



## THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin  
Secretary of the Commonwealth

**Regulation Filing** *To be completed by filing agency*CHAPTER NUMBER: 651 CMR 5.00CHAPTER TITLE: Elder Abuse Reporting and Protective Services ProgramAGENCY: Executive Office of Elder AffairsSUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

The regulations provide oversight authority for a coordinated system of protective services for elderly persons, establishes a mechanism for the receipt of reports, and the designation, re-designation, and termination of protective services agencies within the Commonwealth.

REGULATORY AUTHORITY: MGL c. 19AAGENCY CONTACT: Matthew Casey PHONE: 617-222-7452ADDRESS: 1 Ashburton Place, 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.*

**not required**

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: July 13, 2016

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: 12/22/2016

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

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

None

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: Dec 29 2016

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1330 DATE: 01/13/2017

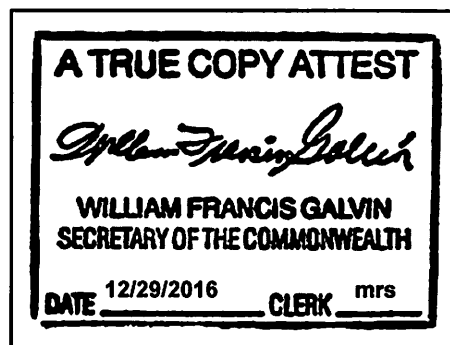
EFFECTIVE DATE: 01/13/2017

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651 CMR: DEPARTMENT OF ELDER AFFAIRS

651 CMR 5.00: ELDER ABUSE REPORTING AND PROTECTIVE SERVICES PROGRAM

Section

- 5.01: Scope and Purpose
- 5.02: Definitions
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5.01: Scope and Purpose

- (1) 651 CMR 5.00.
  - (a) establishes criteria and procedures for the Department to designate, re-designate, or terminate the designation of Protective Services Agencies;
  - (b) sets forth the basis for determining those instances in which Abuse may or must be reported to the Department or its designated Protective Services Agencies;
  - (c) specifies the manner in which reports of Abuse must be made; and
  - (d) specifies the action which must be taken when receiving, investigating, and/or otherwise responding to such reports, including the provision of Protective Services to Elders who are determined to have been Abused.
- (2) 651 CMR 5.00 reflects the program's philosophy of recognizing an Elder's right to self-determination and attempts to balance individual autonomy with the mandate to provide protection. Throughout Protective Services Investigation and service provision, the Elder shall be involved to the greatest feasible extent in decisions which affect the Elder. Services will be provided with the consent of the Elder and with the least possible intrusion into the life of the Elder with the intention of providing protection from Abuse or the risk of Abuse.

5.02: Definitions

As used in 651 CMR 5.00, these terms shall have the following meanings:

Abuse. An act or omission, including Emotional Abuse, Financial Exploitation, Neglect, Physical Abuse, Sexual Abuse, and/or Self-neglect, which results in Serious Physical Injury or emotional injury to an Elder, or Financial Exploitation of an Elder; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

5.02: continued

**Aging Services Access Points (ASAPs).** Locally based private, non-profit corporations which contract with the Department to provide community based services to certain Eligible Elders in accordance with M.G.L. c. 19A, § 4B.

**Capability to Respond to an Emergency.** The capability of a Protective Services Agency to, in an Emergency:

- (a) immediately initiate the Investigation;
- (b) determine the need for an in home visit and/or other response, and initiation of this response, within five hours of the receipt of the report;
- (c) assess the Emergency needs of the allegedly Abused Elder within 24 hours of the receipt of the report; and
- (d) provide services to alleviate the Emergency condition. Where appropriate, such services may include a petition to the Court for an Emergency order of Protective Services pursuant to M.G.L. c. 19A, § 20(b) and in accordance with 651 CMR 5.16 and 5.17.

**Capability to Respond to a Rapid Response Situation.** The capability of a Protective Services Agency to, in a Rapid Response situation:

- (a) immediately initiate the Investigation;
- (b) determine the need for an in home visit and/or other response, and initiation of this response, within 24 hours of the receipt of the report;
- (c) assess the Rapid Response needs of the allegedly Abused Elder within 72 hours of the receipt of the report; and
- (d) provide services to alleviate the Rapid Response situation where appropriate, and consistent with 651 CMR 3.00: *Home Care Program*, 5.00 and M.G.L. c. 19A, § 4B and any applicable regulations.

**Caretaker.** The person(s) responsible for the care of an Elder, which responsibility may arise as the result of the following:

- (a) **Family Relationships.** A husband, wife, son, daughter, brother, or sister, or other relative of an Elder shall be presumed to be a Caretaker if she or he is living with the Elder on a regular basis or is otherwise acting in the role of Caretaker by providing substantial assistance to the Elder which would lead a reasonable person to believe that she or he is acting in the role of Caretaker. Exceptions are minor children and adults adjudicated as incompetent by a court of law.
- (2) **Fiduciary Relationships Imposed by Law.** A Guardian of the person and assets of an Elder appointed by the Probate Court pursuant to M.G.L. c. 190B shall be a Caretaker. A Conservator of an Elder appointed by the Probate Court pursuant to M.G.L. c. 190B, shall be Caretaker of said Elder to the extent that he or she must apply the assets of the Elder to provide the necessities essential for the physical, intellectual and emotional well-being of the Elder. The attorney-in-fact, holding a power of attorney or durable power of attorney pursuant to M.G.L. c. 190B, shall be Caretaker of the Elder granting such a power to the extent that the power of attorney or durable power of attorney requires him or her to apply the assets of the Elder to provide the necessities essential for the physical, intellectual and emotional well-being of the Elder.
- (c) **Contractual Relationships.** A person(s) who is responsible for the care of an Elder and receives monetary or personal benefit or gains as a result of a bargained for agreement with the Elder to act as a Caretaker shall be a Caretaker. A homemaker, home health aide, case manager, visiting nurse or employee of a Homemaker Service Agency, Home Care Program or Agency, or Visiting Nurses Association shall not be a Caretaker under this definition.
- (d) **The Voluntary Assumption of Caretaker Duties.** A person(s) who undertakes a voluntary duty of care for an Elder shall be presumed not to be a Caretaker unless one or more of the following criteria are met by the reputed Caretaker:
  1. The reputed Caretaker is living in the household of the Elder. Exceptions are minor children and adults adjudicated as incompetent by a court of law.
  2. The reputed Caretaker is related to the Elder and he or she has acted or is acting by providing substantial assistance or in such a manner as to lead a reasonable person to believe that he or she is acting as a Caretaker.
  3. The care being rendered by the reputed Caretaker is of a permanent and not temporary duration in that the reputed Caretaker maintains a physical presence in the household on a regular basis.

5.02: continued

4. The Elder by his or her actions, statements, or behavior, indicates reliance upon the reputed Caretaker for care in such a manner that a reasonable person would believe that the reputed Caretaker is being relied upon by the Elder to care for him or her.

5. The reputed Caretaker, by his or her actions, statements, or behavior, indicates voluntary assumption of the obligation of Caretaker in such a manner that a reasonable person would believe that the reputed Caretaker is being relied upon to care for the Elder.

**Conservator.** A person who is appointed to manage the estate of a protected person pursuant to M.G.L. c. 190B.

**Court.** The Probate and Family Court of the Commonwealth.

**Data Subject.** An individual to whom Personal Data refers. **Data Subject** shall not include corporations, corporate trusts, or other similar entities.

