Encourages the continued use and development of generating units that use solar photovoltaic technology by residential, commercial, governmental, and industrial electricity customers throughout the Commonwealth.</i>	
321 CMR	Division of Fisheries & Wildlife	
2.00	Miscellaneous Regulations Relating to Fisheries and Wildlife	47
	<i>Addresses a variety of wildlife and fisheries regulations. Specifically, it addresses the utilization or salvaging of deer killed by means other than hunting.</i>	
3.00	Hunting	49
	<i>Sets hunting seasons and legal methods of take in the Commonwealth.</i>	
4.00	Fishing	51
	<i>Regulations on freshwater fishing in the Commonwealth of Massachusetts.</i>	

808 CMR Bureau of Purchased Services

1.00 Compliance, Reporting, and Auditing for Human and Social Services

53

Sets financial compliance, reporting and audit requirements for organizations receiving Massachusetts funding for human and social services and certain approved private special education schools. Administered by the Operational Services Division (OSD), it ensures proper use of public funds, transparent reporting, and state oversight. Organizations must maintain accurate records of Commonwealth-funded costs and may need to submit financial reports and audits. Defines allowable and non-allowable costs and allows OSD to review records, investigate, require corrective action, and recover disallowed costs. For approved private special education schools, it also establishes tuition rates based on allowable costs and financial information.

Acts 2026

CHAPTER NUMBER	BILL NUMBER	TITLE	DATE
197	H 5304	Authorizing the Division of Captial Asset Management and Maintenance to Release a Certain Sewer Line Easement in the West Roxbury Section of the City of Boston.	8/26/2026
198	H 4444	Providing for a Real Property Exemption for Persons with Disabilities in the Town of Swampscott.	8/26/2026
199	H 4573	Authorizing Sean Duffy to Take the Civil Service Examination for the Position of Firefighter in the City of Haverhill Notwithstanding the Maximum Age Requirement.	8/28/2026
200	H 5288	Authorizing the City of Westfield to Establish an Age Limit for Original Appointment to the Position of Firefighter.	8/28/2026
201	H 5416	Authorizing the Town of Lynnfield to Appropriate Funds from the Golf Enterprise Fund to the Recreation Capital Trust Stabilization Fund.	8/28/2026
202	H 5451	Authorizing the Town of Marion to Grant an Additional License for the Sale of All Alcoholic Beverages Not to Be Drunk on the Premises.	9/4/2026
203	H 5548	Authorizing the Town of Weston to Grant an Additional License for the Sale of All Alcoholic Beverages to Be Drunk on the Premises.	9/4/2026
204	H 5344	Removing the Seating Capacity Requirements for Licenses for the Sale of Alcoholic Beverages to Be Drunk on the Premises in the Town of Belmont.	9/4/2026
205	S 3133	Amending the Membership of the Quabbin Watershed Advisory Committee.	9/4/2026
206	H 5418	Authorizing the Town of Wakefield to Establish a Means Tested Senior Citizen Property Tax Exemption.	9/4/2026
207	H 4879	Authorizing Jonathan Gagne to Take the Civil Service Examination for the Position of Police Officer in the City of Haverhill Notwithstanding the Maximum Age Requirement.	9/10/2026
208	H 5528	Establishing a Sick Leave Bank for Edward Gillen, an Employee of the Highway Division.	9/10/2026
209	H 4477	Authorizing William "Rob" Cargill to Take the Civil Service Examination for the Position of Firefighter in the City of Haverhill Notwithstanding the Maximum Age Requirement.	9/10/2026
210	H 4476	Authorizing Kenneth Navaro to Take the Civil Service Examination for the Position of Firefighter in the City of Haverhill Notwithstanding the Maximum Age Requirement.	9/10/2026

Acts 2026

CHAPTER NUMBER	BILL NUMBER	TITLE	DATE
211	S 2526	Authorizing the Town of Topsfield to Convert 4 Licenses for the Sale of Wine and Malt Beverages Not to Be Drunk on the Premises to 4 Licenses for the Sale of All Alcoholic Beverages Not to Be Drunk on the Premises.	9/10/2026
212	H 3417	Designating Domestic Workers' Rights Day.	9/10/2026
213	H 5351	Authorizing Charity Alcohol Auctions.	9/10/2026



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

MAURA T. HEALEY
GOVERNOR

KIMBERLEY DRISCOLL
LIEUTENANT GOVERNOR

By Her Excellency
MAURA T. HEALEY
GOVERNOR

EXECUTIVE ORDER NO. 658

ESTABLISHING REQUIREMENTS FOR RESPONSIBLE DATA CENTER DEVELOPMENT AND OPERATIONS
IN MASSACHUSETTS TO PROTECT AND SUPPORT RATEPAYERS, COMMUNITIES, AND THE
ENVIRONMENT

WHEREAS, demand for data storage, processing capabilities, and computational tasks is increasing and is leading to the expansion of data centers across the country and development proposals in Massachusetts;

WHEREAS, data centers are energy- and resource-intensive facilities which can require substantial investments in electric grid infrastructure and power generation resources and can affect energy affordability and reliability, air quality, water resources, noise levels, land use, public health, and the environment, if not appropriately planned and regulated;

WHEREAS, the Commonwealth has a responsibility to ensure that Massachusetts residents, businesses, and communities do not bear the costs or burdens of data center development, operations, or incremental energy and water needs and, instead, share in the benefits of economic opportunity, job creation, strengthened infrastructure, and additional local tax revenues;

WHEREAS, on June 25, 2026, Governor Maura Healey released a *Statement of Expectations for Responsible Data Center Development and Operations in Massachusetts* (“Framework”) to establish principles and expectations for data center development in Massachusetts that balance economic growth and innovation with protections for residents, businesses, and communities;

WHEREAS, on June 25, 2026, Governor Healey paused the acceptance of applications for data center sales and use tax exemptions, as established by Section 6(zz) of Chapter 64H of the General Laws, to protect Massachusetts ratepayers and the environment;

WHEREAS, the Framework establishes that data centers should be developed and operated responsibly by bearing the costs associated with their energy needs, supporting clean and reliable energy systems, protecting communities and natural resources, providing meaningful economic and workforce benefits, and ensuring appropriate transparency and accountability;

NOW, THEREFORE, I, Maura T. Healey, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § I, Art. I, do hereby order as follows:

SECTION 1.

The Department of Environmental Protection (“MassDEP”), the Energy Facilities Siting Board (“EFSB”), the Massachusetts Environmental Policy Act Office (“MEPA”), and other relevant permitting-related agencies shall not issue any permits or authorizations associated with any data center project with peak electricity demand exceeding twenty-five megawatts to any data center applicant unless that applicant has: (1) demonstrated conformance with the *Statement of Expectations for Responsible Data Center Development and Operations in Massachusetts*, published June 25, 2026 (“Framework”) including those related to air quality and public health, water use, and community engagement; and (2) submitted a community benefits agreement with key stakeholders as identified in and aligned with the Standards and Guidelines for Community Benefits Plans and Agreements established by the Office of Environmental Justice and Equity (“OEJE”) within the Executive Office of Energy and Environmental Affairs (“EEA”). Prior to filing a community benefit agreement, any data center applicant shall consult with OEJE to confirm alignment with principles of meaningful engagement and community benefit plans outlined in the standards and guidance. Prior to submitting a community benefits agreement to agencies, a data center applicant shall provide said agreement to OEJE for review and comment. The data center applicant shall submit OEJE’s written feedback and comment alongside the community benefits agreement. The OEJE shall serve as the state entity to determine conformance with the standards and guidance; data center applicants shall not be required to submit community benefit agreements for feedback or comment to any other permitting agencies.

For all permitting-related agencies, the use of non-disclosure agreements with a data center project is prohibited, except as otherwise provided by law.

SECTION 2.

MassDEP, EFSB, MEPA, and other relevant agencies shall review all permits or authorizations that may be required by a data center project with peak electricity demand exceeding twenty-five megawatts and, consistent with existing authorities, amend all relevant regulations to align with standards included in the Framework.

SECTION 3.

The Department of Public Utilities (“DPU”) should continue to prioritize completion of its work to develop large load rate schedules, as per Executive Order 654 and aligned with the Framework. These rate schedules should ensure that other ratepayers do not pay distribution grid upgrades or any associated infrastructure needed to support data center demand.

SECTION 4.

Further, the DPU should direct the Electric Distribution Companies (“EDCs”) to take measures to eliminate speculative data center projects from interconnection queues. Through the establishment of fees, deposits, or other requirements, the DPU should direct the EDCs to ensure that any data center projects with electricity demand greater than twenty-five megawatts are legitimate projects that do not lead to the inefficient use of EDC study and interconnection resources, and protect the viability of other projects, such as housing, other businesses, or distributed energy resources.

SECTION 5.

MassDEP shall develop protocols ensuring that data center projects with peak electricity demand exceeding twenty-five megawatts have procured sufficient incremental new clean electricity generation to meet their annual electric consumption and that such electricity procured meets the eligibility requirements to qualify under the Clean Energy Standard, 310 CMR 7.75. MassDEP shall determine whether it is necessary to amend its Clean Energy Standard regulation and/or establish regulations pursuant to Chapter 21N, Section 3(c), of the General Laws to adopt such protocols. By December 31, 2026, MassDEP shall take action to establish an alternative compliance payment (“ACP”) mechanism for data centers that do not procure sufficient incremental clean electricity to meet their annual electric consumption. Funds collected via the ACP mechanism shall be credited to a Ratepayer Protection Fund, with said funds used to mitigate electricity supply costs for all ratepayers.

SECTION 6.

EEA and MassDEP shall also evaluate greenhouse gas emissions from data center projects with peak electricity demand exceeding twenty-five megawatts as part of the Clean Energy and Climate Plan (“CECP”) pursuant to Chapter 21N, Section 3(c), promulgate regulations pursuant to Chapter 21N, of the General Laws, or institute other programs necessary to achieve reductions in greenhouse gas emissions from data centers.

SECTION 7.

MassDEP shall develop protocols requiring data center projects with peak electricity demand exceeding twenty-five megawatts to protect water quality and quantity, including by demonstrating compliance with all applicable Massachusetts water, wastewater, and stormwater requirements.

SECTION 8.

EEA shall work with all relevant agencies and departments to establish guidance for annual reporting and disclosures by operating data center projects with peak electricity demand exceeding twenty-five megawatts consistent with the information identified in the Framework. All data center projects

seeking permits shall submit to relevant agencies with their applications attestations that they will submit annual reporting disclosures established by this guidance.

SECTION 9.

EEA, in coordination with the Executive Office of Economic Development (“EOED”) and consistent with the Framework, shall publish, by December 31, 2026, a Municipal Guidance Document for Data Center Development (“Guide”). The Guide shall support municipal leaders and staff, community-based organizations, residents, and other local stakeholders as they evaluate proposed data center projects and engage with developers. In developing the Guide, EEA and EOED shall together engage a broad range of stakeholders, including municipalities and organizations representing municipal leaders and staff, regional planning agencies, utilities, water resource agencies, organized labor, environmental justice and community-based organizations, businesses, the Attorney General’s Office (“AGO”), and the public to seek input on the Guide’s content.

SECTION 10.

All departments and agencies of the Commonwealth shall cooperate, assist, and support in the implementation of this Executive Order, including by assisting with requests for information and guidance from municipal governments that are actively evaluating a proposed data center project.

SECTION 11.

All departments and agencies of the Commonwealth shall encourage any entity seeking to develop a data center project with peak electricity demand exceeding twenty-five megawatts to use responsible labor practices, including but not limited to, utilization of project labor agreements (“PLAs”) and/or labor peace agreements, support of local hiring, workforce training, and registered apprenticeship programs; and insurance of safe working conditions and long-term employment opportunities that provide fair wages and benefits for residents of host and surrounding communities.

SECTION 12.

EEA, in coordination with EOED and Executive Office of Technology, Service and Security (“EOTSS”) shall provide a report annually, starting in September 2027, to the Governor on ongoing policy, regulatory, and legislative changes that support responsible data center development and that protect ratepayers, workers, water resources, air quality, and public health, energy supply and affordability, electric grid security and resilience, and the state’s continued economic growth, competitiveness, and development. The report should also identify opportunities to improve coordination among state agencies, municipalities, regional entities, communities, and industry. In the development of this report, EEA, EOED, and EOTSS shall engage external stakeholders from across Massachusetts to seek feedback.

SECTION 13.

For the purposes of this Executive Order, a data center is “a building or series of buildings that houses and supports the high-performance servers, storage systems, networking equipment, and related computing infrastructure and equipment necessary for storing, processing, and distributing data and applications,” as defined in 400 CMR 9.00, and that is built or expanded after the effective date of this Executive Order, and exceeds a peak electric demand of twenty-five megawatts, or in the case of a data

center expansion, an addition of twenty-five megawatts of peak electric demand. The Secretaries of EEA and EOED may jointly approve an exemption to the twenty-five megawatt threshold for a data center that is directly tied to an accredited college or university engaging in academic research, the provision of medical care, or a state-sponsored program.

SECTION 14.

Nothing in this Executive Order shall be construed to require action inconsistent with any applicable state or federal law.

SECTION 15.

This Executive Order shall be effective upon the date signed and shall continue in force until amended, superseded, or revoked by subsequent Executive Order.



Given in Boston this eighth day of September in the year two thousand and twenty-six, and of the Independence of the United States of America two hundred and fifty.

A handwritten signature in black ink, reading "William Francis Galvin".

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

A handwritten signature in black ink, reading "Maura T. Healey".
MAURA T. HEALEY
Governor
Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF FAMILY AND MEDICAL LEAVE

MAURA HEALEY
GOVERNOR

KIM DRISCOLL
LIEUTENANT GOVERNOR

LAUREN E. JONES
SECRETARY

WILLIAM J. ALPINE
DIRECTOR

Pursuant to G.L. c. 175M, § 7(e), the Department of Family and Medical Leave is hereby providing notice that effective January 1, 2027, the total paid family and medical leave contribution rate under G.L. c. 175M, § 6(a) shall be 0.88%. The Department's projections for the cost of benefits and administration of the program in FY27, take into account recent changes to the family and medical leave contribution rates under Chapter 175M and guidance from the Internal Revenue Service.

Pursuant to G.L. c. 175M, § 7(e), the Department certifies the following:

- The Department issued a total of \$1,410,150,035 in total benefit payments in fiscal year 2026 (July 1, 2025 - June 30, 2026).
- The total amount remaining in the trust fund as of June 30, 2026, was \$1,761,219,952.
- The total cost of benefits and administration of the program in FY26 was \$1,483,952,334; 140% of Fiscal Year 2026 spending is \$2,077,533,268.

The total remaining trust fund balance at the end of FY26 was \$1,761,219,952, representing \$316,313,316 less than 140% of the previous fiscal year's expenditures. While the legislature considers proposed legislation, Section 37 of House Bill 5496, which would modify the trust fund's statutory target, the Department recommends maintaining the current PFML contribution rate of 0.88%, effective January 1, 2027. The Department projects no risk to fund solvency through FY27.

The calendar year 2027 0.88% contribution rate will be split between the medical leave contribution rate and the family leave contribution rate as follows: .18% will be attributable to the medical leave contribution and .70% will be attributable to the family leave contribution.

William Alpine, Director
Department of Family and Medical Leave
September 11, 2026



EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
COMMONWEALTH OF MASSACHUSETTS
OFFICE OF MEDICAID
ONE ASHBURTON PLACE, BOSTON, MA 02108



MAURA T. HEALEY
GOVERNOR

KIAME MAHANIAH, MD, MBA
SECRETARY

KIMBERLEY DRISCOLL
LIEUTENANT GOVERNOR

RYAN SCHWARZ, MD, MBA
ASSISTANT SECRETARY
FOR MASSHEALTH

Administrative Bulletin 26-19

101 CMR 327.00: *Rates for Ambulance and Wheelchair Van Services*

Effective July 1, 2026

Nonpublic Ambulance Supplemental Payment Distribution Factors for State Fiscal Year 2027

In accordance with [101 CMR 327.05\(5\)\(a\)](#), the Executive Office of Health and Human Services (EOHHS) is prospectively updating the distribution factor percentages used to calculate supplemental payments to eligible nonpublic ambulance providers.

[101 CMR 327.05\(5\)\(a\)](#) permits EOHHS to prospectively update the distribution factor percentage for a quarterly payment by not more than plus or minus 5% through an administrative bulletin or other written issuance.

The updated distribution factors reflect recent MassHealth fee-for-service emergency and nonemergency ground ambulance utilization by provider classification and Department of Public Health (DPH) Emergency Medical Service (EMS) region. EOHHS has retained a 4.00% distribution factor for not-for-profit nonpublic ambulance providers. The remaining 96.00% of the supplemental payment pool is allocated among the other classifications proportionally based on MassHealth utilization.

Updated Distribution Factors

Beginning with the state fiscal year (SFY) 2027 quarterly supplemental payment for the quarter beginning July 1, 2026, EOHHS will apply the following distribution factors.

**State Fiscal Year 2027 Nonpublic Ambulance Supplemental Payment
Distribution Factors**

Classification	Distribution Factor
Not-for-profit nonpublic ambulance providers	4.00%
Not-for-profit hospital nonpublic ambulance providers	6.91%
For-profit nonpublic ambulance providers in Region 1, as defined by the DPH Office of Emergency Medical Services	13.38%
For-profit nonpublic ambulance providers in Region 2, as defined by the DPH Office of Emergency Medical Services	5.18%
For-profit nonpublic ambulance providers in Region 3, as defined by the DPH Office of Emergency Medical Services	9.78%
For-profit nonpublic ambulance providers in Region 4, as defined by the DPH Office of Emergency Medical Services	44.11%
For-profit nonpublic ambulance providers in Region 5, as defined by the DPH Office of Emergency Medical Services	16.63%
Total	100.00%*

* Distribution factor percentages shown in this bulletin are rounded for presentation. Supplemental payments will be calculated using the underlying unrounded distribution factors, which in the aggregate equal 100%.

Distribution factors in this bulletin will apply to each SFY 2027 quarterly supplemental payment unless EOHHS issues a subsequent administrative bulletin or other written issuance under [101 CMR 327.05\(5\)\(a\)](#).

All other eligibility requirements, payment conditions, and payment limitations, and the allocation methodology, under [101 CMR 327.05](#) remain unchanged.

Notice of Final Agency Action

SUBJECT: MassHealth Payment Methodology for Nonpublic Ambulance Supplemental Payment Program

AGENCY: Massachusetts Executive Office of Health and Human Services (EOHHS)

EOHHS hereby announces final changes to the distribution factors used for supplemental payments to eligible nonpublic ambulance providers. EOHHS is issuing Administrative Bulletin 26-19 under 101 CMR 327.05(5)(a).

On June 25, 2026, EOHHS published a Notice of Proposed Agency Action describing proposed changes to the distribution percentages for nonpublic ambulance supplemental payments. The notice explained that the percentages would be updated to reflect changes in MassHealth utilization and providers within each classification. EOHHS accepted written comments on the proposed action through July 24, 2026.

For state fiscal year 2027 quarterly supplemental payments, EOHHS will use the following distribution factors, as set forth in Administrative Bulletin 26-19.

State Fiscal Year 2027 Nonpublic Ambulance Supplemental Payment Distribution Factors

Classification	Distribution Factor
Not-for-profit nonpublic ambulance providers	4.00%
Not-for-profit hospital nonpublic ambulance providers	6.91%
For-profit nonpublic ambulance providers—Region 1	13.38%
For-profit nonpublic ambulance providers—Region 2	5.18%
For-profit nonpublic ambulance providers—Region 3	9.78%
For-profit nonpublic ambulance providers—Region 4	44.11%
For-profit nonpublic ambulance providers—Region 5	16.63%
Total	100.00%*

* Distribution factor percentages shown in this bulletin are rounded for presentation. Supplemental payments will be calculated using the underlying unrounded distribution factors, which in the aggregate equal 100%.

The updated distribution factors affect the allocation of the supplemental payment pool among provider classifications. The aggregate supplemental payment pool is determined

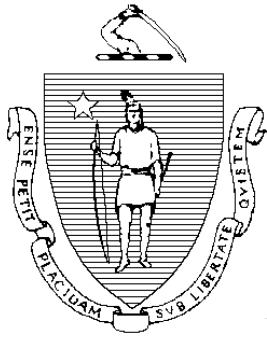
separately under 101 CMR 327.05 and the applicable state plan methodology. EOHHS currently anticipates approximately \$33.07 million in nonpublic ambulance supplemental payments for state fiscal year 2027, or approximately \$8.27 million per quarter, but the amount may change based on available funding and applicable payment limitations.

The final distribution factors, their effective application, and other information about the payments are set forth in Administrative Bulletin 26-19. All other eligibility requirements and payment conditions under 101 CMR 327.05 remain unchanged.

You can submit written comments, or request copies of any notices or written comments on this matter, by emailing ehs-regulations@mass.gov. Please submit electronic comments as an attached Word or PDF document or as text within the body of the email, with “Nonpublic Ambulance Supplemental Payment Program” in the subject line. All submissions must include the sender’s full name, mailing address, and affiliation or organization, if any. If you cannot submit comments or requests by email, you can mail written comments or requests to EOHHS, c/o Debby Briggs, 1 Enterprise Drive, 4th Floor, Quincy, MA 02171.

Copies of Administrative Bulletin 26-19 and other materials concerning this action are available at the web page for [101 CMR 327.00: Rates for Ambulance and Wheelchair Van Services](#).

Posted: September 10, 2026



THE COMMONWEALTH OF MASSACHUSETTS

Secretary of the Commonwealth - William Francis Galvin

NOTICES OF PUBLIC REVIEW OF PROSPECTIVE REGULATIONS PUBLISHED IN COMPLIANCE WITH M.G.L. c. 30A, §§ 2 AND 3

September 25, 2026

Gaming Commission,
Massachusetts

205 CMR 116.00 &
229.00

10/6/26 @ 9:30 A.M. Written
comments must be received by
10/5/26 before 5:00 P.M.

Housing and Livable Communities,
Executive Office of

760 CMR 71.00

Written comments accepted
through 10/9/26 by 11:59 P.M.



Notice of Public Hearing

Notice is hereby provided that in accordance with G.L. c. 30A, § 2, the Massachusetts Gaming Commission (“Commission”) will convene a public hearing for purposes of gathering comments, ideas, and information relative to the proposed adoption of amendments to two regulations. The regulations were promulgated pursuant to G.L. c. 23K, § 4 as to 205 CMR 116.08 and G.L. c. 23N, § 4 as to 205 CMR 229.01 as part of the Commission’s regulatory process, and concern the following:

205 CMR 116.08: *Notice*

The amendments to 205 CMR 116.08 would exempt a public or private transfer of interest in a gaming license of less than 20% from the prior notification and approval requirements set forth in G.L. c. 23K, § 21(b). Entities would still need to notify the Investigations and Enforcement Bureau of the transfer, but the notice would not need to precede the transfer or wait on a formal approval process.

205 CMR 229.01: *Notice*

The amendments to 205 CMR 229.01 would exempt a public or private transfer of interest in a sports wagering license of less than 20% from the prior notification and approval requirements set forth in G.L. c. 23N, § 6(h). Entities would still need to notify the Investigations and Enforcement Bureau of the transfer, but the notice would not need to precede the transfer or wait on a formal approval process.

Scheduled hearing date and time:

Tuesday, October 6, 2026, at 9:30 AM EST

Pursuant to chapter 2 of the session acts of 2025, Governor Healey extended a limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission will conduct this hearing utilizing remote collaboration technology.

MICROSOFT TEAMS MEETING ID: 287 543 685 095 523 PASSCODE: H7Fw6Rk3
DIAL IN BY PHONE: (213) 631-9908 PHONE CONFERENCE ID: 533 722 917#

A complete copy of the draft regulations referenced above may be downloaded by visiting www.massgaming.com, clicking on ‘Regulations and Compliance’ and selecting the [Proposed Rulemaking](#) section. Anyone wishing to offer comments can email autumn.birarelli@massgaming.gov and request the virtual hearing link to appear and speak. Alternatively, written comments may also be submitted to the same email address with ‘Regulation Comment’ in the subject line. **Written comments must be received by 5:00 PM EST on October 5, 2026.**





SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2, relative to the proposed amendments to **205 CMR 116.00: Persons Required to be Licensed or Qualified**, specifically 205 CMR 116.08(2): Notice.

This regulation was promulgated as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is authorized by G.L. c. 23K, § 4. This regulation governs the notification of certain transfers of interest to the Commission and 205 CMR 116.08(2) specifically details which transfers must provide notice to the Commission.

This regulation is unlikely to have an impact on small businesses as it governs the behavior of Sports Wagering Operators who are not small businesses. Under G.L. c. 30A, § 2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards applicable to small businesses are set forth. Provided standards are performance standards.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:



This amendment is unlikely to have any impact on the formation of new businesses in the Commonwealth.

Massachusetts Gaming Commission
By:

/s/ Justin Stempeck
Justin Stempeck, Chief Deputy General Counsel

Dated: August 6, 2026





SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2, relative to the proposed amendments to **205 CMR 229.00: Review of a Proposed Transfer of Interests**, specifically 205 CMR 229.01(2): Notice.

This regulation was promulgated as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is authorized by G.L. c. 23N, § 4. This regulation governs the notification of certain transfers of interest to the Commission and 205 CMR 229.01(2) specifically details which transfers must provide notice to the Commission.

This regulation is unlikely to have an impact on small businesses as it governs the behavior of Sports Wagering Operators who are not small businesses. Under G.L. c.30A, § 2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards applicable to small businesses are set forth. Provided standards are performance standards.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:



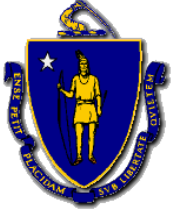
This amendment is unlikely to have any impact on the formation of new businesses in the Commonwealth.

Massachusetts Gaming Commission
By:

/s/ Justin Stempeck
Justin Stempeck, Chief Deputy General Counsel

Dated: August 6, 2026





Commonwealth of Massachusetts
**EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES**

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Juana B. Matias., Secretary

PUBLIC NOTICE

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES (EOHLC)

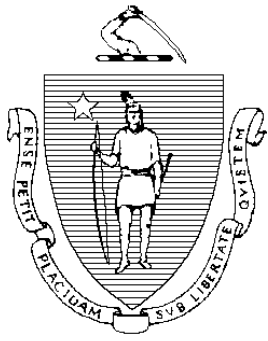
Under the provisions of M.G.L. c. 30A, section 3, notice is hereby given of the proposed amendment of regulation 760 CMR 71.00 – Protected Use Accessory Dwelling Units. EOHLC’s regulatory authority for this action is provided under M.G.L. c. 40A, section 3, para. 11 and St. 2024, c. 150, section 8. In accordance with M.G.L. c. 30A, section 5, the proposed regulation has a minimal or non-existent Small Business Impact. The purpose of the amendment is to clarify when local governments must issue permits for protected use accessory dwelling units and what regulatory powers local governments may exercise in permitting those units.

Pursuant to M.G.L. c. 30A, section 3, written comments on the proposed regulation may be submitted from September 11, 2026 through 11:59 pm on October 9, 2026, by: (1) sending the same electronically to EOHLCRegulationComments@mass.gov , including “Comments on 760 CMR 71” in the subject line; or (2) through an online form that is available at: <https://www.mass.gov/ADUPublicComment>.

A copy of the proposed regulation will be posted on EOHLC’s website at <https://www.mass.gov/info-details/eohlc-regulations-current-regulations-and-proposed-amendments> .

Small Business Impact Statement <i>(As required by M.G.L. c. 30A §§ 2, 3 & 5)</i>		
CMR No: 760 CMR 71.00		
Estimate of the Number of Small Businesses Impacted by the Regulation: This regulation is unlikely to negatively impact small businesses. In fact, the regulation is likely to create opportunities for small businesses to build ADUs.		
Select Yes or No and Briefly Explain		
Yes ☐	No ☒	Will small businesses have to create, file, or issue additional reports? No.
Yes ☐	No ☒	Will small businesses have to implement additional recordkeeping procedures? No.
Yes ☐	No ☒	Will small businesses have to provide additional administrative oversight? No.
Yes ☐	No ☒	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No.
Yes ☐	No ☒	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No.
Yes ☐	No ☒	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No.
Yes ☐	No ☒	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? No.
Yes ☐	No ☒	Do any other regulations duplicate or conflict with the proposed regulation? No.
Yes ☐	No ☒	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No.
Yes ☐	No ☒	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No.
Yes ☐	No ☒	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No.
Yes ☐	No ☒	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? Potentially, for the construction, use, and management of ADUs developed.

Yes ☐	No ☒	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No.
Yes ☐	No ☒	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No.
Yes ☐	No ☒	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No.
Yes ☐	No ☒	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? No.
Yes ☐	No ☒	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No.



THE COMMONWEALTH OF MASSACHUSETTS

Secretary of the Commonwealth - William Francis Galvin

2026 CUMULATIVE TABLE TO THE MASSACHUSETTS REGISTER 1565 - 1583

The Cumulative Tables lists all regulations and amendments thereto published in the Massachusetts Register during the current year. The Table is published in each Register.

State agencies are listed in the Table as they appear in the Code of Massachusetts Regulations (CMR or Code) in CMR numerical order which is based on the cabinet structure. For example, all Human Service agencies are prefaced by the number "1" and are designated as 101 CMR through 130 CMR.

The Cumulative Tables published in the last issue of previous years will have a listing of all regulations published for that year. These Registers are:

April 6, 1976 - 1977	Register: # 88	Date: 2004	Register: #1016
1978	138	2005	1042
1979	193	2006	1068
1980	241	2007	1094
1981	292	2008	1120
1982	344	2009	1146
1983	396	2010	1172
1984	448	2011	1198
1985	500	2012	1224
1986	546	2013	1250
1987	572	2014	1276
1988	598	2015	1302
1989	624	2016	1329
1990	650	2017	1355
1991	676	2018	1381
1992	702	2019	1407
1993	729	2020	1433
1994	755	2021	1459
1995	871	2022	1485
1996	Supp. # 2 807	2023	1511
1997	833	2024	1537
1998	859	2025	1563
1999	885		
2000	911		
2001	937		
2002	963		
2003	989		

		<u>Issue</u>	<u>Effective Date</u>
101 CMR	Executive Office of Health and Human Services		
204.00	Rates of Payment to Resident Care Facilities		
	- <i>Emergency Refile</i> (MA Reg. # 1563)	1569	12/5/25
	- <i>Compliance</i> (MA Reg. # 1563)	1572	12/5/25
206.00	Standard Payments to Nursing Facilities		
	- <i>Emergency Refile</i> (MA Reg. # 1559)	1564	10/1/25
		1567	2/13/26
307.00	Rates for Psychiatric Day Treatment Center Services	1569	3/13/26
317.00	Rates for Medicine Services - <i>Emergency Refile</i> (MA Reg. # 1561) . .	1567	11/7/25
		1573	5/8/26
322.00	Rates for Durable Medical Equipment, Oxygen and Respiratory Therapy Equipment.	1568	3/1/26
327.00	Rates for Ambulance and Wheelchair Van Services		
	- <i>Emergency Refile</i> (MA Reg. # 1557)	1564	9/26/25
	- <i>Compliance</i> (MA Reg. # 1557)	1570	9/26/25
	- <i>Correction</i> (MA Reg. # 1557)	1571	9/26/25
330.00	Rates for Team Evaluation Services	1577	7/3/26
334.00	Rates for Prostheses, Prosthetic Devices, and Orthotic Devices.	1576	6/19/26
337.00	Rates for Dialysis Treatments and Home Dialysis Supplies.	1578	7/17/26
343.00	Rates for Hospice Services	1576	6/19/26
346.00	Rates for Certain Substance-related and Addictive Disorders Programs	1578	7/17/26
347.00	Rates for Freestanding Ambulatory Surgery Center Services	1572	4/24/26
348.00	Rates for Day Habilitation Services	1583	9/25/26
349.00	Rates for Early Intervention Program Services		
	- <i>Future Effective Regulation</i>	1565	7/1/26
		1576	7/1/26
355.00	Rates for Freestanding Birth Center Services	1567	2/13/26
410.00	Rates for Competitive Integrated Employment Services	1580	8/14/26
413.00	Payments for Youth Intermediate-term Stabilization Services.	1576	6/19/26
414.00	Rates for Family Stabilization Services	1574	5/22/26
416.00	Rates for Clubhouse Services	1574	5/22/26
417.00	Rates for Certain Elder Care Services.	1570	3/27/26
420.00	Rates for Adult Long-term Residential Services	1577	7/3/26
422.00	Rates for General Programs Disability Services.	1574	5/22/26
423.00	Rates for Certain In-home Basic Living Supports	1577	7/3/26
424.00	Rates for Certain Developmental and Support Services.	1580	8/14/26
425.00	Rates for Certain Young Parent Support Programs	1578	7/17/26
426.00	Rates for Certain Adult Community Mental Health Services.	1583	9/25/26
446.00	COVID-19 and Public Health Emergency Payment Rates for Certain Community Health Care Providers.	1582	9/11/26
	- <i>Correction</i> (MA Reg. # 1582)	1583	9/11/26
514.00	Hospital Assessment - <i>Emergency</i>	1578	7/7/26
	- <i>Compliance</i> (MA Reg. # 1578)	1582	7/7/26

		<i>Issue</i>	<i>Effective Date</i>
614.00	Health Safety Net Payments and Funding		
	- <i>Emergency Refile</i> (MA Reg. # 1559)	1564	9/30/25
		1569	3/13/26
		1576	6/19/26
103 CMR	Department of Correction		
483.00	Visiting Procedures.	1581	8/28/26
105 CMR	Department of Public Health		
125.000	Licensing of Radiologic Technologists.	1564	1/2/26
	- <i>Correction</i> (MA Reg. # 1564)	1567	1/2/26
270.000	Blood Screening of Newborns for Treatable Diseases and Disorders .	1575	6/5/26
726.000	Temporary Placement of Kratom in Schedule I Pursuant to M.G.L. c. 94C, § 2A - <i>Emergency</i>	1581	8/28/26
775.000	Certified Medication Aides in Long-term Care Facilities.	1567	2/13/26
110 CMR	Department of Children and Families		
2.00	Glossary	1571	4/10/26
7.000	Services - <i>Emergency</i>	1564	12/12/25
	- <i>Compliance</i> (MA Reg. # 1564)	1570	12/12/25
124 CMR	Massachusetts Office for Victim Assistance		
2.00	Compensation for Victims of Violent Crimes		
	- <i>Compliance</i> (MA Reg. # 1554)	1564	8/4/25
	- <i>Correction</i> (MA Reg. # 1564)	1565	8/4/25
130 CMR	Division of Medical Assistance		
405.000	Community Health Center Services	1577	7/3/26
406.000	Pharmacy Services	1577	7/3/26
409.000	Durable Medical Equipment Services.	1579	7/31/26
410.000	Outpatient Hospital Services.	1577	7/3/26
419.000	Day Habilitation Center Services	1583	9/25/26
420.000	Dental Services	1580	8/1/26
422.000	Personal Car Attendant Services.	1577	7/3/26
428.000	Prosthetics Services	1579	7/31/26
432.000	Therapist Services.	1579	7/31/26
442.000	Orthotics Services	1579	7/31/26
449.000	Correctional Facility Services - <i>Emergency Refile</i> (MA Reg. # 1561). .	1567	11/7/25
	- <i>Emergency Refile</i> (MA Reg. # 1561)	1573	11/7/25
	- <i>Emergency</i>	1578	7/2/26
	- <i>Compliance</i> (MA Reg. # 1578)	1583	7/2/26
450.000	Administrative and Billing Regulations	1579	7/31/26
501.000	Health Care Reform: MassHealth: General Policies.	1567	2/13/26

		<i>Issue</i>	<i>Effective Date</i>
502.000	Health Care Reform: MassHealth: The Eligibility Process	1567	2/13/26
503.000	Health Care Reform: MassHealth: Universal Eligibility Requirements	1567	2/13/26
505.000	Health Care Reform: MassHealth: Coverage Types	1567	2/13/26
506.000	MassHealth: Financial Requirements	1566	1/30/26
	- <i>Correction</i> (MA Reg. # 1566)	1568	1/30/26
508.000	MassHealth: Managed Care Requirements	1578	7/17/26
515.000	MassHealth: General Policies	1567	2/13/26
516.000	MassHealth: The Eligibility Process	1567	2/13/26
	- <i>Correction</i> (MA Reg. # 1567)	1569	2/13/25
517.000	MassHealth: Universal Eligibility Requirements	1567	2/13/26
519.000	MassHealth: Coverage Types	1567	2/13/26
522.000	MassHealth: Other Division Programs	1567	2/13/26
205 CMR	Massachusetts Gaming Commission		
3.00	Harness Horse Racing - <i>Emergency</i>	1571	3/27/26
	- <i>Emergency Refile</i> (MA Reg. # 1571)	1578	3/27/26
	- <i>Compliance</i> (MA Reg. # 1571)	1580	3/27/26
		1580	8/14/26
17.00	Review of a Proposed Transfer of Interests in a Racing Meeting License - <i>Emergency</i>	1580	7/22/26
101.00	M.G.L. c. 23K Adjudicatory Proceedings	1572	4/24/26
116.00	Persons Required to Be Licensed or Qualified	1569	3/13/26
133.00	Voluntary Self-exclusion	1574	5/22/26
134.00	Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations	1572	4/24/26
138.00	Uniform Standards of Accounting Procedures and Internal Controls - <i>Correction</i> (MA Reg. # 1492)	1571	3/9/23
		1578	7/17/26
	- <i>Correction</i> (MA Reg. # 1494)	1581	3/9/23
146.00	Gaming Equipment	1582	9/11/26
147.00	Uniform Standards of Rules of the Games	1574	5/22/26
149.00	Race Horse Development Fund	1572	4/24/26
234.00	Sports Wagering Vendors - <i>Compliance</i> (MA Reg. # 1560)	1564	10/24/25
238.00	Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering	1569	3/13/26
	- <i>Correction</i> (MA Reg. # 1569)	1571	3/13/26
		1572	4/24/26
239.00	Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees - <i>Correction</i> (MA Reg. # 1558)	1571	10/10/25
	- <i>Correction</i> (MA Reg. # 1558)	1572	10/10/25
	- <i>Correction</i> (MA Reg. # 1558)	1578	10/10/25
247.00	Uniform Standards of Sports Wagering	1572	4/24/26
248.00	Sports Wagering Account Management	1572	4/24/26
		1578	7/17/26

		<i>Issue</i>	<i>Effective Date</i>
250.00	Protection of Minors and Underage Youth from Sports Wagering . . .	1571	4/10/26
254.00	Temporary Prohibition from Sports Wagering - <i>Correction</i> (MA Reg. # 1494)	1581	3/9/23
256.00	Sports Wagering Advertising	1581	8/28/26
211 CMR	Division of Insurance		
52.00	Managed Care Consumer Protections and Accreditation of Carriers . .	1575	6/5/26
157.00	Licensing and Regulation of Pharmacy Benefit Managers.	1569	3/13/26
220 CMR	Department of Public Utilities		
29.00	Billing Procedures for Residential Rental Property Owners Cited for Violation of the State Sanitary Code 105 CMR 410.200	1568	2/27/26
	- <i>Correction</i> (MA Reg. # 1568)	1569	2/27/26
32.00	Fees for Applications to the Energy Facilities Siting Board.	1576	6/19/26
34.00	Intervenor Support Grant Program	1568	2/27/26
225 CMR	Department of Energy Resources		
21.00	Clean Peak Energy Portfolio Standard (CPS) - <i>Emergency</i>	1576	5/28/26
	- <i>Compliance</i> (MA Reg. # 1576)	1581	5/28/26
28.00	Solar Massachusetts Renewable Target (SMART) Program 3.0 - <i>Emergency</i>	1578	6/26/26
		1583	9/25/26
29.00	Small Clean Energy Infrastructure Facility Siting and Permitting . . .	1568	2/27/26
250 CMR	Board of Registration of Professional Engineers and Land Surveyors		
2.00	General Provisions, Board Procedures and Definitions	1568	2/27/26
3.00	The Registration Process.	1568	2/27/26
5.00	Professional Practice.	1568	2/27/26
7.00	Enforcement and Discipline	1568	2/27/26
262 CMR	Board of Registration of Allied Mental Health and Human Services Professionals		
2.00	Requirements for Licensure as a Mental Health Counselor	1579	7/31/26
3.00	Requirements for Licensure as a Marriage and Family Therapist . . .	1579	7/31/26
8.00	Ethical Codes and Standards of Conduct	1579	7/31/26
266 CMR	Board of Registration of Home Inspectors		
2.00	Definitions	1567	2/13/26
3.00	Procedure for Registration	1567	2/13/26
4.00	Associate Home Inspector Training Program Requirements	1567	2/13/26

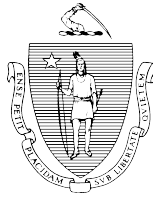
		<i>Issue</i>	<i>Effective Date</i>
6.00	Standards of Practice.	1567	2/13/26
11.00	Insurance Requirements for Limited Liability Corporations and Limited Liability Partnerships	1567	2/13/26
274 CMR	Board of Registration in Midwifery		
3.00	Licensed Certified Professional Midwife Licensure Requirements . . .	1582	9/11/26
301 CMR	Executive Office of Energy and Environmental Affairs		
11.00	MEPA Regulations	1566	1/30/26
41.00	Toxic or Hazardous Substance List - <i>Correction</i> (MA Reg. # 1563) . .	1568	12/19/25
309 CMR	Board of Registration of Hazardous Waste Site Cleanup Professionals		
2.00	Introductory Provisions.	1566	1/30/26
3.00	Licensing of Licensed Site Professionals	1566	1/30/26
4.00	Rules of Professional Conduct	1566	1/30/26
5.00	Advisory Rulings	1566	1/30/26
6.00	Design and Use of Licensed Site Professional's Seal	1566	1/30/26
7.00	Procedure Governing Disciplinary Proceedings and Other Dispositions	1566	1/30/26
8.00	Administrative Penalty Regulations	1566	1/30/26
9.00	Inactive Status.	1566	1/30/26
314 CMR	Division of Water Pollution Control		
4.00	Massachusetts Surface Water Quality Standards	1581	8/28/26
	- <i>Correction</i> (MA Reg. # 1581)	1582	8/28/26
321 CMR	Division of Fisheries & Wildlife		
2.00	Miscellaneous Regulations Relating to Fisheries and Wildlife	1583	9/25/26
3.00	Hunting - <i>Emergency</i>	1564	12/19/25
	- <i>Emergency Correction</i> (MA Reg. # 1564)	1565	12/19/25
		1564	1/2/26
	- <i>Compliance</i> (MA Reg. # 1564)	1571	12/19/25
		1577	7/3/26
	- <i>Correction</i> (MA Reg. # 1577)	1580	7/3/26
		1583	9/25/26
4.00	Fishing	1583	9/25/26
322 CMR	Division of Marine Fisheries		
4.00	Fishing and Shellfishing Equipment.	1566	1/30/26
		1573	5/8/26

		<i>Issue</i>	<i>Effective Date</i>
6.00	Regulation of Catches - <i>Emergency</i>	1573	4/24/26
	- <i>Correction</i> (MA Reg. # 1573)	1580	4/24/26
	- <i>Compliance</i> (MA Reg. #1573)	1580	4/24/26
		1573	5/8/26
	- <i>Correction</i> (MA Reg. # 1573)	1578	5/8/26
	- <i>Emergency</i>	1580	7/31/26
7.00	Permits	1566	1/30/26
		1567	2/13/26
		1573	5/8/26
	- <i>Correction</i> (MA Reg. # 1573)	1578	5/8/26
15.00	Management of Marine Aquaculture	1566	1/30/26
400 CMR	Executive Office of Economic Development		
9.00	Qualified Data Centers	1570	3/27/26
527 CMR	Board of Fire Prevention Regulations		
12.00	Massachusetts Electrical Code	1572	4/24/26
	- <i>Correction</i> (MA Reg. # 1572)	1575	4/24/26
540 CMR	Registry of Motor Vehicles		
5.00	Motor Vehicle Title: Use of Electronic Signature and Electronic Title.	1580	8/14/26
603 CMR	Department of Elementary and Secondary Education\		
7.00	Educator Licensure and Preparation Program Approval	1574	5/22/26
23.00	Student Records	1568	2/27/26
28.00	Regulations on Special Education	1579	7/31/26
31.00	Certificate of Mastery and State Seal of Biliteracy.	1568	2/27/26
57.00	Standards for Interpretation and Translation Services in Schools	1579	7/31/26
606 CMR	Department of Early Education and Care		
10.00	Child Care Financial Assistance	1566	1/30/26
610 CMR	Board of Higher Education		
16.00	Degree Granting Regulation for Pilot Proposals on Innovation	1568	2/27/26
651 CMR	Executive Office of Aging and Independence		
12.00	Certification Procedures and Standards for Assisted Living Residences.	1579	7/31/26

		<i>Issue</i>	<i>Effective Date</i>
760 CMR	Executive Office of Housing and Livable Communities		
69.00	Starter Home Zoning Districts	1569	3/13/26
76.00	Seasonal Communities	1568	2/27/26
77.00	Surplus Real Property	1578	7/17/26
801 CMR	Executive Office for Administration and Finance		
4.00	Rates	1567	2/13/26
		1568	2/27/26
		1579	7/31/26
29.00	Disaster Relief and Resiliency Fund - <i>Emergency</i>	1580	7/29/26
804 CMR	Massachusetts Commission Against Discrimination		
1.00	Rules of Procedure	1576	6/19/26
807 CMR	Teachers' Retirement Board		
25.00	Interest on Delayed Corrections	1570	3/27/26
808 CMR	Bureau of Purchased Services		
1.00	Compliance, Reporting, and Auditing for Human and Social Services.....	1583	9/25/26
815 CMR	Office of the Comptroller		
2.00	State Grants, Federal Grant Awards, Federal Subgrants and Subsidies	1574	5/22/26
3.00	Ready Payment System.	1574	5/22/26
4.00	Late Penalty Interest	1574	5/22/26
6.00	Interdepartmental Fiscal Business	1574	5/22/26
8.00	Contingent Fee Contracts for Non-tax Revenue Maximization	1574	5/22/26
9.00	Debt Collection and Intercept.....	1574	5/22/26
830 CMR	Department of Revenue		
62B.00	Withholding of Taxes on Wages and Declaration of Estimated Income Tax	1575	6/5/26
62C.00	Administrative Provisions Relative to State Taxation - <i>Emergency</i> ...	1568	2/5/26
840 CMR	Public Employee Retirement Administration Commission		
28.00	Electronic Signatures	1573	5/8/26

		<i>Issue</i>	<i>Effective Date</i>
935 CMR	Cannabis Control Commission		
500.000	Adult Use of Marijuana	1564	1/2/26
	- <i>Correction</i> (MA Reg. # 1564)	1568	1/2/26
		1570	3/27/26
	- <i>Correction</i> (MA Reg. # 1570)	1572	3/27/26
	- <i>Emergency</i>	1577	6/18/26
		1582	9/11/26
501.000	Medical Use of Marijuana.	1564	1/2/26
	- <i>Correction</i> (MA Reg. # 1564)	1565	1/2/26
	- <i>Correction</i> (MA Reg. # 1564)	1568	1/2/26
		1570	3/27/26
	- <i>Correction</i> (MA Reg. #1570).	1572	3/27/26
	- <i>Emergency</i>	1577	6/18/26
		1582	9/11/26
940 CMR	Office of the Attorney General		
11.00	Fair Information Practices Act - <i>Correction</i> (MA Reg. # 1562).	1576	12/5/25
40.00	Assisted Living Residences	1578	7/17/26
945 CMR	Office of the Inspector General		
4.00	Owner's Representative for Major Contracts under M.G.L. c. 30, § 39M½.	1565	1/16/25
5.00	Owner's Representative for Major Contracts under M.G.L. c. 149A, § 15½	1565	1/16/25
957 CMR	Center for Health Information and Analysis		
3.00	Assessment on Certain Health Care Providers and Surcharge Payers - <i>Emergency</i>	1566	1/16/26
		1571	4/10/26
4.00	Standard Quality Measure Set	1569	3/13/26
5.00	Health Care Claims, Case Mix and Charge Data Release Procedures .	1568	2/27/26
6.00	Cost Reporting Requirements.	1568	2/27/26
7.00	Nursing Facility Cost Reporting Requirements	1568	2/27/26
9.00	Financial Data Reporting Requirements for Health Care Entities and Affiliated Entities	1565	1/16/26
11.00	Registered Provider Organization Reporting Requirements.	1580	8/14/26
12.00	Pharmacy Benefit Manager Reporting	1566	1/30/26
958 CMR	Health Policy Commission		
6.00	Registration of Provider Organizations.	1573	5/8/26

		<i>Issue</i>	<i>Effective Date</i>
7.00	Notices of Material Change and Cost and Market Impact Reviews . . .	1573	5/8/26
9.00	Assessment on Certain Health Care Providers and Pharmacy Benefit Managers	1573	5/8/26
960 CMR	Office of the State Treasurer and Receiver General		
6.00	Massachusetts Defined Contribution CORE Plan.	1564	1/2/26
961 CMR	State Lottery Commission		
2.00	Rules and Regulations.	1567	2/13/26
		1576	6/19/26
	- <i>Emergency</i>	1580	7/21/26
	- <i>Emergency</i>	1581	8/4/26
980 CMR	Energy Facilities Siting Board		
1.00	Rules for the Conduct of Adjudicatory Proceedings	1568	2/27/26
2.00	General Information and Conduct of Board Business	1568	2/27/26
4.00	Freedom of Information; Protection of Trade Secrets	1568	2/27/26
5.00	Environmental Assessment and Environmental Impact Energy Facilities Siting Counsel	1568	2/27/26
7.00	Long Range Forecasts and Supplements	1568	2/27/26
8.00	Notices to Construct an Oil Facility	1568	2/27/26
11.00	Licensing of Hydropower Generating Facilities	1568	2/27/26
13.00	Consolidated Permits for Clean Energy Infrastructure Facilities	1568	2/27/26
14.00	De Novo Adjudications of Consolidated Local Permit Applications . .	1568	2/27/26
15.00	Cumulative Impact Analysis and Standards for Applying Site Suitability Criteria.	1573	5/8/26
16.00	Pre-filing Consultation and Engagement Requirements	1568	2/27/26
17.00	Constructive Approval	1575	6/5/26



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **101 CMR 348.00**

CHAPTER TITLE: **Rates for Day Habilitation Services**

AGENCY: **Executive Office of Health and Human Services**

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*
This regulation governs the payment rates for MassHealth day habilitation services.