**Decisional Capacity.** An Elder's ability to:

- (a) understand and appreciate the nature and consequences of decisions, including the benefits and risks of and alternatives to any proposed Protective Services; and
- (b) reach an informed decision while free from any apparent duress, intimidation, coercion, use of force, or threat of force by another.

**Department.** The Executive Office of Elder Affairs of the Commonwealth of Massachusetts.

**Designation Agreement.** An agreement between the Department and a Protective Services Agency providing for designation of such agency as a Protective Services Agency for a Protective Services area, which provides for such Agency to provide one or more Protective Services either directly or through subcontract with funding through the Department, or by interagency agreement, or by use of available existing services.

**Elder.** An individual who is 60 years of age or older.

**Elder Abuse Hotline.** A component of the Protective Services Program that allows the submission of reports of Abuse on a 24 hour per day, seven day per week basis.

**Eligible Elder.** An Elder who, as a result of an Investigation by a Protective Services Agency, has been determined to be suffering from a Reportable Condition, is in need of one or more Protective Services, and has themselves or through the provisions of M.G.L. c. 19A, §§ 20(a) and 20(b) consented to the provision of one or more Protective Services.

**Emergency.** An abusive situation in which an Elder is at risk of:

- (a) imminent death;
- (b) immediate and Serious Physical Injury or emotional harm; and/or
- (c) immediate, substantial and irrevocable financial loss.

**Emotional Abuse.** Any intentional act or omission, including but not limited to verbal abuse, confinement, isolation, humiliation, intimidation or any other act or omission that:

- (a) results in significant harm to the emotional state, Decisional Capacity or Functional Capacity of an Elder; or
- (b) creates a reasonable risk of significant harm to the emotional state, Decisional Capacity or Functional Capacity of an Elder.

**Financial Exploitation.** An intentional act or omission by another person, without the consent of the Elder, which causes substantial monetary or property loss to the Elder or substantial monetary or property gain to the other person which gain would otherwise benefit the Elder, but for the act or omission of the other person. Financial exploitation may result from consent obtained as a result of misrepresentation, undue influence, coercion or threat of force by the other person. Financial exploitation may not result from a *bona fide* gift or from any act or practice by another person in the conduct of a trade or commerce prohibited by M.G.L. c. 93A, § 2.

5.02: continued

**Functional Capacity.** An Elder's ability to physically perform and complete desired tasks or activities of daily living in a safe and consistent manner.

**Guardian.** A person who has qualified as a guardian of an Elder pursuant to testamentary or court appointment pursuant to M.G.L. c. 190B, but shall not include a guardian *ad litem*.

**Holder.** The Department, the Elder Abuse Hotline, each Protective Services Agency and guardianship or conservatorship agency which collects, uses, maintains or disseminates Personal Data as a result of performing a governmental or public function or purpose under M.G.L. c. 19A, §§ 14 through 26. Each Protective Services Agency, each guardianship or conservatorship agency, and the Elder Abuse Hotline is a Holder and subject to the provisions of 651 CMR 5.00 only with respect to Personal Data held under contract or arrangement with the Department under the Elder Protective Services Program.

**Home Care Program.** A program of home care services for Elders operated by the Commonwealth pursuant to the requirements of 651 CMR 3.00: *Home Care Program*.

**Home Care Services.** The services under the Home Care Program, either direct or purchased, which are designed to assist Elders to secure and maintain independent living in a home environment and which are available for support through funds administered by the Department pursuant to 651 CMR 3.01: *Scope and Purpose*.

**Investigation.** The process of objective information gathering for the purposes of:

- (a) assessing reported allegations of Abuse;
- (b) evaluating the condition of the Elder including the Decisional Capacity and Functional Capacity of the Elder in order to determine if there is Reasonable Cause to Believe that the Elder is suffering from Abuse;
- (c) establishing a basis for offering services if the existence of Abuse is confirmed.

**Legal Assistance.** Legal advice and representation provided to an Eligible Elder by an attorney in civil matters (and where appropriate, counseling and other assistance by a paralegal or law student under the supervision of an attorney), including counseling or representation by a non-lawyer where permitted by law, to Elders who are determined to be Abused.

**Mandated Reporter Not Subject to Fine.** Any executive director of a Home Care Program who has Reasonable Cause to Believe that an Elder is suffering from or has died as the result of a Reportable Condition. Any homemaker, home health aide, case manager or other staff of a Home Care Program, licensed home health agency, or homemaker service agency who is not a licensed social worker, nurse, licensed psychologist, or family counselor, who has Reasonable Cause to Believe that an Elder is suffering, or has died from a Reportable Condition, shall be included in this category.

**Mandated Reporter Subject to Fine.** Any physician, physician assistant, medical intern, dentist, nurse, family counselor, probation officer, social worker, police officer, firefighter, emergency medical technician, licensed psychologist, coroner, registered physical therapist, registered occupational therapist, osteopath, podiatrist, director of a council on aging, outreach worker employed by a council on aging, executive director of a licensed home health agency or executive director of a homemaker service agency or manager of an assisted living residence who has Reasonable Cause to Believe that an Elder is suffering from or has died as a result of a Reportable Condition.

**Neglect.** The failure or refusal by a Caretaker to provide one or more of the necessities essential for physical well-being, such as food, clothing, medication, shelter, personal care, and medical care, which has resulted in Serious Physical Injury to an Elder; or a Reasonable Cause to Believe that such failure or refusal will immediately result in Serious Physical Injury to an Elder.

**Neglect** shall be determined by consideration of each of the following factors:

- (a) the Elder's ability to meet his or her own needs.
- (b) a history of dependence on a Caretaker.

5.02: continued

- (c) the Elder's Decisional Capacity and Functional Capacity.
- (d) the expectation or desire of the Elder of continuing to receive care provided by the Caretaker.

**Personal Data.** Any information concerning an individual which, because of identifying number, mark or description, can be readily associated with a particular individual; provided, however, that such information is not contained in a Public Record, as defined in M.G.L. c. 4, § 7, clause 26. Personal data shall not include intelligence information, evaluative information or criminal offender record information as defined in M.G.L. c. 6, § 167.

**Personal Data System.** A system of records operated by the Department, each guardianship agency, and each Protective Services Agency, and the Elder Abuse Hotline which system is organized such that data are retrievable by use of the identity of the Data Subject.

**Physical Abuse.**

- (a) The intentional infliction of Serious Physical Injury to an Elder; or
- (b) a threat to inflict Serious Physical Injury to an Elder for which the Protective Services Agency has Reasonable Cause to Believe that the party or parties making the threat possess(es) the intent and apparent ability to carry out the threat.

**Protective Order.** An order of the Court sought by a petition under M.G.L. c. 19A, § 20(a) (non-emergency) or 20(b) (emergency) for the provision of one or more Protective Services for an Elder who is suffering from a Reportable Condition and either lacks the Decisional Capacity to consent to Protective Services or requires the determination of his or her Decisional Capacity to consent to Protective Services.

**Protective Services.** Services which are necessary to prevent, eliminate or remedy the effects of Abuse to an Elder. Subject to appropriation, these services shall include, but not be limited to, the following:

- (a) Provide a response to an Emergency and/or Rapid Response Situation;
- (b) Arrange for Home Care Services;
- (c) Arrange for the provision of Legal Assistance;
- (d) Arrange for counseling;
- (e) Pursue the issuance of a Protective Order, when appropriate;
- (f) Petition the Court for the appointment of a Guardian and/or Conservator.

**Protective Services Agency.** A public or nonprofit private agency, corporation, board, or organization designated by the Department pursuant to M.G.L. c. 19A, § 16 to furnish Protective Services to an Eligible Elder.

**Protective Services Casework.** Activities conducted by a Protective Services Agency including: conducting an Investigation to determine if an Elder is suffering from Abuse; developing a Service Plan; providing or arranging for Protective Services to an Eligible Elder with his or her consent established in accordance with the provisions of M.G.L. c. 19A, §§ 20 (a) or 20 (b); providing information and referral to appropriate agencies; having the Capability to Respond to an Emergency; having the Capability to Respond to a Rapid Response Situation; and arranging counseling for Elders regarding the alleviation or prevention of Abuse and the availability of services.

**Protective Services Caseworker.** An employee of a Protective Services Agency who performs intake and/or Investigation and Service Plan development and other Protective Services Casework functions under the Elder Protective Services Program. A Protective Services Caseworker must meet the following qualifications:

- (a) A Masters or higher degree from an accredited school in social work, psychology, counseling, human development, nursing, sociology, criminal justice, public health, public policy, or gerontology, and at least one year of experience in counseling, casework, case management, preferably in a Protective Services or crisis intervention role; or

5.02: continued

(b) A Bachelors' degree from an accredited school in social work, psychology, counseling, human development, nursing, sociology, criminal justice, public health, public policy, or gerontology, and at least two years of experience in counseling, casework or case management providing protective or crisis intervention services.

**Protective Services Program.** The system of accepting reports of Abuse, the Investigation of such reports, and the provision of Protective Services authorized to be carried out by the Department pursuant to M.G.L. c. 19A, §§ 14 through 26, subject to appropriation.

**Protective Services Supervisor.** An employee of a Protective Services Agency who manages the work of Protective Services Caseworkers and ensures the effective and efficient management of Protective Services Casework. A Protective Services Supervisor must meet the following qualifications:

- (a) A Masters or higher degree from an accredited school in social work, psychology, counseling, human development, nursing, sociology, criminal justice, public health, public policy, or gerontology, and at least two years of experience in counseling, casework, case management, preferably in a Protective Services or crisis intervention role; or
- (b) A Bachelors' degree from an accredited school in social work, psychology, counseling, human development, nursing, sociology, criminal justice, public health, public policy, or gerontology plus at least three years of experience in counseling, casework or case management providing protective or crisis intervention services.

**Public Records.** Any document or record as identified in M.G.L. c. 4.

**Rapid Response.** A non-emergency, but urgent situation in which an Elder is living in conditions which present a potential, or rapidly developing risk of Serious Physical Injury or emotional harm; or a potential, or developing risk of immediate, substantial and irrevocable financial loss.

**Reasonable Cause to Believe.** A basis for judgment that rests on specific facts, either directly observed or obtained from reliable sources, that supports a belief that it is more probable than not that a particular event took place or a particular condition exists.

**Reportable Condition.** Any one or more of the following:

- (a) Abuse;
- (b) Physical Abuse;
- (c) Sexual Abuse;
- (d) Emotional Abuse;
- (e) Neglect;
- (f) Self-neglect; and
- (g) Financial Exploitation.

**Self-neglect.** Based on a Reasonable Cause to Believe, the failure, refusal, inability, or resistance of an Elder to provide for himself or herself one or more of the necessities essential for physical or emotional well-being, including but not limited to, food, clothing, shelter, necessary medications, and/or personal care, which has resulted in:

- (a) Serious Physical Injury or emotional harm; or
- (b) the risk of imminent Serious Physical Injury or emotional harm.

The following factors will be considered when making a determination of Self-neglect:

1. the presence of mental or physical impairments, substance abuse, and/or cultural or linguistic barriers;
2. the Elder's Decisional Capacity to make informed decisions and knowingly appreciate the consequences of such decisions;
3. the involvement or availability of other service providers to meet one or more of the Elder's essential needs when acting within the scope of their responsibility;
4. the willingness and capability of family members and friends to meet one or more of the Elder's essential needs; and/or,
5. the Elder's physical and mental condition, and the potential for the situation to escalate to the point where the Elder would be seriously harmed without intervention.



5.02: continued

**Serious Physical Injury.** A status of an Elder as determined by a Protective Services Agency based on a review of the following factors:

- (a) the Elder's physical condition;
- (b) the type, size, shape, number and location of physical injuries;
- (c) the circumstances under which the injury occurred including the potential for serious injury in the actual incident;
- (d) the emotional impact on the Elder; and
- (e) the potential for escalation of Abuse.

**Service Plan.** A written document created by a Protective Services Agency describing the actions and services needed to prevent, eliminate or alleviate the Abuse of an Elder. Actions and services may be provided by Caseworkers, Elders, Caretakers, relatives, friends, human service and health services professionals, and others depending on the Eligible Elder's needs and the availability of resources. Each Service Plan shall include:

- (a) clear and specific statement(s) of the problem(s) contributing to the Abuse;
- (b) specific and measurable action steps which are designed to address each problem statement; and
- (c) all findings of Abuse identified in the Investigation and/or in the process of ongoing Protective Services Casework.

**Sexual Abuse.** Sexual assault, rape, sexual misuse, or sexual exploitation of an Elder or threats of Sexual Abuse where the individual has the intent and apparent ability to carry out the threatened Sexual Abuse.

**5.03: Functions and Responsibilities of the Department**

(1) The Department shall, subject to appropriation, maintain a state-wide Protective Services Program to receive reports of the Abuse of Elders, which shall be accessible on a 24 hour per day, seven day per week basis. Further, the Department shall, subject to appropriation, develop a coordinated system of Protective Services for Elders suffering from a Reportable Condition(s) pursuant to M.G.L. c. 19A, § 16.

(2) Subject to appropriation, the responsibilities of the Department shall include, but not be limited to, the following:

- (a) Create and maintain the operational ability to receive reports of Abuse of Elders on a 24 hour per day, seven day per week basis;
- (b) Designate, re-designate and terminate Protective Services Agencies;
- (c) Coordinate and manage the Protective Services Program;
- (d) Adopt rules and regulations for the Protective Services Program;
- (e) Monitor the effectiveness of the Protective Services Program and conduct evaluative research about it;
- (f) Utilize grants from federal, state, and other public and private sources to support the Protective Services Program;
- (g) Receive reports of Abuse of Elders and refer such reports to Protective Services Agencies for screening, Investigation, and implementation of a Service Plan, where appropriate;
- (h) Seek Protective Orders, as appropriate, in accordance with 651 CMR 5.16 and 5.17;
- (i) Contract with Protective Services Agencies and other organizations and individuals, as appropriate, to implement the Protective Services Program;
- (j) Appoint Department regional managers who are responsible for program development, monitoring, technical assistance, training, and clinical consultation;
- (k) Publicize and provide education to statewide and national organizations regarding the Protective Services Program;
- (l) Perform all other functions necessary for the administration of the Protective Services Program.