REGULATORY AUTHORITY: **M.G.L. c. 118E**

AGENCY CONTACT: **Deborah M. Briggs, MassHealth Publications** PHONE: **617-847-3302**

ADDRESS: **1 Enterprise Drive, 4th Floor, Quincy, MA 02171**

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

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

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.*

Executive Order 145 notifications: January 20, 2026

Regulatory Review approval: September 1, 2026

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: **March 20, 2026**

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

For the first and second year: No fiscal effect

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: N/A

CODE OF MASSACHUSETTS REGULATIONS INDEX - List key subjects that are relevant to this regulation:

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:

Amends 101 CMR 348.00:: Rates for Day Habilitation Services

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Sep 11 2026

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 10/1/26

CODE OF MASSACHUSETTS REGULATIONS

<u>Remove these Pages:</u>	<u>Insert these Pages:</u>
3 & 4 4.5 - 4.8 910.3 - 910.6	3 & 4 4.5 - 4.8 910.3 - 910.6

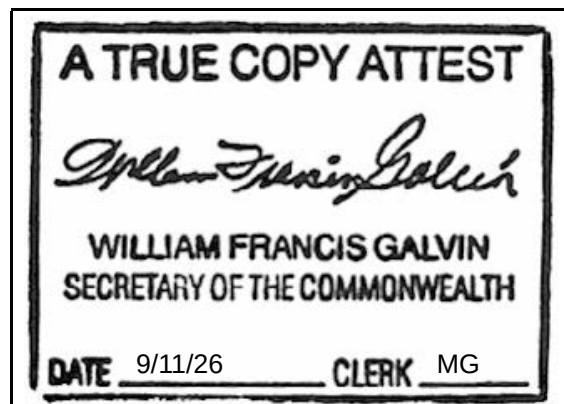


Table of Contents

	<u>Page</u>
101 CMR 331.00: PRESCRIBED DRUGS	809
Section 331.01: General Provisions	809
Section 331.02: General Definitions	809
Section 331.03: Reporting Requirements	811
Section 331.04: Payment for Prescription Drugs	811
Section 331.05: Payment for Over-the-counter Drugs	812
Section 331.06: Dispensing Fees	812
Section 331.07: Special Provisions	812.1
Section 331.08: Severability	812.1
(101 CMR 332.00 AND 333.00: RESERVED)	813
101 CMR 334.00: RATES FOR PROSTHESES, PROSTHETIC DEVICES AND ORTHOTIC DEVICES	820.1
Section 334.01: General Provisions	820.1
Section 334.02: General Definitions	820.1
Section 334.03: General Rate Provisions	820.6
Section 334.04: Reporting Requirements	820.26
Section 334.05: Severability	820.26
(101 CMR 335.00 AND 336.00: RESERVED)	820.27
101 CMR 337.00: RATES FOR DIALYSIS TREATMENTS AND HOME DIALYSIS SUPPLIES	820.31
Section 337.01: General Provisions	820.31
Section 337.02: Definitions	820.31
Section 337.03: Rate(s) Determination	820.32
Section 337.04: Rates for Home Dialysis Supplies	820.33
Section 337.05: Rates for Laboratory Services	820.34
Section 337.06: Rates for Prescribed Drugs	820.34
Section 337.07: Reporting Requirements	820.34
Section 337.08: Bad Debt Settlement	820.34
Section 337.09: Severability	820.34
(101 CMR 338.00: RESERVED)	820.35
101 CMR 339.00: RATES FOR RESTORATIVE SERVICES	820.37
Section 339.01: General Provisions	820.37
Section 339.02: General Definitions	820.37
Section 339.03: General Rate Provisions	820.39
Section 339.04: Allowable Fees	820.40
Section 339.05: Filing and Reporting Requirements	820.46
Section 339.06: Severability	820.46.1
(101 CMR 340.00 THROUGH 342.00: RESERVED)	820.47
101 CMR 343.00: RATES FOR HOSPICE SERVICES	821
Section 343.01: General Provisions	821
Section 343.02: Definitions	821
Section 343.03: Filing and Reporting Requirements	823
Section 343.04: General Rate Provisions	823
Section 343.05: Severability	826
(101 CMR 344.00: RESERVED)	827

Table of Contents

	<u>Page</u>
101 CMR 345.00: RATES FOR TEMPORARY NURSING SERVICES	851
Section 345.01: General Purpose	851
Section 345.02: Definitions	851
Section 345.03: Rate Provisions	852
Section 345.04: General Rate Provisions	854
Section 345.05: Reporting Requirements	855
Section 345.06: Transfer of Ownership	855
Section 345.07: Severability	856
101 CMR 346.00: RATES FOR CERTAIN SUBSTANCE RELATED AND ADDICTIVE DISORDERS PROGRAMS	901
Section 346.01: General Provisions	901
Section 346.02: Definitions	901
Section 346.03: Filing and Reporting Requirements	907
Section 346.04: Rate Provisions	907
Section 346.05: Severability	910
101 CMR 347.00: RATES FOR FREESTANDING AMBULATORY SURGERY CENTER SERVICES	910.1
Section 347.01: General Provisions	910.1
Section 347.02: Definitions	910.2
Section 347.03: General Rate Provisions and Payment	910.2.1
Section 347.04: Filing and Reporting Requirements	910.2.81
Section 347.05: Severability	910.2.81
101 CMR 348.00: RATES FOR DAY HABILITATION PROGRAM SERVICES	910.3
Section 348.01: General Provisions	910.3
Section 348.02: Definitions	910.3
Section 348.03: Rate Provisions	910.4
Section 348.04: Filing and Reporting Requirements	910.6
Section 348.05: Severability	910.6
101 CMR 349.00: RATES FOR EARLY INTERVENTION PROGRAM SERVICES	910.9
Section 349.01: General Provisions	910.9
Section 349.02: Definitions	910.9
Section 349.03: Filing and Reporting Requirements	910.11
Section 349.04: Rate Provisions	910.12
Section 349.05: Severability	910.13
101 CMR 350.00: RATES FOR HOME HEALTH SERVICES	910.15
Section 350.01: General Provisions	910.15
Section 350.02: General Definitions	910.15
Section 350.03: General Rate Provisions	910.17
Section 350.04: Rates of Payment for Home Health Services in the Home	950.17
Section 350.05: Administrative Adjustment	950.18
Section 350.06: Filing and Reporting Requirements	950.18
Section 350.07: Severability	910.18
101 CMR 351.00: RATES FOR CERTAIN ADULT FOSTER CARE SERVICES	910.23
Section 351.01: General Provisions	910.23
Section 351.02: Definitions	910.23
Section 351.03: Rate Provisions	910.24
Section 351.04: Filing and Reporting Requirements	911
Section 351.05: Severability	911

Table of Contents

	<u>Page</u>
101 CMR 429.00: RATES FOR CERTAIN SEXUAL AND DOMESTIC VIOLENCE SERVICES	1045
Section 429.01: General Provisions	1045
Section 429.02: Definitions	1045
Section 429.03: Rate Provisions	1046
Section 429.04: Filing and Reporting Requirements	1048
Section 429.05: Severability	1049
101 CMR 430.00: RATES FOR PROGRAM OF ASSERTIVE COMMUNITY TREATMENT SERVICES	1050.1
Section 430.01: General Provisions	1050.1
Section 430.02: Definitions	1050.1
Section 430.03: Rate Provisions	1050.2
Section 430.04: Filing and Reporting Requirements	1050.3
Section 430.05: Severability	1050.4
101 CMR 431.00: RATES FOR CERTAIN RESPITE SERVICES	1050.5
Section 431.01: General Provisions	1050.5
Section 431.02: Definitions	1050.5
Section 431.03: Rate Provisions	1050.5
Section 431.04: Filing and Reporting Requirements	1050.6
Section 431.05: Severability	1050.6.1
101 CMR 432.00: RATES FOR CERTAIN LEAD AGENCY SERVICES	1050.7
Section 432.01: General Provisions	1050.7
Section 432.02: Definitions	1050.7
Section 432.03: Rate Provisions	1050.8
Section 432.04: Filing and Reporting Requirements	1050.9
Section 432.05: Severability	1050.9
(101 CMR 433.00 THROUGH 443.00: RESERVED)	1050.11
101 CMR 444.00: RATES FOR CERTAIN SUBSTANCE USE DISORDER SERVICES	1050.13
Section 444.01: General Provisions	1050.13
Section 444.02: Definitions	1050.13
Section 444.03: Reporting Requirements	1050.14
Section 444.04: Rate Provisions	1050.14
Section 444.05: Severability	1050.16.3
(101 CMR 445.00: RESERVED)	1050.17

Table of Contents

	<u>Page</u>
101 CMR 446.00: COVID-19 and Public Health Emergency Payment Rates for Certain Community Health Care Providers	1050.120.1
Section 446.01: General Provisions	1050.120.1
Section 446.02: Definitions	1050.120.1
Section 446.03: General Rate Provisions and Payment	1050.120.2
Section 446.04: Special Contracts	1050.120.2
Section 446.06: Severability	1050.120.2
(101 CMR 447.00 AND 101 CMR 448.00: RESERVED)	1050.120.3
101 CMR 449.00: RATES FOR CERTAIN HOME- AND COMMUNITY-BASED SERVICES RELATED TO WORKFORCE DEVELOPMENT	1050.121
Section 449.01: General Provisions	1050.121
Section 449.02: Definitions	1050.121
Section 449.03: Rate Provisions	1050.122
Section 449.04: Filing and Reporting Requirements	1050.123
Section 449.05: Severability	1050.123
(101 CMR 450.00: RESERVED)	1050.125
101 CMR 451.00: RATES FOR CERTAIN YOUTH AND CHILDREN SERVICES	1050.127
Section 451.01: General Provisions	1050.127
Section 451.02: Definitions	1050.127
Section 451.03: Rate Provisions	1050.128
Section 451.04: Filing and Reporting Requirements	1050.129
Section 451.05: Severability	1050.130
(101 CMR 452.00 THROUGH 511.00: RESERVED)	1050.131
101 CMR 512.00: NURSING FACILITY USER FEES	1051
Section 512.01: General Provisions	1051
Section 512.02: Definitions	1051
Section 512.03: Facility Groups	1053
Section 512.04: Calculation of User Fee	1053
Section 512.05: Payment of User Fee	1053
Section 512.06: Reporting Requirements	1054
Section 512.07: Other Provisions	1054.1
(101 CMR 513.00: RESERVED)	1055
101 CMR 514.00: HOSPITAL ASSESSMENT	1057
Section 514.01: General Provisions	1057
Section 514.02: Definitions	1057
Section 514.03: Hospital Groups	1058
Section 514.04: Calculation of Hospital Assessment	1060
Section 514.05: Payment of Hospital Assessment	1060
Section 514.06: Reporting Requirements	1061
Section 514.07: Severability	1062

Table of Contents

	<u>Page</u>
101 CMR 515.00: MANAGED CARE ORGANIZATION SERVICES PAYOR ASSESSMENT	1063
Section 515.01: General Provisions	1063
Section 515.02: Definitions	1063
Section 515.03: Managed Care Organization Services Groups	1064.1
Section 515.04: Calculation of Managed Care Organization Services Assessment	1064.2
Section 515.05: Payment of Managed Care Organization Services Assessment	1064.2
Section 515.06: Reporting Requirements	1064.3
Section 515.07: Other Provisions	1064.4
101CMR 516.00: BEHAVIORAL HEALTH ACCESS AND CRISIS INTERVENTION TRUST FUND SURCHARGE	1065
Section 516.01: Scope and Purpose	1065
Section 516.02: Definitions	1065
Section 516.03: Determination of Surcharge Liability and Payment	1066
Section 516.04: Administrative Review	1068
Section 516.05: Other Provisions	1068
Section 516.06: Severability	1068
(101CMR 517.00 THROUGH 612.00: RESERVED)	1069
101 CMR 613.00: HEALTH SAFETY NET ELIGIBLE SERVICES	1101
Section 613.01: General Provisions	1101
Section 613.02: Definitions	1101
Section 613.03: Eligible Services Requirements	1107
Section 613.04: Eligible Services to Low Income Patients	1113
Section 613.05: Medical Hardship	1118
Section 613.06: Allowable Bad Debt	1120
Section 613.07: Reporting Requirements	1123
Section 613.08: Other Requirements	1125
101 CMR 614.00: HEALTH SAFETY NET PAYMENTS AND FUNDING	1129
Section 614.01: General Provisions	1129
Section 614.02: Definitions	1129
Section 614.03: Sources and Uses of Funds	1133
Section 614.06: Payments to Acute Hospitals	1136
Section 614.07: Payments to Community Health Centers	1141
Section 614.08: Reporting Requirements	1142.1
Section 614.09: Special Provisions	1142.1
(101 CMR 615.00 THROUGH 700.00: RESERVED)	1149
101 CMR 701.00: COMMUNITY HOSPITAL REINVESTMENT TRUST FUND PAYMENTS AND FUNDING	1161
Section 701.01: General Provisions	1161
Section 701.02: General Definitions	1161
Section 701.03: Sources and Uses of Fund	1162
Section 701.04: General Payment Provisions	1162
Section 701.05: Filing and Reporting Requirements	1163
Section 701.06: Noncompliance	1164
Section 701.07: Severability	1164

Table of Contents

	<u>Page</u>
(101 CMR 702.00 THROUGH 800.00: RESERVED)	1165
101 CMR 801.00: DRUG MANUFACTURER NEGOTIATIONS AND ACCOUNTABILITY	1201
Section 801.01: General Provisions	1201
Section 801.02: Definitions	1201
Section 801.03: Direct Negotiations	1202
Section 801.04: Determination of Target Value	1203
Section 801.05: Referral to the Health Policy Commission	1205
Section 801.06: Confidentiality	1206
Section 801.07: Interaction with Other Regulations	1206
Section 801.08: Severability	1206

101 CMR 348.00: RATES FOR DAY HABILITATION SERVICES

Section

- 348.01: General Provisions
- 348.02: Definitions
- 348.03: Rate Provisions
- 348.04: Filing and Reporting Requirements
- 348.05: Severability

348.01: General Provisions

- (1) Scope, Purpose, and Effective Date. 101 CMR 348.00 governs the payment rates for day habilitation services rendered to publicly aided individuals. The rates set forth in 101 CMR 348.00 also apply to day habilitation services governed by 130 CMR 419.000: *Day Habilitation Center Services* and other comparable programs.
- (2) Applicable Dates of Service. Rates contained in 101 CMR 348.00 apply for dates of service on and after September 1, 2026, unless otherwise indicated.
- (3) Coverage. The payment rates in 101 CMR 348.00 are full compensation for day habilitation services provided to publicly aided individuals as well as for any related administrative or supervisory duties rendered in connection with the provision of day habilitation services.
- (4) Coding Updates and Corrections. EOHHS may publish procedure code updates and corrections in the form of an Administrative Bulletin. The publication of such updates and corrections will list:
 - (a) codes for which only the code numbers change, with the corresponding cross references between existing and new codes;
 - (b) codes for which the code number remains the same but the description has changed; and
 - (c) deleted codes for which there are no corresponding new codes.
- (5) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify its policy on and understanding of substantive provisions of 101 CMR 348.00.
- (6) Disclaimer of Authorization of Services. 101 CMR 348.00 is neither authorization for nor approval of the substantive programs for which rates are determined pursuant to 101 CMR 348.00. Governmental units that purchase care are responsible for the definition, authorization, and approval of care and services extended to covered individuals.

348.02: Definitions

As used in 101 CMR 348.00, unless the context requires otherwise, terms have the meanings in 101 CMR 348.02.

Admission Services. Services provided to ensure safe and appropriate care planning for day habilitation members enrolling in day habilitation services for the first time. This is a one-time only claim per MassHealth member ID.

Approved Rates. The rates of payment that have been certified by EOHHS and filed with the Secretary of the Commonwealth. These rates govern payment for services under 101 CMR 348.00.

Center. The Center for Health Information and Analysis established under M.G.L. c. 12C.

Day Habilitation Program. A structured, goal-oriented active treatment program of medically oriented, therapeutic, and habilitation services to raise recipients' levels of functioning and facilitate independent living and self-management in their communities.

Eligible Provider. Any individual, partnership, corporation, or other entity that offers services for purchase by a governmental unit and that meets the conditions of purchase or licensure established under 130 CMR 419.000: *Day Habilitation Center Services*.

348.02: continued

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Governmental Unit. The Commonwealth, any department, agency, board, or commission of the Commonwealth and any political subdivision of the Commonwealth.

Half Per Diem. Day habilitation services provided for a period equal to or less than three hours per day.

Monitor Transportation. Transportation services provided when the member is accompanied by an escort to ensure safety due to signs and symptoms related to medical needs, including Alzheimer's disease and related dementias, or due to other known and verified behaviors related to mental health or developmental disability diagnoses.

Per Diem. Day habilitation services provided for a period greater than three hours per day.

Publicly Aided Individual. A person whose medical and other services a governmental unit is in whole or in part liable for under a statutory program.

Quarter Per Diem. Day habilitation services provided for a period equal to or less than 1½ hours per day.

Re-engagement Services. Services provided to ensure successful re-engagement of members who have not received site-based services during the period of March 24, 2020, through June 30, 2023. This is a one-time only claim per MassHealth member ID on or after the 45th day of service with sustainable re-engagement in site-based services.

Transportation. Method by which a member is brought from their home to the day habilitation provider or from the day habilitation provider to the member's home. Transportation service includes assisting the member while they enter and exit the vehicle, as appropriate. A member's home may include a temporary housing environment such as a shelter or transitional housing.

Wheelchair Transportation. Transportation service provided to a member who requires a wheelchair.

348.03: Rate Provisions

(1) Rate as Full Payment. Each eligible provider must, as a condition of receipt of payment from one or more purchasing governmental units for services rendered, accept the approved rates as full payment and discharge of all obligations for the services rendered, subject only to appellate rights as set forth in M.G.L. c. 118E. There will be no duplication or supplementation of payment from sources other than those expressly recognized or anticipated in the computation of the rate. Any client resources or third-party payments received on behalf of a publicly assisted client will reduce, by that amount, the amount of the purchasing governmental unit's obligation for services rendered to the publicly assisted client.

(2) Approved Day Habilitation Program Rates. For services provided in day habilitation programs in the community, the approved rates include payment for all care and services that are customarily part of the program of services of an eligible provider, subject only to the terms of the purchase agreement between the eligible provider and the purchasing governmental unit(s). The rate of payment for authorized services is the lower of the established charge or the rate listed in 101 CMR 348.03(5).

(3) Day Habilitation Services in Nursing Facilities. Certain residents of nursing facilities who qualify for day habilitation services may be unable to participate in these services in community settings. These individuals may qualify for day habilitation services to be provided at the nursing facility in which they reside. To be eligible for these nursing facility services, the individual must meet criteria established by the MassHealth agency. These members will be billed at the Level 4 rate. The approved rates cover all care and services associated with the provision of day habilitation services in a nursing facility.

348.03: continued

(4) Payment Level for Nursing Facility Residents in Community Day Habilitation Programs. Certain qualifying individuals in nursing facilities may need supplemental services in the form of additional staff assistance to enable them to leave their nursing facility to participate in day habilitation services in the community. The MassHealth agency will pay the Level 4 rate for those individuals so they may participate in a community day habilitation program.

(5) Allowable Fees. The rates of payment for authorized day habilitation program services, unless otherwise noted in 101 CMR 348.03, must be the lower of the established charge or the rate listed in 101 CMR 348.03(5). Refer to purchasers' manuals for special coding instructions and limitations on number of units.

Code	Per Diem Rate	Description
S5102-U1	\$125.91	Skills training and development, <i>per diem</i> , Level 1(communit ­ y program)
S5102-U2	\$167.85	Skills training and development <i>per diem</i> , Level 2 (community program)
S5102-U3	\$290.97	Skills training and development, <i>per diem</i> , Level 3 (community program)
S5102-U4	\$414.09	Skills training and development, <i>per diem</i> , Level 4 (community program & nursing facility residents)

Code	Half Per Diem Base Rate	Description
S5101-U1	\$62.96	Skills training and development, half <i>per diem</i> , Level 1 (community program)
S5101-U2	\$83.93	Skills training and development, half <i>per diem</i> , Level 2 (community program)
S5101-U3	\$145.49	Skills training and development, half <i>per diem</i> , Level 3 (community program)
S5101-U4	\$207.05	Skills training and development, half <i>per diem</i> , Level 4 (community program & nursing facility residents)

Code	Quarter Per Diem	Description
S5100-U5-U1	\$31.48	Skills training and development, quarter <i>per diem</i> , Level 1(communit ­ y program)
S5100-U5-U2	\$41.96	Skills training and development, quarter <i>per diem</i> , Level 2(communit ­ y program)
S5100-U5-U3	\$72.74	Skills training and development, quarter <i>per diem</i> , Level 3 (community program)
S5100-U5-U4	\$103.52	Skills training and development, quarter <i>per diem</i> , Level 4 (community program & nursing facility residents)

Code	One-time Only	Description
S5105	\$2000.00	Admission Services (one-time only on or after the 45 th day of service)
S5105-KZ	\$12,000.00	Re-engagement Services (one-time only on or after the 45 th day of service)

348.03: continued

Code	Per One-way Trip	Description
T2003	\$28.56	Non-wheelchair (ambulatory) transportation
T2003-U6	\$34.98	Wheelchair transportation (one-way trip)
T2003-U7	\$34.98	Monitor transportation (one-way trip)

348.04: Filing and Reporting Requirements

- (1) Required Reports. Reporting requirements are governed by 957 CMR 6.00: *Cost Reporting Requirements*.
- (2) Penalty for Noncompliance. The purchasing governmental unit may impose a penalty in the amount of up to 15% of its payments to any provider that fails to submit required information. The purchasing governmental unit will notify the provider in advance of its intention to impose a penalty under 101 CMR 348.04.

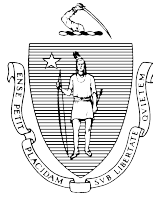
348.05: Severability

The provisions of 101 CMR 348.00 are severable. If any provision of 101 CMR 348.00 or application of any provision to an applicable individual, entity, or circumstance is held invalid or unconstitutional, that holding will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 348.00 or application of those provisions to applicable individuals, entities, or circumstances.

REGULATORY AUTHORITY

101 CMR 348.00: M.G.L. c. 118E.

(PAGES 910.7 AND 910.8 ARE RESERVED FOR FUTURE USE.)

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing*To be completed by filing agency*CHAPTER NUMBER: **101 CMR 426.00**CHAPTER TITLE: **Rates for Certain Adult Community Mental Health Services**AGENCY: **Executive Office of Health and Human Services**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***Establishes the payment rates for certain adult community mental health services provided to publicly aided individuals by governmental units. Services with rates established by this regulation are purchased by the Department of Mental Health (DMH).**REGULATORY AUTHORITY: **M.G.L. c. 118E**AGENCY CONTACT: **Deborah Briggs, MassHealth Publications** PHONE: **617-921-1744**ADDRESS: **1 Enterprise Drive, 4th Floor, Quincy, MA 02171****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*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.***Executive Order 145 notifications: 5/13/26****Regulatory Review approval: 9/8/26**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: **6/12/26**

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

For the first and second year: estimated total annualized increase of \$28.6 million

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: N/A

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

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:*

Amends 101 CMR 426.00.

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Sep 11 2026

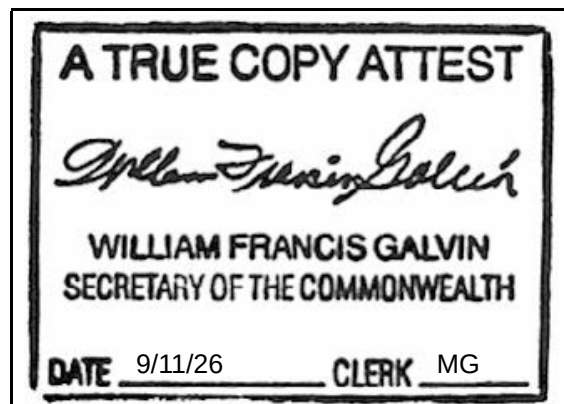
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 9/25/26

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
1038.1 - 1038.6	1038.1 - 1038.6



101 CMR 426.00: RATES FOR CERTAIN ADULT COMMUNITY MENTAL HEALTH SERVICES

Section

- 426.01: General Provisions
- 426.02: Definitions
- 426.03: Rate Provisions
- 426.04: Filing and Reporting Requirements
- 426.05: Severability

426.01: General Provisions

- (1) Scope. 101 CMR 426.00 governs the payment rates for certain adult community mental health services purchased by governmental units.
- (2) Applicable Dates of Service. Rates contained in 101 CMR 426.00 apply for dates of service provided on or after July 1, 2026.
- (3) Disclaimer of Authorization of Services. 101 CMR 426.00 is neither authorization for nor approval of the services for which rates are determined pursuant to 101 CMR 426.00. Governmental units that purchase the services described in 101 CMR 426.00 are responsible for the definition, authorization, and approval of services extended to clients.
- (4) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify its policy on substantive provisions of 101 CMR 426.00.

426.02: Definitions

As used in 101 CMR 426.00, unless the context requires otherwise, terms have the meanings in 101 CMR 426.02.

Client. An individual who receives certain adult community mental health services purchased by a governmental unit.

Cost Report. The document used to report costs and other financial and statistical data. The Uniform Financial Statements and Independent Auditor's Report (UFR) is used when required.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Governmental Unit. The Commonwealth, any board, commission, department, division, or agency of the Commonwealth and any political subdivision of the Commonwealth.

Group Living Environment (GLE). This temporary setting provides a clinically oriented environment and structure in which staff is present on a planned staffing schedule. The setting provides increased treatment and engagement interventions to enable the client to develop the skills necessary to live in a more independent setting. Clients residing in GLEs can also receive supervision and support from an Integrated Team. Certain GLE staff members are part of the Integrated Team and perform the duties and responsibilities of the direct care staff members of the Team for clients residing in the GLEs.

Integrated Team. A multi-disciplinary team of clinical, direct care, and peer staff providing clinical interventions, housing services, and peer and family support to facilitate engagement, support functioning and community living skill development, and maximize self-management consistent with the treatment plan.

Intensive Group Living Environment Services. This group living setting provides clients with the service components and specific clinical interventions particular to a defined service model for which they are referred. The Intensive Group Living Environment Service locations will be designated by the purchasing governmental unit. The following are the intensive GLE services.

426.02: continued

- (a) Medically Intensive Group Living Environment. Provides daily medical management that may be complicated by symptoms and/or behaviors related to the client's mental health. In addition to medical management and other rehabilitative services, clients receive support and supervision services as their needs indicate.
- (b) Intensive Behavioral Group Living Environment. Provides increased therapeutic interventions and supervision that focus on identifying triggers and precipitant behaviors, coping skills, improving communication skills, addressing issues around substance use, and identifying and resolving barriers to more independent community living and employment. Other rehabilitative, support, and supervision services are provided to clients as their needs indicate.
- (c) Intensive Behavioral Assessment Group Living Environment. Provides an intensive level of supervision, including one-to-one (line of sight) coaching on a consistent basis throughout the day. Coaching interventions focus on identifying and practicing pro-social communication and community engagement. Rehabilitation and other support services are provided to clients, as their needs indicate.
- (d) Intensive Fire Safety Group Living Environment. Provides enhanced supervision and monitoring for fire setting behavior, therapeutic interventions to address individually identified risk behaviors assessed in the Fire Setting Behavior Evaluation, and a special physical setting to minimize the risk of fire. Rehabilitative, support, and supervision services are provided to clients as their needs indicate.
- (e) Clinically Intensive Group Living Environment. Delivers rapid response to a client's emerging clinical needs including, but not limited to, symptom management, de-escalation strategies, or one to one assistance. Clients enrolled in this program require either an experience of a length of stay in a Department of Mental Health (DMH) Continuing Care Hospital for two years or more or prior histories of multiple failed efforts in standard DMH community services. The program is designed to develop, implement, and monitor person centered clinically intensive care. Other rehabilitative, support, and supervision services are provided to clients as their needs indicate.
- (f) Intensive Dialectical Behavioral Therapy Group Living Environment. Delivers therapeutic interventions to increase awareness of emotional triggers, manage personal safety, coaching emotional regulation skills and improving skills for social interactions. Intensive Dialectical Behavioral Therapy supports clients to meet the community integration goals, including employment, education, and independent housing. Other rehabilitative, support, and supervision services are provided to clients as their needs indicate.
- (g) Enhanced Medical Group Living Environment. Provides a variety of skilled health care and supportive services, including nursing and hands-on personal care to clients with serious mental illness in addition to compounding medical needs. These services are designed to meet and support the daily needs of clients with chronic medical conditions, terminal illnesses, and/or disabilities that are impacted by their significant mental illness

Lease Management. A lease management function responsible for managing client leasing requirements for those clients enrolled in Adult Community Clinical Services (ACCS) who are benefitting from sponsor-based rental assistance. Covered lease management activities include those leasing arrangements where the ACCS provider is directly involved in the category of sponsor-based leasing.

Provider. Any individual, group, partnership, trust, corporation, or other legal entity that offers services for purchase by a governmental unit and that meets the conditions of purchase or licensure that have been adopted by a purchasing governmental unit.

Reporting Year. The provider's fiscal year for which costs incurred are reported to the Operational Services Division on the Uniform Financial Statements and Independent Auditor's Report (UFR).

Supported Independent Environments (SIE). This setting provides clinical outreach and treatment in an environment with individual or shared units and staff present on a planned schedule within the setting, generally within an office or separate unit. Clients residing in SIEs can also receive supervision and support from an Integrated Team. Certain SIE staff members are part of the Integrated Team and perform the duties and responsibilities of the direct care staff members of the team for clients residing in the SIEs.

426.03: Rate Provisions

- (1) Services Included in the Rate. The approved rate includes payment for all care and services that are part of the program of services of an eligible provider, as explicitly set forth in the terms of the purchase agreement between the eligible provider and the purchasing governmental unit(s).
- (2) Reimbursement as Full Payment. Each eligible provider must, as a condition of acceptance of payment made by any purchasing governmental units for services rendered, accept the approved program rate as full payment and discharge of all obligations for the services rendered. Payment from any other source will be used to offset the amount of the purchasing governmental unit's obligation for services rendered to the publicly assisted client.
- (3) Payment Limitations.
 - (a) No purchasing governmental unit may pay less than or more than the approved program rate.
 - (b) Governmental units do not pay for Integrated Team services for clients residing in Intensive Group Living Environment service locations.
- (4) Administrative Adjustment for Extraordinary Circumstances. A method whereby, subject to availability of funds, a purchasing governmental unit may provide additional resource allocations to a qualified provider in response to unusual and unforeseen circumstances that substantially increase the cost of service delivery in ways not contemplated in the development of current rates. It must be demonstrated that such cost increases gravely threaten the stability of service provision such that client or consumer access to necessary services is at risk. The purchasing governmental unit will evaluate the need for the administrative adjustment, determine whether funding is available, and convey that information to EOHHS for review to determine the amount of any adjustment.

426.03: continued

- (5) Approved Rates. The approved rate is the lower of the provider's charge or amount accepted as payment from another payer or the rate listed in 101 CMR 426.03(5).
- (a) Service Rates.

Program Service Model	Per Enrolled Day Rate
Integrated Team	\$59.37
Integrated Team with GLE/SIE	\$40.42
Supervised Group Living Environments (GLEs):	
Fewer than 13 Beds (Standard GLEs):	
Four to Six Beds	\$388.22
Seven to Nine Beds	\$275.41
Ten to 12 Beds	\$224.14
Supported Independent Environments (SIEs):	
13 to 16 Beds (Model A)	\$95.40
17 to 25 Beds (Model B)	\$75.10
26 to 35 Beds (Model C)	\$54.80
Intensive Group Living Environment Services:	
Medically Intensive Group Living Environment: Four to Six Beds	\$559.39
Medically Intensive Group Living Environment: Seven to Nine Beds	\$466.21
Medically Intensive Group Living Environment: Ten to 12 Beds	\$419.60
Intensive Behavioral Group Living Environment: Four to Six Beds	\$603.63
Intensive Behavioral Group Living Environment: Seven to Nine Beds	\$455.97
Intensive Behavioral Group Living Environment: Ten to 12 Beds	\$391.18
Intensive Behavioral Assessment Group Living Environment: Four to Six Beds	\$488.85
Intensive Behavioral Assessment Group Living Environment: Ten to 12 Beds	\$336.83
Intensive Fire Safety Group Living Environment: Four to Six Beds	\$585.24
Clinically Intensive Group Living Environment: Four to Six Beds	\$648.63
Clinically Intensive Group Living Environment: Seven to Nine Beds	\$539.96
Clinically Intensive Group Living Environment: Ten to 12 Beds	\$524.40
Intensive Dialectical Behavioral Therapy Group Living Environment: Four to Six Beds	\$564.43
Intensive Dialectical Behavioral Therapy Group Living Environment: Seven to Nine Beds	\$442.75
Enhanced Medical Group Living Environment: Four to Six Beds	\$646.08
Enhanced Medical Group Living Environment: Seven to Nine Beds	\$531.98
Enhanced Medical Group Living Environment: Ten to 12 Beds	\$500.63
Program Service Model Add-on	Per Client, per Month
Lease Management Add-on	\$37.64

- (b) Occupancy Rates.
- Occupancy rates are determined by multiplying \$13,015 by the applicable regional occupancy modifier listed below at 101 CMR 426.03(5)(b)3. This is then multiplied by the provider's total bed capacity to arrive at the occupancy rate.
 - The occupancy rate is determined on an annual basis and paid in 12 monthly units.
 - The applicable regional modifier determination for towns and cities that appear in more than one region is at the discretion of the purchasing governmental unit.

426.03: continued

Region	Occupancy Modifier
Boston	107.4%
Brockton	100.9%
Buzzards Bay	97.7%
Fall River	100.4%
Fitchburg	98.9%
Framingham	101.3%
Greenfield	95.1%
Hyannis	98.9%
Lawrence	104.1%
Lowell	103.0%
New Bedford	100.0%
Pittsfield	95.2%
Springfield	96.2%
Worcester	100.9%

- (6) Geographic Areas for the Regional Occupancy Modifier. The following cities and towns comprise the geographic areas encompassed by the regional occupancy modifier.
- (a) Boston: Allston, Boston, Brighton, Chelsea, Dorchester, East Boston, Hyde Park, Jamaica Plain, Mattapan, Readville, Revere, Roslindale, Roxbury, South Boston, West Roxbury, Winthrop
 - (b) Brockton: Abington, Bridgewater, Brockton, Carver, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marion, Marshfield, Mattapoisett, Middleboro, Norwell, Pembroke, Plymouth, Plympton, Rochester, Rockland, Scituate, Wareham, West Bridgewater, Whitman
 - (c) Buzzards Bay: Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Gosnold, Harwich, Mashpee, Nantucket, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, West Yarmouth, Yarmouth
 - (d) Fall River: Fall River, Freetown, Somerset, Swansea, Westport
 - (e) Fitchburg: Ashburnham, Athol, Auburn, Barre, Berlin, Blackstone, Bolton, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Fitchburg, Gardner, Grafton, Hardwick, Harvard, Holden, Hopedale, Hubbardston, Lancaster, Leicester, Lunenburg, Mendon, Milford, Millbury, Millville, New Braintree, North Brookfield, Northborough, Northbridge, Oakham, Oxford, Paxton, Petersham, Phillipston, Princeton, Royalston, Rutland, Shrewsbury, Southborough, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Templeton, Upton, Uxbridge, Warren, Webster, West Boylston, West Brookfield, Westboro, Westminster, Winchendon, Worcester

NON-TEXT PAGE



Docket # 627

THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Notice of Correction

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 101 CMR 446.00

CHAPTER TITLE: COVID-19 and Public Health Emergency Payment Rates for Certain Community Health Care Providers

AGENCY: Executive Office of Health and Human Services

ORIGINAL PUBLICATION REFERENCE: 1582 Date: 9/11/26

SUMMARY OF CORRECTION:

Corrects Promulgation summary to read "Amends" instead of "Repeals", corrects table of contents, and includes omitted pages.

AGENCY CONTACT: Regulations Division PHONE: 617-727-2831

ADDRESS: 24 Beacon Street, Boston, MA 02133

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

SIGNATURE: SIGNATURE ON FILE DATE: Sep 11 2026

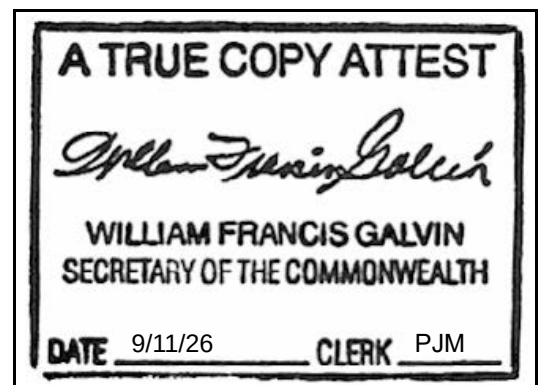
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 9/11/26

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
<u>1050.17 - 1050.18</u> -----	<u>1050.17 - 1050.18</u> <u>1050.120.1 - 1050.120.4</u>



(101 CMR 445.00: RESERVED)

(PAGES 1050.19 THROUGH 1050.120 ARE RESERVED FOR FUTURE USE)

101 CMR 446.00: COVID-19 AND PUBLIC HEALTH EMERGENCY PAYMENT RATES FOR CERTAIN COMMUNITY HEALTH CARE PROVIDERS

Section

- 446.01: General Provisions
- 446.02: Definitions
- 446.03: General Rate Provisions and Payment
- 446.04: Special Contracts
- 446.05: Reserved
- 446.06: Severability

446.01: General Provisions

- (1) Scope and Purpose. 101 CMR 446.00 governs the rates of payment to certain community health care providers to be used by all governmental units for services provided to publicly aided individuals. The rates set forth in 101 CMR 446.03(5) also apply to such services paid for by governmental units for individuals covered by M.G.L. c. 152 (the Workers' Compensation Act).
- (2) Applicable Dates of Service. Rates in 101 CMR 446.00 apply for dates of service on or after September 11, 2026, except as otherwise noted.
- (3) Disclaimer of Authorization of Services. 101 CMR 446.00 is not authorization for or approval of the services for which rates are determined pursuant to 101 CMR 446.00. Governmental units that purchase services are responsible for the definition, authorization, and approval of care and services provided to publicly aided individuals.
- (4) Coverage. The rates of payment in 101 CMR 446.00 constitute payment in full for all services provided by an eligible provider, including administration and professional supervision services. The payment rates will apply to services set forth in 101 CMR 446.00 provided by eligible providers to publicly aided individuals under the conditions described by the purchasing governmental unit.
- (5) Coding Updates and Corrections. EOHHS may publish service code updates and corrections in the form of an administrative bulletin. Updates may reference coding systems including, but not limited to, the Healthcare Common Procedure Coding System (HCPCS). The publication of such updates and corrections will list
 - (a) codes for which the code numbers change, with the corresponding cross references between existing and new codes and the codes being replaced. Rates for such new codes are set at the rate of the code that is being replaced;
 - (b) codes for which the code number remains the same but the description has changed;
 - (c) deleted codes for which there are no corresponding new codes; and
 - (d) codes for entirely new services that require pricing, or codes that had been previously added at individual consideration (IC). EOHHS may list and price these codes according to the rate methodology used in setting rates when Medicare fees are available. When Medicare fees are not available, EOHHS may apply IC payment for these codes until appropriate rates can be developed.
- (6) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify its policy on and understanding of substantive provisions of 101 CMR 446.00, or to issue coding updates and corrections under 101 CMR 446.01(5).

446.02: Definitions

As used in 101 CMR 446.00, terms have the meanings in 101 CMR 446.02, except as otherwise provided.

Eligible Provider. A person, partnership, corporation, governmental unit, or other entity that provides authorized services and that also meets such conditions of participation as have been or may be adopted from time to time by a governmental unit purchasing services.

446.02: continued

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Governmental Unit. The Commonwealth of Massachusetts or any of its departments, agencies, boards, commissions, or political subdivisions.

Publicly Aided Individual. A person for whose medical and other services a governmental unit is in whole or in part liable under a statutory program.

446.03: General Rate Provisions and Payment

(5) Prescribed Drugs.

(a) Defined Terms. Terms used in 101 CMR 446.03(5) that have not been defined elsewhere in 101 CMR 446.00 have the meanings in 101 CMR 331.02: *General Definitions*.

(b) Delivery Fee. Eligible providers will receive a payment adjustment to the professional dispensing fee when medications are delivered to a personal residence (including homeless shelters). The payment adjustment will be the lower of the provider's usual and customary charge for prescription delivery or \$8.00, and will be made only when the MassHealth agency is the primary payer. Payment of this fee by MassHealth will occur only in such circumstances as is designated by Pharmacy Facts, provider bulletin, or other written issuance from the MassHealth agency.

(c) Reporting Requirements. Reporting requirements for 101 CMR 446.03(5) are those in 101 CMR 331.03: *Reporting Requirements*.

446.04: Special Contracts

Notwithstanding 101 CMR 446.03, a governmental unit may enter into a special contract with an eligible provider under which the governmental unit will pay for services authorized but not listed herein, or authorized services performed in exceptional circumstances.

446.06: Severability

The provisions of 101 CMR 446.00 are severable. If any provision of 101 CMR 446.00 or application of any provision to an applicable individual, entity, or circumstance is held invalid or unconstitutional, that holding will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 446.00 or application of those provisions to applicable individuals, entities, or circumstances.

REGULATORY AUTHORITY

101 CMR 446.00: M.G.L. c. 118E

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

(101 CMR 447.00 AND 101 CMR 448.00: RESERVED)

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing*To be completed by filing agency*CHAPTER NUMBER: **130 CMR 419.000**CHAPTER TITLE: **Day Habilitation Center Services**AGENCY: **Division of Medical Assistance**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

This regulation establishes the standards for providing integrated therapies and activities that help individuals with intellectual or developmental disabilities (ID/DD) acquire, improve, or retain their maximum functional, cognitive, and psychosocial skills.

REGULATORY AUTHORITY: **M.G.L. c. 118E, §§ 7 and 12**AGENCY CONTACT: **Deborah M. Briggs, MassHealth Publications** PHONE: **617-847-3302**ADDRESS: **1 Enterprise Drive, 4th Floor, Quincy, MA 02171****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*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.***Executive Order 145 notifications: March 31, 2026****Regulatory Review approval: August 6, 2026**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: **May 15, 2026**

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

For the first and second year: No fiscal effect

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: September 9, 2026

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

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:*

Amends 130 CMR 419.000:: Day Habilitation Center Services

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Sep 11 2026

Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 10/1/26

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
8.1 - 8.2	8.1 - 8.2
16.3 - 16.4	16.3 - 16.4
301 - 312.10	301 - 312.12

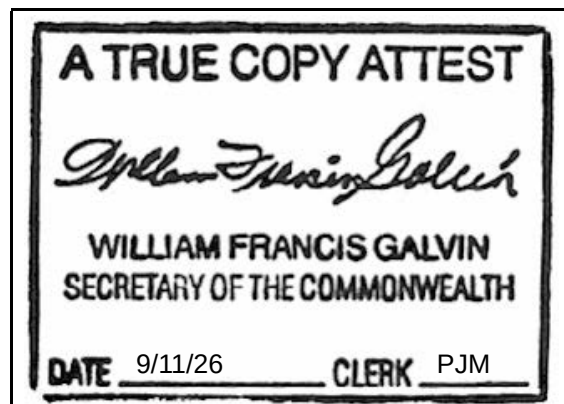


Table of Contents

	<u>Page</u>
130 CMR 417.000: PSYCHIATRIC DAY TREATMENT PROGRAM MANUAL (continued)	
Section 417.423: Qualifications of Professional Staff	285
Section 417.431: Requirements for Admission	286
Section 417.432: Admission Procedures	287
Section 417.433: Treatment Planning	287
Section 417.435: Case Management	288
Section 417.436: Discharge from Program	288
Section 417.437: Recordkeeping Requirements	288
Section 417.438: Written Policies and Procedures	289
Section 417.439: Administration	290
 130 CMR 418.000: SUBSTANCE USE DISORDER TREATMENT SERVICES	 293
Section 418.401: Introduction	293
Section 418.402: Definitions	293
Section 418.403: Eligible Members	298
Section 418.404: Provider Eligibility	299
Section 418.405: Provider Enrollment Process	299
Section 418.406: Required Notifications and Reports	300
Section 418.407: Revocation of Enrollment	300
Section 418.408: Site Inspection	300.1
Section 418.409: Scope of Services	300.1
Section 418.410: Supervision and Other Staff Requirements	300.5
Section 418.411: Recordkeeping Requirements	300.9
Section 418.412: Service Limitations	300.9
Section 418.413: In state Providers: Maximum Allowable Fees	300.10
Section 418.414: Out-of-state Providers: Maximum Allowable Fees	300.10
 130 CMR 419.000: DAY HABILITATION PROGRAM SERVICES	 301
 130 CMR 419.000: DAY HABILITATION CENTER SERVICES	 301
Section 419.401: Introduction	301
Section 419.402: Definitions	301
Section 419.403: Eligible Members	304
Section 419.404: Provider Eligibility	305
Section 419.405: Scope of Day Habilitation	305
Section 419.406: Clinical Eligibility Criteria	306
Section 419.407: Service Needs Assessment, Leveling Tool, and Prior Authorization	306
Section 419.408: Quality Management	307
Section 419.409: Conditions of Payment	308
Section 419.410: Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services	309
Section 419.411: Transportation Services	309
Section 419.416: Day Habilitation Provider Responsibilities	309
Section 419.419: Day Habilitation Service Plan (DHSP)	312.1
Section 419.420: Discharge	312.2
Section 419.421: Day Habilitation Staff Qualifications, Responsibilities, and Training	312.2
Section 419.430: Emergency Services and Plans	312.6
Section 419.431: Noncoverage	312.7
Section 419.432: Physical Site	312.8
Section 419.433: Day Habilitation for MassHealth Members with ID/DD Residing in NFs	312.9
Section 419.434: Withdrawal of a DH Provider from MassHealth	312.10
Section 419.442: Severability	312.11

NON-TEXT PAGE

Table of Contents

	<u>Page</u>
130 CMR 442.000: ORTHOTICS SERVICES	525
Section 442.401: Introduction	525
Section 442.402: Definitions	525
Section 442.403: Eligible Members	526.3
Section 442.404: Provider Eligibility	526.3
Section 442.405: Provider Responsibility	526.5
Section 442.406: Covered Services	526.7
Section 442.407: Service Limitations	526.8
Section 442.408: Non-covered Services	526.9
Section 442.409: Prescribing Provider Orders and Other Documentation Requirements	526.9
Section 442.410: Orthotic Services Provided to Members in Facilities	526.10
Section 442.411: Repairs of Orthotic Products	526.11
Section 442.412: Prior Authorization	526.11
Section 442.413: Medical Necessity Criteria	526.13
Section 442.414: Medicare and Other Third-party Coverage	526.13
Section 442.416: Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services	526.14
Section 442.419: Quality Management and Program Integrity	526.14
Section 442.420: Conditions of Payment	526.14
Section 442.421: Claims for Items Priced at Individual Consideration	526.14
Section 442.423: Recordkeeping Requirements	526.15
Section 442.424: Delivery of Orthotics	526.16
Section 442.425: Prohibited Marketing Activities	526.17
(130 CMR 443.000 THROUGH 446.000: RESERVED)	527
130 CMR 447.000: ACUPUNCTURE SERVICES	528.1
Section 447.401: Introduction	528.1
Section 447.402: Definitions	528.1
Section 447.403: Eligible Members	528.1
Section 447.404: Provider Eligibility	528.2
Section 447.405: Maximum Allowable Fees	528.2
Section 447.406: Reporting Requirements	528.2
Section 447.407: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services	528.2
Section 447.413: Covered Services	528.2
Section 447.414: Non-covered Services	528.2
Section 447.415: Service Limitations	528.3
Section 447.416: Prior Authorization	528.3
Section 447.417: Recordkeeping Requirements	528.3
130 CMR 448.000: COMMUNITY BEHAVIORAL HEALTH CENTER SERVICES	528.5
Section 448.401: Introduction	528.5
Section 448.402: Definitions	528.5
Section 448.403: Eligible Members	528.9
Section 448.404: Provider Eligibility	528.9
Section 448.405: Provider Enrollment Process	528.10
Section 448.406: Required Notifications and Reports	528.10
Section 448.407: Revocation of Enrollment and Sanctions	528.11
Section 448.408: Maximum Allowable Fees	528.11
Section 448.409: Nonreimbursable Services	528.11
Section 448.410: Site Inspections	528.12
Section 448.411: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services	528.12

Table of Contents

	<u>Page</u>
130 CMR 448.000: COMMUNITY BEHAVIORAL HEALTH CENTER SERVICES (continued)	
Section 448.412: Scope of Services	528.12
Section 448.413: Staff Composition Requirements	528.16
Section 448.414: Supervision, Training, and Other Staff Requirements	528.20
Section 448.415: Qualifications of Professional and Paraprofessional Staff Members Authorized to Render Billable Community Behavioral Health Center Services	528.21
Section 448.416: Coordination of Medical Care	528.23
Section 448.417: Schedule of Operations and Appointments	528.23
Section 448.418: Utilization Review Plan	528.23
Section 448.419: Recordkeeping Requirements	528.24
Section 448.420: Written Policies and Procedures	528.25
Section 448.421: Administration	528.26
Section 448.422: Outreach	528.26
Section 448.423: Service Limitations	528.26
130 CMR 449.000: CORRECTIONAL FACILITY SERVICES	528.29
Section 449.401: Introduction	528.29
Section 449.402: Definitions	528.29
Section 449.403: Qualifying Individuals	528.30
Section 449.404: Participating Correctional Facility Eligibility	528.31
Section 449.405: Participating Correctional Facility Enrollment Process	528.31
Section 449.406: Location of Correctional Facility Services	528.32
Section 449.407: Services Provided Under a Contract	528.32
Section 449.408: Reporting Requirements	528.32
Section 449.409: Revocation of Enrollment and Sanctions	528.32
Section 449.410: In-state Providers: Maximum Allowable Fees	528.33
Section 449.411: Site Inspections	528.33
Section 449.412: Covered Services	528.33
Section 449.413: Staffing Requirements	528.35
Section 449.414: Supervision, Training, and Other Staff Requirements	528.35
Section 449.415: Recordkeeping Requirements	528.36
Section 449.416: Administration	528.37
Section 449.417: Service Limitations	528.37
Section 449.418: Severability	528.38

130 CMR 419.000: DAY HABILITATION CENTER SERVICES

Section

- 419.401: Introduction
- 419.402: Definitions
- 419.403: Eligible Members
- 419.404: Provider Eligibility
- 419.405: Scope of Day Habilitation
- 419.406: Clinical Eligibility Criteria
- 419.407: Service Needs Assessment, Leveling Tool, and Prior Authorization
- 419.408: Quality Management
- 419.409: Conditions of Payment
- 419.410: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services
- 419.411: Transportation Services
- 419.416: Day Habilitation Provider Responsibilities
- 419.419: Day Habilitation Service Plan (DHSP)
- 419.420: Discharge
- 419.421: Day Habilitation Staff Qualifications, Responsibilities, and Training
- 419.430: Emergency Services and Plans
- 419.431: Noncoverage
- 419.432: Physical Site
- 419.433: Day Habilitation for MassHealth Members with ID/DD Residing in NFs
- 419.434: Withdrawal of a Day Habilitation Provider from MassHealth
- 419.442: Severability

419.401: Introduction

130 CMR 419.000 establishes the requirements for the provision of services by day habilitation programs under MassHealth. All day habilitation providers must comply with the regulations governing MassHealth, including, but not limited to, 130 CMR 419.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

419.402: Definitions

The following terms used in 130 CMR 419.000 have the meanings given in 130 CMR 419.402 unless the context clearly requires a different meaning.