**5.04: Functions and Responsibilities of a Protective Services Agency**

The responsibilities of a Protective Services Agency shall include, but not be limited to, the following:

- (1) **Reports.**
  - (a) Receive reports of Abuse of Elders;
  - (b) Screen such reports in accordance with 651 CMR 5.09;
  - (c) In the event the data received is insufficient, the Protective Services Agency shall ensure a reasonable effort is made to provide an appropriate response.
- (2) **Response.**
  - (a) Maintain the Capability to respond to an Emergency or Rapid Response situation on a 24 hour per day, seven day per week basis;
  - (b) Maintain coordination with the Elder Abuse Hotline such that Protective Services Agency staff are available and accessible on a 24 hour, seven day per week basis including agency administrative backup to after hours on-call staff;
- (3) **Investigations.**
  - (a) Conduct and complete Investigations of allegedly Abused Elders in accordance with 651 CMR 5.10;
  - (b) Where an Investigation results in a finding that a Reportable Condition pursuant to 651 CMR 5.02 exists, proceed in accordance with 651 CMR 5.12 through 5.15 and 5.18;
  - (c) Where an Investigation results in a finding that a Reportable Condition exists and that the Elder does not have the Decisional Capacity to consent and does not have a consenting Guardian, proceed in accordance with 651 CMR 5.15 through 5.18;
- (4) **General Responsibilities.**
  - (a) Have the capability to directly provide Protective Services Casework;
  - (b) Report certain substantiated claims of Abuse to the District Attorney of the County where the Abuse occurred in accordance with 651 CMR 5.19;
  - (c) Contract with the Department, and other organizations and individuals, as appropriate, to implement and maintain the Protective Services Program;
  - (d) Develop and maintain contracts for the provision of 24 hour per day Emergency Protective Services;
  - (e) Publicize and provide education to Mandated Reporters and the general community regarding Elder Abuse, reporting requirements, and the reporting process;
  - (f) Perform all other functions determined by the Department to be necessary for the administration of the Protective Services Program;
  - (g) Comply with Regulations, Program Instructions, and Standards of Practice developed by the Department to implement and maintain the Protective Services Program;
  - (h) Establish financial systems and procedures which comply with the provisions contained in 45 CFR Part 74 (Administration of Grants), Subpart H (Standards for Grantee and Sub-grantee Financial Management Systems) as well as requirements developed by the Department.
- (5) **Appointment of a Conservator.**
  - (a) A Protective Services Agency may pursue the appointment of a Conservator if it has been determined by an Investigation that such an appointment is in the best interest of the Elder and that:
    1. the Elder is suffering from a Reportable Condition;
    2. the Elder is in need of a Conservator pursuant to M.G.L. c. 190B;
    3. that Abuse of the Elder can be prevented, alleviated or eliminated by the services of a Conservator;
    4. the Elder has no family member or other person available, appropriate, or willing to serve as a Conservator on behalf of the Elder; and
    5. there is no less restrictive alternative available to alleviate or eliminate Abuse of the Elder.
  - (b) A designated Protective Services Agency may not serve in the role of Conservator for any Elder who is a Protective Services client.

5.04: continued

(6) Appointment of a Guardian.

(a) A Protective Services Agency may pursue the appointment of a Guardian if it has been determined by an Investigation that such an appointment is in the best interest of the Elder and that:

1. the Elder is suffering from a Reportable Condition;
2. the Elder is in need of a Guardian pursuant to M.G.L. c. 190B;
3. that Abuse of the Elder can be prevented, alleviated or eliminated by services of a Guardian;
4. the Elder has no family member or other person available, appropriate, or willing to serve as a Guardian on behalf of the Elder; and
5. there is no less restrictive alternative available to alleviate or eliminate the Abuse.

(b) Designated Protective Services Agencies may not serve in the role as Guardian for any Elder who is a Protective Service client.

(7) Staff Development. On an annual basis, a Protective Service Agency shall submit to the Department a plan for staff development, including but not limited to the following:

- (a) Training requirements for new and existing staff;
- (b) Training curricula;
- (c) Training methodology, including whether the training was instructor led, online or blended.

5.05: Designation of Protective Services Agencies

(1) The Department may designate as a Protective Services Agency any public agency or private nonprofit organization which has the capability to implement a Service Plan through access to social, health and mental health services. The Department and a Protective Services Agency shall cooperate in utilizing resources and services of public and nonprofit private agencies in providing Protective Services. A Protective Services Agency may be an agency whose single purpose is to administer programs for Elders or a multipurpose agency with the ability and capability to carry out the Protective Services Program. A Protective Services Agency may not delegate to another agency the authority to award or administer Protective Services funds under this designation without prior written consent of the Department.

(2) Prior to designating a Protective Services Agency, the Department may, in its discretion:

- (a) Consider the views of the unit(s) of general purpose local government and area agency on aging within the Protective Services area regarding the ability of the bidding agency or organization to carry out the responsibilities of the Protective Services Program;
- (b) Conduct an on-site assessment to determine whether a Protective Services Agency or organization which is being considered has the service capability, record of past performance, and management quality to perform all the functions of a Protective Services Agency under the Protective Services Program;
- (c) Designate a Protective Services Agency to serve more than one Protective Services area if, in its judgment, no agency or organization is qualified to serve as a Protective Services Agency in a given area.

(3) The Department shall designate Protective Services Agencies for a maximum period of three years. Each designation may be reviewed at least annually. Designation will be made by a letter signed by the Secretary accompanied by a written Designation Agreement between the Department and the Protective Services Agency.

(4) The Department shall designate at least one public agency or private nonprofit organization to act on behalf of the Department as a Protective Services Agency for a Protective Services area as defined by the Department.

5.06: Termination of Designation

The Department has the authority to terminate the designation of a Protective Services Agency.

5.06: continued

- (1) Either party may terminate a Designation Agreement without cause upon provision of written notice to the other at least 90 calendar days before the effective date of such termination.
- (2) Termination for Cause.
  - (a) In the event that either party fails to comply with the provisions of the Designation Agreement in whole or in part, the other party may, after specifying any alleged breach, default, or noncompliance in writing to the other party and after allowing a reasonable time, but not less than 30 calendar days for correction thereof, terminate the Designation Agreement by sending written notice of termination which specifies the reasons for termination to the other party, at least 30 calendar days prior to the effective date of termination.
  - (b) If the Department determines that any noncompliance with the terms of the Designation Agreement on the part of a Protective Services Agency endangers the life, health, and safety of recipients or applicants for services under the Designation Agreement, it shall terminate the Designation Agreement by orally notifying the Protective Services Agency of termination followed by the mailing of written notification, return receipt requested, setting forth the reasons for termination within seven calendar days following the oral notification.
  - (c) Termination pursuant to 651 CMR 5.06(2) shall take effect upon the oral notification.
- (3) Continuity of Services.
  - (a) Upon termination of a Designation Agreement the Department shall designate a new Protective Services Agency in a timely manner;
  - (b) If necessary to ensure continuity of Protective Services in a Protective Services region, the Department may do the following for a period of up to 180 days following termination of designation:
    1. Assign the responsibilities of a Protective Services Agency to another agency or organization;
    2. Extend the agreement with the terminating agency;
    3. Perform the responsibilities of a Protective Services Agency.

5.07: Reports

- (1) Any person who has Reasonable Cause to Believe that any Elder is suffering from or has died from Abuse may make such a report to the Elder Abuse Hotline, a Protective Services Agency, or the Department.
- (2) Reports of Abuse of Elders in any infirmary maintained in a town, convalescent or nursing home, rest home, charitable home for the aged or intermediate care facility for persons with developmental disabilities, as defined in M.G.L. c. 111, § 71, shall continue to be made to the Department of Public Health pursuant to M.G.L. c. 111, §§ 72(F) through 72(L) and shall not be made to the Department of Elder Affairs under M.G.L. c. 19A, §§ 15 and 16.
- (3) Reports of Abuse or suspected Abuse that can reasonably be understood to constitute a criminal act that endangers the health, safety, and welfare of an individual at risk should also be reported to the police and may be concurrently investigated by the criminal justice system.
- (4) Mandated Reporters Subject to Fine who have Reasonable Cause to Believe that an Elder is suffering from or has died as a result of Abuse shall:
  - (a) immediately make a verbal report of such information or cause a report to be made to the Elder Abuse Hotline, a Protective Services Agency or the Department; and
  - (b) within 48 hours make a written report to the appropriate Protective Services Agency.

Executive directors of Home Health agencies and Homemaker Service agencies shall establish written procedures whereby reports of alleged Abuse of an Elder are forwarded to them by staff as soon as possible after they are received.
- (5) Mandated Reporter Not Subject to Fine. Mandated Reporters Not Subject to Fine who have Reasonable Cause to Believe that an Elder is suffering from or has died as a result of Abuse shall report such information to the Elder Abuse Hotline, a Protective Services Agency, or the Department, and also notify the executive director of their agency. The executive director shall:

5.07: continued

- (a) immediately make a verbal report of such information or cause a report to be made to the Elder Abuse Hotline, a Protective Services Agency or the Department; and
  - (b) Within 48 hours make a written report to the appropriate Protective Services Agency.
- (6) Liability and Retribution Against Reporters.
- (a) No employee or supervisor may discharge, demote, transfer, reduce pay, benefits, or work privileges, prepare a negative work performance evaluation, or take any other action detrimental to an employee or supervisor who files a report in accordance with the provisions of M.G.L. c. 19A, §§ 15(a), 15(b), or 15(c), by reason of such report.
  - (b) No Mandated Reporter Subject to Fine shall be liable in any civil or criminal action by reason of such report; provided however, that such person did not perpetrate, inflict or cause said Abuse.
  - (c) No Mandated Reporter Not Subject to Fine or other reporter of alleged Abuse of an Elder shall be liable in any civil or criminal action by reason of such report if it was made in good faith; provided however, that such person did not perpetrate, inflict or cause said Abuse.
  - (d) Any person making a report of Abuse, pursuant to M.G.L. c. 19A, §§ 15(a), (b), or (c), who, in the determination of the Department or the District Attorney of the County where the Abuse occurred, may have perpetrated, inflicted, or caused said Abuse, may be liable in a civil or criminal action by reason of such report.
- (7) The existence of a social-worker client privilege or patient-psychotherapist privilege relating to the exclusion of confidential communications shall not prohibit the filing of a report by persons subject thereto pursuant to the provisions of 651 CMR 5.07(4)(a), (b) or (c).

5.08: Reporting Process

- (1) Content.
- (a) Reports of Abuse shall be entered into the online system of record as they are received by the Elder Abuse Hotline, Protective Services Agencies, or the Department and shall contain all of the information required by the system.
  - (b) If the intake worker is unable to obtain all of the information required by the online system of record at the time of the report, the intake worker will obtain at least the name and address of the Elder, the nature of the reported condition of Abuse and will make all reasonable efforts to obtain the name and telephone number of the reporter.
  - (c) A report shall be taken for each Elder for whom Abuse is alleged.
- (2) Process.
- (a) Each Protective Services Agency shall have the capability to receive and respond to Emergency and Rapid Response reports of Abuse on a 24 hour per day, seven day per week basis.
  - (b) The Department shall establish the Elder Abuse Hotline to receive reports outside of regular business hours:
    - 1. When it is determined by a member of the Elder Abuse Hotline staff that an Emergency situation exists, he or she shall enter the report into the online system of record and contact the designated on-call worker at the designated Protective Services Agency.
    - 2. When it is determined by the Elder Abuse Hotline that a Rapid Response situation exists, it shall enter the report into the online system of record and contact the designated Protective Service Agency at the beginning of the next calendar day.
    - 3. For other non-Emergency reports, the Elder Abuse Hotline shall enter received reports into the online system of record as received for review by the Protective Services Agency upon commencement of the next regular business hours.
  - (c) At the time the report is received, the Elder Abuse Hotline, a Protective Services Agency or the Department shall advise the person reporting as follows:
    - 1. That if they are a Mandated Reporter as defined in 651 CMR 5.02 and 5.07, they must forward a written statement of their report of Abuse to the appropriate Protective Services Agency within 48 hours after making the verbal report.

5.08: continued

2. That their report is confidential and is subject to state laws and regulations regarding privacy and confidentiality. The identity of the reporter shall not be divulged except to the District Attorney, other relevant government agency, or by court order.
3. Mandated Reporters shall be informed that they will be notified in writing of the action taken in response to the report within 45 calendar days of the report. Other reporters shall be notified only upon their request. This notice shall include the following information:
  - a. Whether or not the information in the report constituted a Reportable Condition;
  - b. Whether or not an Investigation was completed;
  - c. The name, address and telephone number of a Protective Services Agency conducting the Investigation.

5.09: Screening

Upon receipt of an oral or written report (whichever is received first), a Protective Services Agency shall ensure that all reports are evaluated immediately by a Protective Services Supervisor or designated backup supervisor, in order to determine the immediacy and severity of the alleged harm or risk, and the appropriate initial response.

(1) Purpose of Screening.

- (a) To determine whether the allegation constitutes a Reportable Condition to the Protective Services Program/Agency, and
- (b) To determine whether or not an Emergency, Rapid Response, or Routine response is needed.

(2) Screening Decisions.

- (a) In determining whether there is a Reportable Condition and the level of response needed, in accord with 651 CMR 5.09(1)(a) and (b), the Protective Services Supervisor, or designated backup supervisor shall apply the facts which are alleged to the definitions of Abuse/Reportable Condition, Caretaker, Emergency and Rapid Response set forth in 651 CMR 5.02 and shall utilize any other information obtained during screening. Such information may be obtained through discussion with the reporter, examination of Protective Services Agency files and any collateral contacts necessary to clarify/verify the reported information.
- (b) If the Protective Services Supervisor, or designated backup supervisor, determines that the allegation(s) constitute a reportable condition and that:
  1. an Emergency exists, said supervisor shall immediately screen the report as an Emergency and assign it for an immediate Investigation as provided in 651 CMR 5.10; or
  2. a condition requiring Rapid Response exists, said supervisor shall immediately screen the report as a Rapid Response and assign it for an immediate Investigation as provided in 651 CMR 5.10; or
  3. no Emergency or Rapid Response condition exists, said supervisor shall complete the screening decision in a timely way, but no later than 48 hours from the time of intake. When the report is screened in, it shall be assigned for Investigation as provided in 651 CMR 5.10.
- (c) If the Protective Services Supervisor or designated backup supervisor determines, based on information available in the report and obtained during screening, that there is no Reasonable Cause to Believe that the allegation constitutes a Reportable Condition, the report of abuse shall be screened out and the intake record shall be subject to expungement from the records of a Protective Services Agency in accordance with 651 CMR 5.20(12).

Where there is no Reportable Condition, said supervisor shall determine in a timely fashion, the appropriate course of action, consistent with Protective Services Agency requirements. This may include assistance to the reporter in obtaining services, including emergency services, referral for other ASAP services, and/or the provision of information and referral to the reporter regarding social, legal, health or other services which may be available to the Elder.

5.09: continued

1. In cases involving reports from Mandated Reporters Subject to Fine and Mandated Reporters Not Subject to Fine, the Protective Services Supervisor or designated back-up supervisor shall not determine that no Reportable Condition exists without direct discussion with the reporter of Abuse.
2. The Protective Services Supervisor or designated back-up supervisor may determine that no Reportable Condition exists regarding a report from a non-mandated reporter, pursuant to M.G.L. c. 19A, § 15(c), based upon:
  - a. a pattern of prior reports from the reporter which, upon Investigation by a Protective Services Agency, have proved unsubstantial; or
  - b. persuasive information obtained by the screener from reliable sources that the report cannot be substantiated.