Accessible Egress. Accessible egress ensures a continuous, unobstructed path from any point in a building to a public way for people with disabilities with specific criteria for width, travel distance, and signage to meet ADA (Americans with Disabilities Act) standards and DH safety guidelines.

Activities of Daily Living (ADLs). Fundamental personal care tasks performed daily as part of an individual's self-care routine. ADLs include, but are not limited to, eating, toileting, dressing, bathing, transferring, and mobility or ambulation.

Clinical Assessment. The screening process of cataloging a member's need for DH using a tool designated by the MassHealth agency that forms the basis for prior authorization.

Commission of Accreditation of Rehabilitation Facilities (CARF). An independent, non-profit organization that accredits health and human service providers. Accreditation from CARF means that a provider meets high standards for quality and is committed to continuous improvement and person-centered care.

Council on Quality and Leadership (CQL). A leader in accrediting human services organizations and systems to continuously define, measure, and improve quality services for adults with intellectual and developmental disabilities.

419.402: continued

Day Habilitation (DH). A service, for individuals with an intellectual disability (ID) or a developmental disability (DD), that is based on a day habilitation service plan that sets forth measurable goals and objectives, and prescribes an integrated program of activities and therapies necessary to reach the stated goals and objectives.

Day Habilitation Provider (DH Provider). The entity responsible for the day-to-day operation of services and programs subject to 130 CMR 419.000.

Day Habilitation Service Manager (DHSM). An individual who manages cases, ensuring that members' service plans are implemented, reviewed, updated as appropriate, and maintained.

Day Habilitation Service Plan (DHSP). A written plan of care for each member that provides realistic and measurable member-driven goals that prescribe an integrated program of individually designed activities and/or therapies necessary to achieve these goals. The objective of the plan is to help the member reach their optimal level of physical, cognitive, psychosocial, occupational capabilities, and wellness.

Department of Developmental Services (DDS). An agency of the Commonwealth of Massachusetts established under M.G.L. c. 19B.

Department of Public Health (DPH). An agency of the Commonwealth of Massachusetts, established under M.G.L. c. 17, § 1.

Developmental Disability (DD). A severe, chronic disability that

- (1) is attributable to other conditions found to be closely related to ID, apart from mental illness, which results in the impairment of general intellectual functioning or adaptive behavior like that of persons with ID, and which requires treatment or services similar to those required for such persons;
- (2) is manifested before a person reaches 22 years old;
- (3) is likely to continue indefinitely; and
- (4) results in substantial functional limitations in three or more of the following major areas:
 - (a) self-care;
 - (b) understanding and use of language;
 - (c) learning;
 - (d) mobility;
 - (e) self-direction; or
 - (f) capacity for independent living.

Developmental Skills Training. A series of planned, coordinated, goal-oriented services that are designed to maintain or improve the functional abilities of a person with an intellectual or developmental disability. Such services include, but are not limited to, self-help skills, sensorimotor skills, communication skills, independent living skills, affective development skills, social development skills, behavioral skills, and wellness.

Developmental Specialist. A paraprofessional demonstrating aptitude and initiative to oversee and carry out members' DHSP goals.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Evacuation Safety Plan. A formal, detailed, written strategy outlining procedures for safely exiting a building or area during emergencies like fires or natural disasters detailing accessible egress routes and multiple evacuation options for all, including those with mobility limitations.

Functional Level. The degree to which individuals can perform daily living activities and manage their lives independently. Functional level is measured through professional clinical assessments.

Health Care Professional. An individual accredited by a professional body upon completing a course of study, and usually licensed by a government agency, to practice a health-related profession such as dentistry, medicine, nursing, occupational health, or physical therapy.

419.402: continued

Hospital. A facility that is licensed or operated as a hospital by the Massachusetts Department of Public Health or the Massachusetts Department of Mental Health that provides diagnosis and treatment on an inpatient or outpatient basis for patients who have any of a variety of medical conditions.

Instrumental Activities of Daily Living (IADLs). Activities related to independent living that are incidental to the care of the member and that include, but are not limited to, household-management tasks, laundry, shopping, housekeeping, meal preparation and cleanup, transportation, care and maintenance of medical equipment and adaptive devices, medication management or any other need determined by the DH provider as being instrumental to the health care and general well-being of the member.

Intellectual Disability (ID). A disability characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical skills and that originates before the individual reaches 22 years old. The meaning of ID is consistent with the standard contained in the 12th edition of the American Association on Intellectual and Developmental Disabilities' *Intellectual Disability: Definition, Classification, and Systems of Supports* (2021).

Interdisciplinary Team (IDT). The team consists of the Registered Nurse (RN)/health care supervisor, a developmental specialist (as needed or applicable), a DHSM, and the program director. The IDT must also include the following clinical members: a physical therapist, a speech and language pathologist, an occupational therapist, and a behavioral professional. Other health care professionals may be included, as applicable.

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/ID). A facility, or distinct part of a facility, that provides intermediate care facility (ICF) services as defined under 42 CFR § 440.150, and that meets federal conditions of participation, and is licensed by the Commonwealth primarily for the diagnosis, treatment, or rehabilitation for individuals with intellectual disabilities; and provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration for health or rehabilitative services to help individuals function at their greatest ability.

Level II Preadmission Screening and Resident Review (Level II PASRR). A comprehensive evaluation and determination performed by DDS for any individual seeking admission or continued stay in a Medicaid nursing facility, in accordance with 42 CFR 483.100, to determine whether an individual suspected of having intellectual or other developmental disability has such a condition and if they do, whether the individual requires the level of services provided by a nursing facility, and whether specialized services are required.

Leveling Tool. MassHealth tool developed to determine each member's payment level based on the member's qualifying needs while at DH, measured by the level of supports needed for the member to acquire, improve, or retain maximum skill levels and independent functioning.

MassHealth. The medical assistance and benefit programs administered by EOHHS pursuant to Title XIX of the Social Security Act (42 U.S.C. 1396), Title XXI of the Social Security Act (42 U.S.C. 1397), M.G.L. c. 118E, and other applicable laws and waivers to provide and pay for medical services to eligible members.

Member. A person determined by the MassHealth agency to be eligible for MassHealth.

Nursing Facility (NF). An institution (or a distinct part of an institution) which is primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care, rehabilitation services for the rehabilitation of injured people, people with disabilities, or sick persons, or on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services that meets the requirements of § 1919(a), (b), (c), and (d) of the Social Security Act and is licensed under and certified by the Massachusetts Department of Public Health.

419.402: continued

Primary Care Provider (PCP). A health care professional qualified to provide general medical care for common health care problems, who supervises, coordinates, prescribes or otherwise provides or proposes health care services, initiates referrals for specialist care, and maintains continuity of care within the scope of practice.

Resident Integrated Service Plan (RISP). A comprehensive service plan developed by an interdisciplinary team consisting of the DDS service coordinator where applicable, the member (or authorized representative), a NF staff representatives, the specialized services provider, and other relevant professionals (such as physical therapists, speech pathologists, occupational therapists, dieticians, and medical staff). The purpose is to address care in all settings for persons with ID or DD who reside in NFs and receive specialized services.

Semi-annual Review. A review of the member's overall progress conducted by the IDT at least twice per year. Components of the review can be found at 130 CMR 419.419(C)(3).

Service Needs Assessment (SNA). A compilation of evaluations by the clinical members of the IDT (Registered Nurse, OT, PT, SLP, Behavior Professional). The SNA determines a member's level of functioning, needs, and strengths, and makes specific recommendations for DH to address identified needs.

Significant Change. A major change in the member's status that

- (1) impacts one or more areas of the member's health status;
- (2) requires the professional interdisciplinary team's review or revision of the DHSP; and
- (3) requires prior authorizations, if the member's qualifying needs indicate a potential change in the payment level.

Specialized Services. Services specified by EOHHS for an NF resident with ID or DD which, combined with services provided by the nursing facility or other service providers, result in treatment that meets the requirements of 42 CFR 483.440(a)(1).

Transportation. The method by which a member is brought from their home to the day habilitation provider or from the day habilitation provider to the member's home. Transportation service includes assisting the member while they enter and exit the vehicle, as appropriate. A member's home may include a temporary housing environment such as a shelter or transitional housing.

Tuberculosis (TB) History. Detailed record of previous testing (date and result) and/or detailed record of past exposure and susceptibility to the Mycobacterium tuberculosis bacteria or any known exposure to the disease.

Tuberculosis (TB) Risk Assessment. Tool/Questionnaire used to identify asymptomatic adults for testing for latent TB infection. If any risk factors are selected on the tool, a Tuberculin Skin Test (TST) is warranted.

Tuberculosis (TB) Screening. TB blood test to determine whether a person is infected with TB bacteria. This could be either an Interferon-Gamma Release Assay (IGRA) blood test or a Tuberculin Skin Test (TST). The IGRA blood test only requires one visit where as the TST requires a second visit to receive test results.

419.403: Eligible Members

(A) MassHealth Members. MassHealth members, subject to the restrictions and limitations described in 130 CMR 450.105: *Coverage Types* that specifies for each MassHealth coverage type, which services are covered, and which members are eligible to receive those services.

(B) Recipients of the Emergency Aid to the Elderly, Disabled and Children Program. For information on covered services for recipients of Emergency Aid to the Elderly, Disabled and Children, see 130 CMR 450.106: *Emergency Aid to the Elderly, Disabled and Children Program*.

419.403: continued

(C) For information on verifying member eligibility and coverage type, *see* 130 CMR 450.107: *Eligible Members and the MassHealth Card*.

(D) Members enrolled in day habilitation must be at least 18 years old. Members' DD/ID diagnosis must have occurred prior to 22 years old.

419.404: Provider Eligibility

An organization seeking to participate in MassHealth as a DH provider must

(A) be located in Massachusetts;

(B) enter into a contract with the MassHealth agency through submission of an application that includes all documentation specified by the MassHealth agency or its designee and be certified by the MassHealth agency or its designee in accordance with the requirements set forth in 130 CMR 419.000 and 130 CMR 450.000: *Administrative and Billing Regulations* to conduct a business in Massachusetts that delivers health and human services to individuals with ID/DD;

(C) accept the MassHealth agency payments as payment in full for DH;

(D) be in operation at least five business days a week, six hours per day;

(E) collaborate with DDS in accordance with EOHHS guidelines, to ensure coordination of services to DDS clients;

(F) be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Council on Quality and Leadership;

(G) meet all provider participation requirements described in 130 CMR 419.000 and 130 CMR 450.000: *Administrative and Billing Regulations*;

(H) participate in any DH provider orientation required by EOHHS;

(I) submit to the MassHealth agency or its designee a written description of DH offered by the DH provider and its service plan; and

(J) agree to periodic review and inspection by the MassHealth agency or its designee that assesses the quality of member care and ensures compliance with 130 CMR 419.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

419.405: Scope of Day Habilitation

A DH provider must provide the following services.

(1) Nursing Services and Health Care Supervision. The DH provider must provide nursing coverage on-site. Nursing services must be provided to meet the needs of each member, by nurses either directly hired or contracted by the DH, and must include the following:

- (a) administration of medications and treatments prescribed by the member's PCP during the time the member is at the program;
- (b) education in hygiene and health concerns;
- (c) coordination of each member's DHSP with other health care professionals including the NF where the member resides, if applicable;
- (d) monitoring each member's health status and documenting those findings in the member's medical record at least quarterly, or more often if the member's condition requires more frequent monitoring. Nursing must also document any findings twice per year as part of the interdisciplinary team's semi-annual review;
- (e) reporting changes in the member's condition to the member's PCP;
- (f) oversight of the implementation of the IDT recommendations, therapy treatment as recommended by a licensed therapist and, as applicable, PCP order; and

419.405: continued

- (g) coordinated implementation of the PCP's orders with the member, authorized representative, and DH provider staff.
- (2) Developmental Skills Training. The DH provider must provide skills training in the following areas: self-help development, sensorimotor development, communication development, social development, independent living development, affective development skills, behavior development, and wellness.
- (3) Therapy Services. The DH provider must provide therapy services when recommended by the SNA. Therapy services include
 - (a) speech/language therapy;
 - (b) occupational therapy;
 - (c) physical therapy; and
 - (d) behavior management.
- (4) Assistance with Activities of Daily Living (ADL). The DH provider must have sufficient staff at its site to assist with ADLs to members as necessary.
- (5) Day Habilitation Service Management. The DH provider must undertake activities that ensure implementation of the member's day habilitation service plan, including required reviews described in 130 CMR 419.419(C).

419.406: Clinical Eligibility Criteria

- (A) All members, except those who are residents of an NF, must meet the following clinical eligibility criteria for receipt of DH:
 - (1) have ID or DD as defined in 130 CMR 419.402 and as certified by a PCP; and
 - (2) need DH to acquire, improve, or retain their maximum skill level and independent functioning.
- (B) In order for a member residing in an NF to be eligible for receipt of DH, DDS must have determined via a Level II PASRR that the member requires specialized services.
- (C) In order for a member receiving hospice services to be eligible for receipt of DH, the DH provider must obtain in writing from the member's hospice provider that the DH is not providing services related to the member's terminal illness, and that the DH services to be provided are not equivalent to or duplicative of hospice services.

419.407: Service Needs Assessment, Leveling Tool, and Prior Authorization

- (A) A Service Needs Assessment (SNA) is completed by the clinical members of the IDT and determines a member's functional level, needs, and strengths, and makes specific recommendations to address acquisition, improvement, or maintenance of each identified need area for the member. Each SNA must
 - (1) be completed within 60 calendar days of a member's admission and every two years thereafter and upon a significant change in the member's condition;
 - (2) assess each of the following need areas: self-help skills, sensorimotor skills, communication skills, independent living skills, affective development skills, social development skills, behavioral development skills, and wellness; and
 - (3) identify which need areas will be addressed in the DHSP.
 - (4) Assessment Criteria. Providers must include the following as part of the initial assessment or reassessment of a member:
 - (a) confirmation that the member had a physical examination or wellness visit by a PCP within 12 months before the start of DH services;
 - (b) a certification, signed by a PCP, supporting the diagnosis of ID or DD (the diagnosis must have occurred prior to 22 years old); and
 - (c) documentation verifying that member has a Tuberculosis (TB) history and risk assessment with additional screening as indicated within three months prior to admission. If there is no record of a previous TB screening/test, the member must have a TB screening or test prior to admission.

419.407: continued

(B) Leveling Tool. Using the results of the SNA, a DH provider must identify the member's appropriate DH service level and acquire Prior Authorization (PA). The Leveling Tool will identify a member as Level 1, Level 2, Level 3, or Level 4. A new Leveling Tool is required, along with a new SNA, every two years or sooner if the member experiences a significant change in the member's qualifying needs that indicates a potential payment level change.

(C) Prior Authorization (PA).

(1) A DH provider must obtain PA from the MassHealth agency or its designee as a prerequisite to payment for the provision of DH upon admission, every two years thereafter, and upon a significant change in the member's qualifying needs that indicates a potential payment level change.

(2) PA determines the medical necessity for DH as described under 130 CMR 419.406 and in accordance with 130 CMR 450.204: *Medical Necessity*.

(3) PA specifies the level of payment for the service.

(a) The MassHealth agency pays DH providers for DH provided from the first date on which services are authorized through PA in the form and format required.

(b) PA through the MassHealth agency authorizes DH providers to claim for DH services provided to an eligible member at one of four levels of payment reflecting the member's assessed need for DH.

(4) PA does not establish or waive any other prerequisites for payment such as the member's financial eligibility described in 130 CMR 503.007: *Potential Sources of Health Care* and 130 CMR 517.008: *Potential Sources of Health Care*.

(5) The DH provider must submit requests for PA in the form and format required by the MassHealth agency or its designee. The DH PA must contain all required information, including, but not limited to, the completed SNA, Leveling Tool, and DHSP.

(6) In making its prior authorization determination, the MassHealth agency or its designee may require additional assessments of the member or require other necessary information in support of the request for prior authorization.

(7) When submitting a request for PA for members living in an NF, the DH provider must submit the Level II PASRR.

(8) When submitting a request for PA for members who demonstrate medical necessity for one-to-one nursing for all six program hours, the DH provider must provide additional documentation in the form and format designated by the MassHealth agency.

(D) Notice of Determination of Prior Authorization.

(1) Notice of Approval. If the MassHealth agency or its designee approves a request for prior authorization, it will send written notice to the member and the DH provider.

(2) Notice of Denial or Service Modification. If the MassHealth agency or its designee denies or modifies a request for prior authorization of DH, the MassHealth agency or its designee will notify both the member and the DH provider. The notice will state the reason for the denial or service modification and contain information about the member's right to appeal and the appeal procedure.

(3) Right of Appeal. A member may appeal a service denial or modification by requesting a fair hearing in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(E) Review. The MassHealth agency, or its designee, may at any time review the medical necessity of the provision of DH to MassHealth members, including, but not limited to, instances in which there has been a significant change in the member's status as defined in 130 CMR 419.402.

419.408: Quality Management

DH providers must participate in any quality management and program integrity processes established by the MassHealth agency including making any necessary data available and access to visit the provider's place of business upon request by the MassHealth agency or its designee.

419.409: Conditions of Payment

(A) The MassHealth agency pays for DH in accordance with the applicable payment methodology and rate schedule established by EOHHS, including supplemental staffing for those who reside in an NF and attend a community-based DH and for DH provided in NFs. Rates of payment for DH do not cover or include any room and board.

(B) Payment for services is subject to the conditions, exclusions, and limitations set forth in 130 CMR 419.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

(1) DH Payment Levels. Members qualify for DH based on the clinical eligibility criteria in 130 CMR 419.403. The Leveling Tool determines the member's qualifying needs while at DH, measured by the level of supports needed for the member to acquire, improve, or retain maximum skill level and independent functioning. Refer to 101 CMR 348.00: *Rates for Day Habilitation Services* for payment level reimbursement rates. Levels increase based on increased needs for supports.

(a) Level 1. The MassHealth agency pays the Payment Level 1 rate to DH providers for each date of service billed for a clinically eligible member whose Leveling Tool score identifies them as Level 1.

(b) Level 2. The MassHealth agency pays the Payment Level 2 rate to DH providers for each date of service billed for a clinically eligible member whose Leveling Tool score identifies them as Level 2.

(c) Level 3. The MassHealth agency pays the Payment Level 3 rate to DH providers for each date of service billed for a clinically eligible member whose Leveling Tool score identifies them as Level 3.

(d) Level 4. The MassHealth agency pays the Payment Level 4 rate to DH providers for each date of service billed for a clinically eligible member whose Leveling Tool score identifies them as Level 4. Members who live in an NF and have a Level II PASRR will qualify as Level 4. Members whose SNA demonstrates a need for six hours a day of nursing will be in Level 4 if the nursing services are delivered by the DH; additional documentation regarding nursing duties will be required.

(e) Leveling Adjustment. The skilled service needs related to nursing, performed by a continuous skilled nurse contracted to provide services to an individual member in a one-to-one capacity throughout the entire day, are not considered qualifying DH needs for the purpose of the Leveling Tool.

(C) The MassHealth agency pays a DH provider for DH only if

(1) the member receiving DH is eligible under 130 CMR 419.403;

(2) the member meets the clinical eligibility criteria for DH in accordance with 130 CMR 419.406;

(3) the DH provider has obtained prior authorization for DH in accordance with 130 CMR 419.407;

(4) the DH provider is not billing for days that are non covered under 130 CMR 419.431;

(5) the DH provider bills at the payment level authorized by the MassHealth agency or its designee; and

(6) for members who reside in an NF, the member's Level II PASRR conducted by DDS determines that the member requires specialized services.

(D) The MassHealth agency will pay only one DH provider per day for the provision of DH to a member.

(E) Every two years or upon significant change, the DH provider must review each member in its care to ensure that the clinical eligibility criteria for DH continues to be met. A DH provider may not bill and the MassHealth agency will not pay for any member who does not meet the clinical criteria for DH.

(F) The MassHealth agency's payment to a DH provider ends on the date on which a member no longer meets the clinical criteria for DH described in 130 CMR 419.406 or is no longer receiving DH, whichever comes first.

(G) The MassHealth agency pays for DH provided by a participating DH in an NF where the member resides if the conditions of 130 CMR 419.409 and 130 CMR 419.433 are met.

(H) The MassHealth agency pays for DH delivered at an approved site and census.

419.410: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services

The MassHealth agency pays for all medically necessary day habilitation services for EPSDT-eligible members in accordance with 130 CMR 450.140: *Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services: Introduction*, without regard to service limitations described in 130 CMR 419.000, and with prior authorization.

419.411: Transportation Services

(A) Transportation Service. Transportation service provides for transporting members from the member's home to the DH provider (for the provision of DH services) or from the DH provider to the member's home, including assisting the member while entering and exiting the vehicle, as appropriate. For the purposes of 130 CMR 419.411, a home includes any residential service locations, as well as private dwellings.

(B) Provision of Transportation.

(1) As an adjunct to transportation services provided by MassHealth or other funding sources, DH providers may provide transportation service as defined at 130 CMR 419.411(A) either directly or through a subcontractor.

(2) For members receiving consistent and regularly scheduled transportation through the DH provider, a transportation schedule or plan must be documented in the member's record.

(C) Rates of Payment. The MassHealth agency pays DH providers for transportation in accordance with the applicable payment methodology and rate schedule established by EOHHS.

(D) Other Requirements. The DH provider must ensure that all transportation provided by the DH program or its subcontractor meets the following criteria:

(1) All vehicles used for transporting members are licensed by the Massachusetts Registry of Motor Vehicles;

(2) The operation of these vehicles is in accordance with all local, state, and federal statutes and ordinances; and

(3) Any driver of these vehicles must

(a) possess a valid Massachusetts driver's license;

(b) have met the criteria for new employees outlined in 130 CMR 419.421(A) and received new hire and yearly training outlined in 130 CMR 419.421(L);

(c) not operate any vehicle when impaired by any legal or illegal drug, including alcohol and cannabis, even if such drug is prescribed to the driver;

(d) be certified in cardiopulmonary resuscitation (CPR) and first aid;

(e) have experience with or demonstrated competence in safely transporting people;

(f) have received training, upon hire and yearly, in meeting the member's transportation needs as they relate to members with DD/ID, behavioral health issues, persons with disabilities, and the elderly; and

(g) have received training, upon hire and yearly, in wheelchair securement and tie down procedures.

(E) Familial Subcontractor Requirements. The familial subcontractor must

(1) possess a valid Massachusetts driver's license;

(2) have met the criteria for new employees outlined in 130 CMR 419.421(A)(1)(b) through (e);

(3) not operate any vehicle when impaired by any legal or illegal drug, including alcohol and cannabis, even if such drug is prescribed to the driver.

(F) Travel Distance and Time. The DH provider and the transportation provider should attempt to minimize travel distance and travel time.

419.416: Day Habilitation Provider Responsibilities

In addition to meeting all the qualifications set forth in 130 CMR 419.000 and 130 CMR 450.000: *Administrative and Billing Regulations*, the DH provider must meet all the following requirements.

419.416: continued

(A) Policies and Procedures Manual. Each DH provider must develop, maintain, and periodically review and update policies and procedures governing the delivery of DH. The policy and procedures manual must at minimum include

- (1) governance documentation, including but not limited to
 - (a) a mission statement;
 - (b) the goals and objectives of the program;
 - (c) an organizational chart describing the lines of authority and communication needed to manage the DH program including the lines of authority for delegation of responsibility down to the member care level;
 - (d) job descriptions that include titles, reporting authority, qualifications, and responsibilities;
 - (e) a description of the governing body; and
 - (f) a description of the fiscal/business management system that clearly specifies the use of funds within budgetary constraints and fiscal restrictions and fiscal reporting by month, reflecting all sources of income and program expenses.
- (2) administrative policies and procedures, including, but not limited to
 - (a) human resources and personnel;
 - (b) staff and staffing requirements;
 - (c) backup staff, including nursing, in the event coverage is required due to illness, vacation, or other reasons;
 - (d) staff education and training;
 - (e) DH provider staff evaluation and monitoring;
 - (f) emergencies including fire, safety, and disasters, including notifying the fire department and police in emergencies and relocating members during an emergency;
 - (g) MassHealth member rights;
 - (h) human rights and nondiscrimination;
 - (i) incident and accident reporting;
 - (j) staff and member grievances;
 - (k) cultural competency;
 - (l) quality assurance and improvement;
 - (m) emergency services and plans;
 - (n) first aid and cardiopulmonary resuscitation requirements;
 - (o) Health Insurance Portability and Accountability Act (HIPAA);
 - (p) food storage and preparation areas;
 - (q) coordination of DH with other services the member is receiving;
 - (r) procedures to be followed if a member is missing or lost; and
 - (s) procedures to be followed to administer rescue medications in a life-threatening emergency in accordance with 105 CMR 700.003(C): Registration of Persons for a Specific Activity or Activities in Accordance with M.G.L. c. 94C, § 7(g).
- (3) clinical policies and procedures, including but not limited to
 - (a) evaluations and assessments;
 - (b) privacy and confidentiality;
 - (c) medication administration, management, storage, and disposal;
 - (d) universal precautions;
 - (e) infection control and communicable diseases;
 - (f) recognizing and reporting abuse (physical, sexual, emotional, psychological), neglect, self-neglect and financial exploitation;
 - (g) description and use of positive behavioral supports (PBS);
 - (h) admission criteria: policies must ensure nondiscrimination in admissions, including but not limited to admission based on acuity; and
 - (i) discharge planning and follow-up.
- (4) All documentation required in 130 CMR 419.416(A) must be kept on-site or readily accessible.

(B) Record-keeping and Reporting Requirements.

- (1) Record-keeping. The DH provider must maintain records in compliance with the requirements set forth in 130 CMR 450.000: *Administrative and Billing Regulations* and all other applicable state and federal laws. All records, including but not limited to the following, must be accessible and made available on-site for inspection by the MassHealth agency or its designee.

419.416: continued

(a) Member Records. The record must contain information necessary to identify the member. Each member's record also must include all documentation pertaining to the DHSP and the design of an appropriate DHSP, including but not limited to the following:

1. the member's name, member identification number, address, telephone number, sex, age, marital status, next of kin or authorized representative, school or employment status, the date of initial contact with the program, and the emergency fact sheet in accordance with 130 CMR 419.430(D);
2. a member profile that includes a brief history including diagnoses and clinical and behavioral needs. If applicable, the member profile must also include specialized service needs, the name of the DHSM assigned to the member, and the name and contact information of the DDS service coordinator, if applicable;
3. an educational, social, medical, and vocational history with assessment reports from providers, as applicable;
4. an updated record of past and present immunizations, including documentation verifying that member has a Tuberculosis (TB) history and risk assessment with additional screening as indicated within three months prior to admission. Annual TB risk assessments and education are recommended but not required unless there has been a known exposure;
5. a copy of the initial clinical assessment, and copies of any reassessments;
6. a report of the member's most recent annual physical examination or wellness visit;
7. the name, address, and telephone number of the PCP serving the member;
8. written approval of the DHSP from the IDT, review with the member, and notification of the service plan to the member's authorized representative;
9. documentation that the PCP was notified in writing of the approved DHSP;
10. documentation supporting the level of payment associated with services provided to the member;
11. DH staff documentation of all conferences with the member, the member's authorized representatives, and with outside professionals;
12. daily attendance records;
13. transportation records for each trip when transportation is provided by the DH or their subcontracted vendor;
14. progress notes updated monthly by the DHSM when appropriate and available, and by other people significantly involved in implementing the DHSP;
15. progress notes written by the health care supervisor, updated quarterly or more often as necessary to address any significant changes in member's status;
16. reports of all semi-annual reviews conducted in accordance with 130 CMR 419.405(A)(1)(d) and 419.419(C)(3) and any other reports generated in compliance with 130 CMR 419.000;
17. written authorization from the member or the member's authorized representative for the release of information, as applicable;
18. the discharge notice, if the member is discharged;
19. a copy of the Level II PASRR notice, if applicable;
20. documentation of the PA approval supporting the member's level;
21. documentation received from a hospice provider, if applicable, affirming DH services are not related to the member's terminal illness.

(b) Administrative Records. The DH provider must maintain

1. payroll records;
2. personnel records, including requirements set forth in 130 CMR 419.421(A), including evidence of completed staff orientation and training;
3. financial and billing records;
4. member utilization records, including the number of members being served and, if applicable, number of individuals on a waiting list;
5. records of staffing levels and staff qualifications;
6. records of complaints and grievances;
7. contracts for subcontracted services; and
8. documentation for nurses contracted to work in a one-to-one capacity with members throughout the entire day, as applicable, which must be agreed upon in writing between the nurse and the DH and made available to MassHealth or its designee upon request.

419.416: continued

(c) Incident and Accident Records. The DH provider must maintain an easily accessible record of member and staff incidents and accidents. The record may be kept within the individual member medical record or employee record or within a separate, accessible file.

(2) Reporting Requirements.

(a) Program Reporting.

1. The DH provider must submit all the following information in the format and time frames as requested by the MassHealth agency or its designee:
 - a. cost and expense information in accordance with the requirements of 957 CMR 6.03: *Reporting Requirements for Type 1 Providers*; and
 - b. any change in DH provider contact information.
2. The DH provider must make available to the MassHealth agency or its designee any additional information requested by the MassHealth agency or its designee related to the provider's provision of DH, including information such as clinical, statistical or cost and expense information, accreditation correspondence with CARF or Council on Quality and Leadership, and other data necessary to measure the quality of the services delivered by the DH provider.
3. The DH provider must comply with all applicable reporting requirements of other state agencies such as DDS.

(b) Critical Incident Reporting. The DH provider must immediately notify the MassHealth agency of any reportable critical incidents outlined on the MassHealth Critical Incident Report Form. Serious incidents for which the cause is known, and written protocols are followed (*e.g.* seizure protocols or behavior plans) are not required to be reported to MassHealth.

(C) Staffing Ratios and Requirements. A DH provider must have sufficient qualified staffing in accordance with 130 CMR 419.421 to deliver DH and have specific personnel policies, including procedures for monitoring current licensure or certification of professional staff, staff training, supervision, and evaluation. Definitions and minimum qualifications relating to these disciplines can be found at 130 CMR 419.421.

(1) A DH provider must have a full-time program director.

(2) A DH provider must have the following clinicians, either by contract or direct hire, as part of the interdisciplinary team:

- (a) physical therapist;
- (b) speech and language pathologist;
- (c) occupational therapist;
- (d) behavioral professional; and
- (e) nursing.

(3) DH providers must have a RN/health care supervisor available at all times when members are receiving DH services. Licensed practical nurses (LPNs) may carry out all duties as delegated and overseen by the nurse health care supervisor, as appropriate. A nurse must be available to be on-site within 30 minutes during the core hours of DH operation. The RN/health care supervisor will provide supervision of LPNs. Additional LPNs or RNs must be on-site to fully meet the needs of members who need more nursing supports.

(4) In the event of a nurse callout, the program should seek onsite nursing coverage. If onsite nursing coverage cannot be obtained, the site may operate if a nurse can be on-site within 30 minutes during the core hours of DH operation.

(5) A DH provider may employ direct care staff (paraprofessionals) to help meet the needs of its members and reach the minimum staff-to-member ratio of one-to-seven. Additional staff are required to meet the needs of all members served.

(6) Staffing ratios are determined based on the acuity/individual needs of the members in attendance each day.

(7) The DH provider must designate one person as the administrator. The same person, if qualified, may serve as both the administrator and the program director.

(8) Nurses contracted to work in a one-to-one capacity with a member throughout the entire day are not included in the staffing ratios.

(9) Nurses contracted to work in a one-to-one capacity with a member throughout the entire day must be trained on all DH policies and procedures.

419.416: continued

(D) Referrals and Written Agreements. To ensure that members receive all the services required in their DHSPs, the DH provider must make prompt and appropriate referrals for those services not provided by the DH program itself. The DH provider must document all referrals in the member's clinical record and coordinate such referrals with DDS in accordance with the requirements of the contract (*see* 130 CMR 419.404(E)).

419.419: Day Habilitation Service Plan (DHSP)

(A) Interim DHSP. Within five business days after the member's admission, the DH provider's professional interdisciplinary team must design an interim DHSP. The plan must outline a temporary schedule of treatment and activities that will be used until the final DHSP is completed.

(B) Final Day Habilitation Service Plan. Together with the SNA, the final DHSP must be completed within 60 calendar days from the date of the member's admission and updated every two years and upon significant change and must be developed with participation of the member, the member's authorized representatives, where applicable and appropriate, and must be derived from the SNA for each member. The final DHSP describes each training program, measurable goals, and objectives that address the need areas identified in the SNA. The DHSP must be designed in a manner that integrates the various activities, tasks, and, if appropriate, therapies recommended to meet the member's areas of need. The final DHSP must include, but is not limited to, the following:

- (1) a medical plan of care;
- (2) a service plan coversheet that outlines the development of the member's DHSP, based on the recommendations from the SNA; and
- (3) goals and objectives that are written in measurable terms.
 - (a) Each goal must
 1. be written without the use of ambiguous action verbs;
 2. be member-driven; and
 3. provide clear means for attaining the goal within an established time frame.
 - (b) Objectives must address specific skill acquisition and retention as it relates to a goal and must
 1. be written without the use of ambiguous action verbs;
 2. be member-driven;
 3. measure only one behavior; and
 4. identify measurable outcomes performance and stability criterion.

(C) Reviews.

- (1) The DHSM must review the member's goals and objectives every six months or upon significant change and must inform the staff of any changes in the member's status or DHSP.
- (2) The DHSM must ensure that monthly documentation related to the member's DHSP is completed by staff and reflects the member's plan of care. Any significant changes in the member's health status must be discussed with the DH staff.
- (3) The interdisciplinary team must, at least two times per year, conduct a semi-annual review to address the member's overall progress. Components of this review, at a minimum, must include
 - (a) a comprehensive review of the member's goals and objectives (if a change in goals and objectives is indicated by the review, the member's DHSP must be updated); and
 - (b) comprehensive medical review based on the member's DHSP.

419.420: Discharge

- (A) Discharge Procedures. The DH provider must coordinate the discharge with the member, member's authorized representative, DDS, if applicable, and with the staff of the DH provider or other agency to which the member is being transferred, if applicable.
- (B) Discharge Plan. A discharge plan, dated and signed by the program director, must be kept in the member's record for at least six years after the date of discharge and must remain accessible to representatives from the MassHealth agency and other state and federal agencies that are authorized by law to have such information.

419.421: Day Habilitation Staff Qualifications, Responsibilities, and Training(A) General Staffing Requirements.

- (1) Prior to hiring or contracting with any staff, the DH provider must
 - (a) check the candidate's references and job history and ensure that the candidate meets all the required experience, education, and qualifications;
 - (b) conduct a Criminal Offender Records Information (CORI) check and determine whether any offender records may disqualify the individual for employment;
 - (c) conduct a Sex Offender Registry Information (SORI) check and determine whether any offender records may disqualify the individual for employment;
 - (d) search the CPPD Abuser Registry to align with Nicky's Law (M.G.L. c. 19C, § 15);
 - (e) check the Office of Inspector General (OIG) List of Excluded Individuals and Entities (LEIE) to determine whether the candidate appears on the LEIE and is thus disqualified from employment;
 - (f) conduct a national criminal background check in accordance with the administrative procedures described at 115 CMR 12.00: *National Criminal Background Checks*;
 - (g) conduct license and certification checks and validate that the candidate has obtained all necessary licenses and certifications and that all licenses and certifications are current;
 - (h) ensure that each candidate will not be providing direct care to any member that candidate is related to or legally responsible for; and
 - (i) ensure that each candidate has documentation verifying that a previous screening/test for tuberculosis was conducted as well as documentation verifying that a recent TB risk assessment was conducted including additional screening as indicated. Annual TB risk assessments and education are recommended but not required unless there has been a known exposure.
- (2) On an ongoing basis, the DH provider must
 - (a) conduct OIG LEIE checks for all staff on a monthly basis;
 - (b) ensure that all staff are appropriately trained and managed, which must include but not be limited to training in recognition and reporting of abuse;
 - (c) have available at all times enough educated, experienced, trained, and competent personnel to provide DH to individuals with ID or DD;
 - (d) evaluate staff annually using standardized evaluation measures;
 - (e) maintain a separate personnel file for each staff member with all applicable information including performance evaluations; and
 - (f) include in each staff member's personnel file any staff incident or accident reports.

(B) Professional Interdisciplinary Team (IDT).

- (1) The DH provider must have an IDT that consists of the health care supervisor, a developmental specialist (as needed or applicable), a DHSM, and a program director. Responsibilities of the IDT include, but are not limited to, designing the implementation, supervision, and continued review of the DH provider's provision of DH to members in accordance with members' individual DHSP.
- (2) Additional Interdisciplinary Team Members.
 - (a) For the purposes of completing each member's SNA, the IDT must also include the clinicians noted at 130 CMR 419.416(C)(2) as well as other health care professionals as applicable to the member's need. These team members are responsible for reassessing a member's areas of need in the event of a significant change in the member's condition.
 - (b) Additional IDT members must continue participation in IDT reviews until the member no longer requires continued formal direct therapy.

419.421: continued

(C) Administrator.

(1) Qualifications. The administrator must hold either a bachelor's degree in business management or a related field or have at least two years of experience in health care management. One year of that experience must have been in a supervisory capacity.

(2) Responsibilities. The administrator must

- (a) manage day-to-day activities, if acting as the program director;
- (b) report to the MassHealth agency or its designee and other involved agencies;
- (c) monitor compliance with all applicable laws and regulations governing DH; and
- (d) implement the DH provider's policies and procedures.

(D) Program Director.

(1) Qualifications. The program director must hold a bachelor's degree in a health-related field, with at least two years of relevant health care experience, with demonstrated leadership qualities or at least one year of supervisory experience. Six years of relevant health care experience, with two years of demonstrated leadership qualities or at least one year serving in a supervisory role, may be substituted in lieu of a bachelor's degree.

(2) Responsibilities. The program director must

- (a) manage the day-to-day activities of the provision of DH;
- (b) monitor compliance with all applicable laws and regulations governing the provision of DH;
- (c) implement and oversee the DH provider's policies and procedures;
- (d) hire, oversee training of, supervise, evaluate, and, when necessary, fire staff members;
- (e) oversee member services and participate on IDTs; and
- (f) report to the MassHealth agency and other involved agencies, as requested and required by the agency or agencies.

(E) Health Care Supervisor.

(1) Qualifications. The health care supervisor must be licensed as a registered nurse in the Commonwealth of Massachusetts with relevant experience.

(2) Responsibilities. The health care supervisor is responsible for overseeing the indirect and direct nursing care provided to members receiving DH from the DH provider and must

- (a) oversee medication administration and management
- (b) supervise or provide direct care and training in relevant areas;
- (c) coordinate medical services with each member's PCP or medical clinic;
- (d) oversee all health care services provided to the member while at the program;
- (e) complete nursing assessments or review and sign off on assessments completed by other nursing staff (an LPN may not independently perform a comprehensive assessment.);
- (f) participate on all interdisciplinary teams;
- (g) obtain reports and approval of medical care plans from PCPs;
- (h) ensure that documentation by the nurse of the member's progress is recorded quarterly, or more often if the member's condition requires more frequent monitoring;
- (i) advise the program director and other DH provider staff of any medical problems that may hinder a member's participation in DH or in a specific activity; and
- (j) supervise any other nursing staff.

(F) Developmental Specialist.

(1) Qualifications. Each developmental specialist must have a high school diploma or GED.

(2) Responsibilities. Each developmental specialist must

- (a) participate in member IDT reviews, as needed or applicable;
- (b) ensure member training programs are implemented according to their DHSP; and
- (c) help with activities of daily living.

419.421: continued

(G) Day Habilitation Service Manager (DHSM). Each member must be assigned a DHSM. The DHSM can be the program director or developmental specialist or other personnel that meet the qualifications set forth in 130 CMR 419.421(G)(1).

(1) Qualifications. The DHSM must have experience with case managing and case reviews in a relevant health care setting.

(2) Responsibilities include

- (a) supervising the implementation of the DHSP;
- (b) reviewing members' DHSP;
- (c) ensuring plan updates are made to the DHSP;
- (d) participating in interdisciplinary team meetings; and
- (e) maintaining member records.

(H) Other Licensed Nursing Staff.

(1) Qualifications. Other licensed nursing staff must be licensed in the Commonwealth of Massachusetts as either a practical nurse or registered nurse.

(2) Responsibilities. Under the direction of the health care supervisor, other licensed nursing staff must

- (a) administer prescribed medications to members following current medication orders (non-prescription medications must not be dispensed without a medication order)
- (b) provide direct care and training in relevant areas;
- (b) coordinate medical services with each member's PCP or medical clinic;
- (c) complete nursing assessments (RNs must review and sign off on assessments completed by other nursing staff, as LPNs may not independently perform a comprehensive assessment);
- (d) obtain reports and approval of medical care plans from PCPs;
- (e) complete all nursing documentation and quarterly nursing notes or more often if the member's condition requires more frequent monitoring; and
- (f) advise the program director and other DH staff of any medical problems that may hinder a member's participation in DH or in a specific activity.

(I) Other Direct Care Staff (Paraprofessionals).

(1) Qualifications. Other direct care staff must be able to complete the duties of the position.

(2) Responsibilities include

- (a) assisting with ADLs;
- (b) assisting with members' individualized programming programs; and
- (c) providing input for interdisciplinary team reviews.

(J) Behavioral Professionals.

(1) Qualifications.

(a) Behavioral Specialist. The behavioral specialist must have one year's relevant work experience in developing behavioral programming for individuals.

(b) Psychologist. The psychologist must be currently licensed by the Massachusetts Board of Registration of Psychologists, or have at least a master's degree in clinical psychology and at least three years of full-time, supervised, postgraduate experience.

(c) Behavioral Aide. A behavioral aide must have at least one year's experience with data collection and with implementing behavioral programming.

(2) Responsibilities.

(a) Behavioral Specialists. A behavioral specialist must

- 1. assess each individual's behavioral and affective development need areas, except for those individuals with no documented history of behaviors or who, at the time of assessment, are not exhibiting behaviors noted in their history; and
- 2. make recommendations, based upon assessment, on the behavioral programming and habilitation services necessary to meet the members identified needs.

(b) Psychologist. If the DH provider includes psychological testing, a psychologist must perform such testing.

(c) Behavioral Aides. A behavioral aide must assist with assessment and implementation of behavioral programming to address identified need areas.

419.421: continued

(K) Therapists.(1) Physical Therapist.(a) Qualifications.

1. A physical therapist must be licensed by the Massachusetts Board of Registration in Allied Health Professions.

2. Any additional physical therapy personnel must be licensed by the Massachusetts Board of Registration in Allied Health Professions or must be graduates of an approved physical-therapy-assistant program and be licensed by the Massachusetts Board of Registration in Allied Health Professions. A physical therapy assistant must work under the direct supervision of the licensed physical therapist.

(b) Responsibilities of the physical therapist include

1. assessing each individual's therapy and developmental skill need areas; and
2. recommending, based upon the assessments, the DH necessary to meet the member's identified areas of need.

(2) Occupational Therapist.(a) Qualifications.

1. Occupational therapists must be licensed by the Massachusetts Board of Registration in Allied Health Professions.

2. Any additional occupational therapy personnel must be licensed by the Massachusetts Board of Registration in Allied Health Professions or must be graduates of an approved occupational therapy assistant program and be licensed by the Massachusetts Board of Registration in Allied Health professions. An occupational therapy assistant must work under the direct supervision of the licensed occupational therapist.

(b) Responsibilities of the occupational therapist include

1. assessing each member's therapy and developmental skill need areas; and
2. recommending, based upon the assessments, the DH necessary to meet the member's identified areas of need.

(3) Speech and Language Pathologist.(a) Qualifications.

1. Speech and language pathologists must be licensed by and in good standing with the Massachusetts Board of Registration in Speech-language Pathology as a speech/language therapist or speech/language pathologist.

2. Any additional speech and language pathology personnel must work under the direct supervision of the licensed pathologist as a speech and language pathologist assistant (SLPA). SLPAs must be enrolled in a professional training program or must have obtained at least a bachelor's degree in speech pathology and audiology.

(b) Responsibilities of the speech and language pathologist include

1. assessing each member's communication needs; and
2. recommending, based upon the assessments, the DH necessary to meet the member's identified areas of need.

(L) DH Staff Training Requirements upon Hire and Yearly. The DH provider must provide initial and annual training to all staff members who are responsible for the care of a member. Records of completed training must be kept on file and updated regularly by the DH provider. The initial training must be completed for new staff within three months of hire and must include, but is not limited to, the following topics:

- (1) DH scope of services;
- (2) DH provider written policies and procedures;
- (3) DH provider staff roles and responsibilities;
- (4) interdisciplinary professional team approach;
- (5) communication and interpersonal skills;
- (6) emergency procedures and environmental safety, including fire, safety and disaster plans;
- (7) privacy and confidentiality (HIPAA);
- (8) prevention and reporting of abuse, neglect, mistreatment; misappropriation/financial exploitation;
- (9) human rights, non-discrimination, and cultural sensitivity;

419.421: continued

- (10) universal precautions and infection control practices;
- (11) caring for people with ID/DD, behavioral health issues including positive behavioral supports (PBS), behavior acceptance, and accommodations;
- (12) observation, reporting, and documentation of the member's status;
- (13) completing and filing critical incident reports, as applicable to role;
- (14) administering prescribed rescue medications to members as necessary and in accordance with 105 CMR 700.003(C): *Registration of Persons for a Specific Activity or Activities in Accordance with M.G.L. c. 94C, § 7(g)*, as applicable to role;
- (15) advance directives;
- (16) techniques of providing safe personal care assistance and good body mechanics;
- (17) certification in cardiopulmonary resuscitation (CPR) and first aid, as applicable to 130 CMR 419.430(E) for regulatory requirements; and
- (18) wheelchair safety, securements, and tiedown procedures.

419.430: Emergency Services and Plans

The DH provider must establish plans, policies, and procedures for medical and other emergencies developed with the assistance of local and state fire and safety experts, and posted in staff offices and in clearly visible locations throughout each DH provider site. These plans and procedures must include, at a minimum, the following:

- (A) Written emergency policies and procedures that must include
 - (1) an emergency evacuation plan that complies and coordinates with local fire department requirements and that must, at a minimum, require quarterly fire and evacuation drills for all staff members, and which must be documented in accordance with 130 CMR 419.416(B);
 - (2) a procedure to be followed if participant is missing or lost;
 - (3) procedures for handling medical emergencies at each DH provider site;
 - (4) persons and entities to be notified in case of an emergency;
 - (5) locations of alarm signals and fire extinguishers; and
 - (6) staff training in emergency procedures, including, but not limited to, assignment of specific tasks and responsibilities to the personnel and documentation of such training.
- (B) Written procedure for emergency transportation to an acute care hospital must be in accordance with the following requirements.
 - (1) In the event of a medical emergency, a DH provider must call the emergency access number 911 and arrange for the transport of a member to an acute care hospital for emergency medical care.
 - (2) The DH provider must provide all pertinent health information to the emergency medical technician(s) and to any hospital to which any member is transported, including the member's Comfort Care/Do Not Resuscitate Verification Form, Massachusetts Medical Orders for Life-Sustaining Treatment (MOLST) Form, or other advance directive on file with the DH provider, as applicable.
 - (3) The DH provider must contact relevant parties associated with the type of emergency, which may include the member's PCP, authorized representative, and DDS service coordinator. The DH provider must contact relevant parties at the time of the emergency or as soon as possible to advise about the emergency and all actions taken in response to the emergency.
 - (4) The DH provider must, immediately after such medical emergency, document in the member's clinical record the following:
 - (a) the nature of the emergency and actions taken in response to the emergency;
 - (b) the reason for the member's emergency transport to an acute care hospital, if applicable; and
 - (c) the name of the member's authorized representative who was notified of the medical emergency and the date and time the member's authorized representative was notified.
- (C) A written Continuity of Operations Plan (COOP) in accordance with the resources available from the Massachusetts Department of Public Health's Office of Preparedness and Emergency Management;

419.430: continued

(D) An emergency fact sheet on each member, updated upon change and reviewed annually, that contains the following information:

- (1) the name and telephone number of the member's PCP;
- (2) the member's diagnosis;
- (3) any special treatments or medications the member may need;
- (4) the member's allergies;
- (5) insurance information; and
- (6) the name and telephone number of the identified contact person, the authorized representative to be notified in case of emergency and, if applicable, the DDS service coordinator.

(E) A written policy on staffing that includes that at least two staff members certified in first aid and cardiopulmonary resuscitation (CPR) be on duty at all times. The provider must maintain a current record of training and recertification of staff and post the names of certified individuals in a conspicuous location.

(F) A written policy pertaining to the emergency administration of, and staff training on the use of, rescue medications by non-licensed DH staff members in a life-threatening emergency, when medical professionals are not readily available, in accordance with DPH regulatory guidance at 105 CMR 700.003(C): *Registration of Persons for a Specific Activity or Activities in Accordance with M.G.L. c. 94C, § 7(g)*.

419.431: Noncoverage

The following are considered non-covered days and are ineligible for payment under 130 CMR 419.000.

(A) DH provided to a member without prior authorization from the MassHealth agency or its designee.

(B) Any portion of a day outside the approved rate structure described in 101 CMR 348.00: *Rates for Day Habilitation Services*, during which the member is not receiving scheduled services from the DH provider, unless the provider documents that the member was receiving services from the DH provider's staff in a community setting.

(C) DH provided to a member when the member's needs can no longer be met by the DH as determined by the PCP and the professional interdisciplinary team in consultation, or by a qualified representative of the MassHealth agency, DDS, or DPH.

(D) Days or portion(s) of a day outside of the rate structure in 101 CMR 348.00: *Rates for Day Habilitation Services* on which the following services are provided:

- (1) vocational- and prevocational-training services, which include vocational-skills assessment, career counseling, job training, and job placement;
- (2) work-related services, which provide participants with work skills and supervised employment for the production of saleable goods;
- (3) educational services, which involve traditional classroom instruction of academic subjects, tutoring, and academic counseling; and
- (4) social, vocational, and recreational services not administered through the DH provider.

(E) DH provided to members residing in ICF/ID.

(F) DH provided more than five days per week and six hours per day per member;

(G) DH provided at a site that has not been approved by the MassHealth agency or its designee or does not have a current approval on file;

(H) DH provided on or after the effective date of the discharge plan; and

(I) Claims billed above the census on file as approved by the MassHealth agency or its designee.

419.432: Physical Site

(A) Physical Site. The MassHealth agency or its designee approves each DH site and census. A DH provider must provide DH at a site that meets all of the requirements in 130 CMR 419.432(B)(1) through (17).

(B) In the event of a site change, renovation, new construction, or change in census, the DH provider must forward a copy of all plans to the MassHealth agency or its designee for approval.

(1) The site must be designed with adequate space for the provision of all DH, with a minimum of 50 square feet of programming space per participant. This minimum does not include offices (except nurses' offices if used for member treatment), hallways, storage areas, reception areas, and other areas not used for the provision of DH. For sites with kitchens used for activities other than meal preparation, 100% of the kitchen floor area is counted as part of the participant space requirement.

(2) When located in a building or facility housing other services, the DH provider may utilize all available space but must have separate and distinct staff for each service.

(3) As of September 7, 2018, a newly enrolled DH provider site must be in a location that complies with the Americans with Disabilities Act (ADA) and ADA Standards for Accessible Design, and the following:

(a) if the site is on-ground level, it must have at least two means of accessible egress;

(b) if any portion of the site is not on-ground level, the portion of the site that is not on-ground level must comply with the additional requirements identified in the DH Safety Guidelines including but not limited to:

1. two means of accessible egress from each floor

2. additional written evacuation safety plans;

(c) the site is designed to meet the needs of people with disabilities; and

(d) the site is in compliance with local health, fire, and safety codes.

(4) For sites approved on or before September 7, 2018, that occupy multi-level space, the site must have at a minimum one elevator for egress, and evacuation plans must include specific procedures for evacuation of those in wheelchairs and comply with local and state evacuation requirements. Any expansion of square footage made after October 1 2026, including but not limited to expanding to an additional floor, is subject to the requirements of 419.432(B)(3).

(5) The site must include adequate outdoor space for members to safely arrive at and depart from the DH provider site.

(6) DH providers must provide a protected and secure environment for members, including members who wander or require increased supervision and security.

(7) The site must include sufficient parking capacity to satisfy the needs of members, staff, and the public.

(8) The site must include a clean and sanitary food preparation area equipped with a refrigerator, a sink, adequate counter space, and adequate storage space.

(9) Adequate artificial lighting must be available in all rooms, stairways, hallways, corridors, bathrooms, and offices.

(10) A DH provider site serving five or more unrelated participants must comply with the Massachusetts State Building Code, 780 CMR 3.00: *Use and Occupancy Classification*.

(11) The MassHealth agency must approve each DH site. In the event of a site change, renovation, or new construction, the provider must forward a copy of all plans to the MassHealth agency for approval. Upon completion of renovations, moves, or new construction, the MassHealth agency or its designee must view the site to determine compliance with the requirements.

(12) The kitchen and bathrooms must be designed and equipped for teaching ADL skills to all participants.

(13) In at least one participant area, the site must have a fire extinguisher and a first aid kit, easily accessible to staff.

(14) The site must meet the requirements of all state and local building, sanitary, health, fire, and zoning codes, and all other requirements pertaining to health, safety, and sanitation.

(15) The participants must have access to hand sanitizer dispensers and to at least one handwashing station. Hand sanitizer dispensers and hand washing stations must be conveniently placed and accessible to staff. Hand sanitizer dispensers and handwashing stations must be placed with consideration for participant safety and accessibility.

419.432: continued

- (16) Participants must have access to natural light and outside views.
- (17) Participants must have adequate lighting, heating, and ventilation so that participants are comfortable in all seasons of the year.

419.433: Day Habilitation for MassHealth Members with ID/DD Residing in NFs

For purposes of providing DH to MassHealth members with ID or DD who are residing in NFs, DH providers must comply with all of the requirements outlined in 130 CMR 419.433 as well as coordinate and communicate with the member, the DDS service coordinator, if applicable, and the NF, actively participate in the development of the RISP, and attend the NF plan of care meetings to ensure that the DHSP complements and reinforces the service plans referenced in the member's RISP.

(A) Admission Criteria. In addition to the criteria outlined in 130 CMR 419.406, a MassHealth member with ID or DD residing in a NF may receive DH designed to improve the member's level of independent functioning.

(B) Service Needs Assessment (SNA). In addition to the requirements outlined in 130 CMR 419.407, the SNA for a MassHealth member with ID or DD who is residing in a NF and who receives DH must

- (1) be completed by a qualified professional who must possess a master's degree in a human-services-related field or other professional license in a human or health services field;
- (2) include all applicable therapy or nursing assessments completed by the NF. In *lieu* of utilizing assessments completed by the NF, the provider may complete specialized assessments that take into consideration the member's disabilities;
- (3) assess all specialized service need areas to determine if specialized services are needed and if so, what DH services are appropriate to meet those needs; and
- (4) be completed upon a significant change involving a change in the member's Level II PASRR or as the member's RISP dictates.

(C) Day Habilitation Service Plan (DHSP).

- (1) The comprehensive DHSP must meet all the requirements set forth in 130 CMR 419.416 and must
 - (a) be completed and forwarded to the DDS service coordinator if applicable, together with the SNA, within 90 days of the referral for specialized services;
 - (b) be completed in conjunction with the DDS service coordinator as applicable, and the NF;
 - (c) provide DH that is adequate in frequency and intensity to lead to progress; and
 - (d) ensure, in conjunction with the NF, that the DHSP interventions complement and reinforce the RISP.
- (2) DH contained in the DHSP must be available and offered to the member.
- (3) To ensure progress toward goals and objectives and to identify significant changes, the DHSP should be evaluated on the following schedule.
 - (a) Monthly Reviews. In addition to the requirements outlined in 130 CMR 419.419, the DHSM must notify the member's DDS service coordinator within seven business days if the monthly review demonstrates a significant change in the member's condition that may affect the Level II PASRR determinations, if applicable.
 - (b) Quarterly Reviews. The quarterly review must
 - 1. include a reevaluation of continued need for in-facility DH; and
 - 2. be conducted with the DDS service coordinator in conjunction with the NF quarterly plan of care meeting, when applicable.

(D) Communication and Coordination Requirements. For each NF resident with ID or DD that receives DH, the DH provider staff must

- (1) meet with the NF at least twice each year, in addition to the annual plan of care meeting, to coordinate the development and update of the DHSP;
- (2) provide copies of the interim DHSP to the members of the RISP interdisciplinary team at least three days prior to the initial RISP meeting;
- (3) submit the final DHSP, and any changes to the plan, for approval by the RISP interdisciplinary team;
- (4) incorporate any changes recommended by the RISP interdisciplinary team into the final DHSP within 45 days of the initial RISP meeting;

419.433: continued

- (5) determine what other care plans have been, or are in the process of being developed by other providers or agencies to avoid duplication;
- (6) ensure that the goals and objectives of the DHSP are consistent with those in the other plans and forward a copy to the DDS area office, and the NF; and
- (7) immediately notify the DDS service coordinator, where applicable, in the event of a disruption of DH.

(E) Ongoing Documentation and Recordkeeping Requirements.

- (1) DH Providers. In addition to the requirements outlined at 130 CMR 419.416, DH providers must develop and maintain records that document the DH provided to members with ID or DD residing in an NF. Such documentation must include
 - (a) the date the member was referred for specialized services in a DH setting; and
 - (b) documentation that the RISP interdisciplinary team has approved the final DHSP and any subsequent plan revisions.
- (2) Nursing Facilities. The DH provider must
 - (a) provide to the NF copies of the DHSP and any revisions to it, the SNA, and quarterly progress notes;
 - (b) attend the annual NF plan of care meeting at the NF to coordinate the development of the two plans; and
 - (c) accommodate requests from NFs to carry-over the strategies employed in the provision of DH to a member.
- (3) DDS Service Coordinators. DH providers must communicate with DDS service coordinators as follows:
 - (a) contact the DDS service coordinator for instruction if the DH provider determines that it is not appropriate to provide DH to a member in the specialized services need areas;
 - (b) communicate with the DDS service coordinator concerning all issues related to DH, including notification of any changes in the DHSP goals, objectives and/or strategies; and
 - (c) forward a copy of the DHSP and quarterly reviews to the DDS service coordinator for inclusion in the RISP at the NF.

(F) Provision of DH in an NF (In-facility). DH may be provided in the NF to a member with ID or DD when

- (1) the member is so medically fragile that transport to a DH provider site outside of the NF presents a significant risk to the health and safety of the member;
- (2) the member has declined to receive DH at the DH provider's community site; or
- (3) as determined by the RISP interdisciplinary team, DH is the only service that is available to meet the member's specialized services needs.

419.434: Withdrawal of a DH Provider from MassHealth

A DH provider that intends to withdraw from MassHealth must satisfy all the following obligations.

(A) MassHealth Notification.

- (1) A DH provider electing to withdraw from participation in MassHealth must send written notice to the MassHealth agency, or its designee, and DDS of the provider's intention to withdraw from participating as a MassHealth DH provider. The DH provider must send the withdrawal notice to the MassHealth agency or its designee, no fewer than 90 days before the effective date of withdrawal.
- (2) The DH provider must forward to the MassHealth agency or its designee a list of all members currently receiving DH. The DH provider must notify the MassHealth agency in writing as members are placed in other programs or begin to receive alternative services, including the name of the new program or service and each member's start date in the new program or service.

(B) Notification to Members and Authorized Representatives.

- (1) The DH provider must notify all members, authorized representatives of members and other funding sources in writing of the intended closing date no fewer than 90 days from the intended closing date, and specify the assistance to be provided to each member in identifying alternative services.

419.434: continued

(2) On or reasonably after the date on which the DH provider sends a withdrawal notice to the MassHealth agency or its designee, the provider must give notice to all members to whom it is providing DH along with notice to the members' authorized representatives, including for those members who have been transferred to hospitals, or who are on medical or nonmedical leave of absence. The notice must advise that any member who is eligible for MassHealth on the effective date of the withdrawal must relocate to another DH provider participating in MassHealth to ensure continuation of MassHealth payment of DH services and must be determined eligible to continue to receive the services. A copy of this notice must be forwarded to the MassHealth agency or its designee.

(3) The notice must also state that the DH provider will work promptly and diligently to arrange for the relocation of members to MassHealth-participating DH providers or, if appropriate, to alternative community-service providers.

(C) Emergency Withdrawal. In the instance of emergency withdrawal, the DH provider must contact the MassHealth agency, or its designee, within one business day of the emergency withdrawal and follow up, in writing, within three business days informing the MassHealth agency, or its designee, of the reasoning for such emergency withdrawal, and must provide proof in documentation or other form as the MassHealth agency may require. The DH provider must also notify all members, member representatives, the MassHealth agency, and DDS coordinator, if applicable, about the status of all members and any plans for relocation.

(D) Admission and Relocation Requirements.

(1) A DH provider must not admit any new MassHealth members after the date on which the withdrawal notice is sent to the MassHealth agency or its designee. Members receiving DH from the DH provider, for whom PA was sought prior to the withdrawal notice being sent, who are then authorized for DH after the notice of withdrawal, are not considered newly admitted members.

(2) Notwithstanding provision for emergency withdrawal, a DH provider that withdraws from participation in MassHealth must assist members to whom it has been providing DH to identify and locate another DH provider and must continue to provide its current level of DH until all members receiving services from the DH provider have been admitted with a new DH provider or another qualified MassHealth provider.

(3) A DH provider seeking to withdraw from the MassHealth program must work promptly and diligently to arrange for the relocation of members to a MassHealth participating DH provider or other qualified MassHealth providers.

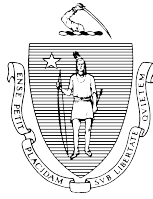
419.442: Severability

The provisions of 130 CMR 419.000 are severable. If any provision of 130 CMR 419.000 or application of any provision to an applicable individual, entity, or circumstance is held invalid or unconstitutional, that holding will not be construed to affect the validity or constitutionality of any remaining provisions of 130 CMR 419.000 or application of those provisions to applicable individuals, entities, or circumstances.

REGULATORY AUTHORITY

130 CMR 419.000: M.G.L. c. 118E, §§ 7 and 12.

NON-TEXT PAGE



Docket # 1183

THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Notice of ComplianceRegulation Filing *To be completed by filing agency*CHAPTER NUMBER: **130 CMR 449.000**CHAPTER TITLE: **Correctional Facility Services**AGENCY: **Division of Medical Assistance**

THIS REGULATION WAS ORIGINALLY FILED AS AN EMERGENCY:

*Published in Massachusetts Register
Number:***1578**

Date:

7/17/26

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.*

Executive Order 145 notifications: June 29, 2026**Regulatory Review approval: June 29, 2026**

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: **7/24/2026**

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: **August 28, 2026**AGENCY CONTACT: **Deborah M. Briggs, MassHealth
Publications**PHONE: **617-847-3302**ADDRESS: **1 Enterprise Drive, 4th Floor, Quincy, MA 02171**

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

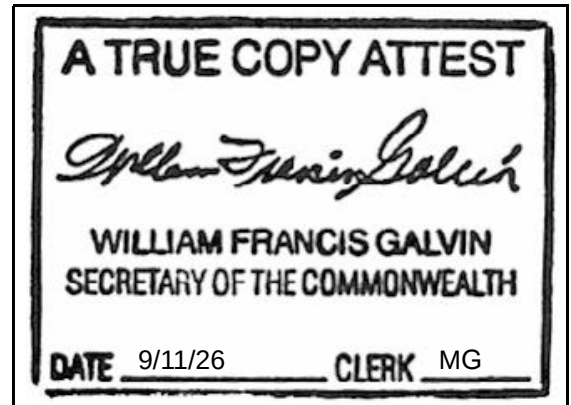
SIGNATURE: **SIGNATURE ON FILE**DATE: **Sep 11 2026**

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 7/2/26

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
528.29 & 528.30 -----	528.29 & 528.30 528.31 - 528.38



130 CMR 449.000: CORRECTIONAL FACILITY SERVICES

Section

- 449.401: Introduction
- 449.402: Definitions
- 449.403: Qualifying Individuals
- 449.404: Participating Correctional Facility Eligibility
- 449.405: Participating Correctional Facility Enrollment Process
- 449.406: Location of Correctional Facility Services
- 449.407: Services Provided Under a Contract
- 449.408: Reporting Requirements
- 449.409: Revocation of Enrollment and Sanctions
- 449.410: In-state Providers: Maximum Allowable Fees
- 449.411: Site Inspections
- 449.412: Covered Services
- 449.413: Staffing Requirements
- 449.414: Supervision, Training, and Other Staff Requirements
- 449.415: Recordkeeping Requirements
- 449.416: Administration
- 449.417: Service Limitations
- 449.418: Severability

449.401: Introduction

130 CMR 449.000 establishes the requirements for correctional facilities participating in MassHealth that provide services pursuant to the Consolidated Appropriations Act, 2023 (CAA 2023) or the Reentry Demonstration. All participating correctional facilities must also comply with MassHealth regulations including, but not limited to, 130 CMR 450.000: *Administrative and Billing Regulations*.

449.402: Definitions

The following terms used in 130 CMR 449.000 have the meanings given in 130 CMR 449.402 unless the context clearly requires a different meaning. Eligibility for reimbursement of services defined in 130 CMR 449.000 is not determined by these definitions, but by application of 130CMR 449.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

Adjudication. The court process that determines if an individual committed the act for which they are charged.

Adverse Incident. An occurrence that represents actual or potential serious harm to the wellbeing of a member or to others under the care of a participating provider. Adverse incidents may be the result of the actions of a member served, actions of a staff member providing services, or incidents that compromise the health and safety of the member, or operations of the provider.

Clinical Laboratory. As defined in 130 CMR 401.402: *Clinical Laboratory*.

Consolidated Appropriations Act (CAA, 2023). The Consolidated Appropriations Act of 2023 that was signed into law by Congress on December 29, 2022, thereby amending 42 U.S.C. 1396(a)(84), 42 U.S.C. 1396a(nn)(3), 42 U.S.C. 1396d(a), 42 U.S.C. 1397bb, 42 U.S.C. 1397jj(b).

Correctional Facility. Any building, enclosure, space or structure used for the custody, control and rehabilitation of committed offenders and of such other persons as may be placed in custody therein in accordance with law.

Former Foster Care Youth. Youth who meet the eligibility criteria for former foster care children, including individuals younger than 26 years old who meet the criteria for the group upon attaining either age 18 or a higher age (up to 21).

449.402: continued

Inmate. A committed offender or such other person as is placed in custody in a correctional facility in accordance with law.

Inmate of a Participating Correctional Facility. A committed offender or such other person as is placed in custody in a participating correctional facility in accordance with law.

ORP Provider. A provider who orders, refers, or prescribes a covered service to a MassHealth member.

Participating Correctional Facility (Facility). Any correctional facility that is enrolled as a MassHealth provider, that is not an institution of mental diseases as defined in 42 CFR 435.1010: *Definitions* relating to institutional status, and that is either

- (1) a Department of Corrections state prison;
- (2) a county jail or house of correction; or
- (3) a Department of Youth Services hardware-secure or staff-secure track 1 facility or unit.

Post-adjudication. The time period following adjudication.

Reentry Demonstration. The initiative authorized through MassHealth's Section 1115 Demonstration which allows for the provision of certain MassHealth services to inmates of participating correctional facilities in the 90 days prior to their release from such institutions.

Rendering Provider. A Massachusetts licensed practitioner providing covered services to MassHealth members.

Warm Hand-off. A continuity of care tool to transition case management activities from a pre-release case management to a post-release case manager. Warm hand-offs should include a meeting between the individual, and both the pre-release and post-release case manager. It should also include a review of the person-centered care plan and the next steps to ensure continuity of case management and follow-up as the individual transitions into the community.

449.403: Qualifying Individuals

(A) Qualification for CAA, 2023 Services.

- (1) In order to qualify to receive the covered services listed in 130 CMR 449.412(C), the individual must meet each of the following criteria:
 - (a) meet the definition of an inmate of a participating correctional facility;
 - (b) be eligible for MassHealth;
 - (c) be held post-adjudication or serving a sentence; and
 - (d) be an individual younger than 21 years old or a former foster care youth from 18 up to, but not including, 26 years old.

(B) Qualification for Reentry Demonstration Services. In order to qualify to receive the covered services listed in 130 CMR 449.412(D), the individual must meet each of the following criteria:

- (1) meet the definition of an inmate of a participating correctional facility;
- (2) be enrolled in MassHealth in an eligible benefit plan. Individuals are only eligible for MassHealth coverage under the reentry demonstration if they have MassHealth Standard, CommonHealth, CarePlus, or Family Assistance;
- (3) be held post-adjudication or serving a sentence;
- (4) be under age 65 years old; and
- (5) not be eligible for Medicare enrollment.

(C) For information on MassHealth member eligibility and coverage types, see 130 CMR 450.107: *Eligible Members and the MassHealth Card.*

449.404: Participating Correctional Facility Eligibility

(A) A correctional facility is eligible to enroll as a participating correctional facility only if the correctional facility meets all provider participation requirements in 130 CMR 449.000 and 450.000: *Administrative and Billing Regulations*.

(B) Clinical Laboratory Services by Participating Correctional Facility. A facility or partnering contractor that provides services listed in 130 CMR 449.412(C) that operates a clinical laboratory, must be certified as a clinical laboratory by the Centers for Medicare & Medicaid Services, based on the criteria set forth in 130 CMR 401.404(A)(2). 42 CFR Part 493: Laboratory Requirements sets forth the conditions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). A facility that conducts CLIA-waived testing only must obtain a CLIA Certificate of Waiver by meeting the exemption conditions under 42 CFR Part 493 Subpart B: Certificate of Waiver and submitting an application for a Certificate of Waiver. A facility that conducts laboratory testing that is not CLIA waived must be in compliance with the Certificate of Waiver, Certificate of Compliance, Certificate for PPM procedures, or Certificate of Accreditation applicable to the category of examinations or procedures performed by the laboratory.

(C) Radiology Services by Participating Correctional Facility. A facility or partnering contractor that provides services listed in 130 CMR 449.412(C), that provides radiologic services, must meet the conditions under 42 CFR 482.26: Condition of participation: Radiologic services and under 42 CFR 483.50: Laboratory, radiology, and other diagnostic services.

(D) Substance Use Disorder Treatment Program Operated by Participating Correctional Facility. A facility that operates a substance use disorder treatment program that provides reentry demonstration services must receive approval from the Department of Public Health, pursuant to 105 CMR 164.600 through 164.626.

(E) Pharmacy Services by Participating Correctional Facility. A facility that provides reentry demonstration pharmacy services must ensure that all pharmacists providing services are

- (1) licensed in good standing with the Massachusetts Board of Registration in Pharmacy, consistent with 247 CMR 2.00: *Definitions* and 247 CMR 3.00: *Pharmacist Licensure Requirements*; and
- (2) licensed by the federal Drug Enforcement Administration (DEA) and possess a DEA registration number (if applicable), to the extent the pharmacist provides pharmacy services relating to controlled substances.

449.405: Participating Correctional Facility Enrollment Process

(A) The applicant must submit the appropriate provider enrollment application to the MassHealth agency. The MassHealth agency may request additional information or perform a site inspection to evaluate the applicant's compliance with the regulations in 130 CMR 449.000.

- (1) Based on the information in the enrollment application, information known to the MassHealth agency about the applicant, and the findings from any site inspection deemed necessary, the MassHealth agency will determine whether the applicant is eligible for enrollment.
- (2) The MassHealth agency will notify the applicant of the determination in writing within 60 days of the MassHealth agency receiving a completed application. An application will not be considered complete until the applicant has responded to all MassHealth requests for additional information, and MassHealth has completed any required site inspection.

(B) If the MassHealth agency determines that the applicant is not eligible for enrollment, the notice will contain a statement of the reasons for that determination, including but not limited to incomplete application materials and recommendations for corrective action, if appropriate, so that the applicant may reapply for enrollment once corrective action has been completed.

(C) Enrollment is valid only for the facility or facilities described in the application and is not transferable. Any additional facility established by the applicant at another location must apply for enrollment and be enrolled with the MassHealth agency to receive payment.

449.406: Location of Participating Correctional Facility Services

- (A) A facility may provide covered pre-release services at its facility.
- (B) A facility cannot provide covered services in a facility that is an institution of mental diseases (IMD) as defined in 42 C.F.R. 435.1010.

449.407: Services Provided Under a Contract

- (A) Introduction. A facility may provide covered services directly or through contractual arrangements made by the facility. If a facility provides services via contractual arrangements, the contractor must also meet the requirements outlined in 130 CMR 449.000. Whether the services are provided directly or through contracts, the facility is responsible for submitting claims for services and for meeting the requirements in 130 CMR 449.000 and all other applicable state and federal requirements. A facility may provide services through contracts in the following situations.
 - (1) when a facility, in order to be approved to participate in MassHealth, makes arrangements with another agency or organization to provide some or all of the covered services that it does not provide directly; or
 - (2) when a facility that is already approved for participation in MassHealth makes arrangements with others to provide services it does not provide.
- (B) Contract Requirements.
 - (1) If the facility contracts with another provider participating in MassHealth (*e.g.*, hospital, independent clinical laboratory, independent diagnostic testing facility, or pharmacy), a written contract must document the services to be provided and the corresponding financial arrangements.
 - (2) If the facility contracts with a provider that does not participate in MassHealth, the written contract must include
 - (a) a description of the services to be provided;
 - (b) the duration of the agreement and how frequently it is to be reviewed;
 - (c) a description of how personnel are supervised;
 - (d) a statement that the contracting organization will provide its services in accordance with any plan of care established for the member with the facility's staff;
 - (e) a description of the contracting organization's standards for personnel, including qualifications, functions, supervision, and in-service training;
 - (f) a description of the method of determining reasonable costs and payments by the facility for the specific services to be provided by the contracting organization; and
 - (g) an assurance that the contracting organization will comply with Title VI of the Civil Rights Act and all relevant MassHealth provider requirements.

449.408: Reporting Requirements

Each facility must comply with the reporting requirements that pertain to the practice, facility, policies or staffing of the facility as directed by the MassHealth agency, and in compliance with 130 CMR 450.000: *Administrative and Billing Regulations* and 130 CMR 449.000.

449.409: Revocation of Enrollment and Sanctions

- (A) The MassHealth agency has the right to review a facility's continued compliance with the conditions for enrollment referred to in 130 CMR 449.404 and the reporting requirements in 130 CMR 449.408 upon reasonable notice and at any reasonable time during the facility's hours of operation. The MassHealth agency has the right to revoke the enrollment, subject to any applicable provisions of 130 CMR 450.000: *Administrative and Billing Regulations*, if such review reveals that the participating facility has failed to or ceased to meet such conditions.
- (B) If the MassHealth agency determines that there exists good cause for the imposition of a lesser sanction than revocation of enrollment, it may withhold payment, temporarily suspend the facility from participation in MassHealth, or impose some other lesser sanction as the MassHealth agency sees fit, pursuant to the processes set forth in 130 CMR 450.000: *Administrative and Billing Regulations*, as applicable.

449.410: In-state Providers: Maximum Allowable Fees

(A) The Executive Office of Health and Human Services (EOHHS) determines the payment rate for covered services in accordance with 101 CMR 317.00: *Rates for Medicine Services*, 101 CMR 314.00: *Rates for Dental Services*; 101 CMR 316.00: *Rates for Surgery and Anesthesia Services*; 101 CMR 318.00: *Rates for Radiology Services*; 101 CMR 320.00: *Rates for Clinical Laboratory Services*; and 101 CMR 444.00: *Rates for Certain Substance Use Disorder Services*. Payment is subject to the conditions, exclusions, and limitations set forth in 130 CMR 449.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

(B) Administrative Operations. Payment by the MassHealth agency for covered services includes payment for administrative operations and for all aspects of service delivery not explicitly included in 130 CMR 449.000, such as, but not limited to

- (1) staff supervision or consultation with another staff member;
- (2) providing information for the coordination of referrals; and
- (3) recordkeeping.

449.411: Site Inspections

(A) The MassHealth agency, and their agents and designated contractors may, at any time, conduct announced or unannounced site inspections of any and all facility locations to determine compliance with applicable regulations, which can include auditing activities in accordance with 130 CMR 450.000: *Administrative and Billing Regulations*. Such site inspections need not pertain to any actual or suspected deficiency in compliance with the regulations.

(B) After any site inspection where deficiencies are observed, the MassHealth agency will prepare a written site inspection report. The site inspection report will include the deficiencies found, and the period within which the deficiency must be corrected. The facility must submit a corrective action plan, within the timeframe set forth by the MassHealth agency, for each of the deficiencies cited in the report, including the specific corrective steps to be taken a timetable for these steps, and the date by which full compliance will be achieved. The MassHealth agency will review the corrective action plan and will accept the corrective action plan only if it conforms to these requirements.

449.412: Covered Services

(A) Facilities that provide covered services must meet the staff requirements outlined in 130 CMR 449.413 and as more fully described in provider bulletins and other guidance that may be issued by the MassHealth agency.

(B) Covered CAA, 2023 services include:

- (1) Targeted Case Management (TCM) provided during the 30 days prior to the individual's release.

The TCM service must include the following elements:

(a) Comprehensive assessment and periodic reassessment of individual needs, to determine the need for any medical, educational, social, or other services, including:

1. taking client history;
2. identifying the individual's needs and completing related documentation; and
3. gathering information from other sources such as family members, medical providers, social workers, and educators (if necessary), to form a complete assessment of the eligible individual.

(b) Development (and periodic revision) of a specific person-centered care plan based on the information collected through the assessment that

1. specifies the goals and actions to address the medical, social, educational, and other services needed by the individual;
2. includes activities such as ensuring the active participation of the eligible individual, and working with the individual (or the individual's authorized health care decision maker) and others to develop those goals; and
3. identifies a course of action to respond to the assessed needs of the eligible individual.

419.412: continued

- (c) Referral and related activities, including but not limited to referrals to appropriate care and services available in the geographic region of the home or residence of the eligible individual, (such as scheduling appointments for the individual) to help the eligible individual obtain needed services, including activities that help link the individual with medical, social, and educational providers or other programs and services that can provide needed services to address identified needs and achieve goals specified in the care plan.
 - (d) A warm hand-off to a post-release case manager to transition case management and support continuity of care of needed services that are documented in the person-centered care plan.
- (2) Screening and Diagnostics provided during the 30 days before the individual's release.
- (a) Screenings for individuals younger than 21 years old must include
 - 1. services indicated as medically necessary in accordance with the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) requirements in 130 CMR 450.140; and
 - 2. any additional screenings required by EOHHS as announced in sub-regulatory guidance, including but not limited to a behavioral health screening.
 - (b) Screenings for former foster care youth ages 21 through 25 must include the screenings required by EOHHS as announced in sub-regulatory guidance, including but not limited to a behavioral health screening.
 - (c) Diagnostics must include any diagnostics indicated as medically necessary based upon the required screenings that are feasible for the facility to provide.
- (C) Subject to the Commonwealth's approval of a facility's readiness, covered reentry demonstration services include:
- Pre-Release Case Management provided during the 90 days prior to the individual's release from the facility.
- (1) The Pre-Release Case Management service must include the following elements:
- (a) conducting a health risk assessment, as appropriate;
 - (b) assessing the needs of the individual in order to inform development, with the client, of a discharge/reentry person-centered care plan, with input from the clinician providing consultation services and the facility's reentry planning team. While the person-centered care plan is created in the pre-release period and is part of the case management pre-release service to assess and address physical and behavioral health needs and health related social needs (HRSN) identified, the scope of the plan extends beyond release;
 - (c) obtaining informed consent, when needed, to furnish services and/or to share information with other entities to improve coordination of care;
 - (d) providing warm linkages to a post-release care manager, which includes sharing discharge/reentry care plans with the post-release care manager upon reentry;
 - (e) ensuring that necessary appointments with physical and behavioral health care providers, including, as relevant to care needs, with behavioral health coordinators and post-release care managers are arranged;
 - (f) making warm linkages to community-based services and supports, including but not limited to educational, social, prevocational, vocational, housing, nutritional, transportation, childcare, child development, and mutual aid support groups;
 - (g) providing a warm hand-off, as appropriate, to post-release case managers; and
 - (h) ensuring that, as allowed under federal and state laws and through consent with the member, data is shared with post-release care managers, and, as relevant, to physical and behavioral health/serious mental illness (SMI)/substance use disorder (SUD) providers to enable timely and seamless hand-offs.
- (2) EOHHS may issue, via administrative bulletin or other written issuance, additional guidance regarding the requirements of pre-release case management.
- (D) Case management services delivered after an individual's release from the facility are not included in the scope of 130 CMR 449.412.

449.413: Staffing Requirements

- (A) Rendering providers working within facilities may provide covered services.
- (B) Rendering providers must
 - (1) be licensed, registered, certified, or otherwise appropriately credentialed or recognized practitioners under Massachusetts state scope of practice statutes; and
 - (2) have the necessary experience and receive appropriate training, as applicable to a given carceral facility.
- (C) ORP providers must be enrolled in MassHealth, pursuant to 130 CMR 450.000: *Administrative and Billing Regulations* and regulations governing the ORP provider's provider type. ORP providers may enroll in MassHealth as a non-billing provider as described in 130 CMR 450.212(E) or as a billing provider.
 - (1) The following types of providers are ORP providers: certified nurse midwife, certified nurse practitioner, certified registered nurse anesthetist, clinical nurse specialist, dentist, licensed independent clinical social worker, optometrist, pharmacist (if authorized to prescribe), physician, physician assistant, podiatrist, psychiatric clinical nurse specialist, or psychologist.
 - (2) Claims for services listed in 130 CMR 449.413(C)(2) require an order, referral, or prescription from a MassHealth-enrolled ORP provider. Claims for the following services listed in 130 CMR 449.415(C)(2)(a) through (q) that do not have an order, referral, or prescription from a MassHealth-enrolled ORP provider will be denied.
 - (a) any service that requires a Primary Care Clinician referral (*see* 130 CMR 450.118(J): *Referral for Services*);
 - (b) any service that requires a Primary Care ACO Participating Primary Care Provider referral (*see* 130 CMR 450.119(I): *Referral for Services*);
 - (c) Adult Day Health;
 - (d) Adult Foster Care;
 - (e) Continuous Skilled Nursing;
 - (f) Durable Medical Equipment;
 - (g) Eyeglasses;
 - (h) Group Adult Foster Care;
 - (i) Home Health;
 - (j) Independent Nurse;
 - (k) Labs and Diagnostic Tests;
 - (l) Medications;
 - (m) Orthotics;
 - (n) Oxygen/Respiratory Equipment;
 - (o) Prosthetics;
 - (p) Psychological Testing; and
 - (q) Therapy (Physical, Occupational, or Speech and Language).
- (D) Case Manager Qualifications. The case manager must have, or work under the supervision of an individual with, at minimum, a bachelor's degree in a related field or two years of professional or paraprofessional experience in human services, criminal justice, social work, social casework, guidance, vocational counseling, employment counseling, educational counseling or correctional facility work.

449.414: Supervision, Training, and Other Staff Requirements

- (A) Staff Supervision Requirements. Each staff member must receive supervision appropriate to the staff member's skills and level of professional development. Supervision must occur in accordance with the program's policies and procedures and must include review of specific member issues, as well as a review of general principles and practices related to mental health, substance use disorder, and medical conditions.
- (B) Staff Training. The facility must ensure that staff receive training to enhance and broaden their skills. Recommended training topics include but are not limited to:
 - (1) common diagnoses across medical and behavioral healthcare;
 - (2) engagement and outreach skills and strategies;

449.414: continued

- (3) service coordination skills and strategies;
- (4) behavioral health and medical services, community resources, and natural supports;
- (5) principles of recovery and wellness;
- (6) cultural competence;
- (7) managing professional relationships with members including but not limited to boundaries, confidentiality, and peers as CSP workers;
- (8) service termination;
- (9) motivational interviewing;
- (10) accessibility and accommodations;
- (11) trauma-informed care;
- (12) traumatic brain injuries; and
- (13) safety protocols.

(C) Staff Professional Standards. Any staff, of any discipline, operating in the facility must comport with the standards and scope of practice delineated in their professional licensure and be in good standing with their board of professional licensure, as applicable. Each facility must notify the MassHealth agency of any staff who are sanctioned by the Department of Public Health or sanctioned by their board of licensure, as applicable.

(D) Staffing Plan. The facility must maintain a staffing plan that includes policies and procedures to ensure all staffing and supervision requirements pursuant to 130 CMR 449.000 are met. The staffing plan must include a safety protocol outlining how adverse incidents are documented and addressed.

(E) Conflict of Interest. The facility must ensure appropriate protections against conflicts of interest in the service planning and delivery of covered services.

449.415: Recordkeeping Requirements

(A) Release of Information. Each facility must obtain written authorization from each member or the member's legal guardian to release information obtained by the facility, to other community-based providers, federal and state regulatory agencies, and, when applicable, referral providers or other relevant parties to the extent necessary to carry out the purposes of the program and to meet regulatory requirements. All such information must be released on a confidential basis and in accordance with all applicable requirements.

(B) Member Records.

- (1) Facilities must maintain member records in accordance with 130 CMR 450.000: *Administrative and Billing Regulations*. When a member is referred to any other provider, the program must maintain the original member record and forward a copy of the information in 130 CMR 449.415(C) and (D) to the other provider.
- (2) Member records must be complete, accurate, and properly organized.

(C) Facilities must maintain case records that document for all individuals receiving case management services the following:

- (1) the name of the individual;
- (2) the dates of the case management services;
- (3) the name of the provider agency (if relevant) and the person providing the case management service;
- (4) the nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;
- (5) whether the individual has declined services in the care plan;
- (6) the need for, and occurrences of, coordination with other case managers;
- (7) a timeline for obtaining needed services; and
- (8) a timeline for reevaluation of the plan.

(D) The member's record must include at least the following information:

- (1) the member's name and case number, MassHealth identification number, gender identity, date of birth, marital status, next of kin, and date of initial contact;

449.415: continued

- (2) the place of service;
- (3) the member's description of the problem, and any additional information from other sources, including the referral source, if any;
- (4) written documentation that the member receiving services meets the clinical standards published by the MassHealth agency;
- (5) the relevant medical, psychosocial, educational, and vocational history;
- (6) a needs assessment of the member;
- (7) short- and long-range goals that are realistic and obtainable and a time frame for their achievement;
- (8) the member's service plan, updates, and related facility service planning meetings, including a schedule of activities and services necessary to achieve the member's goals, signed by both the facility staff person and the member;
- (9) written record of all services provided, including face-to-face, virtual, and collateral contacts, with progress notes;
- (10) a written record of the reassessments that includes recommendations for revision of the service plan, when indicated, and the names of the reviewers;
- (11) the name(s) of the facility staff person(s) responsible for providing services to the member;
- (12) reports on all collateral consultations and collaborations with family, friends, and outside professionals, including probation, parole or correctional institution staff, who are involved in the member's treatment;
- (13) all information and correspondence to and from other involved agencies, including appropriately signed and dated consent forms;
- (14) when discharged, a discharge summary, including a summary of the member's services, a brief summary of the member's condition and response to services on discharge, achievement of goals, and recommendations for appropriate services that should be provided in subsequent programs by the same or other agencies to accomplish the member's long-range goals, and the program's future responsibility for the member's care; and
- (15) if the member fails to keep appointments or to adequately participate in the service plan, facility staff must make every effort to encourage the member to do so, and these follow-up efforts must be documented in the member's record.
- (16) if the member is receiving case management services, all of the documentation listed in 130 CMR 449.417(C).

(E) Program Records. The facility must retain documentation reflecting compliance with the requirements of 130 CMR 449.000, including 130 CMR 449.403.

(F) Other Records and Reports as Directed by EOHHS. The facility must maintain other records and reports as directed by EOHHS.

(G) Availability of Records. Any and all health records must be made available to the MassHealth agency upon request.

449.416: Administration

(A) Organization. The facility must maintain an organizational chart showing major operating programs of the organization, the personnel in charge of each program, and the lines of authority.

(B) Staff Development and Supervision. Each staff member must receive supervision appropriate to the person's skills and level of professional development. Supervision must be documented and must occur within the context of a formalized relationship that provides frequent and regularly scheduled individual or group personal contact with the supervisor.

449.417: Service Limitations

Funding Availability. Reimbursement for MassHealth services is subject to limitations based on the availability of full federal financial participation, and any other applicable federal statute, regulation, or payment limit.

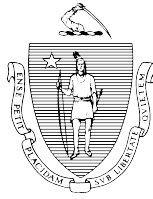
130 CMR: DIVISION OF MEDICAL ASSISTANCE

449.418: Severability

The provisions of 130 CMR 449.000 are severable. If any provision of 130 CMR 449.000 or application of any provision to an applicable individual, entity, or circumstance is held invalid or unconstitutional, that holding will not be construed to affect the validity or constitutionality of any remaining provisions of 130 CMR 449.000 or application of those provisions to applicable individuals, entities, or circumstances.

REGULATORY AUTHORITY

130 CMR 449.000: M.G.L. c. 118E, §§ 7 and 12.

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing*To be completed by filing agency*CHAPTER NUMBER: **225 CMR 28.00**CHAPTER TITLE: **SOLAR MASSACHUSETTS RENEWABLE TARGET (SMART) PROGRAM 3.0**AGENCY: **Department of Energy Resources**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

The purpose of 225 CMR 28.00 is to encourage the continued use and development of generating units that use solar photovoltaic technology by residential, commercial, governmental, and industrial electricity customers throughout the Commonwealth.