5.10: Investigation

Investigation is the process of objective information gathering for the purpose of:

- (a) assessing the allegations of Abuse reported;
- (b) evaluating the condition of the Elder including the Decisional Capacity and Functional Capacity of the Elder to determine if there is Reasonable Cause to Believe that the Elder is suffering from Abuse.
- (c) establishing a basis for offering services if the existence of Abuse is confirmed.

The content and results of the Investigation shall be transcribed into the online record system as directed by the Department and shall document the evidence upon which a determination of the existence or absence of Abuse was based. At a minimum, the Investigation shall produce the following:

(1) Content.

- (a) The identity of the allegedly Abused Elder;
- (b) The nature, extent, and cause(s) of the alleged serious physical or emotional injury or Financial Exploitation;
- (c) The identity of the person(s) or support system of Caretakers alleged to be responsible for the alleged injuries;
- (d) A determination of the Decisional Capacity, Functional Capacity and a determination of the social, physical, and emotional needs of the Elder;
- (e) All information necessary to determine if any Reportable Condition exists;
- (f) The Investigation summary shall address all allegations reported and all additional types of Abuse identified during the Investigation whether or not the completed Investigation resulted in Reasonable Cause to Believe that Abuse exists.

(2) Process.

- (a) One or more visits to the residence of the Elder: or, if such a visit is not possible, one or more in-person interviews with the Elder at a location other than the Elder's residence.
- (b) For all reports screened as an Emergency a Protective Services Agency shall:
  1. immediately initiate the Investigation;
  2. assess the Emergency needs of the allegedly Abused Elder within 24 hours of the receipt of the report. This shall include determination of the need for an in home visit and/or other response, and initiation of this response, within five hours of the receipt of the report;
  3. provide services to alleviate the Emergency condition including a petition to the Court for an Emergency order of Protective Services pursuant to M.G.L. c. 19A, § 20(b), where appropriate in accordance with 651 CMR 5.16 and 5.17;
  4. if it is determined that a home visit or in-person interview with the Elder is not immediately required as determined under 651 CMR 5.10(2)(b)2., such visit or interview must be conducted as soon as possible, but within five days of the receipt of the report in order to assess possible risk to the Elder;
  5. complete the Investigation within 30 calendar days.
- (c) For all reports screened as Rapid Response, a Protective Services Agency shall:
  1. immediately initiate the Investigation;

## 5.10: continued

2. assess the Rapid Response needs of the allegedly Abused Elder within 72 hours of the receipt of the report. This shall include determination of the need for an in home visit and/or other response, and initiation of this response, within 24 hours of the receipt of the report;
  3. provide services to alleviate the Rapid Response situation, where appropriate, and consistent with 651 CMR 3.00: *Home Care Program*, 5.00 and M.G.L. c. 19A, § 4B and any applicable Regulations;
  4. if it is determined that a home visit or in-person interview with the Elder is not immediately required as determined under 651 CMR 5.10(2)(c)2., such visit or interview must be conducted as soon as possible, but within five days of the receipt of the report in order to assess possible risk to the Elder;
  5. complete the Investigation within 30 calendar days.
- (d) For other non-emergency reports, a Protective Services Agency shall:
1. immediately initiate the Investigation;
  2. make the first home visit or in-person interview with the Elder as soon as possible, but within five days of the receipt of the report in order to assess possible risk to the Elder;
  3. complete the Investigation within 30 calendar days.
- (e) During the home visit or in-person interview for either an Emergency or a non-emergency situation, written notification, in a format provided by the Department, shall be given to the Elder that an Investigation is being conducted and that she/he has a right to review the Protective Services file. In situations in which the Protective Services Caseworker is unable to visit or speak with the Elder alone, factors placing the Elder at risk should be considered in determining when and how to present the written notice. If the Protection Services Caseworker is unable to conduct an in-person interview with the Elder, risk factors should also be considered in determining the appropriateness of mailing the written notification.
- (f) Interviews with other members of the Elder's household.
- (g) Collateral contacts with other services agencies, other professionals, and other individuals involved with the Elder.
- (h) The Protective Services Caseworker shall neither confirm nor deny the identity of the reporter.
- (3) If any person other than the Elder who is the subject of the report prevents the Protective Services Caseworker from gaining access to the Elder, the Protective Services Caseworker, in conjunction with his or her supervisor, will evaluate any information which indicates a safety risk to the Elder or the Caseworker and make a decision whether or not to request assistance from a law enforcement agency in visiting the Elder.

5.11: Elder's Refusal to Participate

- (1) An Elder with the Decisional Capacity to understand the circumstances and consequences of a report received by a Protection Services Agency and the nature of available Protection Services may refuse to participate in an Investigation being conducted by a Protective Services Agency. If an Elder refuses to participate in an investigation, the Protective Services Agency shall make all reasonable efforts to continue the investigation and attempt to comply with the requirements of 651 CMR 5.10 to the extent possible and in a manner that will not unnecessarily endanger the Elder.
- (2) All reasonable efforts should be made to conduct at least one home visit or in-person interview with the Elder.
- (3) If after completing an Investigation without the participation of the elder, the Protective Services Agency determines there is Reasonable Cause to Believe a Reportable Condition exists, the Protective Service Agency shall develop a service plan in accordance with 651 CMR 5.13 and offer Protective Services to the Elder. Elders with Decisional Capacity retain the right to refuse such Protective Services.



**5.12: Action upon the Completion of Investigation**

- (1) If, after the Investigation of a report, a Protective Services Caseworker determines that there is no Reasonable Cause to Believe that a Reportable Condition exists, the Protective Services Caseworker, with supervisory approval shall:
  - (a) Expunge records in accordance with 651 CMR 5.20(11) within three years of such determination; and
  - (b) Where appropriate, the Protective Services Caseworker shall provide information and referral to the Elder regarding social, health, legal, or other services.
- (2) If, after the Investigation of a report, a Protective Services Caseworker determines that there is Reasonable Cause to Believe that a Reportable Condition exists, the Protective Services Caseworker, with supervisory approval, shall open the case for the provision of Protective Services.

**5.13: Service Plan Development**

After it is determined that a Reportable Condition exists, the Protective Services Agency shall begin to develop a Service Plan. The Service Plan shall:

- (1) be developed in consultation with the Elder and/or reflect the Elder's needs and wishes as much as possible, consistent with the Elder's Decisional Capacity to consent, and utilize the least restrictive, appropriate service alternatives;
- (2) be developed in consultation with the Protective Services Supervisor;
- (3) be developed within five business days following the completion of the Investigation; and
- (4) be reassessed at least once during the first month of service. After the initial month, each Eligible Elder's need for services shall be reassessed at least every three months thereafter until such service(s) are no longer required, but shall be modified more frequently, if needed, to reflect changes in the Elder's needs, circumstances or the level of risk, consistent with the requirements of 651 CMR 5.18.

Any changes in the service pattern, including an increase, reduction, termination, or suspension of service other than those set forth in the initial plan, made as a result of those periodic reviews, shall be reflected in the service plan.