REGULATORY AUTHORITY: **St. 2016, c. 75, § 11 and M.G.L. c. 25A, § 6**AGENCY CONTACT: **Samantha Meserve** PHONE: **617-823-2214**ADDRESS: **100 Cambridge Street, 9th Floor, Boston, MA 02114****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*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.***DOER Issued EO 145 notices to EOHLC and MMA on June 26, 2026.**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: **August 5, 2026**

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: **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: **September 10, 2026**

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Environment and Energy

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:*

Amends 225 CMR 28.00

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: **Sep 11 2026**

Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: **1583** DATE: **9/25/26**

EFFECTIVE DATE: **9/25/26**

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
2.3 & 2.4 301-304 307-332	2.3 & 2.4 301-304 307-332.2

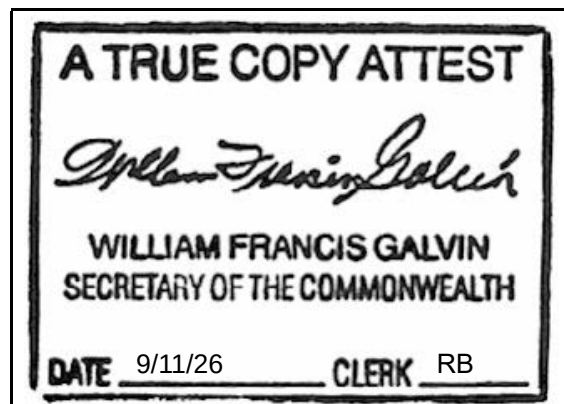


Table of Contents

	<u>Page</u>
225 CMR 27.00: BUILDING ENERGY REPORTING	293
Section 27.01: Purpose and Application	293
Section 27.02: Definitions	293
Section 27.03: Covered Buildings List	294
Section 27.04: Reporting Requirements and Process	295
Section 27.05: Reporting Exemptions	296
Section 27.06: Building Ownership Changes and Designations	296
Section 27.07: Disputing Inclusion in Covered Buildings List, Alternative Compliance Pathways, and Reporting Options	297
Section 27.08: Data Verification	298
Section 27.09: Personally Identifying Building Owner and Lessee Information	298
Section 27.10: Annual Building Database and Report	298
Section 27.11: Enforcement and Penalties	298
Section 27.12: Inspection	299
Section 27.13: Severability	299
225 CMR 28.00: SOLAR MASSACHUSETTS RENEWABLE TARGET (SMART) PROGRAM 3.0	301
Section 28.01: Purpose and Application	301
Section 28.02: Definitions	301
Section 28.03: Administration	308
Section 28.04: Applicability	308
Section 28.05: Annual Adjustable Block and Rate Structure	309
Section 28.06: Qualification Process for STGUs	311
Section 28.07: Program Eligibility	313
Section 28.08: Land Use	321
Section 28.09: Mitigation Fee	324
Section 28.10: Program Requirements and Other Provisions	325
Section 28.11: Annual Compliance Reporting Requirements	326
Section 28.12: Consumer Protection	327
Section 28.13: Compensation Rates	329
Section 28.14: Calculation of Incentive Payments for STGUs	330
Section 28.15: Solar Program Administrator	332
Section 28.16: Inspection	332
Section 28.17: Noncompliance	332
Section 28.18: Severability	332.1
225 CMR 29.00: SMALL CLEAN ENERGY INFRASTRUCTURE FACILITY SITING AND PERMITTING	333
Section 29.01: Purpose	333
Section 29.02: Definitions	333
Section 29.03: Administration	337
Section 29.04: Applicability	337
Section 29.05: Concurrency and Transition Periods	337
Section 29.06: Site Suitability	338
Section 29.07: Application of Site Suitability Guidance	338
Section 29.08: Pre-filing Requirements	339
Section 29.09: Consolidated Local Permit Application	341
Section 29.10: Consolidated Local Permit Application Review Process	343
Section 29.11: Technical Assistance	345
Section 29.12: Common Conditions and Requirements for Constructive Approval	345
Section 29.13: Model Small Clean Energy Infrastructure Facility Permitting Bylaw	346
Section 29.14: Successors in Interest	346
Section 29.15: Reporting	346
Section 29.16: Severability	346

NON-TEXT PAGE

225 CMR 28.00: SOLAR MASSACHUSETTS RENEWABLE TARGET (SMART) PROGRAM 3.0

Section

- 28.01: Purpose and Application
- 28.02: Definitions
- 28.03: Administration
- 28.04: Applicability
- 28.05: Annual Adjustable Block and Rate Structure
- 28.06: Qualification Process for STGUs
- 28.07: Program Eligibility
- 28.08: Land Use
- 28.09: Mitigation Fee
- 28.10: Program Requirements and Other Provisions
- 28.11: Annual Compliance Reporting Requirements
- 28.12: Consumer Protection
- 28.13: Compensation Rates
- 28.14: Calculation of Incentive Payments for STGUs
- 28.15: Solar Program Administrator
- 28.16: Inspection
- 28.17: Noncompliance
- 28.18: Severability

28.01: Purpose and Application

The purpose of 225 CMR 28.00 is to establish a successor statewide solar incentive program to 225 CMR 20.00 to encourage the continued use and development of generating units that use solar photovoltaic technology by residential, commercial, governmental, and industrial electricity customers throughout the Commonwealth. The continued use and development of these generating units has the potential to reduce peak demand, system losses, the need for investment in new infrastructure, distribution congestion, increase grid reliability, improve public health and safety, and diversify the Commonwealth's energy supply. The program establishes mechanisms that allow for responsiveness to rapidly changing market conditions to sustain the development of solar photovoltaic technology to decarbonize the grid. Further, it contributes to the Commonwealth's environmental protection goals concerning air emissions and land use policy including, but not limited to, those required by the Global Warming Solutions Act, M.G.L. c. 21N, §§ 1 through 9, and the Clean Energy and Climate Plan for 2050, by displacing non-renewable generating resources. Owners of generating units that choose to participate in the statewide solar incentive program pursuant to 225 CMR 28.00 do so on a voluntary basis but shall comply with all the terms and requirements of 225 CMR 28.00.

28.02: Definitions

Alternative On-bill Credit. A credit generated by an Alternative On-bill Credit Generation Unit.

Alternative On-bill Credit Generation Unit. An STGU that is enrolled under a tariff establishing a bill credit for generation from STGUs that is approved by the DPU, but is not a tariff approved pursuant to 220 CMR 8.00: *Sales of Electricity by Qualifying Facilities and On-site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-site Generating Facilities* or 220 CMR 18.00: *Net Metering*.

Annual Capacity Block. A quantity of STGU capacity, determined pursuant to 225 CMR 28.05(1), that is entitled to be qualified under 225 CMR 28.00 in a given Program Year.

Annual SMART Program Assessment. The annual assessment of the SMART program conducted pursuant to 225 CMR 28.05(1).

Applicant. The Owner or Authorized Agent of a solar photovoltaic Generation Unit who has submitted a Statement of Qualification Application.

28.02: continued

Approved Distribution System Upgrade. A capital investment project under the provisional program established by D.P.U. 20-75-B or an electric sector modernization plan submitted under M.G.L. c. 164, § 92B that has been proposed by a Distribution Company and approved by the DPU.

Authorized Agent. A person or entity that acts on behalf of the Owner of an STGU through a formal agreement for all dealings with the Department.

Base Compensation Rate. The portion of an STGU's compensation rate related to the Generation Unit's rated alternating current capacity, prescribed in 225 CMR 28.13(2).

Behind-the-meter STGU. An STGU that serves On-site Load other than parasitic or station load utilized to operate the Generation Unit and that receives compensation under 220 CMR 8.00: *Sales of Electricity by Qualifying Facilities and On-site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-site Generating Facilities* or 220 CMR 18.00: *Net Metering*, or under the SMART Tariff.

Bill Credits. Net Metering Credits or Alternative On-Bill Credits.

Brownfield. A disposal site that has received a release tracking number from MassDEP pursuant to 310 CMR 40.0000: *Massachusetts Contingency Plan*, the redevelopment or reuse of which is hindered by the presence of oil or hazardous materials, as determined by the Department, in consultation with MassDEP. For the purposes of 225 CMR 28.02: Brownfield, the terms "disposal site," "release tracking number," "oil," and "hazardous materials" shall have the meanings given to such terms in 310 CMR 40.0006: *Terminology, Definitions and Acronyms*. No disposal site that otherwise meets the requirements of 225 CMR 28.02 shall be excluded from consideration as a Brownfield because its cleanup is also regulated by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 through 9675, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 through 6939g, or any other federal program.

Building Mounted STGU. An STGU with 100% of the nameplate capacity of the solar photovoltaic modules used for generating power installed on a building.

Business Day. Means Monday through Friday, exclusive of state and federal legal holidays.

Canopy STGU. An STGU with not less than 100% of the nameplate capacity of the solar photovoltaic modules used for generating power installed on a raised structure in a manner that complies with the requirements of 225 CMR 28.07(5)(b)2.

Commercial Operation Date. The date on which a Distribution Company grants approval for an STGU to interconnect with the electric grid.

Community Shared STGU. An STGU that provides electricity or Bill Credits to three or more Customers of Record and meets the eligibility requirements of 225 CMR 28.07(5)(c)1.

Comparable Crops. Crops which by their production, harvesting, on-farm usage, processing, marketing, and other factors are comparable in agricultural practice, equipment requirements, economic value, environmental impact, and other factors to the crops previously grown on the site or previously grown by the proposed operator.

Compensation Rate Adder. An adder to an STGU's Base Compensation Rate established pursuant to 225 CMR 28.13(3).

Core Habitat. Key areas that are critical for the long-term persistence of rare species and other species of conservation concern, as well as a wide diversity of natural communities and intact ecosystems across the Commonwealth, as identified by the Massachusetts Division of Fisheries and Wildlife BioMap framework within the Natural Heritage and Endangered Species Program.

28.02: continued

Critical Natural Landscape. Areas including large natural landscape blocks and buffering uplands around coastal, wetland and aquatic Core Habitats to help ensure their long-term integrity, as identified by the Massachusetts Division of Fisheries and Wildlife BioMap framework within the Natural Heritage and Endangered Species Program.

Customer of Record. An eligible customer with the Distribution Company whose name appears on a Distribution Company billing account of a meter connected to or receiving Bill Credits from an STGU.

Department. The Massachusetts Department of Energy Resources, established by M.G.L. c. 25A.

Distribution Company. A company engaging in the distribution of electricity or owning, operating or controlling distribution facilities as defined in M.G.L. c. 164, § 1; provided, however, a Distribution Company shall not include a municipal utility established pursuant to the provisions of M.G.L. c. 164.

DPU. The Massachusetts Department of Public Utilities established by M.G.L. c. 25, § 1.

Dual-use Agricultural STGU. An STGU located on Land in Agricultural Use, Important Agricultural Farmland, Fallow Farmland, or Newly Created Farmland that allows the continued use of the land for agriculture and meets the eligibility requirements of 225 CMR 28.07(5)(b)3.

Eligible Landfill. A landfill that has received an approval from MassDEP for the use of a solar photovoltaic Generation Unit at the landfill as a post-closure use pursuant to 310 CMR 19.143: *Post-closure Use of Landfills*.

End-use Customer. A person or entity in Massachusetts that purchases electrical energy from a Distribution Company.

Energy Storage System. A commercially available technology that is capable of absorbing energy, storing it for a period of time, and thereafter dispatching the energy.

Environmental Attribute. All GIS Certificates and any other environmental benefits associated with the energy generation of an STGU.

Environmental Monitor. An entity retained by the Department, under 225 CMR 28.08(6), to ensure compliance with Performance Standards under 225 CMR 28.08(7).

Fallow Farmland. Open arable land that has not been cultivated or used in agriculture for a period of one to five years preceding the Pre-Determination Application for a Dual-use Agricultural STGU.

Federal Low Income Requirements. For metropolitan areas, individuals and households with incomes at or below the greater of:

- (a) 80% area median income; and
- (b) 200% of the federal poverty level.
- (c) For non-metropolitan areas, individuals and households with incomes at or below the greater of:
 1. 80% area median income;
 2. 80% Statewide non-metropolitan area median income; and
 3. 200% of the federal poverty level.

Such designations may be identified using the U.S. Department of the Treasury's Community Development Financial Institutions Fund's Investment Area Eligibility dataset.

28.02: continued

Federally Designated Environmental Justice Area. Communities defined as disadvantaged by the U.S. Environmental Protection Agency's Greenhouse Gas Reduction Fund and Solar for All program, including:

- (a) census tracts identified as "disadvantaged" by the White House's Climate and Economic Justice Screening Tool;
- (b) census block groups that are at or above the 90th percentile for any of the U.S. Environmental Protection Agency's EJScreen tool's supplemental indexes when compared to the nation or state; or
- (c) geographic areas identified in the U.S. Environmental Protection Agency's EJScreen tool as within Tribal land.

Final Statement of Qualification. A document issued by the Department that qualifies an STGU under 225 CMR 28.00 and authorizes the start of the STGU's tariff term and issuance of incentive payments.

Flat Incentive Rate. The compensation rate assigned to STGUs less than or equal to 25 kW, set pursuant to 225 CMR 28.05(7).

Floating STGU. An STGU located on a body of water that is currently, or was formerly, used for water treatment, agricultural or industrial activities, that allows for the continued use of the water body for its intended purpose and meets the eligibility requirements of 225 CMR 28.07(5)(b)4.

Generation Attribute. Means a Generation Attribute, as defined in 225 CMR 14.02: *Definitions*.

Generation Unit. Means a Generation Unit, as defined in 225 CMR 14.02: *Definitions*.

GIS Certificate. An electronic record produced by the NEPOOL GIS that identifies Generation Attributes of each MWh accounted for in the NEPOOL GIS.

Growing Season Hours. For April through September, 9:00 A.M. through 6:00 P.M. For March and October, 10:00 A.M. through 5:00 P.M.

Guideline. A set of clarifications, interpretations, and procedures, including forms, developed by the Department to assist in compliance with the requirements of 225 CMR 28.00. The Department may issue new or revised Guidelines after providing notice and a minimum of 21-day public comment period on a draft version. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 28.00.

Important Agricultural Farmlands. Means those soils found to be Important Farmlands pursuant to 7 C.F.R. § 657.5, that includes prime farmlands, unique farmlands, and additional land of statewide importance.

Incentive Payment Effective Date. As defined in the SMART Tariff, means the earliest date on or after the Commercial Operation Date on which electrical energy output of an STGU can result in the creation of RPS Class I Renewable Generation Attributes and is also eligible to begin receiving incentive payments.

Independent Verifier. An entity approved by the Department to perform the function of a third-party meter reader as defined in Rule 2.5(j) of the NEPOOL GIS Operating Rules, or any successor rule.

Interconnection Service Agreement. The agreement for interconnection service entered into between the interconnecting customer and a Distribution Company, as defined and provided in each Distribution Company's standards for interconnection of distributed generation.

28.02: continued

PFAS. Per- and polyfluoroalkyl substances, a group of synthetic chemicals that contain fluorinated carbon atoms, are used in consumer and industrial products, are highly resistant to breakdown, and accumulate in soil and water as environmental pollutants.

Power Conversion Technology. The design, process, and equipment by which an energy resource is converted into useful energy

Pre-determination Application. A request submitted to the Department for the purpose of obtaining a preliminary determination of eligibility for a Compensation Rate Adder.

Pre-determination Letter. A determination by the Department that a project likely satisfies the eligibility requirements for a Compensation Rate Adder. Such determination is contingent upon the project demonstrating compliance with all eligibility criteria pursuant to 225 CMR 28.00 at the time of receiving a Final Statement of Qualification.

Pre-paid Solar Lease. A Solar Contract for a Third-party Owned STGU where the Customer of Record has paid not less than 50% of the value of the STGU prior to installation of the STGU.

Preliminary Statement of Qualification. A document issued by the Department that qualifies an STGU under 225 CMR 28.00. Such qualification is contingent upon the STGU reaching Mechanical Completion within its Reservation Period and receiving a Final Statement of Qualification.

Previously Developed. Areas degraded by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, golf courses, managed turfgrass, abandoned dumping yards, or other degraded areas as determined by the Department.

Primary Installer. The primary entity responsible for an STGU's installation. The Primary Installer shall be a professional contractor licensed to conduct business in Massachusetts. Any electrical work performed on the installation shall be conducted by an electrician holding a valid and current license in Massachusetts. The Primary Installer is directly responsible for turnkey project management and installation work, although the installation work may be sub-contracted. Homeowners or other individuals are not eligible to be a Primary Installer unless they are a Massachusetts licensed electrician completing an installation on their own property.

Priority Habitat. Priority Habitat as defined in 321 CMR 10.02: *Definitions*.

Program Year. The period of January 1st to December 31st associated with a given Annual Capacity Block and associated set of compensation rates established pursuant to 225 CMR 28.05(1).

Project Footprint. The acreage of land encompassed by an STGU's solar photovoltaic modules, plus any land significantly impacted by construction of the STGU, including, but not limited to, land altered of its natural vegetative composition and structure for clearing, grading, and roadways.

Public Entity STGU. An STGU greater than 25 kW that provides all of its generation output in the form of electricity or Bill Credits to a Municipality or Other Governmental entity and meets the eligibility requirements of 225 CMR 28.07(5)(c)4.

Raised Racking STGU. An STGU with 100% of the nameplate capacity of the solar photovoltaic modules used for generating power installed on a raised structure on a building that allows for the continued use of the area beneath for a secondary purpose.

Renewable Generation. Renewable Generation, as defined in 225 CMR 14.02: *Definitions*.

Renewable Generation Attribute. A Renewable Generation Attribute, as defined in 225 CMR 14.02: *Definitions*.

28.02: continued

Reservation Period. The period of time during which an STGU is entitled to a Statement of Qualification reservation prior to the STGU's receipt of notice of authorization to interconnect from the Distribution Company and issuance of a Final Statement of Qualification by the Department.

RPS Class I Renewable Generation. RPS Class I Renewable Generation, as defined in 225 CMR 14.02: *Definitions*.

RPS Class I Renewable Generation Attribute. A RPS Class I Renewable Generation Attribute, as defined in 225 CMR 14.02: *Definitions*.

RPS Class I Renewable Generation Unit. A RPS Class I Renewable Generation Unit, as defined in 225 CMR 14.02: *Definitions*.

SMART Tariff. The SMART Provision tariff for each individual Distribution Company as reviewed and approved by the DPU, as may be amended from time to time.

Solar Contract. An executed agreement between a solar installer and the Owner or Customer of Record identifying ownership rights to an STGU and/or some payment mechanism for the electricity generated by the STGU.

Solar Program Administrator. The program administrator for 225 CMR 28.00 that is selected pursuant to 225 CMR 28.15.

Solar Tariff Generation Unit (STGU). A Generation Unit that generates electricity using solar photovoltaic technology and meets all of the eligibility criteria set forth in 225 CMR 28.07.

Standalone STGU. An STGU that serves no associated On-site Load other than parasitic or station load utilized to operate the Generation Unit or coupled Energy Storage System.

State Qualifying Facility. Means a Qualifying Facility, as defined by the DPU in 220 CMR 8.02: *Definitions*.

Statement of Qualification. A document issued by the Department that qualifies an STGU under 225 CMR 28.00.

Statement of Qualification Application. An application to qualify an STGU submitted pursuant to 225 CMR 28.06.

Summer Peak Period. The summer Seasonal Peak Period as detailed in 225 CMR 21.05.

Third-party Owner. An entity that has a turnkey contract involving a power purchase agreement, lease, or other arrangements with a Customer of Record, but is the Owner of the STGU. The Third-party Owner may have a separate contract with another entity for the actual installation work.

Waitlist. The list of Statement of Qualification Applications waiting to be qualified for a given Program Year pursuant to 225 CMR 28.06(4).

Winter Peak Period. The winter Seasonal Peak Period as detailed in 225 CMR 21.05.

28.03: Administration

225 CMR 28.00 shall be administered by the Department.

28.04: Applicability

225 CMR 28.00 applies to Distribution Companies and to the Owners, Authorized Agents, Primary Installers of STGUs.

28.05: Annual Adjustable Block and Rate Structure

(1) Annual SMART Program Assessment. The Department shall conduct an annual assessment of the SMART Program. The Department may contract with a third-party vendor to assist in this assessment. Based on this assessment, the Department shall set the following Program Year's Capacity Block, Capacity Allocation, Annual Capacity Set Asides, Base Compensation Rates, Compensation Rate Adders, and Flat Incentive Rate for 25 kW or less STGUs as detailed in 225 CMR 28.05(3) through (7).

(a) Factors Considered in Setting Program Year's Block and Rate Structure. The Department shall consider the following factors as part of its Annual SMART Program Assessment:

1. the Commonwealth's progress toward achieving the statewide greenhouse gas emissions limits and sublimits established pursuant to M.G.L. c. 21N;
2. historic program participation rates, including participation by Low Income Customers;
3. current and forecasted ratepayer cost impacts;
4. regional and national solar costs;
5. material and development costs for solar; and
6. the Commonwealth's land use and environmental protection goals.

(b) Annual Survey of Solar Development Costs. As part of the Annual SMART Program Assessment, the Department shall issue a survey to stakeholders pertaining to solar development costs. The survey will cover solar development costs in the Commonwealth including, but not limited to, financing models, permitting and interconnection costs, development timelines, capital costs, operating expenses, or other factors as determined by the Department. The Department will consider the results of the survey in determining the levelized revenue requirement for different STGU configurations and other considerations relevant to the Annual SMART Program Assessment.

(2) Annual Program Year Report. Starting for Program Year 2026, and annually thereafter, no later than December 1st or the following Business Day, the Department shall publish a report on the Department's website that contains the results of the Annual SMART Program Assessment. The report shall contain the annual determinations detailed in 225 CMR 28.05(3) through (7).

(a) Release of Draft Report for Public Comment. Annually, no later than October 1st, or the following Business Day, the Department shall publish a draft Annual Program Year Report to the Department's website and provide notice and a 30-day public comment period.

(b) First Program Year. For Program Year 2025, the Department shall publish the first Program Year Report by September 1, 2025, for the period of October 15, 2025, to December 31, 2025. Program Year 2025's Annual Program Year Report shall be based upon the Evaluation of Solar Costs and Needed Incentive Levels across Sectors from 2025-2030 published to the Department's website on July 10, 2024. The report shall contain the annual determinations detailed in 225 CMR 28.05(3) through (7).

(3) Annual Capacity Block Determination. Annually, the Department shall determine the available Annual Capacity Block for the Program Year.

(a) First Program Year. For Program Year 2025, the Annual Capacity Block shall be 900 MW.

(b) Unused Program Year Capacity. Any unused capacity for a given Program Year shall not roll into the following year's Annual Capacity Block.

(c) Determination of Capped Capacity for Certain Project Types. STGUs less than or equal to 25 kW and Behind-the-meter STGUs greater than 25 kW and less than or equal to 250 kW shall not count toward the Annual Capacity Block, unless based on the Annual SMART Program Assessment, the Department opts to impose a capacity set aside for such STGUs for the next Program Year. The Department shall include any proposed set aside in its draft Annual Program Year Report.

(4) Annual Capacity Allocation. Annually, the Department shall determine the allocation of a Program Year's Annual Capacity for each Distribution Company. Each Distribution Company shall be allocated a minimum of 1% of the Annual Capacity Block. The remaining capacity available shall be allocated proportional to the total electric load served to Massachusetts End-use Customers by the Distribution Company, provided that a Program Year's Annual Capacity for Fitchburg Gas and Electric Light Company doing business as Unitil shall not exceed 10 MW.

28.05: continued

(5) Annual Capacity Set Asides. For each Annual Capacity Block, the Department shall set aside capacity for the below listed STGU types. The annual capacity set aside for each STGU type shall not be less than the percentages listed in the below table.

Set-aside Category	Minimum % of Program Year Capacity
• Standalone STGUs greater than 25 kW and less than or equal to 250 kW; and • STGUs greater than 250 kW and less than or equal to 500 kW	10%
Low Income Property Generation Units	10%
Community Shared Solar Generation Units	15%

- (a) Additional Set Aside Categories. The Department may set aside capacity for additional STGU types, including for STGUs less than or equal to 25 kW and Behind-the-meter STGUs greater than 25 kW and less than or equal to 250 kW, as it deems necessary.
- (b) Capacity Reallocations. Set-aside capacity shall not be reallocated.
- (c) Set Aside Capacity Assignments. If an STGU qualifies for more than one set aside category, the Department shall count the STGU's capacity toward the applicable Compensation Rate Adder set-aside category. If that Program Year's set-aside category is full, then, if applicable, the capacity shall count towards the set aside for STGUs greater than 250 kW and less than or equal to 500 kW. If that Program Year's set-aside category is full, the capacity shall count towards any applicable set aside categories established pursuant to 225 CMR 28.05(5)(a). If all applicable set-aside categories have already been filled for the Program Year, the capacity shall not count towards any set aside categories.

(6) Annual Calculation of Base Compensation Rates and Compensation Rate Adders. The Department shall determine a Program Year's Base Compensation Rates and Compensation Rate Adders based on the Annual SMART Program Assessment and the methodology identified in the Department's *Guideline Regarding the Annual Assessment and Compensation Rates*. Any increase or decrease to the value of any Base Compensation Rate or Compensation Rate Adder shall not exceed 20% of the value for the same category of Base Compensation Rate or Compensation Rate Adder from the prior Program Year or one cent per kWh, whichever is greater.

(7) Annual Calculation of Flat Incentive Rate for Less than or Equal to 25 kW STGUs. Annually, the Department shall determine the Flat Incentive Rate for STGUs with a capacity less than or equal to 25 kW. The Flat Incentive Rate shall be based on the Annual SMART Program Assessment and the methodology identified in the Department's *Guideline Regarding the Annual Assessment and Compensation Rates*.

- (a) Minimum Incentive Payment. The incentive payment for an STGU with a capacity less than or equal to 25 kW shall not be less than \$0.01/kWh.
- (b) Adder for Low Income STGUs. Annually, the Department shall determine an additional adder amount to be added to the Flat Incentive Rate determined pursuant to 225 CMR 28.05(7) for STGUs less than or equal to 25 kW that qualify as Low Income STGUs pursuant to 225 CMR 28.07(5)(c)2.
- (c) Flat Incentive Rate and Adder Change Cap. Any increase or decrease to the value of the Flat Incentive Rate or adder for Low Income STGUs shall not exceed 20% of the value from the prior Program Year or one cent per kWh, whichever is greater.

28.06: Qualification Process for STGUs

(1) Statement of Qualification Application. A Statement of Qualification Application shall be submitted to the Solar Program Administrator by the Applicant. The Applicant shall use the most current forms and associated instructions provided by the Department, and shall include all information, documentation, and assurances required by such forms and instructions. The application shall contain all applicable documentation detailed below.

(a) Documentation for Applicable Eligibility Provisions. All solar photovoltaic Generation Units shall provide documentation sufficient to demonstrate that they meet all applicable eligibility provisions under 225 CMR 28.07 and documentation requirements under 225 CMR 28.00.

(b) Additional Required Documentation for STGUs 25 kW or Less. A solar photovoltaic Generation Unit 25 kW or less shall submit the following documentation as part of its Statement of Qualification Application:

1. Customer Disclosure Form. A customer disclosure form developed pursuant to 225 CMR 28.12(5) signed with a wet signature or signature using an electronic signature software by the Owner. If the solar photovoltaic Generation Unit Owner is a Third-party Owner, the form shall be signed with a wet signature or an electronic signature software by the Customer of Record.
2. Solar Contract. The Solar Contract for the solar photovoltaic Generation Unit.
3. Customer Utility Bill. A utility bill for the Customer of Record provided by the Distribution Company within 12 months prior to the Solar Contract execution date.
 - a. A solar photovoltaic Generation Unit shall be exempt from 225 CMR 28.06(1)(b)3. if the Applicant can demonstrate to the Department's satisfaction that the solar photovoltaic Generation Unit is sited on new construction.
 - b. The Applicant shall instead provide alternative documentation of the annual load estimate for the Customer of Record. If the solar photovoltaic Generation Unit is a Third-party Owned Generation Unit, the Applicant shall also provide alternative documentation to demonstrate to the Department's satisfaction compliance with the savings requirement under 225 CMR 28.07(5)(a).

(c) Additional Required Documentation for STGUs Greater than 25 kW. A solar photovoltaic Generation Unit greater than 25 kW shall provide evidence of the following in order to obtain a Preliminary Statement of Qualification:

1. an executed Interconnection Service Agreement, as tendered by the Distribution Company;
2. a sufficient interest in real estate or other contractual right to construct the solar photovoltaic Generation Unit at the location specified in the Interconnection Service Agreement; and
3. all necessary governmental permits and approvals to construct the solar photovoltaic Generation Unit with the exception of ministerial permits, such as a building permit, and notwithstanding any pending legal challenge(s) to one or more permits or approvals initiated by a party other than the Applicant, Owner, or Customer of Record.

(d) Additional Required Documentation for STGUs 1,000 kW or Less. The Owner or Applicant of a solar photovoltaic Generation Unit exempt under 18 CFR § 292.203(d) from the filing requirements under 18 CFR § 292.203(a)(3) for certification as a qualifying facility shall attest to such exemption in its Statement of Qualification Application.

(e) Application Review Procedures. The Solar Program Administrator will notify the Applicant when the Statement of Qualification Application is administratively complete or if additional information is required. All Preliminary Statement of Qualification Applications may be subject to review by the Department and the Solar Program Administrator and shall be processed in no more than 45 Business Days by each party.

1. Public Comment. The Department may, at its sole discretion, provide an opportunity for public comment on any Statement of Qualification Application. The Department may extend the application review timeline to account for the public comment period.
2. Mitigation Fee Review. If a solar photovoltaic Generation Unit has a pending request with the Department pursuant to 225 CMR 28.09(2)(b), the Statement of Qualification Application shall not be deemed administratively complete under 225 CMR 28.06(1)(e) until the Department has issued a determination.
3. Applications Subject to Site Visits. If a solar photovoltaic Generation Unit is subject to a site visit from the Environmental Monitor pursuant to 225 CMR 28.08(6)(b), the Department may extend the Statement of Qualification Application review time under 225 CMR 28.06(1)(e), subject to the availability of the Environmental Monitor.

28.06: continued

(2) Issuance or Non-issuance of a Preliminary Statement of Qualification. If the Department finds that a solar photovoltaic Generation Unit meets the applicable eligibility requirements of 225 CMR 28.00, the Solar Program Administrator will issue a Preliminary Statement of Qualification for the STGU.

(a) Preliminary Statement of Qualification. The Preliminary Statement of Qualification shall contain the Base Compensation Rate and the preliminary Compensation Rate Adders applicable to the STGU. It shall also include the Reservation Period during which the STGU is required to achieve Mechanical Completion. If the STGU does not achieve Mechanical Completion before the expiration of the Reservation Period, the Department shall revoke its Preliminary Statement of Qualification. An STGU may add or remove Compensation Rate Adders during its Reservation Period.

1. Reservation Period. The length of an STGU's Reservation Period shall be not less than 24 months. An STGU may apply for an extension of the Reservation Period pursuant to the applicable procedures of the Department's *Statement of Qualification Reservation Period Guideline*.

2. Restrictions or Conditions. The Preliminary Statement of Qualification may include reasonable restrictions or conditions the Department deems necessary to ensure compliance with 225 CMR 28.00.

(b) Non-Issuance of a Preliminary Statement of Qualification. If a solar photovoltaic Generation Unit does not meet the requirements of 225 CMR 28.00, the Solar Program Administrator shall provide written notice to the Applicant, including the reasons for such finding.

(c) Withdrawal of a Statement of Qualification Application. If an Applicant submits a Statement of Qualification Application for a solar photovoltaic Generation Unit and chooses to withdraw the application, the Applicant shall not be eligible to submit a Statement of Qualification Application for the Generation Unit for the following Program Year. A solar photovoltaic Generation Unit shall be exempt from this requirement if it can demonstrate to the Department's satisfaction that it should be granted an exception for good cause.

(3) Issuance or Non-issuance of a Final Statement of Qualification. An STGU that has received a Preliminary Statement of Qualification and is still within its Reservation Period may submit a claim for a Final Statement of Qualification once it has received authorization to interconnect.

(a) Required Documentation. The Final Statement of Qualification claim shall include a copy of the authorization to interconnect issued by the applicable Distribution Company, financial payment documentation, and any remaining documentation to satisfy all applicable eligibility criteria pursuant to 225 CMR 28.07.

(b) Final Statement of Qualification. The Final Statement of Qualification shall contain the final Base Compensation Rate and Compensation Rate Adders applicable to the STGU, the length of the STGU's tariff term, and the STGU's Incentive Payment Effective Date.

(c) Non-issuance of a Final Statement of Qualification. If an STGU does not meet the requirements of 225 CMR 28.00, the Solar Program Administrator shall provide written notice to the Applicant including the reasons for such finding.

(4) Statement of Qualification Applications for Program Year Capacity. Statement of Qualification Applications for solar photovoltaic Generation Units applying for a portion of a Program Year's Annual Capacity Block shall be reviewed using the following process.

(a) The Department shall begin accepting Statement of Qualification Applications for a Program Year on January 1st, or the following Business Day, of the Program Year. For Program Year 2025, the Department shall begin accepting Statement of Qualification Applications on October 15, 2025.

(b) The Department shall accept applications for a period of ten Business Days during which it shall sequence all applications for Generation Units by Interconnection Service Agreement Application Date. The Department shall allocate capacity according to this sequence.

(c) Following the initial ten Business Day application period, all capacity will be reserved on a first-come first-served basis by date of Statement of Qualification Application.

(d) If all available capacity in the Program Year is reserved, the Department shall establish a Waitlist, on a first-come first-served basis, which will be posted to the Department's website and updated weekly.

28.06: continued

(e) If a Statement of Qualification Application for a Generation Unit is withdrawn by the Applicant or denied by the Department, the Department shall offer the capacity previously reserved by that Generation Unit to the first eligible Generation Unit on the Waitlist. If the capacity available is less than the capacity of the first eligible Waitlist Generation Unit, the capacity will not be allocated until there is sufficient capacity available to accommodate the Generation Unit.

(f) When a Generation Unit is selected off the Waitlist, the Applicant will be given ten Business Days to accept or decline the selection. If the Applicant declines the selection or does not respond within ten Business Days, the Generation Unit will be removed from the Waitlist and the next eligible Generation Unit on the Waitlist will be selected, subject to available capacity.

(g) At the beginning of a new Program Year, the Department shall first allocate capacity to Generation Units on the Waitlist before processing applications submitted during the ten Business Day application period established pursuant to 225 CMR 28.06(4)(b).

(5) Statement of Qualification Applications for Uncapped Capacity. The Department shall begin accepting Statement of Qualification Applications for STGUs that do not count towards the Annual Capacity Block pursuant to 225 CMR 28.05(3)(c) on January 1st, or the following Business Day, of the Program Year.

28.07: Program Eligibility

(1) RPS Class I Eligibility. For each MWh of electricity generation produced by an STGU, it will be eligible to generate GIS Certificates encoded as RPS Class I Renewable Generation Attributes. These GIS Certificates and any other GIS Certificates associated with Environmental Attributes other than RPS Class I Renewable Generation Attributes, shall be transferred directly to an account owned by the Distribution Company in whose service territory the STGU is located upon issuance by NEPOOL GIS. The Distribution Company shall register the STGU with NEPOOL GIS and report the associated NEPOOL GIS Asset ID for each STGU to the Department no later than the date it issues an authorization to interconnect for an STGU.

(2) RPS Effective Date. The RPS Effective Date shall be the earliest date on or after the Commercial Operation Date on which electrical energy output of an STGU can result in the creation of RPS Class I Renewable Generation Attributes.

(3) SMART Program Effective Date(s). STGUs that receive a Final Statement of Qualification pursuant to 225 CMR 28.06(3) will be eligible to begin receiving incentive payments upon the effective date of the SMART Tariffs, as approved by the DPU. Revisions to the SMART Program that require amendments to the SMART Tariffs shall take effect upon review and approval of revised SMART Tariffs by the DPU.

(4) General Eligibility Criteria for STGUs.

(a) Technology, Capacity, and Interconnection Requirement. An STGU shall meet the following requirements:

1. use solar photovoltaic technology;
2. have a capacity of 5,000 kW or less; and
3. be interconnected with the electric grid in the Commonwealth of Massachusetts.

(b) Active Statements of Qualification. To submit a Statement of Qualification Application under 225 CMR 28.06, a solar photovoltaic Generation Unit shall not have an active Statement of Qualification as defined under 225 CMR 20.00: *Solar Massachusetts Renewable Target (Smart) Program* or 225 CMR 14.00: *Renewable Energy Portfolio Standard – Class I*.

1. Construction Date Requirement for Program Years 2025 and 2026. Applicants submitting a Statement of Qualification Application in Program Years 2025, 2026, and thereafter upon request by the Department, shall demonstrate to the Department's satisfaction that on-site physical work of a significant nature had not begun on the solar photovoltaic Generation Unit prior to June 20, 2025. On-site physical work of a significant nature shall include, but not be limited to, the continuous installation of racks or other structures to affix photovoltaic panels, collectors, or solar cells to a site.

28.07: continued

2. Exception to Construction Date Requirement for Low Income Properties. An STGU located on a Low Income Property that submits a Statement of Qualification Application shall not be subject to the requirements of 225 CMR 28.07(4)(b). For Program Years 2025, 2026, and thereafter, upon request by the Department, an STGU located on a Low Income Property shall demonstrate to the Department's satisfaction that on-site physical work of a significant nature has not begun on the solar photovoltaic Generation Unit prior to July 1, 2024. On-site physical work of a significant nature shall include, but not be limited to, the continuous installation of racks or other structures to affix photovoltaic panels, collectors, or solar cells to a site.
- (c) Distribution Company Owned Solar Photovoltaic Generation Units. Any solar photovoltaic Generation Unit that is owned by a Distribution Company and was approved to be constructed by the DPU, pursuant to M.G.L. c. 164, § 1A, shall not be eligible to qualify as an STGU under 225 CMR 28.00.
- (d) Public Utility Regulatory Policies Act of 1978 Requirements. An STGU with a maximum net power production capacity of greater than 1,000 kW shall obtain federal qualifying facility status from the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 292.207(a) and (b).
- (e) Energy Storage Requirement. All STGUs greater than 1,000 kW that do not qualify for a Locational Compensation Rate Adder shall be co-located with an Energy Storage System that meets the eligibility requirements of 225 CMR 28.07(5)(e)1.
1. Exceptions to Energy Storage Requirement for Good Cause. An STGU shall be exempt from the requirement of 225 CMR 28.07(4)(e) if it can demonstrate to the Department's satisfaction that it should be granted an exception for good cause.
 2. Department Review of Exception Requests. The Department will review applications for exceptions under 225 CMR 28.07(4)(e) on a case by case basis.
- (5) Special Eligibility Criteria for STGUs.
- (a) Residential Third-party Owned 25 kW or Less STGUs.
1. Savings Requirement . Customers of Record on a residential rate class entering into an agreement for Third-party Owned STGUs shall receive on the first year of their Solar Contract a per-kilowatt-hour savings equivalent to 10% or greater of the Value of Energy for Net-metered Generation Units on an R-1 rate class applicable to the Customer of Record's service territory, calculated pursuant to 225 CMR 28.14(2)(a), in effect at the time of Solar Contract execution. At no point during the term of the Solar Contract shall the per-kilowatt-hour rate charged to the Customer of Record for the output of the Third-party Owned STGU exceed the per-kilowatt-hour rate the Customer of Record is charged by the Distribution Company for the same billing cycle, inclusive of any low or moderate income discounts applied to the Customer of Record's bill by the Distribution Company. Required documentation for demonstrating compliance with the savings requirement is detailed further in the Department's *Guideline on Consumer Protection*. If the Customer of Record for the STGU has a Pre-Paid Solar Lease, the Applicant shall provide documentation to the Department's satisfaction that during the term of the Solar Contract, the Customer of Record shall receive comparable benefits to the 10% savings requirement, as detailed further in the *Guideline on Consumer Protection*.
 2. Maximum Escalator Rate. The escalator rate in a Solar Contract with a Customer of Record on a residential rate class may not exceed 3% per year.
- (b) Locational Compensation Rate Adders.
1. Brownfield and Landfill STGUs. In order to qualify as a Brownfield or Landfill STGU, an STGU shall be sited on locations that qualify as a Brownfield or Eligible Landfill.
 - a. Exception to Executed ISA Requirement. STGUs applying as a Brownfield or Landfill STGU shall not be subject to the requirements in 225 CMR 28.06(1)(c)1.
 - b. Exception to 5,000 kW Requirement. STGUs applying as a Brownfield or Landfill shall not be subject to 225 CMR 28.07(4)(a)2. and shall instead be permitted to be sized less than or equal to 10,000 kW. Such systems shall receive the Base Compensation Rate for 1,000 - 5,000 kW STGUs.
 - c. Eligibility Determinations. Brownfield STGUs shall obtain a Pre-Determination Letter from the Department, pursuant to the process outlined in the Department's *Guideline Regarding the Definition of Brownfield*. All final determinations regarding the eligibility of such facilities will be made by the Department, in consultation with MassDEP.

28.07: continued

2. Canopy STGUs. In order to qualify as a Canopy STGU, 100% of the nameplate capacity of the STGU shall be located on a raised structure with not less than 75% of the nameplate capacity of the solar photovoltaic modules allowing for the regular and continued use of the area beneath for a secondary function that aligns with the routine operational activities of the site, including, but not limited to, parking, pedestrian walkway, transportation infrastructure, storage of equipment, or canal, provided that such secondary function may not be agricultural production.
3. Dual-use Agricultural STGUs. In order to qualify as a Dual-use Agricultural STGU, an STGU shall meet the following criteria:
 - a. Project Design Requirements.
 - i. The STGU will not impede the continued use of the land beneath the solar photovoltaic modules for agricultural purposes;
 - ii. the STGU is designed to optimize a balance between the generation of electricity and the agricultural productive capacity of the soils beneath; and
 - iii. the STGU allows for continuous agricultural activities underneath the solar photovoltaic modules, with height enough for labor or machinery as it relates to tilling, cultivating, soil amendments, harvesting, and grazing animals.
 - b. Project Specification Requirements.
 - i. Panel Height Requirements. The panels of Dual-use Agricultural STGUs shall meet the following height requirements.
 - (i) Fixed Tilt STGUs. For fixed tilt STGUs, the minimum height of the lowest panel point shall be eight feet above ground.
 - (ii) Tracking STGUs. For tracking STGUs, the minimum height of the panel at its horizontal position shall be ten feet above ground. This minimum height may be reduced to eight feet if the maximum sunlight reduction requirement under 225 CMR 28.07(5)(b)3.b.ii. is still met in all tilt positions and the farm operator has functional control of the tracker control system to accommodate agricultural activities.
 - ii. Sunlight Requirements. A Dual-use Agricultural STGU shall propose a sunlight reduction plan for the STGU based upon the compatibility of the STGU with the proposed agricultural crops and productivity. The plan shall utilize the best available information as indicators, including, but not limited to, photosynthetic active radiation and light saturation data and qualitative information. The maximum sunlight reduction from a Dual-use Agricultural STGU's panels on every square foot of land directly beneath, behind, and in areas adjacent to and within the STGU's design shall not be more than 50% of baseline field conditions during the Growing Season Hours, unless the Applicant can demonstrate that an exception should be granted pursuant to 225 CMR 28.07(5)(b)3.b.iv.
 - iii. Maximum Direct Current (DC) Rating. The maximum DC capacity rating of a Dual-use Agricultural STGU shall be no more than twice the AC capacity rating of the STGU and shall not exceed 7,500 kW DC.
 - iv. Exception from Project Specification Requirements. An Applicant may request that the Department, in consultation with MDAR, issue an exception from one or more of the Project Specification Requirements in 225 CMR 28.07(5)(b)3.b.i. through iii. Required documentation for an exception request is detailed further in the Department's *Guideline Regarding the Definition of Dual-use Agricultural Solar Tariff Generation Units*.
 - c. Eligible Farmland. A Dual-use Agricultural STGU shall be sited on Land in Agricultural Use, land classified as Important Agricultural Farmland, Fallow Farmland, or on Newly Created Farmland.
 - i. Newly Created Farmland. To be deemed Newly Created Farmland, the Applicant shall demonstrate the viability of agricultural production at the time a Pre-determination Application is submitted to the Department and MDAR and meet the below criteria.
 - (i) Clearcutting Prohibition. No Newly Created Farmland Project Footprint shall be a result of the clearing or conversion of forest land that does not qualify as permissible tree clearing. Permissible tree clearing may include routine maintenance of existing field boundaries or roads, removing isolated trees in an existing cleared space, or other instances of routine agricultural activity as determined by the Department, in consultation with MDAR.

28.07: continued

- (ii) Soil Test Requirement. For Newly Created Farmland, Applicants shall provide soil tests from the UMass Amherst Soils Testing Laboratory or equivalent, demonstrating pH and macronutrients are within optimum ranges for the crops proposed to be grown.
- d. Agricultural Plan. Applicants shall provide an agricultural plan detailing the agricultural activities to take place on the project site. A template for the agricultural plan shall be provided in the Pre-determination Application.
 - i. Transitioning Greater than Ten Acres of Farmland. If, as part of its Agricultural Plan, a Dual-use Agricultural STGU on Important Agricultural Farmland is proposing to transition greater than ten acres of farmland to grazing or hay production that has not been used for those agricultural purposes during any of the five crop years prior to the Pre-determination Application, the agricultural plan shall demonstrate that there will be concurrent growing of Comparable Crops to the existing operation for at least the first five years of the STGU operation, as determined by the Department, in consultation with MDAR, and detailed further in the Department's *Guideline Regarding the Definition of Dual-use Agricultural Solar Tariff Generation Units*.
 - ii. New Commodities. The agricultural plan may include new commodities in the place of Comparable Crops provided that the plan includes the farmer's previous experience with or a working knowledge of the new commodity, an estimate or other information detailing the market viability of the new commodity, or a comparison of the economic value of the new commodity relative to current production.
- e. Eligibility Determinations. Dual-use Agricultural STGUs shall obtain a Pre-determination Letter from the Department, pursuant to the process outlined in the Department's *Guideline Regarding the Definition of Dual-use Agricultural Solar Tariff Generation Units*. All final determinations regarding the eligibility of such facilities will be made by the Department, in consultation with MDAR.
- 4. Floating STGUs. In order to qualify as a Floating STGU, an STGU shall meet the following criteria:
 - a. Project Design Requirements.
 - i. the STGU will not interfere with the continued use of the water body for its designated purpose;
 - ii. the racking system shall be made of materials that have been tested for water quality impact and have been shown to have no or minimal impact;
 - iii. the STGU shall use equipment that has been certified by the manufacturer to not contain PFAS;
 - iv. the STGU will not be permitted in wetland resource areas and natural waterbodies such as salt ponds, or freshwater lakes and great ponds, as defined in M.G.L. c. 91;
 - v. the ratio of the total surface area covered by the Floating STGU divided by the total surface area of the water body under standard conditions shall not exceed 50%;
 - vi. the STGU shall be designed to minimize potential interaction with native species;
 - vii. the STGU is a floating structure allowing for continued use and maintenance of the water body while generating electricity; and
 - viii. the Applicant shall demonstrate to the Department's satisfaction that the water body was not constructed for the purpose of obtaining eligibility as a Floating STGU.
 - b. Eligibility Determinations. Floating STGUs shall obtain a Pre-determination Letter from the Department, pursuant to the process outlined in the Department's *Guideline Regarding the Definition of Floating Solar Tariff Generation Units*. All final determinations regarding the eligibility of such facilities will be made by the Department, in consultation with MassDEP, MassDFG, or MDAR, as necessary.
 - c. Capacity Limitation. The Department shall not qualify more than 40 MW of Floating STGU capacity under 225 CMR 28.00.
 - d. Interconnection Application Date Requirement. Floating STGUs shall demonstrate that an application for an Interconnection Service Agreement was submitted to the Distribution Company prior to June 20, 2025.

28.07: continued

(c) Eligibility Criteria for Off-taker Based Compensation Rate Adders.

1. Community Shared STGUs. In order to qualify as a Community Shared STGU, an STGU shall meet the following criteria.

a. Low Income Customers Requirement. Community Shared STGUs shall allocate no less than 40% of all Bill Credits generated by the STGU to Low Income Customers or allocate no less than 15% of all Bill Credits generated to Low Income Customers at no cost to the Low Income Customers.

i. Low Income Customers Requirement for Alternative Community Shared Solar Programs, Municipal Load Aggregations. STGUs qualifying through a municipal load aggregation program established pursuant to M.G.L. c. 164, § 134 shall allocate 100% of the generation output of the STGU, in the form of electricity, energy cost savings, or Bill Credits to Low Income Customers.

ii. Low Income Customers Requirement for Alternative Community Shared Solar Programs, Distribution Companies. STGUs qualifying through a community shared solar program established and administered by a Distribution Company shall allocate 100% of the generation output of the STGU, in the form of electricity, energy cost savings, or Bill Credits generated to Low Income Customers.

b. Guaranteed Discount Requirement. Low Income Customers shall receive not less than a 40% discount on the value of allocated Bill Credits from the Community Shared STGU to the Low Income Customer. All other customers shall receive not less than a 20% discount on the value of allocated Bill Credits from the Community Shared STGU to the End-use Customer. This requirement shall not apply to End-use Customers on a non-residential rate class.

i. Guaranteed Discount Requirement for Alternative Community Shared Solar Programs, Municipal Load Aggregation Programs. STGUs qualifying through a municipal load aggregation program established pursuant to M.G.L. c. 164, § 134 may satisfy 225 CMR 28.07(5)(c)1.b. by allocating to participating Low Income Customers in the form of electricity, energy cost savings, or Bill Credits an aggregate annual value equal to the product of:

(i) 30% of the average annual value of an Alternative On-bill Credit for the rate class and Distribution Company of the STGU at the date of the STGU's Statement of Qualification Application and

(ii) the total annual kWh generated by the STGU. The value of the guaranteed discount requirement shall be calculated through the methodology outlined in the *Guideline Regarding Community Shared Solar Tariff Generation Units* and shall not exceed the value of the STGU's Community Shared Compensation Rate Adder.

ii. Guaranteed Discount Requirement for Alternative Community Shared Solar Programs, Distribution Companies. STGUs qualifying through a community shared solar program established and administered by a Distribution Company may satisfy 225 CMR 28.07(5)(c)1.b. by allocating to participating Low Income Customers in the form of electricity, energy cost savings, or Bill Credits an aggregate annual value equal to the product of:

(i) 30% of the average annual value of an Alternative On-bill Credit for the rate class and Distribution Company of the STGU at the date of the STGU's Statement of Qualification Application and

(ii) the total annual kWh generated by the STGU. The value of the guaranteed discount requirement shall be calculated through the methodology outlined in the *Guideline Regarding Community Shared Solar Tariff Generation Units* and shall not exceed the value of the STGU's Community Shared Compensation Rate Adder.

c. Customer Disclosure Form Requirement. The Owner or Authorized Agent of a Community Shared STGU shall submit a copy of the customer disclosure form developed pursuant to 225 CMR 28.12(4) completed by each Customer of Record receiving electricity or Bill Credits generated by the Community Shared STGU as part of its Statement of Qualification Application. The customer disclosure forms shall be signed with a wet signature or an electronic signature software by the Customer of Record.

28.07: continued

- i. New Customers of Record. The Community Shared STGU Owner or Authorized Agent shall provide updated customer disclosure forms for any new Customers of Record that receive electricity or Bill Credits generated by the Community Shared STGU after it is granted its Statement of Qualification. Any updated customer disclosure forms shall be submitted to the Department by no later than December 31st of the calendar year that they were signed.
 - ii. Customer Disclosure Form Exceptions.
 - (i) Exception for Alternative Community Shared Solar Programs. A Community Shared STGU may be exempt from the customer disclosure form requirements in 225 CMR 28.07(5)(c)1.c. if the Applicant can demonstrate to the Department's satisfaction that the Customers of Record are enrolled without a customer contract. In these instances, the Applicant may be required to demonstrate that the Customer(s) of Record have received an explanation of benefits, pursuant to the documentation outlined in the *Guideline Regarding Community Shared Solar Tariff Generation Units*, or further Department guidance.
 - (ii) Exception for Anchor Off-takers. Participants receiving Bill Credits in excess of those produced annually by 25 kW of nameplate capacity shall not be subject to 225 CMR 28.07(5)(c)1.c.
- d. Bill Credits.
 - i. Allocation Requirement. Community Shared STGUs shall demonstrate to the Department's satisfaction that at least 90% of Bill Credits or electricity, or in the case of an Alternative Community Shared Solar Program, energy cost savings, have been assigned to valid and active utility accounts by the Incentive Payment Effective Date.
 - ii. Bill Credit Requirements for Alternative Community Shared Solar Programs. Electricity, energy cost savings, or Bill Credits may be allocated through a municipal load aggregation program established pursuant to M.G.L. c. 164, § 134, or through a community shared solar program established and administered by a Distribution Company. Community Shared STGUs that qualify through such eligible programs shall submit satisfactory documentation to the Department as detailed in the Department's *Guideline Regarding Community Shared Solar Tariff Generation Units*. Community Shared STGUs that qualify through such eligible programs shall use an enrollment process consistent with M.G.L. c. 164, § 134 and any requirements established by the DPU.
 - iii. Bill Credit Restriction for Anchor Off-takers. For Community Shared STGUs 100 kW or greater, no more than two participants may receive Bill Credits in excess of those produced annually by 25 kW of nameplate capacity, and the combined share of said participants' capacity shall not exceed 50% of the total capacity of the STGU. STGUs subject to this requirement must demonstrate that no individual or distinct legal entity will receive bill credits or electricity in an amount that exceeds the applicable limitations noted in 225 CMR 28.07(5)(c)1.d.iii., even if the credits are allocated across multiple utility accounts.
- 2. Low Income STGUs. In order to qualify as a Low Income STGU, an STGU shall meet the following criteria.
 - a. Size Requirement. Low Income STGUs shall be 25 kW or less.
 - b. Low Income Off-takers Requirement. Low Income STGUs shall satisfy at least one of the following criteria:
 - i. provide 100% of the annual generation output as electricity or Bill Credits to a single Low Income Customer and be located on that Low Income Customer's residence;
 - ii. provide at least 15% of the annual generation output as electricity or Bill Credits to one Low Income Customer at no cost to the Low Income Customer;
 - iii. provide at least 15% of the annual generation output as electricity or Bill Credits to two or three Low Income Customers at no cost to the Low Income Customers, provided that a single Low Income Customer's annual usage is less than 15% of the Generation Unit's output; or

28.07: continued

- iv. provide 100% of the annual generation output as electricity or Bill Credits to one or more qualified Low Income Properties. The Applicant shall provide satisfactory documentation to the Department that there is a minimum agreement term of 20 years for the Low Income Property to receive the generation output, as detailed in the Department's *Guideline Regarding Low Income Generation Units*.
 - v. Requirement for Behind-the-meter STGUs. For Behind-the-meter STGUs satisfying the Low Income Off-takers Requirement under 225 CMR 28.07(5)(c)2.b.ii. or iii., the Applicant shall demonstrate to the Department that the STGU will have at least 15% excess generation to allocate.
 - vi. Requirement to Update Off-takers. If one or more Low Income Customer used to satisfy 225 CMR 28.07(5)(c)2.b.ii. or iii. no longer qualify as Low Income Customer, the Applicant shall replace that customer with an eligible Low Income Customer and update the Department of that update within 30 days of the previous Low Income Customer's change in eligibility status.
3. Low Income Property STGUs. In order to qualify as a Low Income Property STGU, an STGU shall meet the following criteria:
- a. Eligible Properties. Applicants shall provide satisfactory documentation to the Department that the recipient or recipients of the generation output meets the definition of Low Income Property.
 - i. Private Entities. A private entity wishing to qualify as a Low Income Property shall demonstrate to the Department's satisfaction that:
 - (i) at least 25% of the housing available at the properties to be served by the Generation Unit is required to be rented to households that are at or below 80% of the area median income; or
 - (ii) at least 20% of the housing available at the properties to be served by the Generation Unit is required to be rented to households that are at or below 50% of the area median income.
 - b. Generation Output Delivery. Applicants shall provide satisfactory documentation to the Department that the STGU is sited on a Low Income Property or 100% of the generation output will be delivered to one or more Low Income Properties in the form of electricity or Bill Credits.
 - c. Third-party Owned Generation Units. If the STGU has a Third-party Owner, the Applicant shall provide satisfactory documentation to the Department that there is a minimum agreement term of 20 years or a demonstration of intent to renew the agreement for the Low Income Property to receive the generation output.
 - d. Optional Pre-determination. Applicants may request a Pre-determination Letter from the Department, pursuant to the process outlined in the Department's *Guideline Regarding Low Income Generation Units*.
4. Public Entity STGUs. In order to qualify as a Public Entity STGU, an STGU shall meet the following criteria:
- a. Municipal or Government Property. For STGUs sited on property owned by a Municipality or Other Governmental Entity, the Applicant shall provide satisfactory documentation to the Department that either:
 - i. The STGU is owned by the Municipality or Other Governmental Entity; or
 - ii. The Owner has assigned 100% of the generation output in the form of electricity or Bill Credits to Municipalities or Other Governmental Entities.
 - b. Private Property. For STGUs sited on privately owned property, the Applicant shall provide satisfactory documentation to the Department that either:
 - i. The STGU is owned by the Municipality in which the STGU is sited;
 - ii. The Owner has assigned 100% of the generation output in the form of electricity or Bill Credits to the Municipality or Other Governmental Entities in the Municipality in which the STGU is sited; or
 - iii. The Owner has
 - (i) assigned 100% of the generation output in the form of electricity or Bill Credits to Municipalities or Other Government Entities and
 - (ii) not less than 15% of that output is assigned to the Municipality, or an Other Governmental Entity located in the Municipality, in which the STGU is sited.

28.07: continued

- c. Contract Requirement. Applicants may apply for a Preliminary Statement of Qualification by providing satisfactory documentation to the Department that a Municipality or Other Governmental Entity has awarded a contract to develop an STGU. STGUs applying as a Public Entity STGU shall not be subject to the requirements in 225 CMR 28.06(1)(c)2.
- d. Exception to Executed ISA Requirement. STGUs applying as a Public Entity STGU shall not be subject to the requirements in 225 CMR 28.06(1)(c)1.
- e. Exception to Permit Requirement. STGUs applying as a Public Entity STGU shall not be subject to the requirements in 225 CMR 28.06(1)(c)3.
- (d) Other Compensation Rate Adders.
 - 1. Solar Tracking Adder. In order to qualify for the Solar Tracking Adder, an STGU shall follow the path of the sun to maximize the solar radiation incident on the photovoltaic surface with a one or two-axis array that points the system directly at the sun at all times and is designed to maximize possible daily energy generation.
 - 2. Pollinator Adder. In order to qualify for the Pollinator Adder, an STGU shall obtain and maintain at least a silver certification from the University of Massachusetts Clean Energy Extension Pollinator-friendly Certification Program, or other equivalent certification as determined by the Department.
- (e) Other Special Eligibility Criteria.
 - 1. Energy Storage Systems. In order to qualify for the Energy Storage System Compensation Rate Adder, an STGU shall be co-located with an Energy Storage System that meets the following eligibility criteria:
 - a. System Size. The STGU shall be greater than 25 kW.
 - b. System Requirements.
 - i. Minimum and Maximum Nominal Rated Power. The nominal rated power capacity of the Energy Storage System shall be at least 25%. The nominal rated power capacity of the Energy Storage System may be more than 100% of the rated capacity, as measured in direct current, of the STGU, but the STGU will receive credit for no nominal rated power capacity greater than 100% in the calculation of its Energy Storage Adder, pursuant to 225 CMR 28.13(3)(e)2.
 - ii. Minimum and Maximum Nominal Useful Energy. The nominal useful energy capacity of the Energy Storage System co-located with the STGU shall be at least two hours. The nominal useful energy capacity of the Energy Storage System co-located with the STGU may be more than six hours, but the STGU will receive credit for no nominal useful energy capacity greater than six hours in the calculation of its Energy Storage Adder, pursuant to 225 CMR 28.13(3)(e)2.
 - iii. Minimum Efficiency Requirement. The Energy Storage System co-located with the STGU shall have at least a 65% round trip efficiency in normal operation.
 - c. Operational and Performance Requirements.
 - i. Operational Requirements. The Energy Storage System shall be online and able to discharge at least 85% of the time during the Summer Peak Period and Winter Peak Period. The Energy Storage System may satisfy this requirement for either or both of the Peak Periods by participating in a demand response or grid services program. For any period that the Energy Storage System is not participating in a demand response or grid services program, the Energy Storage System shall demonstrate to the Department's satisfaction that it meets the operational requirements. If the Energy Storage System is decommissioned or non-functional for more than 15% of the Summer Peak Period or Winter Peak Period, the Department may disqualify the STGU from continuing to receive the Energy Storage System Compensation Rate Adder.
 - ii. Performance Requirements. The Energy Storage System shall dispatch 100 complete cycle equivalents per year or shall participate in a demand response or grid services program.

28.07: continued

d. Standalone DC-coupled Solar with Energy Storage. DC-coupled STGUs with Energy Storage Systems will be eligible for annual true up payments to account for round-trip efficiency losses and compensate the Owner for the AC equivalent of the Renewable Generation of the STGU. The Department will use the following formula to calculate the true up payment and shall publish a Guideline on Energy Storage that explains the parameters and the process for annual compensation.

$$\text{Annual True Up Payment} = R_P \cdot \eta_{\text{inv}} \cdot \eta_{\text{tran}} \cdot \sum_{i=1}^n E_i$$

2. Special Provisions for Phased Interconnection. STGUs shall be subject to the following provisions if the Applicant can demonstrate to the Department's satisfaction that the STGU has an agreement with the relevant Distribution Company for phased interconnection. Phased interconnection shall mean a single STGU for which the Distribution Company has structured the STGU's authorization to interconnect with the total nameplate capacity occurring in two or more phases, where the initial phase is less than the total nameplate capacity.
- a. The Applicant shall submit a Statement of Qualification Application for the total nameplate capacity of the STGU and receive a capacity allocation pursuant to 225 CMR 28.06(4). The Interconnection Service Agreement shall demonstrate the timing of the phased interconnections.
 - b. The Applicant shall submit the first authorization to interconnect to receive a Final Statement of Qualification including the Incentive Payment Effective Date for the STGU.
 - c. After receiving an amended authorization to interconnect from the Distribution Company that includes the total nameplate capacity for the STGU, the Applicant shall submit it and receive a revised Final Statement of Qualification. The revised Final Statement of Qualification shall provide that the STGU is permitted to enroll and receive compensation under the SMART Tariff commencing on the Incentive Payment Effective Date of the original Final Statement of Qualification until the 20th anniversary of the Incentive Payment Effective Date included in the revised Final Statement of Qualification.

28.08: Land Use

- (1) Ineligible Land. An STGU shall be ineligible for 225 CMR 28.00 if its Project Footprint overlaps with the following land use types:
- (a) Wetland Resource Areas, as defined under 310 CMR 10.04: *Definitions*, not including Buffer Zones, as defined under 310 CMR 10.04, except as authorized by all necessary regulatory bodies in accordance with all applicable regulations, guidance, and policies;
 - (b) properties included in the *State Register* pursuant to 950 CMR 71.00: *Protection of Properties Included in the State Register of Historic Places*, except as authorized by regulatory bodies; or
 - (c) protected open space as established under Article XCVII of the Amendments to the Constitution. An STGU shall not be subject to 225 CMR 28.08(1)(c) if it receives one of the Locational Compensation Rate Adders listed under 225 CMR 28.13(3)(b).
- (2) Ineligible Land for Ground-mounted STGUs above 250 kW. A ground-mounted STGU above 250 kW that is not located on Previously Developed land and does not qualify for a Locational Compensation Rate Adder listed under 225 CMR 28.13(3)(b) shall be ineligible for 225 CMR 28.00 if:
- (a) the Project Footprint overlaps with land designated as Core Habitat; or

28.08: continued

(b) more than 10% of the Project Footprint overlaps with the highest levels of forest carbon in Massachusetts, as detailed in the Department's *Guideline Regarding Land Use, Siting, and Project Segmentation*; except in the instance where an STGU has an interconnection application that was submitted to the Distribution Company prior to September 24, 2025, and will interconnect to a substation or feeder that is constructed or upgraded as part of an Approved Distribution System Upgrade, that was filed with the Department of Public Utilities before January 1, 2026, then the overlap of the Project Footprint shall be more than 25%. There shall be no further exceptions to the 10% overlap threshold.

(3) Determination of Previously Developed Land. An Applicant may request a determination from the Department whether a prospective Project Footprint meets the definition of Previously Developed. The Department may consult with relevant agencies in issuing a determination. Further guidance on acceptable documentation to demonstrate that a Project Footprint meets the definition is detailed in the Department's *Guideline Regarding Land Use, Siting, and Project Segmentation*.

(4) Single Parcel Requirement. For any parcel of land for which an STGU has submitted a Statement of Qualification Application, if its current boundaries are the result of a subdivision recorded after January 1, 2020, the Owner shall demonstrate to the Department that the subdivision was not for the purpose of obtaining eligibility as an STGU.

(5) Project Segmentation. No more than one STGU on a single building, or one ground-mounted STGU on a single parcel shall be eligible to receive a Statement of Qualification as an STGU under 225 CMR 28.00.

(a) Exceptions to Project Segmentation. Notwithstanding 225 CMR 28.08(5), the following types of STGUs may be eligible to receive a Statement of Qualification, subject to demonstration to the Department's satisfaction that one of the following exceptions should apply:

1. two or more separately metered behind-the-meter STGUs located on the same parcel. If the combined capacity of the STGUs is over 250 kW, the STGUs shall have separate End-use Customers;
2. an STGU 25 kW or less, a Canopy STGU, a Floating STGU, or a Building Mounted STGU, which is located on the same parcel as another STGU, provided that the STGU is separately metered from the original STGU and, in the case of an STGU 25 kW or less or a Building Mounted STGU, is located on a separate building from the original STGU;
3. a Dual-use Agricultural STGU located on the same parcel as another STGU, provided that the STGU is separately metered from the original STGU and the original STGU is not a ground-mounted STGU;
4. a Canopy STGU located on the same parcel as another Canopy STGU, provided that the STGU is separately metered from the original STGU;
5. an STGU on a Brownfield located on the same parcel as another STGU on a Brownfield, provided that the STGU is separately metered from the original STGU and that the total capacity qualified for the parcel is less than or equal to 10,000 kW;
6. an STGU on an Eligible Landfill located on the same parcel as another STGU on an Eligible Landfill, provided that the STGU is separately metered from the original STGU and that the total capacity qualified for the parcel is less than or equal to 10,000 kW;
7. an STGU 25 kW or less or a Building Mounted STGU, which is located on the same building as another STGU, provided that the STGU is separately metered from the original STGU and is connected to a meter of a separate End-use Customer as the original STGU;
8. an STGU located on the same parcel that submits a Statement of Qualification Application at least 12 months after the Commercial Operation Date of the original STGU and is separately metered or that can demonstrate to the Department's satisfaction that the Owners of the STGUs are unaffiliated parties;
9. an STGU that is physically located on a parcel or parcels of land owned or controlled by the Massachusetts Department of Transportation as established by M.G.L. c. 6C and can demonstrate to the Department's satisfaction that it should be granted an exception to the provisions of 225 CMR 28.08(5); and
10. an STGU that can demonstrate to the Department's satisfaction that it should be granted an exception to the provisions of 225 CMR 28.08(5) for good cause.

28.08: continued

(6) Environmental Monitor. All STGUs qualifying as Dual-use Agricultural STGUs or subject to the requirements of 225 CMR 28.09 shall work with the Environmental Monitor pursuant to the following requirements.

(a) Payment of Fees. Applicants shall be responsible for the payment of fees for the cost of the Environmental Monitor's site visits, compliance certification, and other related activities.

(b) Site Visits. The Environmental Monitor shall conduct site visits to the location of the STGU to ensure compliance with the Performance Standards detailed in 225 CMR 28.08(7) and provide recommendations on minimizing site impacts.

1. A minimum of two site visits shall occur, one prior to the Department issuing a Preliminary Statement of Qualification and one prior to the Department issuing a Final Statement of Qualification. STGUs that submit a Statement of Qualification Application in the initial ten-day application window under 225 CMR 28.06(4)(b) may be issued a Preliminary Statement of Qualification prior to an initial visit from the Environmental Monitor. Such STGUs shall have a site visit from the Environmental Monitor within 90 days of receiving their Preliminary Statement of Qualification. Subject to the availability of the Environmental Monitor, the Department may extend the 90-day window on a case-by-case basis.

2. The Department may require additional site visits by the Environmental Monitor as necessary.

3. Site visits may occur during all stages of project development and up to two years following Mechanical Completion.

4. Applicants shall ensure that the Environmental Monitor has adequate access to project facilities and information required to ensure compliance with the Performance Standards.

(7) Performance Standards. All STGUs qualifying as Dual-use Agricultural STGUs or subject to the requirements of 225 CMR 28.09 shall work with the Environmental Monitor to obtain a certification that the construction of the STGU complies with the below standards. In the event that compliance with one or more listed Performance Standards conflicts with a permit requirement imposed by an authority having jurisdiction, compliance with the permit requirement shall take precedence and the Environmental Monitor shall deem the STGU in compliance with the applicable Performance Standard.

(a) no removal of field soils;

(b) existing leveled field areas shall be left as is without disturbance;

(c) where soils need to be leveled and smoothed, such as filling potholes or leveling, this shall be done with minimal overall impact with all displaced soils returned to the areas affected;

(d) ballasts, screw-type, or post driven pilings and other acceptable minimal soil impact methods that do not require footings or other permanent penetration of soils for mounting are required, unless the need for such can be demonstrated;

(e) any soil penetrations that may be required for providing system foundations necessary for additional structural loading or for providing system trenching necessary for electrical routing shall be done with minimal soils disturbance, with any displaced soils to be temporary and recovered and returned after penetration and trenching work is completed;

(f) no concrete or asphalt shall be used in the solar array mounting area other than surface mounted ballasts or other code required surfaces, such as for transformer or electric gear pads;

(g) address soil and water resource concerns that may be impacted to ensure the installation does not disturb an existing soil and water conservation plan or to avoid creating a negative impact to soil and water conservation best management practices, such as stimulating erosion or water run-off conditions;

(h) there shall be limited use of geotextile fabrics;

(i) vegetative cover shall be maintained to prevent soil erosion and plantings shall be native species appropriate to the geographical area, to the maximum extent feasible, consistent with The Vascular Plants of Massachusetts: A County Checklist provided by the Massachusetts Natural Heritage and Endangered Species Program;

(j) principles of Environmentally Sensitive Site Design and Low Impact Development Techniques, as defined under 310 CMR 10.04: *Definitions*, shall be employed;

(k) Stormwater Management Standards, as outlined under 310 CMR 10.05(6)(k), shall be employed.

28.09: Mitigation Fee

(1) Applicability. A ground-mounted STGU with a capacity greater than 250 kW with a Project Footprint that overlaps with land that is not Previously Developed and does not qualify for a Locational Compensation Rate Adder listed under 225 CMR 28.13(3)(b) shall be subject to the requirements of 225 CMR 28.09.

(2) Mitigation Fee Formula.

(a) The Department shall determine a formula for calculating the appropriate Mitigation Fee for 225 CMR 28.00. The formula shall be published in the Department's *Guideline Regarding Land Use, Siting, and Project Segmentation*. The formula shall include a maximum fee per acre to be applied to the total acreage of the Project Footprint. The Department shall use the following weighted factors in such formula:

1. Carbon Storage. The average forest carbon stock, plus the amount of carbon projected to be sequestered through a year determined by the Department, expressed in metric tons of carbon dioxide equivalent per acre, within the Project Footprint. The Department may partner with third-party entities to develop its approach for measuring the carbon storage score of an STGU.
2. Ecological Integrity. The ability of land located within the Project Footprint to support biodiversity and ecosystem processes over the long term. The Department may partner with third-party entities to develop its approach for measuring the Ecological Integrity score of an STGU.
3. Critical Natural Landscape. The assessment of the Project Footprint's overlap with Critical Natural Landscape.
4. Agricultural Potential. The agricultural potential of land located within the Project Footprint based on a classification of the farmland soil through the USDA Natural Resources Conservation Service and the land's status as Land in Agricultural Use.
5. Geographical Distribution. The assessment of the historical development of ground mounted solar in the SMART program by geographic distribution trends.

(b) Review Process for Mitigation Fee. For fees calculated under 225 CMR 28.09(2), an Applicant may request a review from the Department of whether the Mitigation Fee criteria scoring for a prospective Project Footprint presents a clear and obvious discrepancy from on-site conditions. The Department may consult with relevant agencies or third-party entities, including the Environmental Monitor, in assessing the on-site conditions and determining any corresponding adjustment to the Mitigation Fee. The Applicant may be subject to site visits and/or fees for the cost of the assessment.

(c) Project Footprints That Include Previously Developed Land. Any portion of a Project Footprint that includes Previously Developed land shall not be included in the acreage calculation for the Mitigation Fee under 225 CMR 28.09(2).

(3) Payment of Mitigation Fees. Applicants shall be required to pay 25 % of the Mitigation Fee within 30 days of the completion of the Environmental Monitor's first site visit under 225 CMR 28.08(6)(b) and the remainder of the Mitigation Fee at the time of submission for a Final Statement of Qualification. The Department shall not issue the Final Statement of Qualification until the Mitigation Fee is received. If an Applicant fails to pay the entirety of the Mitigation Fee, the Department may pause processing of all Statement of Qualification Applications submitted by the Applicant until the funds are received.

(4) Refunding of Mitigation Fees. Applicants shall receive a refund of the portion of the Mitigation Fee paid in the event that an STGU does not achieve commercial operation, and the Applicant can demonstrate to the Department's satisfaction that the land has not been materially impacted. Applicants shall withdraw the Statement of Qualification Application for the STGU in order to receive a refund.

(5) Trust Fund. Applicants shall deposit Mitigation Fee payments into an account maintained by the Executive Office of Energy and Environmental Affairs. Such account shall be held separate from the other accounts of the Executive Office of Energy and Environmental Affairs. The proceeds from this account shall be used without further appropriation to support conservation, ecosystem, and biodiversity programs in a proportion determined by the Executive Office of Energy and Environmental Affairs in consultation with the Department.

28.09: continued

(6) Alternative Compliance Pathway. The Department may determine that an STGU subject to 225 CMR 28.09 satisfies the requirements of 225 CMR 28.09 by complying with all applicable mitigation fee provisions developed by the Executive Office of Energy and Environmental Affairs under the Site Suitability Methodology for Clean Energy Infrastructure pursuant to M.G.L. c. 21A, § 30, or any associated regulatory provisions established by the Department requiring the payment of fees for compensatory environmental mitigation for the restoration, establishment, enhancement or preservation of comparable environmental resources, pursuant to M.G.L. c. 25A, § 21.

28.10: Program Requirements and Other Provisions(1) Reporting Requirements.

(a) Generator Account Registration. An asset shall be established for individual STGUs within a generator account at NEPOOL GIS. For Non-NEPOOL Generators, as that term is defined under Rule 2.1(a)(vi) of the NEPOOL GIS *Operating Rules*, multiple STGUs may be registered under a single asset.

(b) Settlement Market System Assets. The electrical energy output from an STGU registered as a NEPOOL Generator, as that term is defined under Rule 2.1(a)(i) of the NEPOOL GIS *Operating Rules*, shall be verified by the ISO-NE.

(c) Non-NEPOOL Market Assets. The electrical energy output from an STGU registered as a Non-NEPOOL Generator, as that term is defined under Rule 2.1(a)(ii) of the NEPOOL GIS *Operating Rules*, shall be reported to the Independent Verifier, as approved by the Department, for all such assets.

(d) Duration of Distribution Company Asset Ownership. A Distribution Company shall retain the asset ownership and rights to all RPS Class I Renewable Generation Attributes associated with an STGU registered in a Distribution Company's NEPOOL GIS generator account for as long as the STGU is eligible to receive payment for such RPS Class I Renewable Generation Attributes and any Environmental Attributes as prescribed in 225 CMR 28.07(1). Following this period, ownership rights to assets and the RPS Class I Renewable Generation Attributes and any other Environmental Attributes that an STGU generates will be owned by the STGU Owner.

(2) Capacity Expansions. Both direct current (DC) and alternating current (AC) capacity expansions to the capacity listed in an STGU's Statement of Qualification are not permitted except under the following circumstances:

(a) a direct current capacity expansion to an STGU's rated capacity is permitted if the expansion occurs within an STGU's Reservation Period; and

(b) direct current and alternating current capacity expansions following an STGU's Commercial Operation Date may be allowed if the STGU can demonstrate to the Department's satisfaction that the expansion is *de minimis* and is required for equipment replacement or reconfiguration necessary to ensure the continued operation of the STGU.

(3) Special Provisions for Relocated and Replacement Generation Units. The Department may provide a Statement of Qualification to a solar photovoltaic Generation Unit that meets one of the following categories and criteria, as well as all other relevant provisions of 225 CMR 28.00:

(a) Relocated STGU. A solar photovoltaic Generation Unit whose equipment was used before June 20, 2025 to generate electrical energy outside of the Commonwealth of Massachusetts and that is interconnected with the electric grid in the service territory of a Distribution Company on or after June 20, 2025 may qualify as an STGU, provided that no components of the Power Conversion Technology were used in a Generation Unit located in the Commonwealth prior to June 20, 2025. No components from a Generation Unit previously qualified as an RPS Class I Renewable Generation Unit, Solar Carve-out Renewable Generation Unit, Solar Carve-out II Renewable Generation Unit, Solar Tariff Generation Unit under 225 CMR 20.00, or STGU under 225 CMR 28.00 shall be eligible to qualify as part of an STGU.

28.10: continued

(b) Replacement STGU. A solar photovoltaic Generation Unit that replaces an inactive or decommissioned solar photovoltaic Generation Unit that had operated on the same site for at least 15 years prior to the Statement of Qualification Application submission date, may submit a Statement of Qualification Application under 225 CMR 28.00 and qualify for an incentive payment rate equal to half of the applicable incentive rates for the Program Year in which the Statement of Qualification Application is submitted. A solar photovoltaic Generation Unit that replaces an inactive or decommissioned solar photovoltaic Generation Unit that had operated on the same site for fewer than 15 years shall not be eligible to qualify under 225 CMR 28.00 unless the Applicant or Owner can demonstrate to the Department's satisfaction that it should be granted an exception for good cause.

(4) Maintenance of Contact Information. The Owner or Authorized Agent of an STGU shall maintain up to date contact information for the STGU and shall respond in a timely manner, not to exceed ten Business Days, to communications from the Department necessary for the administration and enforcement of 225 CMR 28.00.

(5) Notification Requirements for Change in Eligibility Status. The Owner or Authorized Agent of an STGU shall notify the Solar Program Administrator of any changes that may affect the continued eligibility of the Generation Unit as an STGU. The Owner or Authorized Agent shall submit the notification to the Solar Program Administrator no later than five days following the end of the month during which such changes were implemented. The notice shall state the date the changes were made to the STGU and describe the changes in sufficient detail to enable the Solar Program Administrator and the Department to determine if a change in eligibility is warranted.

(6) Notification Requirements for Change in Ownership, Generation Capacity, or Contact Information. The Owner or Authorized Agent of an STGU shall notify the Solar Program Administrator of any changes in the ownership, capacity, or contact information for the STGU. The Owner or Authorized Agent shall submit the notification to the Solar Program Administrator no later than five days following the end of the month during which such changes were implemented.

(7) Compliance with the SMART Tariffs. STGUs shall remain in compliance with the provisions set forth in the SMART Tariffs as approved by the DPU. STGUs determined to be non-compliant with the SMART Tariff may be notified by the Department that they are found to be non-compliant pursuant to 225 CMR 28.17, which may result in the suspension or revocation of a Statement of Qualification.

28.11: Annual Compliance Reporting Requirements

(1) Dual-use Agricultural STGUs. Annually by February 1st, Dual-use Agricultural STGUs shall submit a report to the Department and MDAR on agricultural yields, grazing activities, and operational changes. A template for the annual report shall be posted on the Department's website, and submission instructions and deadlines will be detailed in the Department's *Guideline Regarding the Definition of Dual-use Agricultural Solar Tariff Generation Units*. Applicants or Owners may request waivers from certain reporting requirements by December 1st as detailed in the Department's *Guideline Regarding the Definition of Dual-use Agricultural Solar Tariff Generation Units*.

(2) Community Shared STGUs. Annually by December 31st, Community Shared STGUs shall provide updated customer disclosure forms for any new Customers of Record and an updated Schedule Z, credit allocation form, or off-taker list, demonstrating the STGU continues to allocate at least 90% of its credits or electricity to eligible off-takers.

28.11: continued

(3) Energy Storage Systems.

(a) Historical Performance Data. Annually by May 1st, the Applicant or Owner of an Energy Storage System shall provide historical 15-minute interval performance data in a manner established by the Department to demonstrate compliance with the Operational and Performance Requirements pursuant to 225 CMR 28.07(5)(e)1.c.

(b) Exception Process. Applicants may request exceptions to the Operational and Performance Requirements based on unexpected circumstances such as fire, safety concerns, public health concerns, warranty failures, unintended outages, or others as determined by the Department. Applicants requesting an exception shall provide a written request with supporting documentation as part of the annual compliance reporting.

(4) Pollinator Adder. Annually by March 31st, STGUs receiving the Pollinator Adder shall annually submit a letter of certification to the Department.

(5) Floating STGUs. Annually by December 31st, Floating STGUs shall submit a report to the Department as detailed in the Department's *Guideline Regarding the Definition of Floating Solar Tariff Generation Units*. A template for the annual report shall be posted on the Department's website.

(6) Failure to Report. Failure to comply with annual reporting requirements may result in the STGU being placed in non-compliance pursuant to 225 CMR 28.17.

28.12: Consumer Protection

(1) Unfair Methods of Competition and Unfair or Deceptive Acts or Practices. Unfair methods of competition and unfair or deceptive acts or practices regarding an STGU or the SMART 3.0 Program, as addressed under M.G.L. c. 93A, § 2, 940 CMR 3.00: *General Regulations*, and 940 CMR 19.00: *Retail Marketing and Sale of Electricity*, are prohibited under 225 CMR 28.00. Additionally, Applicants, Owners, and Authorized Agents under 225 CMR 28.00 are required to follow all applicable provisions of 225 CMR 28.00 and state and federal laws, including M.G.L. c. 93A, § 2.

(2) Department Monitoring. Applicants, Owners, and Authorized Agents shall comply with all requirements of 225 CMR 28.00, including 225 CMR 28.12(1). The Department may consult with other state entities, Municipalities, governmental bodies, or other parties to ensure such requirements are met. The Department may conduct audits by requesting information from the Applicants of STGUs pursuant to 225 CMR 28.16 to ensure compliance with 225 CMR 28.12(1) and all other provisions of 225 CMR 28.00. The Department may contract with third parties to assist with such audits.

(3) Enforcement. If the Department determines that an Applicant, Owner, or Authorized Agent has violated 225 CMR 28.12(1) or not complied with the requirements of an audit under 225 CMR 28.12(2), the Department may take non-compliance actions pursuant to 225 CMR 28.17. The Department may temporarily suspend all STGU Statements of Qualification or Compensation Rate Adders submitted by an Applicant, Owners, or Authorized Agent during the pendency of an audit if the Department determines there is a reasonable likelihood that 225 CMR 28.00 has been violated and that the violation poses a risk of ongoing harm to the ratepayers of the Commonwealth, Owners, or Customers of Record.

(4) Customer Disclosure Forms for Community Shared STGUs. Community Shared STGUs shall provide consumer information in a form and manner as prescribed by the Department, including, but not limited to, proper sizing to achieve customer benefits, contract pricing for the length of the agreement, complete system cost information, operation and maintenance responsibilities, disposition of associated RECs and tariff terms, and anticipated production. Such disclosure shall contain a statement that bill impacts may fluctuate from month to month and that customers are at risk of possible bill increases. Such disclosure shall be provided to the consumer prior to entering into any contract for Community Shared STGU services.

28.12: continued

(5) Customer Disclosure Forms for STGUs 25 kW or Less. A provider of STGUs 25 kW or less shall provide consumer information in a form and manner as prescribed by the Department, including, but not limited to, contract pricing for the length of the agreement, complete system cost information, operation and maintenance responsibilities, disposition of associated RECs and tariff terms, and anticipated production. Such disclosure shall be provided to the consumer prior to entering into any contract for any such STGU.

(6) Contract Requirements for STGUs 25 kW or Less. Contracts executed for STGUs 25 kW or less shall meet the following requirements.

(a) Parties. The contract shall be between the Primary Installer and the Customer of Record. For an STGU for which the Owner is a Third-party Owner and the Primary Installer is a subcontractor to the Owner, an executed contract between the Owner and the Primary Installer and an executed contract between the Owner and Customer of Record shall be provided.

(b) Application Preparation Responsibilities. The contract shall identify a project manager, and shall include Statement of Qualification Application preparation, equipment procurement and installation, site preparation, permitting and interconnection support, Statement of Qualification Application completion paperwork, training, operations and maintenance, and compliance with all applicable state and local laws.

(c) Budget. The contract shall include a budget that identifies key project components and a timeline and corresponding payment schedule for installation of the project.

(d) Contract Service. Contract Service shall include responsibility for the Statement of Qualification Application process including submittal of authorization to interconnect, securing required permits and engineering approvals, installation of the project, scheduling and participation in all required inspections, and providing warranty services, as required.

(7) Special Contract Requirements. Contracts for the below specified STGU types shall contain the following requirements in addition to the applicable provisions of 225 CMR 28.12(6).

(a) Residential Direct Ownership Contract Requirements.

1. A wet signature or signature using an electronic signature software from the Owner;
2. A right of rescission within three or more Business Days;
3. The annual degradation and estimated first year production for the STGU;
4. The allocation of maintenance obligations between the Owner and the Applicant or Primary Installer;
5. The Owner's remedy for maintenance/service in case of Applicant or Primary Installer bankruptcy.

(b) Residential Third-party Ownership Contract Requirements.

1. A wet signature or signature using an electronic signature software from the Customer of Record;
2. Pricing Terms and length of Power Purchase Agreement;
3. Explanation of Power Purchase Agreement term renewal;
4. Explanation of any early termination fees;
5. Terms for system removal upon Solar Contract termination;
6. Explanation of purchase option and economic terms for purchase;
7. The Owner's rights and obligations upon selling the property where the STGU is sited; and
8. Allocation of risk of loss in case of damage to system.

(c) Community Shared Solar Contract Requirements.

1. A wet signature or signature using an electronic signature software from the Customer of Record;
2. Terms under which pricing will be calculated over life of the Solar Contract;
3. Explanation of billing procedures, subscription sizing, historic household usage evaluation, and impacts to utility bill;
4. All possible fees or charges under the Solar Contract;
5. Terms and conditions for early termination on the part of the customer, Applicant, and Primary Installer;
6. In the case of early termination on the part of the customer, the termination shall be processed and effective within 60 days;
7. Explanation of contract renewal terms and procedures;

28.12: continued

8. Transferability of community solar subscription; and
9. Early termination fees shall not be included in the Solar Contract.

28.13: Compensation Rates

(1) Length of Compensation Rate Terms. All STGUs will be eligible to receive compensation under 225 CMR 28.00 for 20 years from the STGU's Incentive Payment Effective Date. STGUs under 225 CMR 28.07(5)(e)2. will be eligible to receive compensation from the Incentive Payment Effective Date for the first phase of the STGU until 20 years from the Incentive Payment Effective Date set for the STGU's total nameplate capacity. The Base Compensation Rate and Compensation Rate Adders contained in an STGU's Final Statement of Qualification shall be fixed for those 20 years, subject to any suspension or revocation issued pursuant to 225 CMR 28.17(3).

(2) Base Compensation Rates. Base Compensation Rates for each Program Year will be established and published pursuant to 225 CMR 28.05(6) and shall be the same across all Electric Distribution Company service territories. STGUs less than or equal to 25 kW shall receive a Flat Incentive Rate pursuant to 225 CMR 28.14(3). Base Compensation Rates shall be established for the following capacity ranges:

- (a) 25 kW - 250 kW;
- (b) 250 kW - 500 kW;
- (c) 500 kW - 1,000 kW; and
- (d) 1,000 kW - 5,000 kW.

(3) Compensation Rate Adders. Compensation Rate Adders for each Program Year will be established and published pursuant to 225 CMR 28.05(6) and shall be the same across all Electric Distribution Company service territories.

(a) Adding and Removing Compensation Rate Adders. An STGU may add and/or remove a Compensation Rate Adder one time during its tariff term. An STGU that qualifies for a Compensation Rate Adder after its Commercial Operation Date may only receive the Compensation Rate Adder for the remainder of its tariff term, provided it can demonstrate continued compliance with the eligibility criteria. The value of each Compensation Rate Adder for which an STGU is eligible will be the applicable Compensation Rate Adder at the time the STGU qualifies for the Compensation Rate Adder.

(b) Locational Compensation Rate Adders. Locational Compensation Rate Adders shall include:

1. Brownfield STGU;
2. Building Mounted STGU;
3. Canopy STGU;
4. Dual-use Agricultural STGU;
5. Floating Solar STGU;
6. Landfill STGU;
7. Large Building Mounted STGU; and
8. Raised Racking STGU.

(c) Off-taker Based Compensation Rate Adders. Off-taker Based Compensation Rate Adders shall include:

1. Community Shared STGU;
2. Low Income Property STGU; and
3. Public Entity STGU.

(d) Other Adders.

1. Pollinator Adder; and
2. Solar Tracking Adder.

(e) Energy Storage Adder. An STGU that meets the eligibility requirements of 225 CMR 28.07(5)(e)1. shall be eligible to receive a variable adder to its Base Compensation Rate.

1. Energy Storage Adder Multiplier. The energy storage adder multiplier will be published in the Department's Annual Program Year Report and shall be the same across all Electric Distribution Company service territories.

28.13: continued

2. Energy Storage Adder Formula. The variable energy storage adder for STGUs paired with Energy Storage Systems that meet the requirements of 225 CMR 28.07(5)(e)1. will be calculated using the below formula. The Department shall publish a *Guideline on Energy Storage* that provides an Energy Storage Adder calculator and explains the parameters of 225 CMR 28.13(3)(e)2.

Energy Storage Adder

$$= \left[\frac{\left(\frac{\text{Nominal Rated Power Capacity of Energy Storage System}}{\text{DC Rated Capacity of the Solar Photovoltaic System}} \right)}{\left(\left(\frac{\text{Nominal Rated Power Capacity of Energy Storage System}}{\text{DC Rated Capacity of the Solar Photovoltaic System}} \right) + \exp \left(0.7 - \left(8 * \left(\frac{\text{Nominal Rated Power Capacity of Energy Storage System}}{\text{DC Rated Capacity of the Solar Photovoltaic System}} \right) \right) \right) \right]} * \left[0.8 + \left(0.5 * \ln \left(\frac{\text{Nominal Rated Useful Energy of the Energy Storage System}}{\text{Nominal Rated Power Capacity of Energy Storage System}} \right) \right) \right] * \text{Energy Storage Adder Multiplier}$$

- (f) Combining Base Compensation Rates and Compensation Rate Adders.
- 1. Combining Adders. An STGU greater than 25 kW can combine its Base Compensation Rate with no more than one Compensation Rate Adder from each of the two categories listed in 225 CMR 28.13(3)(b) through (c), provided it meets the eligibility criteria to qualify for each of the Compensation Rate Adders.
 - 2. Exception for Brownfield STGUs. Qualification for the Brownfield STGU Locational Adder shall not count towards an STGU's count of Compensation Rate Adders under 225 CMR 28.13(3)(f)1.

28.14: Calculation of Incentive Payments for STGUs

(1) Calculation of Incentive Payments for Standalone STGUs Greater than 25 kW. Any payments provided to the Owner of a Standalone STGU, which meets the criteria of 225 CMR 28.14(1)(a) or (b), will be equal to total of the STGU's Base Compensation Rate plus any Compensation Rate Adders multiplied by the total kWh generated by the STGU in the Distribution Company billing period, minus the value of the energy generated by the STGU in a Distribution Company billing period.

Standalone Solar Incentive Payment

$$= (\text{Base Compensation Rate} + \text{Compensation Rate Adders}) * \text{total kWh generated} - \text{value of energy generated}$$

- (a) Value of Energy Generated for Standalone STGUs Receiving Bill Credits. The methodology for calculating the value of the energy generated by a Standalone STGU that receives a Bill Credit is dependent on whether it is qualified as a Net Metered Generation Unit or as an Alternative On-bill Credit Generation Unit and will be determined as follows:
- 1. Net Metered Generation Unit. The value of energy for a Net Metered Generation Unit shall be equal to the total kWh generated during a utility billing period multiplied by the STGU's applicable net metering credit, as established in M.G.L. c. 164, § 138.

Net Metered Generation Unit Energy Value

$$= \text{total kWh Generated} * \text{net metering credit rate}$$

- 2. Alternative On-bill Credit Generation Unit. The value of energy for an Alternative On- bill Credit Generation Unit shall be equal to the total kWh generated during a utility billing period multiplied by the STGU's applicable credit value under its applicable tariff structure.

Alternative On Bill Credit Generation Unit energy value

$$= \text{total kWh generated} * \text{energy compensation rate}$$

28.14: continued

(b) Value of Energy Generated for Non-net Metered Generation Units. The value of energy for a Non-net Metered Generation Unit shall be equal to its total compensation received from a Distribution Company as a State Qualifying Facility under 220 CMR 8.00: *Sales of Electricity by Qualifying Facilities and On-site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-site Generating Facilities.*

$$\begin{aligned} &\text{Non Net Metered Generation Unit energy value} \\ &= \text{total kWh generation} * \text{State Qualifying Facility value} \end{aligned}$$

(2) Calculation of Incentive Payments for Behind-the-meter STGUs greater than 25 kW. Payments provided to the Owner of a Behind-the-meter STGU by a Distribution Company for RPS Class I Renewable Generation Attributes and Environmental Attributes will be fixed at the point in time that an STGU receives its Final Statement of Qualification for the duration that the STGU is eligible under 225 CMR 28.00 and will be equal to the total of the STGU's Base Compensation Rate plus any Compensation Rate Adders, minus the value of energy, multiplied by the total kWh generated by the STGU in the Distribution Company billing period.

$$\begin{aligned} &\text{Behind-the-meter Solar Incentive Paymnet} \\ &= [(\text{Base Compensation Rate} + \text{Compensation Rate Adders} \\ &- \text{value of energy}) * \text{total kWh generated} \end{aligned}$$

The methodology for calculating the value of the energy for a Behind-the-meter STGU is dependent on whether the Generation Unit is qualified as a Net-metered Generation Unit, an Alternative On-bill Credit Generation Unit, or a Non-net Metering Generation Unit, and will be determined as follows:

(b) Value of Energy for Net-metered Generation Units. The value of energy shall be equal to the sum of the Owner's current distribution kWh charge, current transmission kWh charge, current transition kWh charge, and the average of the basic service kWh charge in the prior three calendar years.

$$\begin{aligned} &\text{Net Metered value of energy} \\ &= (\text{distribution kWh charge} + \text{transmission kWh charge} \\ &+ \text{transition kWh charge} \\ &+ \text{three-year average of basic service kWh charge}) \end{aligned}$$

(c) Value of Energy for Alternative On-Bill Credit Generation Units and Non-net Metered Generation Units. The value of energy shall be equal to 0.65% of the sum total of the average of the basic service kWh charge in the prior three calendar years, current distribution kWh charge, current transmission kWh charge, and current transition kWh charge, plus 0.35% of the average of the basic service kWh charge in the prior three calendar years, as of the date of the STGU's preliminary Statement of Qualification.

$$\begin{aligned} &\text{Alternative On Bill Credit and Non Metered value of energy} \\ &= [0.65 (\text{three-year average of basic service kWh charge} \\ &+ \text{distribution kWh charge} + \text{transmission kWh charge} \\ &+ \text{transition kWh charge}) \\ &+ 0.35 (\text{three-year average of basic service kWh charge})] \end{aligned}$$

(3) Calculation of Incentive Payments for STGUs Less than or Equal to 25 kW. The value of incentive payments provided to the Owner of an STGU less than or equal to 25 kW by a Distribution Company for RPS Class I Renewable Generation Attributes and Environmental Attributes will be set on annual basis pursuant to 225 CMR 28.05(7) and fixed at the point in time that an STGU receives its Statement of Qualification for the duration that the STGU is eligible under 225 CMR 28.00.

28.14: continued

(4) Calculation of Blended Rates. In instances when multiple STGUs qualifying for different compensation rates are being interconnected behind the same retail meter, the Department may establish a blended rate for the STGUs, in consultation with the Distribution Company and the Solar Program Administrator. The blended rate will be based on the total compensation rate for each STGU but will be weighted based on the AC capacity of each STGU that will be connected behind the same retail meter. The single, unique blended rate will be the same on each Statement of Qualification for the STGUs.

(5) Calculation of Combined Rates. In instances when two or more STGUs are being installed on one parcel with a combined capacity that does not exceed 5,000 kW and the STGUs have been granted an exception to the project segmentation requirements for good cause, pursuant to 225 CMR 28.08(5)(a)10., the Department may establish the Base Compensation Rate based on the combined capacity of the STGUs. The Department may require that the Applicant submit a single Statement of Qualification Application for the combined capacity installed on the parcel and may issue a single Statement of Qualification with a single Base Compensation Rate based on the combined AC capacity of the STGUs.

28.15: Solar Program Administrator

(1) The Department shall determine whether it is necessary for the Distribution Companies to contract with an independent Solar Program Administrator. The Solar Program Administrator will be responsible for providing some or all of the following services:

- (a) receiving Statement of Qualification Applications;
- (b) coordinating with the Department and the Distribution Companies to issue Statements of Qualification to STGUs;
- (c) acting as the Independent Verifier for all Non-NEPOOL Market Assets, pursuant to 225 CMR 28.10(1)(c); and
- (d) any other duties prescribed in a request for proposals.

(2) The Department may determine whether the Distribution Companies may use the Solar Program Administrator for 225 CMR 20.00: *Solar Massachusetts Renewable Target (Smart) Program* to fulfill 225 CMR 28.15(1).

(3) The Department may require the Distribution Companies to procure a new Solar Program Administrator in the event that the Solar Program Administrator is not satisfactorily fulfilling the requirements of 225 CMR 28.15(1).

28.16: Inspection

(1) Document Inspection. The Department may audit the accuracy of all information submitted pursuant to 225 CMR 28.00. The Department may request and obtain from any Owner or Authorized Agent of an STGU, and from any Distribution Company information that the Department determines necessary for the administration or enforcement of 225 CMR 28.00.

(2) Audit and Site Inspection. Upon reasonable notice to an STGU Owner, or Authorized Agent, the Department may conduct audits, which may include inspection and copying of records and/or site visits to an STGU's facilities, including, but not limited to, all files and documents that the Department determines are related to compliance with 225 CMR 28.00.

28.17: Non-compliance

Any Distribution Company, Owner, or Authorized Agent of an STGU that fails to comply with the requirements of 225 CMR 28.00 and accompanying Guidelines shall be subject to the provisions in 225 CMR 28.17(1) through (3).

28.17: continued

(1) Notice of Non-compliance. A failure to substantially comply with the requirements of 225 CMR 28.00 and accompanying Guidelines shall be determined by the Department on a case by case basis. A written Notice of Non-compliance shall be prepared and delivered by the Department to any Distribution Company, Owner, or Authorized Agent of an STGU that fails to comply with the requirements of 225 CMR 28.00, and to the DPU, as applicable. The Notice of Non-compliance shall describe the requirement(s) with which the Distribution Company, Owner, or Authorized Agent failed to comply, the time period of such non-compliance, and any remedial actions necessary to come back into compliance.

(2) Publication of Notice of Non-compliance. A Notice of Non-compliance may be published on the Department's website and in any other media deemed appropriate by the Department. Such publication may remain posted until the Distribution Company, Owner, or Authorized Agent returns to compliance as determined by the Department. The Department may also maintain a historical record of Notices of Non-compliance on the Department's website.