**5.14: Financial Eligibility and Costs for Certain Services**

- (1) Protective Services Casework shall be provided to Eligible Elders regardless of income.
- (2) **Costs and Eligibility of Other Protective Services.**
  - (a) Home Care Services that may be provided under the Commonwealth's Home Care Program shall be subject to the financial eligibility and Cost Sharing Program requirements set forth in 651 CMR 3.00: *Home Care Program*.
  - (b) Home Care Services that may be provided under the Commonwealth's Home Care Program shall be subject to the criteria established by the Home Care Program as set forth in 651 CMR 3.00: *Home Care Program*.
  - (c) Home Care Program Respite Services shall be subject to the Respite Care Program requirements and copayment criteria set forth in 651 CMR 3.00: *Home Care Program*.
- (3) An Eligible Elder whose Protective Services plan requires Home Care Services and whose annual gross income is above the Cost Sharing Program income limits for the Home Care Program shall be assisted with private payment arrangements with private providers of the needed services.
- (4) In situations in which the Protective Services Caseworker and the Protective Services Supervisor have determined that private payment arrangements will have an adverse effect on the provision of Protective Services to the Elder, the executive director of the Home Care Program may approve Home Care Program Services subject to the following requirements:
  - (a) The Eligible Elder shall be charged the full cost of those services.
  - (b) Reasonable efforts shall be made to implement private payment arrangements.

5.14: continued

- (5) No Eligible Elder shall be required to reimburse the Department for all or part of the cost of Protective Services unless she/he has been notified prior to the start of services that a reimbursement will be charged.
- (6) If in the judgment of the Department or a Protective Services Agency, discussion of financial eligibility and/or payment of fees would have an adverse effect upon the provision of Protective Services, no such discussion shall be required and no bill shall be sent to the Eligible Elder subject to the following requirements:
  - (a) Supervisory approval of the determination of adverse effect shall be documented in the case record.
  - (b) Reasonable efforts to discuss financial eligibility and to collect such copayments or charges shall be made on a monthly basis following the provision of services.
- (7) Services other than Protective Services Casework, Home Care Services and/or Respite Care shall be provided or arranged for by a Protective Services Agency subject to appropriation, and subject to the financial and other eligibility criteria of the government agency or private organization providing such service(s).

5.15: Obtaining Consent for Protective Services

- (1) A Protective Services Agency shall provide Protective Services to an Elder who suffers from a Reportable Condition and who needs such service(s) only when one of the following has been obtained:
  - (a) The written consent of the Elder or Guardian on a form provided by the Department or;
  - (b) Verbal consent or an affirmative act by the Elder indicating consent, where the Elder is:
    - 1. physically incapable of providing written consent;
    - 2. unable to read;
    - 3. unwilling to or fearful of providing written consent; or
    - 4. unable to understand the form in the language in which it is printed and for which reasonable attempts have been made to explain the services in the Elder's primary language.
- (2) Documentation of consent given under 651 CMR 5.15(1)(b) shall be entered in the progress notes and shall consist of the Protective Services Caseworker's explanation of services to the Elder and the nature of the Elder's response indicating consent. The entry of documentation of the circumstances of consent in the progress notes should be referred to on the consent form.
- (3) In situations in which it is believed that the Elder lacks the Decisional Capacity to provide written consent, but is able to understand and accept, to some degree, the purpose and services of the Protective Services Program, an explanation of the program should be offered in a way suitable to the Elder's level of understanding. This explanation and the Elder's response indicating consent must be documented in the manner described in 651 CMR 5.15(2).
- (4) In situations in which the Elder is believed to lack the Decisional Capacity to consent, and in the absence of the Elder's refusal, a family member may agree to the provision of services which do not interfere with the liberty and well-being of the Elder and to which the Elder does not object. The circumstances of consent must be documented in the manner described in 651 CMR 5.15(2).
- (5) In situations in which the Elder lacks the Decisional Capacity to consent, authorization for the provision of service(s) may be obtained by petitioning the Probate and Family Court in accordance with M.G.L. c. 19A, §§ 20(a) or (b) and in accordance with 651 CMR 5.17.
- (6) In an Emergency or Rapid Response situation, the Protective Services Caseworker may provide or arrange for services with the verbal consent of the Elder or the Elder's Guardian or by an affirmative act of the Elder. A Protective Services Agency shall attempt to obtain written consent as soon as possible thereafter.

5.15: continued

(7) Upon receipt of consent in any form described in 651 CMR 5.15, services shall be provided or arranged in accordance with the service plan, the financial eligibility of the Elder for services funded through agencies other than the Department, and the availability of resources.

(8) No person shall interfere with the provision of Protective Services to an Elder who requests or consents to receive such services. In the event that interference occurs on a continuing basis, a Protective Services Agency may petition the Court to enjoin such interference.

5.16: Actions Without Consent

(1) Upon a refusal to consent, or withdrawal of consent to Protective Services by an Abused Elder who has the Decisional Capacity to consent; or upon the decision of the Court not to issue an order for Protective Services or not to appoint a fiduciary of an Abused Elder under M.G.L. c. 19A, § 20(a) or 20(b), the Protective Services Caseworker shall do the following:

- (a) Notify the Elder of the availability of Protective Services should he or she decide to consent to services at a future time;
- (b) Advise the Elder of the availability of Home Care and other social services in his or her area;
- (c) Advise the Elder of the availability of free legal services in his or her area;
- (d) Explain the availability of M.G.L. c. 209A and other appropriate legal interventions to protect him or her from further Abuse in family and household Abuse situations;
- (e) Close the Protective Services Case.

(2) If the Elder is believed to lack the Decisional Capacity to consent to Protective Services, *see* 651 CMR 5.17(2)(a).

(3) If the Elder lacks the Decisional Capacity to consent to the provision of Protective Services, *see* 651 CMR 5.17(2)(b).

(4) If access to the Elder is barred by a person other than the Elder, *see* 651 CMR 5.17(2)(c).

5.17: Protective Orders

(1) A Protective Order may be sought to enable the provision of Protective Services in cases where a Protective Services Agency has Reasonable Cause to Believe that access to the allegedly Abused Elder has been barred by any person other than the allegedly Abused Elder or where the determination of the Elder's Decisional Capacity to consent to the provision of Protective Services is necessary for the completion of the Investigation.

(2) Protective Orders may be sought for the following circumstances:

(a) The Elder is believed to lack the Decisional Capacity to consent to protective services. A Protective Services Agency or the Department may petition the Court for an order under M.G.L. c. 19A, § 20(a) or 20(b) requesting that a medical/competency evaluation be completed in order to determine the Elder's Decisional Capacity to consent to Protective Services if, as a result of an Investigation, a Protective Services Agency or the Department has Reasonable Cause to Believe:

1. That a Reportable Condition exists;
2. That the Elder is in need of one or more Protective Services to alleviate the conditions creating the Abuse;
3. That an attempt has been made to obtain consent in accordance with 651 CMR 5.15 for the provision of one or more Protective Services and consent has not been obtained; and
4. That consent has not been obtained because the Elder may lack the Decisional Capacity to consent to the provision of one or more Protective Services needed to alleviate the Abuse;
5. That the risk to the Elder is serious enough to warrant Court intervention; and
6. Supervisory approval for the initiation of Court action has been obtained.



## 5.17: continued

(b) The Elder lacks the Decisional Capacity to consent to the provision of protective services. A Protective Services Agency or the Department may petition the Court for an order under M.G.L. c. 19A, § 20(a) or 20(b) specifying those services necessary to alleviate the Abuse if, as a result of an Investigation, a Protective Services Agency or the Department has Reasonable Cause to Believe:

1. That a Reportable Condition exists;
2. That the Elder is in need of one or more Protective Services to alleviate the conditions creating the Abuse;
3. That an attempt has been made to obtain consent in accordance with 651 CMR 5.15 for the provision of one or more Protective Services and consent has not been obtained; and
4. That consent has not been obtained because the Elder lacks the Decisional Capacity to consent, as determined by a medical/competency evaluation, to the provision of one or more Protective Services needed to alleviate the Abuse;
5. That the risk to the Elder is serious enough to warrant Court intervention; and
6. Supervisory approval for the initiation of Court action has been obtained.