(3) Suspension or Revocation of Statement of Qualification. The Department may suspend or revoke a Statement of Qualification or compensation rate adder if the Owner of an STGU or Authorized Agent of the Owner fails to comply with any provisions in 225 CMR 28.00 or fails to complete any remedial actions detailed in a notice of noncompliance.

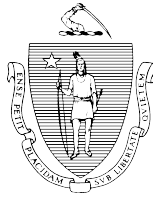
28.18: Severability

If any provision of 225 CMR 28.00 is declared invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

REGULATORY AUTHORITY

225 CMR 28.00: St. 2016, c. 75, § 11 and M.G.L. c. 25A, § 6.

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing*To be completed by filing agency*

CHAPTER NUMBER: **321 CMR 2.00**

CHAPTER TITLE: **MISCELLANEOUS REGULATIONS RELATING TO FISHERIES AND WILDLIFE**

AGENCY: **Division of Fisheries & Wildlife**

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

321 CMR 2.0 is a regulation that addresses a variety of wildlife and fisheries regulations. Specific to this amendment package, it addresses the utilization or salvaging of deer killed by means other than hunting,

REGULATORY AUTHORITY: **M.G.L. c. 131, § 5**

AGENCY CONTACT: **James Burnham** PHONE: **5083896343**

ADDRESS: **1 Rabbit Hill Road Westborough, MA 01581**

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

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

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.*

Fisheries and Wildlife Board approval 3/18/26

EOEEA approval 8/3/26

Administration and Finance Approval 8/13/26

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: **2/23/26**

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

For the first and second year: no fiscal effect

For the first five years: no fiscal effect

No fiscal effect: 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: 8/19/26

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Salvage, Disposition, and Possession of Deer Killed by Means Other than Sport Hunting

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:*

Amendment to 321 CMR 2.00 will bolster utilization of deer killed by means other than sport hunting.

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Aug 26 2026

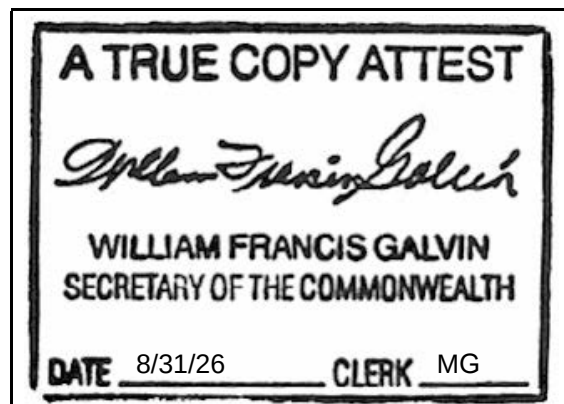
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 9/25/26

CODE OF MASSACHUSETTS REGULATIONS

<u>Remove these Pages:</u>	<u>Insert these Pages:</u>
<u>9 & 10</u>	<u>9 & 10</u>



2.03: Possession and Use of Shotgun Shells Loaded with Lettered Birdshot

In accordance with the authority found in M.G.L. c. 131, §§ 5 and 66, rules and regulations relative to the possession of shotgun shells loaded with lettered birdshot are hereby adopted.

(1) Definitions.

Birdshot means those sizes of shotgun shot which have a pellet diameter equal to or less than 0.160 inches in the American standard.

Buckshot means those sizes of shotgun shot which have a pellet diameter equal to or greater than 0.240 inches in the American standard, but excluding a single ball or slug.

Coot means the coot or American coot (*Fulica americana*).

Lettered Birdshot means those sizes of shotgun shot which have a pellet diameter not less than 0.170 inches and not greater than 0.230 inches in the American standard, and shall include B, BB, BBB, T, TT, F and FF shot, so-called.

Non-toxic Shot means steel shot or such other non-toxic shot as shall be approved by the United States Fish and Wildlife Service as an acceptable non-toxic alternative to lead shot.

Shotgun Shell means a cartridge or round of ammunition consisting of primer, case, propellant (powder) and projectile (one or more shot, balls, or slugs) designed to be fired from a shotgun.

Shotgun Shell Loaded with Shot means loose shot carried in a shot pouch or similar container, or which is carried on the person and could readily be so loaded, as well as shot which has been loaded in a shotgun shell or in the barrel of a primitive firearm.

Waterfowl means migratory game birds of the family *Anatidae* (ducks, mergansers, geese, and brant).

(2) Persons licensed to hunt in Massachusetts, or persons lawfully hunting without a license, may possess and use birdshot for hunting for those birds and mammals and during those seasons when hunting with a shotgun is otherwise lawful. Persons licensed to hunt in Massachusetts, or persons lawfully hunting without a license, may use and possess for the purposes of hunting waterfowl, coot, or coyote, shotgun shells loaded with birdshot or lettered birdshot during the annual open seasons for waterfowl and coot as provided in 321 CMR 3.02(2), or the annual open seasons for coyote as provided in 321 CMR 3.02(3), provided that only non-toxic shot may be used or possessed for the hunting of waterfowl and coot. Nothing in 321 CMR 2.03(2) shall be construed to allow the use of shotgun shells loaded with birdshot, lettered birdshot, buckshot, slugs, or single balls of any size during those seasons or at those times or in those places where hunting by means of a shotgun is otherwise disallowed.

(3) Possession of shotgun shells loaded with buckshot, slugs, or single balls shall be subject to the provisions of M.G.L. c. 131, § 66, and shall not be possessed in any place where birds and mammals may be found, except during the period when deer may be hunted lawfully by means of a shotgun as provided in 321 CMR 3.02(4)(b)3. and 5. Notwithstanding the foregoing, shotgun shells loaded with buckshot, slugs, or single balls may be possessed on a skeet, trap, or target range between sunrise and sunset, when otherwise lawful.

2.04: Salvage, Disposition and Possession of Deer Killed by Means Other than by Sport Hunting

(1) Purpose: The purpose of 321 CMR 2.04 is to provide a procedure for the salvage, disposition and utilization of deer killed by means other than by sport hunting and to thereby eliminate or reduce the wastage of edible meat or specimens for scientific study. No person, except as provided in 321 CMR 2.04, shall take, transport, or possess a salvageable deer as defined in 321 CMR 2.04(2).

2.04: continued

(2) Definitions. For the purposes of 321 CMR 2.04, the following words or phrases shall have the following meanings:

Approved Organization. Any non-profit Massachusetts sportsman's club, civic organization, church, synagogue or other religious entity, museum, natural history association, or similar non-profit organization.

Director. The Director of the Division of Fisheries and Wildlife, or their agents.

Environmental Police Officer or EPO. The Director of the Office of Law Enforcement, deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement, environmental police officers, and such other enforcement officers of the Office of Law Enforcement as may be appointed pursuant to M.G.L. c. 21, § 6.

Online Reporting. Use of a Division of Fisheries and Wildlife licensing and game harvest reporting system accessible at the MassWildlife website that allows for automated licesning and game harvest reporting, including issuance of an official seal *via* the internet.

Salvageable Deer. Deer which may have any portion utilized and are killed by collision with a motor vehicle, euthanized due to injury, disease, or threat to public safety, illegally killed and seized by a law enforcement officer, or harvested under M.G.L. c. 131, § 37.

(3) The driver of the motor vehicle which collides with a salvageable deer, or any passenger in such vehicle, provided that such person shall be domiciled in Massachusetts, is eligible to salvage the deer. Upon the killing of a salvageable deer the driver or passenger who intends to salvage the salvageable deer shall immediately upon taking the carcass of the deer into their possession notify the Office of Law Enforcement (1-(800) 632-8075) of such intent and shall report to said Office their name and address and the date, place, and time of the killing of the deer. The Office of Law Enforcement or Division may direct the driver to transport the salvageable deer to an installation or field office to receive a metal seal, or may provide an official seal remotely by a confirmation number generated *via* online reporting, or may issue to the driver a permit which shall allow the approved driver him to possess and transport the salvageable deer. In the case of a confirmation number, the driver must affix the written confirmation number to the deer. No fee shall be assessed to a driver to receive an official seal or permit. The official seal or confirmation number shall remain attached to the deer carcass while the carcass is being transported and until the carcass is butchered or otherwise prepared for food purposes.

(4) All salvageable deer not taken in accordance with 321 CMR 2.04(3) shall be reported to the Division of Fisheries and Wildlife or of the Office of Law Enforcement within 24 hours of being taken and disposition shall be subsequently be determined by the Division of Fisheries and Wildlife or of the Office of Law Enforcement. The Division of Fisheries and Wildlife or of the Office of Law Enforcement shall provide an official seal for salvageable deer by affixing a metal seal or providing the confirmation number generated *via* online reporting that must be written and affixed to the deer. The official seal or confirmation number shall remain attached to the deer carcass while the carcass is being transported and until the carcass is butchered or otherwise prepared for food purposes.

(5) Deer or parts thereof salvaged under provisions of 321 CMR 2.04 shall not be sold, bartered, or exchanged for consideration, provided that nothing in 321 CMR 2.04(5) shall be deemed to preclude the retention for personal use by an eligible person of the head, hide, hooves, and shinbones of such salvageable deer as he shall have been permitted to possess. In the event that the salvageable deer shall be disposed of in accordance with 321 CMR 2.04(6)(a) to an approved organization for a game dinner or similar purpose, it shall be understood that any charge or fee requested by such approved organization shall be considered a donation to the organization and not a charge or fee for the purchase of any meal containing deer meat.

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing*To be completed by filing agency*CHAPTER NUMBER: **321 CMR 3.00**CHAPTER TITLE: **Hunting**AGENCY: **Division of Fisheries & Wildlife**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***321 CMR 3.0 is the regulation that sets hunting seasons and legal methods of take in the Commonwealth.**REGULATORY AUTHORITY: **M.G.L. c. 131, § 5**AGENCY CONTACT: **James Burnham** PHONE: **5083896343**ADDRESS: **1 Rabbit Hill Road Westborough, MA 01581****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*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.***Fisheries and Wildlife Board approval 3/18/26****EOEEA approval 8/3/26****Administration and Finance Approval 8/13/26**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: **2/23/26**

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

For the first and second year: no fiscal effect

For the first five years: no fiscal effect

No fiscal effect: 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: 8/19/26

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Hunting

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:*

Amendment to 321 CMR 3.00 will bolster Chronic Wasting Disease protections and increase opportunities for deer hunting.

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Aug 26 2026

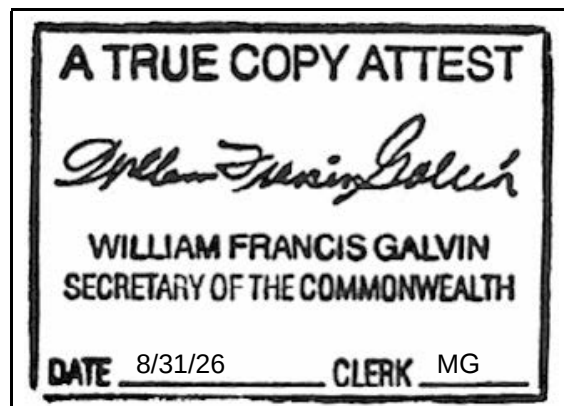
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 9/25/26

CODE OF MASSACHUSETTS REGULATIONS

<u>Remove these Pages:</u>	<u>Insert these Pages:</u>
<u>43 - 46.2</u>	<u>43 - 46.2</u>



3.02: continued

Baited Area means any area where baiting has taken place and such area shall remain a baited area for the period from ten days prior to the opening of the exclusive archery season as provided in 321 CMR 3.02(4)(b)2. to 12:00 P.M. on the day following the close of the exclusive primitive firearms season as provided in 321 CMR 3.02(4)(b)4.

Baiting means the deliberate placing, depositing, distributing, or scattering of bait so as to constitute for deer a lure, attraction, or enticement to or on any area where hunters are attempting to take them. Food sources deposited by natural vegetation, from agricultural or gardening practices, or standing crops planted and left as wildlife food plots do not constitute baiting.

Barrel Length means that portion of a firearm through which shot is driven, guided, or stabilized.

Bow and Arrow means a bow and arrows of the type and design specified for the hunting of deer, bear, and wild turkey pursuant to 321 CMR 3.01(3).

Caplock means only a type of gunlock that ignites the charge by means of a spark produced by a spring-actuated external cock or hammer directly striking a percussion cap which is placed over a nipple which transmits the flame of the percussion cap to the powder.

Decoy means an artificial or natural replica or silhouette of a deer, including taxidermy mounts and preparations of a like nature.

Deer-based Lure means any scent attractant made or derived from tissues or fluids extracted or collected from any species within the deer family including, but not limited to, urine, bladders, and glands.

Director means the Director of the Division of Fisheries and Wildlife or their agent.

Flintlock means only a type of gunlock that ignites the charge by means of a spark produced by a spring-actuated cock or hammer striking a piece of flint against a vertical, pivoted striking plate.

Grunt Tube means a breath-powered, mouth-operated, non-electronic calling device which mimics deer vocalizations, the purpose of which is to attract deer pursuant to the lawful hunting thereof.

Lead Projectile means a round ball, Minie or Maxi bullet, or other spherical or conical projectile composed of lead, lead-antimony, or similar alloys. Saboted projectiles are lawful, regardless of the composition of the sabots.

Loaded from the Muzzle or Muzzle-loading means, with respect to a primitive firearm, that all the powder, any wadding, and the projectile are placed in the muzzle and forced to the other end of the barrel with the aid of a ramrod.

Loaded Primitive Firearm means a primitive firearm which contains a ball or shot in the muzzle and which, in the case of a flintlock, contains powder in the flash pan, and, in the case of a caplock, has a percussion cap on the nipple.

Online means a Division of Fisheries and Wildlife licensing and game harvest reporting system accessible at the MassWildlife website that allows for automated licensing and game harvest reporting, including issuance of an official seal via the internet.

Permanent Tree Stand means that type of hunting platform or structure (emplaced for any period of time) which is fastened to a tree by nails, bolts, wire, or other fasteners which intrude through the bark into the wood of the tree, or, which is fastened or erected in any manner and is emplaced for a period exceeding 30 days.

Primitive Firearm means a flintlock or caplock firearm, either rifled or smoothbore, fired from the shoulder and loaded from the muzzle, and which has limited range and firepower.

3.02: continued

Scent means an odoriferous substance which replicates or mimics the natural odor or bodily secretions of deer or other wild animals, the purpose of which is to attract deer pursuant to the hunting thereof or to mask the body odor or scent of humans hunting deer.

Shotgun Deer Season means that portion of the open season prescribed in 321 CMR 3.02(4)(b)3.

Unloaded Primitive Firearm means a primitive firearm which lacks one or more of the components of a loaded primitive firearm.

Winter Deer Permit means a permit issued by the Director which allows the harvest of one additional antlered or antlerless deer in Wildlife Management Zone 13 or 14 during the winter season.

Youth Deer Hunt means the season, which occurs on the fourth Friday and subsequent Saturday following Labor Day, when minors 12 through 17 years old may hunt deer as provided in M.G.L. c. 131, § 14 and 321 CMR 3.02(4)(b)5.

Youth Deer Hunt Permit means a special permit issued by the Director exclusively to minors 12 through 17 years old which allows them to hunt for deer during the Youth Deer Hunt and harvest either an antlered or antlerless deer during any open deer season.

Zone or Zones means the Massachusetts wildlife management zones as described in 321 CMR 3.02(4)(o).

(b) Open Season. The open season shall be in the following periods:

1. Beginning the last Monday in October and ending the following Saturday, any three days of which may be selected by the Director, there shall be a special season for paraplegics exclusively, who may hunt deer by means of a shotgun not larger than ten gauge, including shotguns with a rifled bore, by means of a muzzle-loading firearm, fired from the shoulder, .44 to .775 caliber, or by means of a bow and arrow. Such hunting shall be limited to those specified areas designated by the Director. During this special season, nothing shall prevent the otherwise lawful hunting of birds and mammals in accordance with established statutes and regulations.
2. In all zones, beginning on the Monday following the Youth Deer Hunt and ending on the first Saturday after Thanksgiving, all days inclusive, there shall be a special season for archers exclusively and during this period deer may be hunted only by means of a bow and arrow.
3. Beginning the first Monday after Thanksgiving and ending the second Saturday thereafter, all days inclusive except Sunday, deer may be hunted throughout Massachusetts by means of a shotgun not larger than ten gauge, including shotguns with a rifled bore, by means of a muzzle-loading firearm, fired from the shoulder, .44 to .775 caliber, or by means of a bow and arrow.
4. Beginning the third Monday after Thanksgiving and ending on December 31st, all days inclusive, deer may be hunted only by means of a primitive firearm using a single lead projectile, or by means of a bow and arrow. Black powder (or synthetic substances such as "pyrodex" which are approved for competitive muzzle-loading meets by the National Muzzle Loading Rifle Association) is the only powder to be used during this season. Primitive firearms may have smooth or rifled bores and shall not contain more than one usable barrel. In the case of primitive firearms with double bore barrels, one barrel shall be made inoperative by removal of the nipple and hammer. The caliber of a primitive firearm shall be not less than .44 nor more than .775 and only those primitive firearms having a barrel length of 18 inches or longer shall be permitted. A person shall not, except during the paraplegic, Youth Deer Hunt and shotgun deer seasons, have in his or her possession a shotgun shell loaded with a rifled slug, single ball, buckshot of any size, BB shot or air rifle shot in any place where birds or mammals might be found, except on a skeet, trap or target range between sunrise and sunset, and except for the hunting of waterfowl, or coyote as provided in 321 CMR 2.03: *Possession and Use of Shotgun Shells Loaded with Lettered Birdshot*. During the primitive firearm season, nothing in 321 CMR 3.02(4) shall prevent the otherwise lawful hunting of birds and mammals in accordance with established statutes and regulations.

3.02: continued

5. The fourth Friday and subsequent Saturday following Labor Day, which shall be the Youth Deer Hunt, when minors 12 to 17 years old who have been issued a Youth Deer Hunt Permit by the Director may hunt for deer by means of a shotgun, not larger than ten gauge, including shotguns with a rifled bore, by means of a muzzle-loading firearm, fired from the shoulder, .44 to .775 caliber, or by means of a bow and arrow. A Youth Deer Hunt Permit must be obtained by the hunter allowing for the harvest of one antlered or antlerless deer in any Wildlife Management Zone, valid during the Youth Deer Hunt and any day during open deer season provided the relevant season stamps have been obtained by either the holder of the Youth Deer Hunt Permit or accompanying adult. Minors 12 to 14 years old taking part in the Youth Deer Hunt must possess a Youth Deer Hunt Permit, and be accompanied by a duly licensed adult as required by M.G.L. c. 131, § 14. All minors 15 to 17 years old taking part in the Youth Deer Hunt shall possess both a Massachusetts hunting or sporting license, and a Youth Deer Hunt Permit. Minors and the adults who accompany them during the Youth Deer Hunt, must comply with all applicable laws and regulations of the Division, including the provisions of M.G.L. c. 131, §§ 14, 71, 72 and 321 CMR 3.02(4). During the Youth Deer Hunt, it is prohibited to hunt deer in an area where baiting has occurred up to ten days prior to the Youth Deer Hunt season. Nothing in 321 CMR 3.02(4) shall preclude the otherwise lawful hunting of birds and mammals in accordance with the applicable law and regulations of the Division during the Youth Deer Hunt season.
6.
 - a. Beginning on January 1st and ending on January 31st, inclusive, deer may be hunted in Wildlife Management Zones 9, 10, and 11 by means of a primitive firearm or bow and arrow.
 - b. Beginning on January 1st and ending on February 14th, inclusive, deer may be hunted in Wildlife Management Zones 13 and 14 by means of a primitive firearm or bow and arrow. Hunters with a valid Winter Deer Permit may harvest an additional antlered or antlerless deer in Wildlife Management Zones 13 or 14 during the winter season.
7. Beginning on the second Monday before the Youth Deer Hunt and ending on the Thursday before the Youth Deer Hunt in Wildlife Management Zones 13 and 14, deer may be hunted only by means of a primitive firearm, or bow and arrow.
- (c) A person shall not hunt a deer during any period of the season except between ½ hour before sunrise and ½ hour after sunset Eastern Standard Time.
- (d) Bag Limit:
 1. In all zones a person shall not kill nor possess more than two antlered deer, except a minor 12 through 17 years old with a valid Youth Deer Permit may kill and possess one additional antlered deer as specified in 321 CMR 3.02(4)(b)5., and a person with a valid Winter Deer Permit for exclusive use in Wildlife Management Zones 13 or 14 as specified in 321 CMR 3.02(4)(b)6. may kill and possess one additional antlered deer.
 2. In all zones a person's bag limit of antlerless deer shall be determined by the number of valid antlerless deer permits and attached deer tags that are possessed by such person. Such antlerless deer shall be in addition to the bag limit of antlered deer specified in 321 CMR 3.02(4)(d)1.
 3. For the purposes of 321 CMR 3.02(4)(d), antlerless deer may be killed or possessed only in accordance with 321 CMR 3.02(4)(e).
- (e) Antlerless Deer Permit. A person shall not hunt, kill, or possess an antlerless deer in any county, area, or zone unless he or she possesses on their person a valid permit from the Director to do so. However, nothing in 321 CMR 3.02(4)(e) shall prevent a person from killing an antlerless deer during the exclusive season for paraplegics, when so authorized by the Director.
- (f)
 1. A person shall not make, set, or use any bait, decoy, torchlight or spotlight, trap, or other like device for the purpose of attracting, ensnaring, taking, injuring, or killing a deer, nor hunt by baiting or within any baited area, nor hunt, drive, worry, or disturb any deer with or by the aid of any noise-making device, provided that nothing in 321 CMR 3.02(4)(f) shall be deemed to prohibit the use of scents or of deer antlers or replicas thereof or of grunt tubes as callers or attractants by persons otherwise lawfully hunting deer, and further provided that, notwithstanding the above prohibition, deer decoys may be used for hunting during archery only deer season.

3.02: continued

2. No person shall place deer-based lures in the environment for the purpose of attracting deer, nor shall any person have deer-based lures in their possession while hunting deer.
- (g) No person, except on land owned or leased by him or her or except with the express written permission of the landowner or his or her authorized agent, shall construct, maintain, occupy, or use a permanent tree stand.
- (h) A person killing a deer shall immediately, before transporting or removing the carcass in any manner from where it was killed, complete and attach to the carcass in a conspicuous manner a deer tag supplied with the person's hunting or sporting license or a legally authorized deer permit. The deer tag when affixed to the deer shall be detached from the license or permit. Said deer tag shall remain attached to the deer until the deer is presented to a duly authorized person or deer checking station, at which time said deer tag shall be surrendered upon request to the official agent in charge thereof, or shall remain attached to the deer after being reported online. The provisions of 321 CMR 3.02(4)(h) relative to tagging requirements shall not apply to a person lawfully hunting without a license.
- (i) Reserved.
- (j) Harvest Reporting: Within 48 hours after killing a deer its harvest shall be reported to the Division of Fisheries and Wildlife by one of the following means:
 1. Checking Station: The entire carcass shall be presented by the person who killed the deer to a duly authorized person, or at a deer checking station designated by the Director for the purpose of being recorded and examined for research purposes and to have affixed thereto an official seal in such manner as prescribed by the Director; or
 2. Online Reporting: The person who killed the deer shall access the Online system to report the harvest of the deer. The person shall receive an Online system confirmation number, which shall be the official seal issued by the Division of Fisheries and Wildlife, and record the confirmation number on the tag affixed to the deer as prescribed in 321 CMR 3.02(4)(h).
 3. The official seal shall remain affixed to the deer until the animal is skinned, cut up, or otherwise prepared for food purposes or for mounting by a taxidermist. The official seal is non-transferable and shall be valid only for the deer or carcass to which it is applied.
 4. Any violation of the requirements of 321 CMR 3.02(4)(j) shall be heard in the District Court for the location where the violation occurred.
- (k) A person killing an antlerless deer by authority of a valid permit issued by the Director shall surrender said antlerless deer tag upon request at the time the deer is checked by a duly authorized person or deer checking station designated by the Director or the antlerless deer tag shall remain on the deer after being reported online.
- (l) During the shotgun deer season a person shall not hunt any bird or mammal or enter the fields or woodlands of the state with any firearm, ammunition, bow and arrow, or other device intended or adapted for the taking of birds and mammals, except for the hunting of deer or for the hunting of migratory game birds in accordance with 321 CMR 3.02(2) or for the hunting of coyote in accordance with 321 CMR 3.02(3). After having killed the season limit of deer applicable to the county, zone or area where hunting, a person shall not, during the remainder or duration of the shotgun deer season, hunt any bird or mammal or enter the fields or woodlands of the state with any firearm, ammunition, bow and arrow, or other device intended or adapted for the taking of birds and mammals, except for the hunting of migratory game birds in accordance with 321 CMR 3.02(2) or for the hunting of coyote in accordance with 321 CMR 3.02(3). Nothing in 321 CMR 3.02(4)(l) shall be construed to prohibit the otherwise lawful setting and tending of traps in accordance with the provisions of 321 CMR 3.02(5).

3.02: continued

(m) During the shotgun deer season, a person shall not hunt a bird or mammal with a rifle, revolver, or pistol or by the aid of a dog, or have in their possession or under their control in any wood or field a rifle, revolver or pistol or a dog adapted to the hunting or pursuing of birds or mammals, except that this shall not prohibit the use of dogs while hunting waterfowl on coastal waters. Notwithstanding the above, shotguns with a rifled bore may be used for hunting in accordance with 321 CMR 3.02(4)(b). During the exclusive archery period of the open season a person hunting or in pursuit of deer shall not use, have in their possession or under their control in any field or woodland a dog, a rifle, a shotgun, or a firearm of any kind, nor shall he or she have in their possession any shotgun shells loaded with a single ball or slug or buckshot in any place where birds or mammals might be found. During the exclusive primitive firearms season a person hunting deer shall not use, have in their possession or under their control in any field or woodland, a dog or firearm, except a primitive firearm.

(n) During the shotgun deer season and Youth Deer Hunt, a person hunting deer, migratory game birds or coyote or entering the fields, woodlands, or wetlands of the state for the purpose of hunting deer, migratory game birds or coyote shall wear in a conspicuous manner on his or her chest, back and head, a minimum of 500 square inches of clothing or material of a hunter orange color as defined by the Director pursuant to 321 CMR 3.01(2), except for persons hunting waterfowl from within a blind or a boat. During the special seasons for paraplegics and primitive firearms, a person hunting deer or entering the fields or woodlands of the state with the intent to hunt deer, including a person hunting deer by means of a bow and arrow, shall wear on his or her head, chest, and back a minimum of 500 square inches of clothing or material of a hunter orange color as defined in 321 CMR 3.01(2).

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing*To be completed by filing agency*CHAPTER NUMBER: **321 CMR 4.00**CHAPTER TITLE: **Fishing**AGENCY: **Division of Fisheries & Wildlife**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***321 CMR 4.00 are the regulations on freshwater fishing in the Commonwealth of Massachusetts.**REGULATORY AUTHORITY: **M.G.L. c. 131, § 5**AGENCY CONTACT: **James Burnham** PHONE: **5083896343**ADDRESS: **1 Rabbit Hill Road Westborough, MA 01581****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*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.***Fisheries and Wildlife Board 7/8/26****EOEEA 8/11/26****EO of Administration and Finance 8/25/26**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: **5/18/26**

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

For the first and second year: no fiscal effect

For the first five years: no fiscal effect

No fiscal effect: 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: 8/19/26

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Fishing

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:*

321 CMR 4.00 amendment aligns eel regulations with marine fisheries, simplifies trout fishing regulations, amends salmon regulations, and refines definition of possession.

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Aug 26 2026

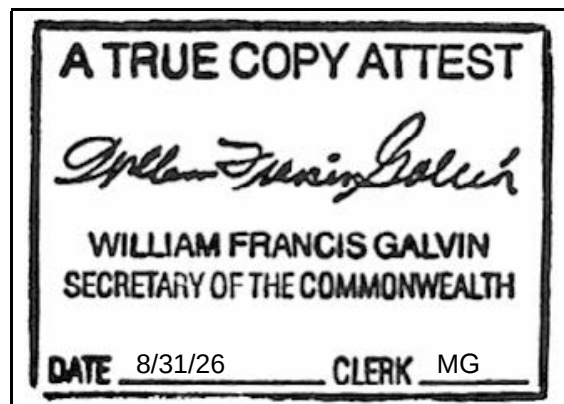
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 9/25/26

CODE OF MASSACHUSETTS REGULATIONS

<u>Remove these Pages:</u>	<u>Insert these Pages:</u>
69 - 74	69 - 74



321 CMR 4.00: FISHING

Section

- 4.01: Taking of Certain Fish
- 4.02: Taking of Carp and Suckers for the Purpose of Sale
- 4.03: Taking of Commercial Eels From Inland Waters
- 4.04: Taking of Fish in Interstate Ponds Lying Between Massachusetts and New Hampshire
- 4.05: Taking of Fish in Interstate Ponds Lying Between Massachusetts and Connecticut
- 4.06: Taking of Fish in Interstate Ponds Lying Between Massachusetts and Rhode Island
- 4.09: Propagation, Culture, Maintenance and Sale of Protected Freshwater Fish

4.01: Taking of Certain Fish

In accordance with the authority vested in me by the provisions of M.G.L. c. 131, §§ 4, 5 and 51, I hereby declare an open season for the taking of fish throughout Massachusetts and promulgate the following rules and regulations relating to their taking as hereinafter provided:

(1) Definitions: For the purposes of 321 CMR 4.01, the following words or phrases shall have the following meanings:

Dealer means a person who commercially handles fish, birds, or mammals protected by M.G.L. c. 131 and who is licensed as a Class 6 dealer pursuant to M.G.L. c. 131, § 23.

Director means the Director of the Division of Fisheries and Wildlife or his or her authorized agent.

Float means any device, including a toggle, floating with a line and hook attached, baited with natural or artificial bait and not under the direct control of the hand of the person fishing.

Hook means an angling device which is attached to a fishing line and which is designed to take one fish at a time, including, but not limited to, devices commonly called spinners, spoons, bait harnesses, lead head jigs, or plugs, the purpose of which is to capture the fish by enticing it to take the device into its mouth, thereby engaging the fish upon it.

Lead Jig means any lead-weighted hook which has a mass of less than one ounce.

Lead Sinker or Lead Weight means any sinker or weight made from lead and which has a mass of less than one ounce. The term lead sinker shall not include any other sinkers, weights, fishing lures or fishing tackle including, but not limited to, artificial lures, hooks, weighted flies, and lead-core or other weighted fishing lines.

Licensed Fisherman means an angler who possesses a current valid Massachusetts fishing or sporting license in any of the following classes: F1, F2, F3, F4, F6, F7, F8, F9, S1, S2, or S3.

Minimum Legal Length in Inches means the greatest length in inches measured from the anterior extremity of the snout with the mouth closed to the posterior extremity of the tail with the lobes compressed when the fish is flat and fully extended.

Resident Licensed Fisherman means an angler who possesses a current valid Massachusetts fishing or sporting license in any of the following classes: F1, F2, F3, F4, F8, S1, S2, or S3.

Sell, in all its moods and tenses, means purchasing, selling, bartering, exchanging, and taking, offering, or exposing for the purpose of purchase, sale, barter, or exchange.

Snagging means the taking of fish, not attracted by bait or artificial lures, with hooks, gangs or lures either baited or unbaited, in a manner so as to pierce and hook a fish in any part of the body other than the mouth.

4.01: continued

Tiger Muskellunge means a sterile cross between a northern pike and a muskellunge.

Tiger Trout means a cross between a female brown trout and a male brook trout.

Transgenic Fish means any fish that possesses a new or unique combination of genetic material obtained through the use of biotechnological means. This definition does not include diploid, triploid, or hybrid-crossed fish

Words importing the singular number may extend and be applied to several persons or things, words importing the plural number may include the singular, and words importing the masculine gender may include the feminine and neuter.

(2) Catch and Release Areas.

(a) The following general requirements shall pertain to all catch-and-release fishing areas. All fish caught must be released. Fishing allowed with artificial lures only. The use of natural or artificial baits such as worms, shiners or other live bait, cheese, corn, or salmon or other fish eggs is prohibited. Fish in possession in any catch-and-release area is *prima facie* evidence of a violation of 321 CMR 4.01(2). Catch-and-release fishing areas are named in 321 CMR 4.01(2)(b) through (j).

(b) East Branch Westfield River: extending from the Chesterfield Gorge parking lot in the Town of Chesterfield downstream six miles to the gate north of the Corps of Engineers basin parking lot at Knightville in the Town of Huntington.

(c) Millers River: Bears Den Segment, extending from a railroad bridge in the Towns of Athol and Templeton downstream 6½ miles to the first dam in the Town of Athol. Wendell Segment, extending from the Wendell Road bridge in the Towns of Orange and Wendell downstream 1½ miles to a breached dam in the Towns of Erving and Wendell.

(d) Nissitissit River: in the Town of Pepperell, extending from the New Hampshire border downstream to the Prescott Street bridge. In addition to the provisions of 321 CMR 4.01(2)(a), fly fishing only is permitted on the Nissitissit River catch-and-release area. All anglers must use a conventional fly rod and fly line.

(e) Quashnet River: extending from Johns Pond in the Town of Mashpee downstream 4½ miles to the sign 0.1 miles south of Rte. 28 in the Town of Falmouth.

(f) Red Brook: from White Island Pond in the Town of Plymouth downstream 4½ miles to Buttermilk Bay in the Town of Wareham.

(g) Swift River: From the Winsor Dam to the Rte. 9 bridge crossing. In addition to the provisions of 321 CMR 4.01(2)(a), fly fishing only is permitted on the Swift River between Winsor Dam and the Rte. 9 crossing. All anglers must use a conventional fly rod and fly line.

(h) Swift River: From the Rte. 9 bridge crossing downstream to Cady Lane. Catch-and-release fishing is mandated during the period from July 1st through December 31st only.

(i) Upper Deerfield River: Segment 1, extending from Fife Brook Dam downstream 1½ miles to the Hoosac Tunnel railroad trestle. Segment 2, extending from the mouth of Pelham Brook downstream one mile to the Mohawk Campground.

(j) Housatonic River: from the Rte. 20 bridge in Lee downstream to the Willow Mill Dam in Lee, and, from the Glendale Dam in Great Barrington downstream to the Boston and Maine railroad bridge in Great Barrington.

(3) Reservoirs under the Control of the Department of Conservation and Recreation. Quabbin Reservoir and that portion of its tributary streams within the Quabbin Reservation, Wachusett Reservoir, and Sudbury Reservoir are hereby closed to all fishing except during the open season for access as established by the Department of Conservation and Recreation.

(4) Prohibitions: Except as otherwise provided for in M.G.L. c. 131 and 321 CMR, it shall be unlawful:

(a) to fish in the Merrimack River in the area downstream from the Essex Dam to the Boston and Maine Railroad Bridge;

(b) to fish in the canal systems in the Cities of Lawrence and Lowell during the month of April;

4.01: continued

- (c) to take fish in the inland waters of Massachusetts by snagging;
- (d) to take fish in the inland waters of Massachusetts by poison, explosive, float or toggle;
- (e) to take fish in the inland waters of Massachusetts by any means other than angling, except that carp and suckers may be taken by spears or archery;
- (f) to take fish in the inland waters of Massachusetts by net, seine, trawl, or similar device, except for the taking of bait fish pursuant to M.G.L. c. 131, § 52, and 321 CMR 4.01(8), or for the taking of herring and alewives pursuant to M.G.L. c. 131, § 56;
- (g) to set or use more than two hooks for fishing, or, in the case of ice fishing, five hooks.
- (h) to take or attempt to take fish other than at a time provided in 321 CMR 4.01 or to possess at any time a greater number of fish or of fish of a length less than provided in 321 CMR 4.01 or to possess a fish at a period or in an area other than so provided. Such taking or possession shall be *prima facie* evidence of a violation of 321 CMR 4.01, provided, that the taking or having in possession of any fish of a length less than as provided in 321 CMR 4.01 or in excess of the bag limit as provided in 321 CMR 4.01 if taken by a person lawfully fishing and immediately returned alive to the water from whence it was taken shall not constitute such a violation.
- (i) to use a lead sinker, lead weight, or lead jig in the inland waters of Massachusetts; provided that this prohibition shall be enforceable beginning January 1, 2012.

(5) Dukes and Nantucket Counties. The provisions of 321 CMR 4.01 shall not apply to the taking of white perch in Dukes and Nantucket Counties.

(6) Seasons, Dates, Creel and Size Limits, and Related Provisions. Open seasons, dates, provisions relative to certain waters, creel limits, minimum legal length in inches, and related provisions relative to the taking of certain fish in inland waters are set forth in Table 1.

(7) Jurisdictional Boundaries. For the purpose of determining inter-agency jurisdictional boundaries between the Division of Fisheries and Wildlife and the Division of Marine Fisheries, a marker is hereby established on the Merrimack River. The marker shall be the first upstream or easternmost (*i.e.*, northbound traffic) bridge of Rte. I-495 in the City of Haverhill. Waters of the Merrimack River downstream from said bridge shall be subject to the authority, rules and regulations, of the Division of Marine Fisheries. Waters upstream from said bridge shall be subject to the jurisdictional authority, rules and regulations, of the Division of Fisheries and Wildlife.

(8) Taking, Sale, Importation and Use of Baitfish.

(a) Definitions:

Baitfish means only live or dead fish of the following species. A person shall not use as bait any fish, alive or dead, including parts thereof, except the baitfish listed in 321 CMR 4.01(8)(a)1. through 10.

1. White sucker (*Catostomus commersoni*)
2. Banded killifish (*Fundulus diaphanus*)
3. Mummichog (*Fundulus heteroclitus*)
4. Pumpkinseed (*Lepomis gibbosus*)
5. Golden shiner (*Notemigonus crysoleucas*)
6. Rainbow smelt (*Osmerus mordax*), only as provided in 321 CMR 4.01: *Table 1*.
7. Yellow perch (*Perca flavescens*)
8. Fallfish (*Semotilus corporalis*)
9. Fathead minnow (*Pimephales promelas*)
10. Herring (*Clupea* spp.) may be used as bait in the Connecticut River, Merrimack River, and coastal rivers and streams only as provided in 321 CMR 4.01: *Table 1* and 322 CMR, but may not be possessed or used as bait in other rivers and streams, or in lakes, ponds, or reservoirs.

4.01: continued

Commercial Baitfish means only live or dead fish of the following species lawfully imported into the Commonwealth, or propagated within the Commonwealth for purposes of sale as baitfish:

1. White sucker (*Catostomus commersoni*)
2. Mummichog (*Fundulus heteroclitus*)
3. Golden shiner (*Notemigonus crysoleucas*)
4. Fathead minnow (*Pimephales promelas*)

Baitfish taken from any inland waters of the Commonwealth shall not be considered commercial baitfish, and shall not be sold or offered for sale.

(b) Taking for Personal Use. Licensed fishermen may take baitfish defined as Baitfish in 321 CMR 4.01(8)(a) from the waters of the Commonwealth for personal use only.

(c) Baitfish Harvest Zones. Except as prohibited by 321 CMR 4.01(7)(d), baitfish may be taken from the inland waters of the Commonwealth by licensed fishermen for personal use only.

(d) Prohibited Areas. Baitfish may not be taken from great ponds, waters which are in whole or in part under lease or license as public fishing grounds, or other waterbodies designated as closed to the taking of baitfish by the Director.

(e) Certain Fish Traps to Be Allowed. Licensed fishermen may take baitfish for personal use by all lawful methods, including by means of a single fish trap with openings of not over one inch, by a single circular net not exceeding six feet in diameter, or by means of a net, containing not more than 36 square feet of net surface. Nets designed to gill fish are prohibited. Any fish taken in such fish traps, other than those permitted by 321 CMR 4.01(8)(a) shall be immediately returned to the waters from where they were taken.

(f) Importation of Baitfish. Only commercial baitfish defined in 321 CMR 4.01(8)(a) may be imported for use and sale as bait by a licensed dealer. Importation of any live fish, other than aquarium trade fish as defined in 321 CMR 9.01(2): *Definitions*, requires an importation permit from the Director, including commercial baitfish.

(g) Sale of Commercial Baitfish. No person shall sell or offer for sale any commercial baitfish unless such person is licensed as a dealer and the commercial baitfish has been lawfully imported or propagated within the Commonwealth.

(h) Sale of Preserved Baitfish. Notwithstanding the provisions of 321 CMR 4.01(8), baitfish or parts thereof which are canned, pickled or otherwise commercially preserved by a method other than by freezing, and lawfully imported or propagated may be used or sold as bait without a permit.

4.01: continued

TABLE 1

SPECIES	DAILY CREEL	MINIMUM LENGTH (INCHES)	OPEN SEASON (ALL DATES INCLUSIVE
Brook, Brown, Tiger & Rainbow Trout (All Waterbodies ^{1,2,3})	6	None	Jan. 1 - Dec. 31
Total daily creel not to exceed three Brook, Brown, or Tiger Trout in any combination.			
Lake Trout (Wachusett Res.)	3	None	Jan. 1 - Dec. 31
Lake Trout (Quabbin Res.)	2	18	Jan. 1 - Dec. 31
Landlocked Salmon	2	15	Jan. 1 - Dec. 31

¹ Special Brown Trout Management Waters: South Pond (Quacumquasit), Brookfield, daily bag may have no more than one Brown trout (minimum length of 15")

² Exclusive of the areas set forth in 321 CMR 4.01(2)(j), in the area from the confluence of the East and West Branches of the Housatonic River in Pittsfield to the Connecticut border in Sheffield, the total daily creel (January 1st through December 31st) shall not exceed one trout (minimum length of 20").

³Exclusive of the areas set fourth in 321 CMR 4.01(2).

4.01: continued

TABLE 1 (continued)

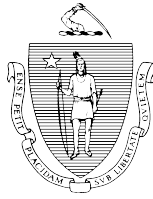
SPECIES	DAILY CREEL	MINIMUM LENGTH (INCHES)	OPEN SEASON (ALL DATES INCLUSIVE
Atlantic Salmon ⁴	2	15	Jan. 1- Dec. 31
Smelt ⁵	-	None	May 16- last day of Feb.
Sturgeon	-	-	No Open Season
Black Bass (Largemouth or Smallmouth)	5	12	Jan. 1 - Dec. 31
Chain Pickerel	5	15	Jan. 1 - Dec. 31
Northern Pike	1	28	Jan. 1 - Dec. 31
Tiger Muskellunge	1	28	Jan. 1 - Dec. 31
Walleye	5	14	Jan. 1 - Dec. 31
American Shad (Connecticut River and tributaries and Merrimack Rivers and tributaries)	3	None	Jan. 1 - Dec. 31
American Shad (All Other Waters)	0 (Catch and Release Only)	None	Jan. 1 - Dec. 31
American Eel	25	9	Jan. 1 - Dec. 31
Striped Bass ⁶	See 322 CMR		
Herring	See 322 CMR		
All Other Species	-	None	Jan. 1 - Dec. 31

⁴Atlantic Salmon: The harvest of Atlantic salmon is prohibited in all inland waters of Massachusetts, except:

- (a) Quabbin Reservoir and tributaries of the Quabbin Reservoir,
- (b) the Swift River downstream of Quabbin Reservoir, and
- (c) Wachusett Reservoir and tributaries of the Wachusett Reservoir.

⁵Smelt may be taken in all inland waters by hook and line only from May 16th to the last day of February, excepting Quabbin Reservoir, where smelt may only be taken in open water where legal fishing is permitted from May 16th to the end of the Quabbin fishing season. There is no daily or seasonal limit for smelt on these waters. The possession of smelt or their use as bait in inland waters other than during the established open season on smelt is prohibited.

⁶Sale of striped bass from inland waters is prohibited.

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing*To be completed by filing agency*CHAPTER NUMBER: **808 CMR 1.00**CHAPTER TITLE: **COMPLIANCE, REPORTING, AND AUDITING FOR HUMAN AND SOCIAL SERVICES**AGENCY: **Bureau of Purchased Services**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

808 CMR 1.00 sets financial compliance, reporting and audit requirements for organizations receiving Massachusetts funding for human and social services and certain approved private special education schools. Administered by the Operational Services Division (OSD), it ensures proper use of public funds, transparent reporting, and state oversight. Organizations must maintain accurate records of Commonwealth-funded costs and may need to submit financial reports and audits. The regulation defines allowable and non-allowable costs and allows OSD to review records, investigate, require corrective action, and recover disallowed costs. For approved private special education schools, it also establishes tuition rates based on allowable costs and financial information.

REGULATORY AUTHORITY: **M.G.L. c. 29, § 29B**AGENCY CONTACT: **Kristina Gasson** PHONE: **3512012864**ADDRESS: **One Ashburton Place, Room 1608, Boston, MA 02108****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*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.*

Approved by A&F, CAB, and GOV 3/18/2026; LGAC and MMA notification 5/13/2026; LGAC confirmation of receipt 5/15/2026; SEC Notice of Public Hearing 5/22/2026; Notice of Public Hearing Boston Globe publication date 5/27/2026; Notice of Public Hearing published in Register 6/2/2026.

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: **June 17, 2026**

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: Anticipate no fiscal effect on the public and private sectors.

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: September 8, 2026

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

**Daycare Center Services Contracted Rate
Purchased Services, Bureau of
Social Service Programs Prices, Reporting and Auditing for**

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:*

Amend 808 CMR 1.00

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Sep 09 2026

Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1583 DATE: 9/25/26

EFFECTIVE DATE: 9/25/26

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
1 & 2 3 - 18	1 & 2 3 - 20

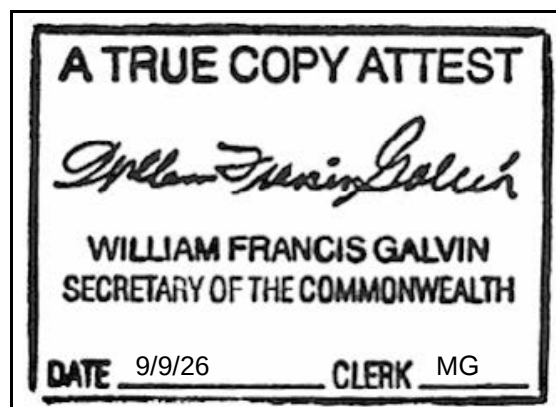


Table of Contents

	<u>Page</u>
808 CMR 1.00: COMPLIANCE, REPORTING AND AUDITING FOR HUMAN AND SOCIAL SERVICES	3
Section 1.01: Purpose Application and Authority	3
Section 1.02: Definitions	3
Section 1.03: General Provisions	6
Section 1.04: Recordkeeping and Reporting Requirements	8
Section 1.05: Non-Reimbursable Costs	11
Section 1.06: Price Authorization for M.G.L. c. 71B Approved Private School Programs	14
Section 1.07: Severability	19

NON-TEXT PAGE

808 CMR: BUREAU OF PURCHASED SERVICES

808 CMR 1.00: COMPLIANCE, REPORTING AND AUDITING FOR HUMAN AND SOCIAL SERVICES

Section

- 1.01: Purpose and Application
- 1.02: Definitions
- 1.03: General Provisions
- 1.04: Recordkeeping and Reporting Requirements
- 1.05: Non-reimbursable Costs
- 1.06: Price Authorization for M.G.L. c. 71B Approved Private School Programs
- 1.07: Severability

1.01: Purpose and Application

(1) Purpose. 808 CMR 1.00 governs contract compliance, required contractual terms, financial reporting and auditing requirements applicable to all procurements of Human and Social Services and to M.G.L. c. 71B Approved Private Schools subject to the authority of the Bureau of Purchased Services within the Operational Services Division (OSD). 808 CMR 1.00 also describes the methods used by OSD in authorizing prices for M.G.L. c. 71B Approved Private School special education Programs.

(2) Application. 808 CMR 1.00 applies to Contractors and Subcontractors providing Human and Social Services to any Department and to all Contractors operating Programs approved by the Department of Elementary and Secondary Education (ESE) under M.G.L. c. 71B and to their independent auditors, and to any Executive Office, Department, Agency, Board, Commission or Institution of the Executive Department, but excluding the Legislative and Judicial Branches, the Constitutional Offices, the Public Institutions of Higher Education and independent public authorities. Where a Contractor utilizes a Subcontractor to provide some or all of the Human and Social Services or in a Program approved by ESE under M.G.L. c. 71B, the subcontract between the Contractor and the Subcontractor shall require that all provisions of 808 CMR 1.00 shall apply to the Subcontractor as well. As 808 CMR 1.00 applies to services purchased pursuant to M.G.L. c. 71B, it also applies to Commonwealth Local Education Authorities (LEAs). OSD or its designee shall issue policies, procedures, and forms related to contract compliance, accounting principles, auditing standards, and pricing as may be determined necessary by OSD to implement the provisions of 808 CMR 1.00 and 801 CMR 21.00: *Procurement of Commodities or Services*, which are in addition to the terms of 808 CMR 1.00.

1.02: Definitions

Unless the context requires otherwise, terms used in 808 CMR 1.00 shall have the following meaning:

Administration and Support Costs. Administration and Support Costs (management and general) include expenditures for the overall direction of the organization, general record keeping, business management, budgeting, general board activities, general legal expenses and related purposes. "Overall direction" includes the salaries and expenses of the chief officer of the organization and the chief officer's staff. If such staff spends a portion of its time directly supervising fundraising or Program service activities, such salaries and expenses are considered indirect fundraising or Program costs and should be prorated (allocated) among those functions by position title or type of expense.

Authorized Price. A price which has been:

- (a) agreed upon in a contract;
- (b) established by the Executive Office of Health and Human Services pursuant to St. 2008, c. 257 or, in the case of M.G.L. c. 71B Programs, the price authorized by OSD.

For health care services (including Title XIX), as defined in M.G.L. c. 118E, the Authorized Price shall be set as directed by the Division of Medical Assistance.

1.02: continued

Base Year. The Fiscal Year which may be designated by OSD for the purpose of its Program pricing activity under 808 CMR 1.06.

Bureau of Purchased Services (BPS). The office within the Operational Services Division of the Executive Office for Administration and Finance established by M.G.L. c. 7, § 22N.

Capital Item. A Capital Item is:

- (a) an asset or group of assets of nonexpendable personal property having a useful life of more than one year; or
- (b) a repair, betterment or improvement or a group of repairs, betterments or improvements of non-movable assets, which adds to the permanent value of an asset and prolongs its useful life for more than one year; and which costs the lesser of:
 - 1. the capitalization level established and certified by the Contractor in accordance with generally accepted accounting principles for financial statement purposes; or
 - 2. the dollar amount authorized by the Federal Office of Management and Budget in 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards or superseding successor provision.

Client. An individual, group of individuals, or the family or other person who provides support to such individuals, who is eligible for or receiving Human and Social Services. Also referred to as a consumer.

Client Resources. Revenue received in cash or in kind from Clients to defray all or a portion of the cost of services. These may include supplemental social security income received by the Contractor to defray the room and board expense of residential Clients, Clients' Supplemental Nutrition Assistance Program (SNAP) or food assistance, or payments made by Clients according to ability to pay, such as a sliding fee scale.

Commercial Fee. A prospectively negotiated earnings allowance derived from a net surplus of Contract Revenue and reimbursable operating costs associated with Human and Social services provided by a for-profit contractor to the Commonwealth pursuant to 808 CMR 1.00. Payments and related expenses received from other governmental payors, allocated administrative revenue and payments from the general public derived from clients, parents or guardians for services rendered to clients not Sponsored by any governmental entity are not considered in the establishment of the for-profit earnings allowance.

Commercial Income. The difference between gross revenues and gross expenses resulting from the production of commercial products and services by Clients.

Contract Revenue. Revenue derived from payments for Human and Social Services furnished in Commonwealth supported programs from the Commonwealth purchasing department, client resources and third-party payments made on behalf of the client from Medicaid, Medicare, insurance companies, health maintenance organizations and other payors.

Contractor. An individual or organization which enters into a contract with a Department or the State to provide Human or Social Services or which operates Programs approved by the Department of Elementary and Secondary Education under M.G.L. c. 71B.

Days. Calendar days, unless otherwise specified.

Department. Any Executive Office, Department, Agency, Office, Division, Board, Commission or Institution within the Executive Branch, excluding the Legislative Branch, Judicial Branch, Constitutional Offices, Elected Offices, Public Institutions of Higher Education, the Military Division and Independent Public Authorities. Department also includes Massachusetts Local Education Authorities (LEAs) when purchasing M.G.L. c. 71B Approved Private School Programs.

Department of Early Education and Care (EEC). An office of the Commonwealth established by M.G.L. c. 15D.

1.02: continued

Department of Elementary and Secondary Education (ESE). The Massachusetts Department of Elementary and Secondary Education established by M.G.L. c. 15, § 1, including its departments and divisions.

Environmentally Preferable Products (EPPs). Products and services that are less detrimental to the environment and human health than competing products and services that serve the same purpose. EPPs may include, but are not limited to, products that contain recycled or sustainable materials, minimize waste, conserve energy or water, consist of fewer toxic substances, reduce the amount of toxic substances disposed or consumed, reduce the climate impact on the environment, enhance decarbonization, use environmentally sustainable materials, protect open space, or lessen the impact to public health.

Executive Office of Health and Human Services (EHS). The Executive Office established by M.G.L. c. 6A, § 2, including its departments and divisions.

Fiscal Year of the Commonwealth. The 12-month period beginning on July 1st and ending on June 30th.

Human and Social Services. Services provided by a Contractor to assist, maintain or improve the personal, mental or physical well-being of Clients. This may include, but is not limited to, social, habilitative, rehabilitative, health, mental health, developmental disability, special education, vocational, employment and training and elder services.

Local Education Authority (LEA). A local school district or public school defined pursuant to M.G.L. c. 71B.

M.G.L. c. 71B Approved Private School. A private day or residential school approved in accordance with 603 CMR 18.00: *Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs*. Also referred to as Approved Private School.

Major Appliances. A large machine designed for household or commercial tasks such as cooking, laundry, dishwashing, and refrigeration, which include but are not limited to stoves, ranges, washing machines, dryers, dishwashers, and refrigerators.

Maximum Obligation. The maximum dollar amount of the Department's contract to pay for Human and Social Services.

Offsetting Revenue. The sum of the following revenues and support items. These revenues and support items must be received during the price year and must be dedicated for use in the same Program that also receives Commonwealth funds.

- (a) any Contractor revenues and support (including but not limited to public and private grants, gifts, contributions, bequests, or any income therefrom, income from endowments, funds received from the Massachusetts Department of Elementary and Secondary Education for nutrition programs, or similar funding) to the extent that revenues and support are restricted to use in the Program;
- (b) the amount of unrestricted revenues and support voluntarily designated by the Contractor to defray the cost of Program services to a Department;
- (c) the fair market value of any public employees assigned to work in the Contractor's Program (including salaries, fringe benefits and travel allowances) and/or the occupancy of public facilities to the extent that they are available to the Program without charge or at less than fair market value;
- (d) any revenues and support (including but not limited to Supplemental Social Security Income, SNAP or food assistance, Emergency Aid to the Elderly, Disabled and Children (EAEDC), reimbursements from third-party payers, Client sliding fee scale payments) received by or available to the Contractor on account of Clients;
- (e) the amount of Commercial Income that the Contractor or Department may designate;

1.02: continued

- (f) the value of revenues and support used to defray non-reimbursable costs; and
- (g) not-for-profit Contractor surplus revenue retention funds accrued in excess of the limitations of 808 CMR 1.03(7) which may be utilized at the discretion of the Department to reduce the Authorized Price or Maximum Obligation of the Commonwealth.

Principal Purchasing Agency. The agency that provides the majority of contracted spending and has primary oversight over the Contractor, unless another agency is designated by OSD.

Program. The delivery of one or more discrete services in an organized and coordinated fashion in order to achieve contract objectives or a M.G.L. c. 71B private special education Program approved by ESE.

Reimbursable Operating Costs. Those costs reasonably incurred in providing the services described in the contract and/or, in the case of a Program approved under the provisions of M.G.L. c. 71B, in providing the services mandated by ESE or specifically included in an Authorized Price, with the exception of costs enumerated in 808 CMR 1.05 and costs excluded in the Authorized Price. Operating costs shall be considered “reasonably incurred” only if they are reasonable and allocable using the standards contained in Federal Office of Management and Budget 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards or superseding successor provision.

Related Party. Any person or organization satisfying the criteria for a Related Party published by the Financial Accounting Standards Board in Statement of Financial Accounting Standards No. 57 (FASB 57), Codification 850-10-20.

Restricted Funds. Those temporarily and permanently restricted funds derived from charitable contributions, as defined in the Uniform Financial Statements and Independent Auditor’s Report (UFR), which have been designated to a specific use by their donor. Funds which have been restricted as to application by the Contractor’s governing body are not considered restricted.

Sponsored. The financing of the delivery of a program of Human and Social Services or a Human and Social Service to a Client.

Subcontractor. An individual acting as a sole proprietor of an organization or organization which provides some or all of the needed Human or Social Services or operates a Program on behalf of a Contractor, provided, however, that Subcontractor does not include an individual (including a client) or a firm providing personnel services or non-direct client services, unless specifically provided for in the service contract or agreement. Subcontractor also includes sub-Subcontractors. Human and Social Service as used in 808 CMR 1.02: Subcontractor does not include management and business support activities.

Submit or Submission. Unless otherwise provided, to deliver a document electronically, by hand or by depositing it with the U.S. Post Office or other delivery service, postage pre-paid.

Uniform Financial Statements and Independent Auditor's Report (UFR). A uniform reporting system, established by OSD, consisting of basic financial statements prepared and audited in accordance with generally accepted accounting principles (GAAP) and generally accepted governmental auditing standards (GAGAS), supplemental schedules and other information as deemed necessary.

1.03: General Provisions

- (1) Client Identification. No documents submitted to OSD shall include information that identifies a Client by name or by other means that includes personally identifiable information. Client identification numbers or another numbering scheme should be utilized.

1.03: continued

(2) Waiver of 808 CMR 1.00. Upon request, OSD may consider waiving the applicability of one or more provisions of 808 CMR 1.00, provided that all such requests: are in writing and signed by an authorized signatory; specify the transactions to which such waiver would apply and the specific provisions of 808 CMR 1.00 which are to be waived; and are accompanied by documentation and justification deemed sufficient by OSD to support the need for relief. Waivers do not affect the responsibility of a Department or Contractor to comply with other applicable regulations or statutes.

(3) 808 CMR 1.00 Prohibitions. The failure of a Department or OSD to identify violations of 808 CMR 1.00 in determining or authorizing a price shall not be deemed a waiver of violations of 808 CMR 1.00 which are identified later.

(4) Price Limitations. The Commonwealth cannot be charged a rate or authorized price which is higher than the lowest fee charged to the general public or third-party payor for human and social services except as follows:

- (a) Where a client receiving Sponsored services from the Department is charged a fee that the Contractor has collected and the fee is calculated based upon that Department's approved sliding fee scale; or
- (b) Where a provider has sufficient restricted charitable contributions designated by their donor to be used to offset the difference between the fee charged to a private paying client and the rate charged to the Commonwealth.

(5) Reimbursement as Full Payment. Each Contractor shall, as a condition of accepting payment made by one or more Departments for services provided, accept the Authorized Price as full payment and discharge of all obligations for the services provided. There shall be no duplication or supplementation of payment from sources other than those expressly recognized or anticipated in the determination of the Authorized Price. Any Client Resources or third party payments made on behalf of a Client, not expressly recognized or anticipated in the computation of the Authorized Price, shall reduce the amount of the appropriate Department's obligation for payment.

(6) Commercial Fee. For-profit contractors with authorized prices furnished via all compensation structures in all types of contracts are to be reimbursed in an amount not to exceed the contract reimbursable operating costs incurred by the contractor for the services provided to the Department pursuant to 808 CMR 1.00. Departments are permitted to prospectively negotiate a for-profit earnings allowance for the purpose of furnishing a Commercial Fee to for-profit contractors, which is in excess of the contract reimbursable operating costs for the services being procured. Departments are not required or expected to furnish a Commercial Fee, which is in excess of contract reimbursable operating costs to for-profit Contractors. Each contract executed between a department and a for-profit contractor must either:

- (a) explicitly indicate when a Commercial Fee has not been established by indicating that the earnings allowance is zero; or
- (b) clearly indicate the amount of the negotiated earnings allowance, by percentage or dollar amount, in the contract.

In the event a contract does not specify a commercial fee, the amount authorized shall be assumed to equal the current annual surplus revenue retention limit. For contracts subject to 808 CMR 1.00, the contracting department may authorize a for-profit contractor to retain a Commercial Fee from such a contract not to exceed the amount then-authorized for annual surplus revenue retention. In addition, the for-profit contractor may not retain a Commercial Fee from a contract with deficit results of operations or from a cost reimbursement contract. Departments shall consider several approaches in developing a reasonable for-profit earning allowance in accordance with OSD policies and procedures issued pursuant to 808 CMR 1.00 and 801 CMR 21.00: *Procurement of Commodities or Services*. The provisions of this language also apply to M.G.L. c. 71B approved private special education Programs and contracts that utilize non-negotiated unit rates established by Departments and the Executive Office for Health and Human Services. OSD shall determine the Commercial Fee, if any, prospectively for M.G.L. c. 71B approved private special education Programs. Departments shall monitor the amount of Commercial Fee from the net surplus from Contract Revenues (or revenues received

1.03: continued

by M.G.L. c. 71B private special education Programs) and reimbursable costs retained by each for-profit Contractor in any given year and recoup funds or reduce future prices when appropriate in accordance with 808 CMR 1.03(6) and other guidance issued by OSD.

(7) Not-for-profit Contractor Surplus Revenue Retention. If, through cost savings initiatives implemented consistent with programmatic and contractual obligations, a non-profit Contractor accrues an annual net surplus from the revenues and expenses associated with services provided to Departments which are subject to 808 CMR 1.00, the Contractor may retain, for future use, a portion of that annual surplus not to exceed 20% of said revenues. Surpluses may be used by the Contractor for any of its established charitable purposes, provided that no portion of the surplus may be used for any non-reimbursable cost set forth in 808 CMR 1.05, the free care prohibition excepted. OSD shall be responsible for determining the amount of surplus that may be retained by each Contractor in any given year and may determine whether any excess surplus shall be used to reduce future prices or be recouped.

(8) Procurement of Contractor Furnishings, Equipment and Other Goods and Services. All procurements of furnishings, equipment and other goods and services by or on behalf of a Contractor shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Capital Items, as defined in 808 CMR 1.02, shall be acquired through solicitation of bids and proposals consistent with generally accepted accounting principles. When a contract includes funding for Capital Items, Departments shall require Contractors to include preferences for EPPs in their procurements. Upon request, contractors should provide documentation that utilizes independent, third-party standards and certifications when such documentation is relevant and readily available. Departments reserve the right to review a Contractor's procurement documentation, including its inventory of Capital Items, to determine whether EPPs were procured. Contractors must, within a reasonable time after a Department's request, provide to the requesting Department and Primary Purchasing Agency, if different, written documentation that the procurement of EPPs at the time was impractical or economically unfeasible. In the event Capital Items listed in a Contractor's inventory are not EPPs and such Capital Items are not accompanied by documentation justifying the choice to use the non-EPP Capital Items, Departments will not be obligated to fund or reimburse the Contractors for the non-EPP Capital Items.

(9) Fiscal Conduits Prohibited. No procuring Department or contractor providing social, rehabilitative, health or M.G.L. c. 71B approved private special education services for the Commonwealth shall enter into any written or verbal agreement to award a contract or to use or modify the terms or intent of an existing contract:

- (a) to acquire any goods for the Procuring Department's use;
- (b) to defray the expenses of services rendered by individuals hired or supervised in the daily performance of their work by personnel in the classified service of the Commonwealth; or
- (c) solely to acquire payroll or fiscal management for a Program of Client services operated by the Commonwealth or any third party. This third-party exclusion shall not apply to entities that provide payroll or fiscal management to programs directly operated by the Contractor.

OSD may refer matters concerning departments, contractors or individuals determined to be responsible for entering into such agreements for investigation pursuant to M.G.L. c. 266, § 67A.

1.04: Recordkeeping and Reporting Requirements

(1) Recordkeeping. The Contractor and its Subcontractors shall keep on file all data necessary to satisfy applicable reporting requirements of the Commonwealth (including EHS, OSD, the Center for Health Information and Analysis and Departments), and financial books, supporting documents, statistical records, and all other records which reflect revenues associated with and costs incurred in or allocated to any Program of services rendered under the Contract. The Contractor and its Subcontractors shall maintain records of all types of expenses and income or

1.04: continued

other funds pertaining to the Program paid to the Contractor by every source, including from each Client. Books and records shall be maintained in accordance with generally accepted accounting principles as set forth by the American Institute of Certified Public Accountants (AICPA); which for not-for-profit Contractors shall be the Industry Audit Guide for Audits of Voluntary Health and Welfare Organizations, unless otherwise provided in the UFR. In addition, personnel records shall be maintained for each employee in accordance with generally accepted accounting principles recommended by the AICPA and sufficient to meet the requirements of M.G.L. c. 151, the Fair Labor Standards Act of 1938 and contract terms. If the Contractor or a Subcontractor receives any federal funds from the Commonwealth, directly or through subcontracts, the Contractor or Subcontractor shall also keep data necessary to satisfy Federal Office of Management and Budget 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards or superseding successor provision and shall also maintain books and records in accordance with 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards or superseding successor provisions.

(2) Annual Audit. Each Contractor and Subcontractor shall, on or before the 15th day of the fifth month after the end of its fiscal year, submit electronically to OSD a UFR or a certification of exemption, in accordance with the standards and instructions contained in the UFR. The UFR and related materials submitted by a Contractor to OSD shall be certified under pains and penalties of perjury as true, correct and accurate by a Massachusetts independent public accountant engaged by the Contractor or by an authorized signatory for the Board of Directors or officers of the corporation, the Executive Director, or Chief Financial Officer of the Contractor. Contractors and Subcontractors are expected to attend trainings on UFR submission in a time and manner determined by OSD.

(3) Other Reporting Requirements. In addition to reports required by contract, secretariats are authorized to develop and implement procedures and reporting requirements for Contractor qualification and risk management purposes.

(4) Related Party Transactions. Notice of all Related Party transactions (including the relationship of the Related Party and a description of the nature and amount of the transaction) shall be made in writing to OSD and the Department(s) prior to their execution. In the case of an M.G.L. c. 71B Approved Private School Program, notification shall be given to OSD and ESE. If disclosure was made through a response to a Request for Response pursuant to 801 CMR 21.00: *Procurement of Commodities or Services*, within an executed contract, or through other formal means, such disclosure will satisfy the requirements of 808 CMR 1.04(4). Prior written disclosure shall not be required where the total value of transactions with a Related Party is less than \$100 within the year, and shall not be required where the transaction is a gift to the Contractor from an official, administrator or manager of the Contractor.

(5) Inventory of Equipment and Furnishings and Other Goods. Any Contractor in possession of Capital Items, as defined in 808 CMR 1.02 shall label, maintain and keep on file a written inventory of the property in accordance with generally accepted accounting principles. Contractors shall note in the inventory which items are EPPs. The Department may specify additional inventory requirements for Capital Items acquired with funds from the Commonwealth. Upon termination of the Contractor's contracts with the Department, Capital Items acquired with Commonwealth funds under a capital budget shall be subject to the following disposal standards:

- (a) if the Department holds title, the item shall be returned to the Department or transferred to another Contractor, as directed by the Department;
- (b) if the Contractor holds title and the item has been fully depreciated it shall be retained by the Contractor; or
- (c) if the Contractor holds title and the item has not been fully depreciated, the item and its title shall be returned to the Department, or transferred to another Contractor, or the item may be retained or sold by the Contractor after paying the Commonwealth for the remaining value of the item not fully depreciated or the proceeds of the sale, as determined by the Department.

1.04: continued

(6) Requests for Additional Information. Each Contractor and Department shall Submit such additional information as OSD may require, no later than 21 Days after the date of the postmark of a written request or the date an electronic request is sent.

(7) Extensions. At its discretion, OSD may in exceptional circumstances grant one extension of the filing deadline for Submission of the reporting requirements contained in 808 CMR 1.04(2) or (6). Extension requests for 808 CMR 1.04(2) must be received electronically. All requests for extensions must be received by OSD prior to the original due date. An extension is deemed to be denied if not granted in writing by OSD prior to the original due date.

(8) Access and Examination of Records. A Contractor shall make available for review, inspection and audit all records relating to its operations and those of its affiliates, subsidiaries and Related Parties and shall permit timely and reasonable access to its appropriate personnel for the purpose of interview and discussion related to those records and associated policies to any contracting Department, Executive Office, OSD, the Office of the State Auditor, the Office of Attorney General, the Office of the Inspector General, the federal government or their representatives. Audit of records by OSD or Departments shall be conducted according to the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, as published by the United States General Accounting Office.

(9) Field Audits and Quality Control Reviews. OSD may coordinate and conduct field audits of Contractors and quality control reviews of auditor's reports and work papers in the possession of the Contractor or its independent auditor. OSD may photocopy work papers and related documents, as deemed necessary.

(10) Audit Resolution Policy. OSD will maintain an audit resolution policy in accordance with generally accepted government auditing standards.

(11) Penalties.

(a) Application. OSD, Secretariats and Departments have authority to pursue remedial measures and assess penalties under the provisions of 808 CMR 1.04(11). In addition, OSD or Secretariats may require Departments or the Office of the Comptroller to take action necessary to carry out any penalty assessed by OSD or Secretariats. The availability of penalties under 808 CMR 1.04 shall not limit the Commonwealth's rights to pursue other remedies available by law, regulation, contract or the audit resolution policy.

(b) Failure to Comply with 808 CMR 1.04(1), (2), (3), (6), (8), (9) or (10). If a Contractor fails to comply with 808 CMR 1.04(1), including correction of deficiencies, 808 CMR 1.04(2), (3), (6), (7), (8), (9) or (10) in a timely manner, regardless of the stated reason, the Contractor may be subject to penalties up to and including: delay of payment, disallowance of payment of expenses relative to which documentation sufficient to meet the governmental agencies' inspection or auditing standards is not provided, restriction on bidding for new contracts, restriction from receiving additional funds or price increases, determination that the Contractor is ineligible for the ready payment system under 815 CMR 3.00, or debarment from doing business with the State. In addition, Contractors of special education services shall be deemed ineligible for an increase to prices authorized pursuant to the provisions of 808 CMR 1.06.

(c) Failure to Comply with 808 CMR 1.04(4) or (5) or 1.05. If, after a hearing, OSD finds a violation of 808 CMR 1.04(4) or (5) or 1.05, OSD may order that the contract(s) directly affected by such violation be terminated or may assess a civil penalty of not more than \$2,000 or 10% of the Contractor's annual Maximum Obligation under such contract(s), whichever is greater. If OSD determines after a hearing that a Contractor has committed repeated willful violations of 808 CMR 1.04(4) or (5) or 1.05, OSD may debar the Contractor for a period not to exceed five years.

1.05: Non-reimbursable Costs

Funds received from Departments may only be used for Reimbursable Operating Costs as defined in 808 CMR 1.02. In addition, funds may not be used for costs specifically identified in 808 CMR 1.05 as non-reimbursable. Expenditures not in accordance with 808 CMR 1.05 are subject to recoupment, intercept, offset, and where appropriate, the Authorized Price is subject to adjustment, as determined by the Commonwealth.

(1) Unreasonable Costs. Any costs not determined to be Reimbursable Operating Costs as defined in 808 CMR 1.02 or any amount paid for goods or services which is greater than either the market price or the amount paid by comparable Departments or other governmental units within or outside of the Commonwealth.

(2) Certain Depreciation.

(a) Depreciation for assets to the extent that the assets have previously been depreciated by the Contractor.

(b) Depreciation which is computed by a method other than the following: an historical cost basis with a straight-line method; using a schedule of asset service lives pursuant to OSD policy; and charging one half of the annual depreciation expense in each of the years of acquisition and disposal.

(c) Depreciation on idle, excess, or donated assets or on that portion of an asset's historical cost basis which was paid for from Restricted Funds.

(d) Depreciation on assets acquired under a capital budget approved by a Department and held in trust for the Commonwealth of Massachusetts or depreciation on assets acquired under a capital budget approved by a Department to which the Contractor holds title under the terms of a contract.

(3) Certain Interest.

(a) Any interest paid or accrued upon funds advanced or borrowed from any owner, partner, officer, stockholder, Related Party, or affiliated or parent organization which exceeds the prime rate plus 1% as published in *The Wall Street Journal* for similar obligations issued at the same time and for the same amount of time.

(b) Any interest paid or accrued to inter-fund borrowing.

(c) Any interest paid or accrued during the reporting year which is not supported by documentation and certification to demonstrate that payment of interest and repayment of principal are required under a definite schedule, or upon demand, pursuant to a written contract.

(d) Any interest or penalties incurred because of late payment of loans or other indebtedness, late filing or payment of federal and state tax returns, municipal taxes, unemployment taxes, social security, and the like.

(e) Any interest paid or accrued upon funds advanced or borrowed to the extent of income received or accrued from the investment of Restricted Funds which were available to defray all or a portion of the expenses to which borrowed or advanced funds were applied.

(4) Current Expensing of Capital Items. All costs attributable to the current expensing of a Capital Item.

(5) Certain Salaries and Consultant Compensation. Those salaries, wages, and consultant compensation considered to be excessive by OSD, in light of salaries, wages and consultant compensation of other comparable Contractors.

(6) Bad Debts. Those amounts (whether estimated or actual) which represent the portion of an account or note receivable that proves to be entirely uncollectible despite collection efforts including legal action, and any related legal costs.

(7) Taxes. Federal corporate income taxes and the income related portion of the Massachusetts corporate excise tax.

1.05: continued

(8) Related Party Transaction Costs. Costs which are associated with a Related Party transaction are reimbursable only to the extent that the costs do not exceed the lower of either the market price or the Related Party's actual costs. Notwithstanding the above provision, Related Party transaction costs are reimbursable up to market price when the following conditions are satisfied:

- (a) the transaction is for a good or service which the Related Party sells to the general public;
- (b) the Related Party's transactions with the Contractor in the reporting year comprise less than 10% of the Related Party's annual sales of that good or service to the general public (excluding sales to other parties also related to the Related Party under FASB 57); and
- (c) the Contractor has approved the transaction by vote of independent directors, or a committee of independent directors, following full disclosure of the Related Party's interests.

Further, costs associated with a Related Party transaction which would not be Reimbursable Operating Costs to a Contractor under 808 CMR 1.02 and 1.05 are non-reimbursable. Transactions with a Related Party totaling less than \$100 annually may be reimbursed at market prices.

(9) Certain Fringe Benefits.

- (a) Fringe benefits determined to be excessive in light of salary levels and benefits of other comparable Contractors and fringe benefits to the extent that they are not available to all employees under an established policy of the Contractor. Disparities in benefits among employees attributable to length of service, collective bargaining agreements or regular hours of employment shall not result in the exclusion of such costs.
- (b) Employer contributions to pension, annuity, and retirement plans which have been denied approval by the Internal Revenue Service.

(10) Fundraising Expense. The cost of activities which have as their primary purpose the raising of capital or obtaining contributions, including the costs associated with financial campaigns, endowment drives, and solicitation of gifts and bequests. However, if a Program which receives Commonwealth funds does not, or cannot be reasonably expected to, receive federal funds, the fundraising expenses specifically for raising capital or obtaining contributions for that Program may be offset against the revenue generated by the fundraising activity except no loss will be reimbursable. In those circumstances, the Contractor must maintain and make available for review, subject to donor restrictions on confidentiality, accounting systems which adequately document and segregate those fundraising activity expenses and revenues associated with Programs which receive Commonwealth funds from other Contractor Programs in accordance with generally accepted accounting principles.

(11) Travel Allowances. Any amount advanced, paid, or accrued to reimburse the Contractor's employees for the use of a private motor vehicle on official agency business in excess of the amount allowed under the United States Internal Revenue Code §§ 61 and 62.

(12) Non-program Expenses. Expenses of the Contractor which are not directly related to the social service Program purposes of the Contractor.

(13) Security Deposits. Money deposited by the Contractor with a lessor of real property as security for full and faithful performance of the terms of a Contractor's lease.

(14) Free Care. Costs associated with free service and use.

(15) Research. The costs related to the conduct of grants, contracts, investigations, or Programs directed at the understanding, cause or alleviation of physical, mental or behavioral conditions. All costs of salaries, supplies, equipment, and overhead which are directly related to research are to be excluded. Data gathering and Program analysis are not considered to be research.

(16) Management Agency Fees. Fees charged to the Contractor by a management agency which exceed the costs the Contractor would have incurred had it not entered into a management agreement.

1.05: continued

(17) Costs Resulting from a Change of Assets.

- (a) Any costs related to a change of Program ownership that has not been recognized by the Commonwealth because of one or more of the following conditions:
 - 1. The transfer of Program ownership occurred between Related Parties;
 - 2. The transfer of Program ownership was not made for reasonable compensation;
 - 3. The transfer of Program ownership was not a genuine transfer of all the powers and rights of ownership;
 - 4. The transfer of Program ownership did not show an intent to sell the assets or the transfer increased the cost basis of either the transferor or transferee; or
 - 5. In the case of a financing agreement between the transferor and the transferee, the agreement was not designed to bring about a complete transfer of Program ownership or there was not compliance with the terms of the agreement.
- (b) When a change of Program ownership has been recognized by the Commonwealth, as follows:
 - 1. For land, costs that exceed the lower of the acquisition cost or the basis allowed the immediate prior owner.
 - 2. For furnishings and fixtures and equipment, costs that exceed the lower of the acquisition cost or the basis allowed the immediate prior owner, reduced by the amount of actual depreciation (or principal payments in *lieu* of depreciation) included as a Reimbursable Operating Cost.
 - 3. For buildings, costs that exceed the lower of the acquisition cost, 100% of the most recent 100% property valuation reduced by the amount of actual depreciation (or principal payments in *lieu* of depreciation) included as Reimbursable Operating Costs to the immediate prior owner, or an independent appraisal made by a qualified appraiser. Appraisals using the income approach to establish value will not be recognized.
- (c) Where there has been an exchange of assets by a Related Party, costs in excess of the cost previously allowed to the Contractor with the Related Party relationship for the exchanged assets.
- (d) Where there has been an exchange of assets between Contractors and such exchange results in a sale-lease back, costs in excess of the transferor's allowable costs for the exchanged assets.

(18) Lobbying Costs. Funds used to compensate or reward lobbyists, consultants or staff to promote, oppose, or influence legislation, or influence the governor's approval or veto thereof or to influence the decision of any member of the Executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto, and any costs associated with lobbying activities. This prohibition shall apply where the lobbyists, consultants or staff, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation, approval or veto, or regulations, whether or not any compensation in addition to the salary for such employment is received for such services.

(19) Certain Reporting Year Expenditures. Reporting year expenditures in the operating fund for which Restricted Funds were available but not used.

(20) Itemized Deductions. All expenses not qualifying as itemized business deductions under the United States Internal Revenue Code.

(21) Litigation Costs. All costs incurred in connection with the prosecution or defense of claims against the State or any of its subdivisions, including, but not limited to, legal, accounting, and consulting costs. Reasonable expenses of a successful price appeal under 808 CMR 1.06(6) will not be considered non-reimbursable.

(22) Unallowable Costs. Costs which are not allowable under Federal Office of Management and Budget 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards or superseding successor provisions are non-reimbursable to Programs which receive federal financial assistance.

1.05: continued

(23) Luxury Items. All costs associated with luxury items including, but not limited to luxury passenger automobiles as defined in the Internal Revenue Code, §§ 4001 or 4002, airplanes, boats, vacation homes, alcoholic beverages, charitable contributions and donations, and all non-Program entertainment expenses.

(24) Salaries of Officers and Managers. Salaries of officers and managers to the extent they exceed the rate paid to state managers in job group M-XII, step seven.

(25) Mortgage Principal. Mortgage principal on an amortized or other basis: no Department shall reimburse a Contractor for the principal portion of any note secured by a mortgage on property owned directly or indirectly by the Contractor.

(26) Undocumented Expenses. Costs which are not adequately documented in the light of the American Institute of Certified Public Accountants statements on auditing standards for evidential matters.

(27) Administration and Support Costs. Costs which are otherwise non-reimbursable under the provisions of 808 CMR 1.05 may not be reimbursed through Administration and Support Costs.

(28) Payments by the State for Contracted Services in Support of or in Opposition to Unions or Employee Organizations. Pursuant to M.G.L. c. 7, § 56, costs associated with any attorney, consultant or other person to advise, consult or provide any other service to such contracting person or entity relative to persuading employees thereof to support or oppose any organization of said employees or any other employee self-organization or concerted activity for mutual aid or protection. 808 CMR 1.05 shall not apply to the costs of attorneys or consultants to assist in collective bargaining with a union or other employee organization recognized as said employees' bargaining agent or to administer a collective bargaining agreement.

1.06: Price Authorization for M.G.L. c. 71B Approved Private School Programs

808 CMR 1.06 sets forth the eligibility and procedural requirements applicable to M.G.L. c. 71B Approved Private School Programs seeking Massachusetts approved prices. 808 CMR 1.06 does not limit the prices a Contractor may charge to other purchasers of a Program, however, pursuant to 808 CMR 1.03(4) no price authorized under 808 CMR 1.06 may exceed the lowest price charged by a Contractor to other purchasers of the Program. In the calculation of an Authorized Price for an M.G.L. c. 71B Approved Private School Program, OSD shall not apply unrestricted funds or unrestricted revenue not specifically designated for such calculation by the Contractor. Any voluntary use of unrestricted funds or unrestricted revenues shall be governed by an annual written agreement between the Contractor and OSD. Any price authorization made as a result of such a written agreement shall not extend beyond June 30th of the Fiscal Year for which the price is authorized.

(1) Annual Price Authorization for Approved Private School Programs Located within the Commonwealth.

(a) Eligibility for a Price Increase. In order for an Approved Private School Program to be eligible for an increase to its currently Authorized Price, the Contractor must have filed a UFR or appropriate documentation of exemption for the designated Base Year in accordance with 808 CMR 1.04 or predecessor regulation and the instructions to the UFR.

(b) Price Determination for Eligible Programs. If a Program has been determined to be eligible for a price increase in accordance with 808 CMR 1.06(1)(a), OSD may establish a subsequent year price for the Program by adding a per student annual adjustment amount to the current Authorized Price as follows:

1. Where the Program's Authorized Price has been calculated pursuant to 808 CMR 1.06(3) or recalculated pursuant to 808 CMR 1.06(4) or predecessor regulation as a result of a revision by ESE of the Programs approved staffing and other components since the Base Year, the per student annual adjustment amount will be determined by multiplying the current Authorized Price by a percentage factor, as determined on an annual basis by OSD, which reflects adjustments to employee compensation.

1.06: continued

2. Except as provided in 808 CMR 1.06(1)(b)1., the per student annual adjustment amount will be determined by multiplying the current Authorized Price by a percentage factor, as determined on an annual basis by OSD.
 3. Unless otherwise provided in 808 CMR 1.06, the price as determined in 808 CMR 1.06(1)(b)1. or 2. will be the annual price authorized for the subsequent Fiscal Year.
 - (c) Price Determination for Other Programs. If a Program does not satisfy the criteria for a price adjustment under 808 CMR 1.06(1)(a), OSD will authorize a price for the Program equal to the current Program price, unless otherwise provided in 808 CMR 1.06.
 - (d) Additional Price Adjustments.
 1. Adjustments to Account for Surplus Revenues and Audit Findings. Where a Contractor has accumulated a surplus in the Base Year in excess of the limitations contained in 808 CMR 1.03(7), or an audit of the Program by the Office of the State Auditor has determined that Program funds are subject to recoupment or OSD has determined that Department funds have been expended by the Program on non-reimbursable costs, OSD may adjust the Program price to recoup such excess surplus or inappropriate expenditures. Such adjustments may reduce the base upon which future years' prices are determined.
 2. Adjustments for Failure to Comply with Audit Requirements. OSD will rescind any price increase authorized under 808 CMR 1.06 and will adjust the Authorized Price accordingly if, by June 1st:
 - a. the Contractor has failed to correct UFR filing deficiencies identified by OSD; or
 - b. OSD has not received a corrective action plan incorporated into an administrative agreement which has been prepared and signed in accordance with the OSD Audit Resolution Policy relative to material and reportable internal control and compliance findings contained in its UFR for the Base Year.
 - (e) Adjustments to Reflect Price Increases Due to Extraordinary Circumstances. The Program price authorized under 808 CMR 1.06(1) may be prospectively adjusted for increases subsequently granted under 808 CMR 1.06(4), however any adjusted price shall not exceed the greater of the price authorized under 808 CMR 1.06(1), or that granted under 808 CMR 1.06(4).
 - (f) Annual Adjustment Limitation. No price authorized under 808 CMR 1.06(1) except a price authorized under 808 CMR 1.06(1)(e) may exceed the price in effect for the current Fiscal Year plus the annual adjustment percentage determined annually by OSD.
 - (g) Prices authorized pursuant to 808 CMR 1.06(1) will be authorized on or before the first Wednesday in February of each year and shall become effective on July 1st following authorization.
- (2) Annual Price Authorization for M.G.L. c. 71B Approved Private Schools Located outside the Commonwealth of Massachusetts. Any price authorized pursuant to 808 CMR 1.06(2) shall be effective on the date of authorization by OSD, or the effective date as determined by the state in which the Program is located, whichever is later. Prices authorized by OSD under 808 CMR 1.06(2) shall remain in effect until superseded by OSD.
- (a) If an Approved Private School Program is located outside of the Commonwealth of Massachusetts in a state which has an established state rate or price setting mechanism, OSD will authorize as the price to be paid by Commonwealth Departments the price established, authorized or approved by the state in which the Program is located, provided that the price is the lowest charged by the Contractor for the Program. In order for OSD to authorize a price, the following must be submitted to OSD by the Contractor:
 1. A UFR or certificate of exemption for the most recent reporting year, in accordance with the UFR instructions;
 2. A certification from the Contractor that the price requested to be authorized is the lowest charged by the Contractor for the Program; and
 3. A copy of the price authorization or approval by the state in which the Program is located, including the effective dates of the price.
 4. If the requested price is not the lowest charged by the Contractor for the Program, the Contractor must identify the amount of the lowest price charged, which will then be authorized by OSD.

1.06: continued

(b) If an Approved Private School is located outside the Commonwealth of Massachusetts in a state where there is no established state rate or price setting mechanism, OSD will determine and authorize a Program price pursuant to the provisions of 808 CMR 1.06(1) or (3), as applicable.

(3) Price Authorization for New or Reconstructed M.G.L. c. 71B Approved Private School Programs.

(a) Upon the request and recommendation of ESE, OSD will review a proposed Program price for a new or reconstructed M.G.L. c. 71B Approved Private School Program. A new Program is one approved by ESE for the first time as such. A reconstructed Program is one currently approved by ESE but the service configuration of which has been altered and those alterations have been approved by ESE. OSD may require that information sufficient for its review, including format of the information, be submitted with the ESE request and recommendation. After review, OSD may authorize the proposed price, authorize an adjusted price, or suspend action pending the receipt of additional information.

If the proposed price is for a reconstructed M.G.L. c. 71B Approved Private School Program, the school must notify all entities, including state departments and superintendents of Local Education Authorities, which currently purchase the Program, that it will be requesting an increase, including the amount of the requested price, by October 1st. OSD will authorize an adjusted price no earlier than July 1st of the following fiscal year upon receipt of DOE approval and a completed application from the Approved Private School program. If the application process continues into a subsequent fiscal year(s) and the reconstruction includes changes which result in a price higher than the original requested tuition price, an additional notification process to all entities named above must occur by October 1st for each subsequent year until the price is authorized by OSD.

(b) A price authorized under the provisions of 808 CMR 1.06(3) for a new M.G.L. c. 71B Approved Private School Program is subject to review and adjustment after six months based upon a review and analysis of the Contractor's actual expenditures. Within 60 days of the last day following the sixth month of the effective date of the price, or the date that the Program becomes operational, whichever is later, the Contractor must submit, in UFR format, actual expenditure and revenue reports according to the instructions in the UFR, including an accountant's review report (AICPA Professional Standards Statement on Auditing Standards No. 71 (SAS No. 71)). Within 60 days of the receipt of the required materials, OSD shall notify the Contractor of any adjustments to be made to the Authorized Price.

(c) Where a Contractor's proposed Program price includes budgeted expenses for the purchase of major appliances, or for building repair, renovation or construction, Contractor shall provide documentation that the Contractor included EPP specifications in its procurement. Contractors should provide documentation that utilizes independent, third-party standards and certifications when such documentation is relevant and readily available. If non-EPPs are chosen, the Contractor shall provide a cost-benefit analysis, which includes consideration of operational costs and benefits, that justifies the choice.

(4) Price Adjustment for M.G.L. c. 71B Approved Private School Programs - Extraordinary Relief.

(a) Conditions for Consideration of Extraordinary Relief. Where an Approved Private School experiences additional expenses for its Program during the price year which are necessary for the provision of the mandated program of services and which it cannot absorb within its Authorized Price, the Contractor may apply to OSD for a price adjustment for the Program during the price year if the expenses are necessary to:

1. meet federal or state statutory, or local regulatory requirements, including ESE or EEC regulations and licensing requirements not currently included in the Authorized Price, or
2. account for unanticipated emergencies beyond the reasonable control of the Contractor.

(b) To be eligible for consideration for extraordinary relief the conditions described in 808 CMR 1.06(4)(a) must have resulted from unforeseen events occurring after July 1st of the current Fiscal Year.

1.06: continued

(c) Required Documentation. To be eligible for consideration for extraordinary relief, the Contractor's request must include the following:

1. a detailed description of the situation which has caused the Contractor to seek extraordinary relief;
2. price year income and expenses to date for the Approved Private School Program(s) for which extraordinary relief is being sought;
3. a copy of the Contractor's most recently completed fiscal year UFR;
4. a copy of the Approved Private School Program budget(s) for the current fiscal year using the components contained in the UFR and instructions thereto;
5. a listing of the Approved Private School Program purchasers for the current Fiscal Year, including the number of students for each purchaser;
6. the average enrollment, by month, of the Approved Private School Program(s) for the most recently completed 12-month period;
7. substantial evidence that the Contractor's resources are insufficient to cover the expenses for which extraordinary relief is sought, including substantial evidence that the Contractor has exhausted all programmatic and financial resources. For the purposes of 808 CMR 1.06(4)(c)7., "programmatic and financial resources" shall not include unrestricted funds or revenues as defined in the instructions to the UFR which have not been specifically designated for use by the Approved Private School Program by the Contractor, but shall include, and not be limited to, surplus revenues as determined by OSD under 808 CMR 1.03(7).
8. evidence, for each cost for which extraordinary relief is sought, that the Contractor acted prudently, reasonably and in compliance with the law;
9. citations or notices of violations of federal, state or local statute or regulation supporting the request, or a statement from the appropriate authority that it requires the expense or item for which extraordinary relief is being sought;
10. documentation that the current operating expenses are in compliance with the reimbursable cost standards contained in 808 CMR 1.02 and 1.05;
11. the Contractor's requested price;
12. documentation that the Contractor has notified all entities which currently purchase the Approved Private School Program that it has requested extraordinary relief, and the amount of the requested price;
13. where a Contractor's request includes expenses for additional Approved Private School Program staff, a staff listing, prepared using position titles contained in the instructions to the UFR and containing the number of proposed full time equivalents for each position title. Such a staff listing shall include a statement, signed by an authorized representative of ESE and/or EEC indicating that the agency's regulation requires the listed staffing level and the number of students the staffing is intended to serve; and
14. where a Contractor's request includes expenses for the purchase of Major Appliances, or for building repair, renovation or construction, Contractor shall provide documentation that the Contractor included EPP and EPS preferences in its procurement. Contractors should provide documentation that utilizes independent, third-party standards and certifications when such documentation is relevant and readily available. If non-EPPs are chosen, the Contractor shall provide a cost-benefit analysis, which includes consideration of operational costs and benefits, that justifies the choice.

(d) Submission. The Contractor shall Submit its request, together with all the required documentation under 808 CMR 1.06(4)(c)1. through 13. to OSD, with a copy to ESE. A request will be deemed incomplete until all of the required documentation is submitted, and no action will be taken by OSD on an incomplete application. OSD may request additional or clarifying information from the Contractor. Should these requests not be satisfied within 21 Days of the postmark of such request, extraordinary relief shall not be granted.

(e) Adjusted Price. OSD will take action on a complete request within 60 Days of the receipt of materials required under 808 CMR 1.06(4)(d). Should OSD determine that the Contractor's request meets the requirements of 808 CMR 1.06(4)(a) through (c) and that extraordinary relief should be granted, OSD will develop and authorize a price subject to the following conditions:

1. any requested expenses which do not qualify under 808 CMR 1.06(4)(a)1. or 2. will not be included;

1.06: continued

2. any requested expenses which are deemed to be non-reimbursable by OSD using the criteria contained in 808 CMR 1.05 will not be included;
3. any requested adjustments to administrative expenses will not be included;
4. the additional amount included in any adjusted price for any given item will not exceed the amount of the difference between the Contractor's expense for the item in the most recently completed Fiscal Year, and the current year's anticipated expense, on a per student basis;
5. in the event any Capital Items listed in a Contractor's inventory are not EPPs and such Capital Items are not accompanied by documentation justifying the choice to use such items, the cost of any such items will not be included; and
6. no adjusted price will be effective prior to the date of authorization, and no price shall include expenses incurred prior to the date of authorization.

(5) Administrative Review.

- (a) OSD may conduct a review of Approved Private School Programs and/or Authorized Prices for good cause, including but not limited to the following reasons: failure to incur costs for items included in the initial price authorization process or later adjustments, failure to provide the approved or required Program services, failure to implement approved or required programmatic or non-programmatic changes included in the price year Reimbursable Operating Costs, or use of Department funds on non-reimbursable costs as defined in 808 CMR 1.05, as determined by OSD.
- (b) OSD shall initiate administrative review by notifying the Contractor that it intends to conduct an administrative review and the reason(s) for the review. OSD may require the Contractor and/or Department(s) to Submit books, records and other information it deems necessary for its review. Such requests shall be in writing, and requested materials shall be submitted to OSD within 21 Days of the request.
- (c) OSD shall notify the Contractor and the Department(s) of the results of the administrative review. The review may result in an amendment to an Authorized Price.

(6) Contractor Right to Appeal.

- (a) Any Contractor aggrieved by the action of OSD relative to action taken under 808 CMR 1.06(1), (2), (3), (4) or (5)(c), who desires a review thereof, may file an appeal with the Division of Administrative Law Appeals within 30 Days of notice of OSD's action. The question on appeal shall be whether OSD, in taking the challenged action, has properly applied its regulations.
- (b) The pendency of an appeal under 808 CMR 1.06(6) does not limit OSD's right to undertake an administrative review of any Authorized Price or to take any other corrective action.

(7) Price Authorization in Special Cases.

- (a) Individual Prices. OSD will develop, issue, and amend, as necessary, instructions for the authorization of individual prices for services to students enrolled in Approved Private School Programs when that student has a need for additional or unique services which are not provided by the Approved Private School Program.
- (b) Specialized Placement Price Authorization. OSD will develop, issue and amend, as necessary, instructions for the development and authorization of prices for individual students who are placed, after approval by ESE pursuant to 603 CMR 28.00: *Special Education*, by a Department in a private school which has not been approved under M.G.L. c. 71B. These placements are also referred to as "sole source" placements.
- (c) Special Circumstances. With the consent of ESE and the Contractor, OSD may authorize a price determined in any manner consistent with St. 1993, c. 110, § 274, as amended, should OSD determine that price determination methods under 808 CMR 1.06 are inapplicable to the private school or produce a result which is inconsistent with St. 1993, c. 110, § 274.

1.06: continued

(d) Critical Direct Care Positions for M.G.L. c. 71B Approved Private School Programs. Upon application to OSD by an Approved Private School Program, OSD may adjust the current Authorized Price to accommodate compensation adjustments for the following direct care positions, as defined in the Fiscal Year 1999 UFR Audit and Preparation Manual:

Direct Care/Program Staff I;
Direct Care/Program Staff II;
Direct Care/Program Staff Supervisor;
Teacher; and
Special Education Teacher.

All Authorized Price adjustments will be governed by the OSD Critical Direct Care Staff Compensation Policy for M.G.L. c. 71B Approved Private School Programs. All requests for Authorized Price adjustments under 808 CMR 1.06(7)(d) will include a statement, signed by an authorized representative of ESE, indicating that the number of staff in each position for which an adjustment in compensation is sought is consistent with ESE approval.

Any funds received pursuant to an adjustment in the Authorized Price made under 808 CMR 1.06(7)(d) will be used for the purpose requested. Any such funds not so used, as determined by OSD through the Administrative Review process set forth in 808 CMR 1.06(5), will be subject to recoupment.

1.07: Severability

The provisions of 808 CMR 1.00 are severable. If any provision of 808 CMR 1.00 or its application is held to be illegal, unenforceable or void, Departments and Contractors shall be relieved of the obligations under that provision and all other provisions shall remain in full force and effect. Such invalidity shall not be construed to affect the application of the provision under circumstances other than those held invalid.

REGULATORY AUTHORITY

808 CMR 1.00: M.G.L. c. 29, § 29B; M.G.L. c. 7, § 22N.

NON-TEXT PAGE