(c) Access to the Elder is barred during the investigation of a report by a person other than the Elder. A Protective Services Agency or the Department may petition the Court for an order to complete the Investigation of a report of Abuse under M.G.L. c. 19A, § 20(a) or 20(b) if a Protective Services Agency or the Department has Reasonable Cause to Believe:

1. That a Reportable Condition may exist;
2. That the Elder may be in need of one or more Protective Services to alleviate the conditions creating the alleged Abuse;
3. That an attempt(s) has been made to gain access in order to complete the Investigation and access has been barred by a person(s) other than the allegedly Abused Elder;
4. That the alleged risk to the Elder is serious enough to warrant Court intervention; and
5. Supervisory approval for the initiation of Court action has been obtained.

(3) Contents of the Petition. The petition for an order for Protective Services and/or appointment of a fiduciary shall set forth the facts and attesting documentation required by the Court and be in accordance with procedures developed by the Court. The documentation shall include the petition, affidavits of the Protective Services Caseworker and other involved professionals, the medical certificate, and the accompanying physician's letter or affidavit, if available. Such petition shall specify the services/interventions requested and shall seek the least restrictive form of intervention that will alleviate or eliminate Abuse.

(4) Rights of the Elder under M.G.L. c. 19A, § 20(a) or 20(b).

(a) The Protective Services Caseworker shall inform the Elder of his or her rights under M.G.L. c. 19A, § 20(a) or 20(b) in a manner suitable to the Elder's level of understanding.

(b) The Elder who is the subject of the petition shall have the right to be present, be represented by counsel, present evidence, and examine and cross-examine witnesses.

(c) The Elder shall have the right, at his or her own expense, to secure an independent medical and psychological or psychiatric examination relevant to the issue involved in any hearing under M.G.L. c. 19A, § 20(a) or 20(b) and to present a report of his or her independent evaluation or the evaluator's personal testimony as evidence at the hearing. Appointed counsel of an indigent Elder may request that the Court order such an independent evaluation.

(d) The Court shall not order an institutional placement or change of residence unless it finds that no less restrictive alternative will meet the needs of the Elder.

(e) No Elder may be committed to a mental health facility pursuant to M.G.L. c. 19A, §§ 20(a) or 20(b).

(f) If the Elder who is the subject of the petition is indigent, the Court shall appoint counsel to represent the interest of the Elder at the Court hearing.

(g) If the Elder who is the subject of the petition lacks the Decisional Capacity to retain counsel or waives the right to counsel, the Court shall appoint a guardian ad litem to represent the interest of the Elder at the Court hearing.

(h) A Protective Services Agency attorney shall request that the Court appoint counsel for the Elder who is the subject of the petition if the Elder is not represented by counsel at the Court hearing.

5.17: continued

- (i) The Protective Services Caseworker, in conjunction with the Protective Services Supervisor and agency attorney, shall make reasonable attempts to facilitate the exercise of the Elder's rights as set forth in 651 CMR 5.17(4)(a) through (h) in any hearing under M.G.L. c. 19A, §§ 20(a) or 20(b).
- (5) Specific Procedural Statutory Requirements of the Court.
  - (a) Non-emergency Protective Order, M.G.L. c. 19A, § 20(a).
    - 1. The Court shall hold a hearing on the matter within 14 days of the filing of the petition.
    - 2. The Court shall give notice to the Elder who is the subject of the petition at least five days prior to the date set for the hearing.
    - 3. An order for Protective Services for an Elder pursuant to M.G.L. c. 19A, § 20(a) shall remain in effect for a period of six months, unless otherwise stipulated in such order. The Court may, for good cause shown, extend an order for Protective Services. Such extension shall remain in effect for a period of six months, unless otherwise stipulated in the order.
  - (b) Emergency Protective Order, M.G.L. c. 19A, § 20(b).
    - 1. A member of the immediate family, or Caretaker of the Elder may also petition the court for a Protective Order if they have Reasonable Cause to Believe that the conditions set forth in 651 CMR 5.16(2) through (4) exist.  

A member of the Elder's immediate family or the Elder's Caretaker is encouraged to report the alleged Abuse to the Elder Abuse Hotline, the local designated Protective Services Agency, or the Department, in order to seek an Emergency Investigation of the situation and condition of the Elder prior to filing a petition with the Court for an Emergency order for Protective Services under M.G.L. c. 19A, § 20(b).
    - 2. The Court shall give notice to the Elder who is the subject of the petition at least 24 hours prior to the Court hearing.
    - 3. The Court may dispense with notice upon finding that immediate and foreseeable physical harm to the Elder or others will result from the 24 hour delay and that reasonable attempts have been made to give such notice to the Elder.
    - 4. No statutory authority exists for the appointment of any type of fiduciary representation as a result of a hearing for an Emergency Protective Order under M.G.L. c. 19A, § 20(b).
    - 5. The order for Emergency Protective Services shall remain in effect for a period not to exceed 14 days. Said order may be extended for an additional period not to exceed 14 days if the Court finds that the extension is necessary to remove the Emergency.
- (6) Actions upon Obtaining a Protective Order.
  - (a) Non-emergency Protective Order, M.G.L. c. 19A, § 20(a).
    - 1. If, after a hearing the Court determines, based on the preponderance of the evidence, that the Elder has been Abused, is in need of Protective Services and lacks the Decisional Capacity to consent and no other person who is authorized to consent is available or willing to consent, the Court may order the provision of Protective Services.
    - 2. If, after a hearing the Court determines, based on the preponderance of the evidence, that the Elder has been Abused, is in need of Protective Services and lacks the Decisional Capacity to consent and no other person who is authorized to consent is available or willing to consent, the Court may appoint a Conservator, Guardian, or other person authorized to consent to the provision of Protective Services; provided however, that the Court shall establish the least restrictive form of fiduciary representation that will satisfy the needs of such Elder.
    - 3. The Protective Services Caseworker shall develop or revise and implement a service plan for the provision of one or more Protective Services in accordance with the order of the Court as soon as possible after the M.G.L. c. 19A, § 20(a) order is granted.
    - 4. The Elder, a Protective Services Agency, or the Department, may, for good cause shown, and, at any time, petition the Court to modify or set aside any order of the Court pursuant to M.G.L. c. 19A, § 20(a).
    - 5. Where funds are not available through appropriation from the Department to directly provide one or more Protective Services under M.G.L. c. 19A, § 20(a), a Protective Services Agency shall coordinate with and utilize existing social, health, mental health, legal and other resources, as available, to provide services under a service plan.

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6. A Protective Services Agency shall insure that the services are provided in the least intrusive manner and by persons already familiar with the Elder whenever possible.
7. A copy of all Protective Orders issued by the Court shall be placed in the Protective Services case record.
- (b) Emergency Protective Order, M.G.L. c. 19A, § 20(b).
  1. If, after a hearing the Court determines, based on the preponderance of the evidence, that the Elder has been or is being Abused, that an Emergency exists, and that the Elder lacks the Decisional Capacity to consent to the provision of Protective Services, the Court may order the provision of Protective Services on an Emergency basis.
  2. The Court has the statutory authority to order only those services necessary to remove the conditions creating the Emergency and shall specifically delineate the authorized services in its order.
  3. The Protective Services Caseworker shall develop or revise and implement a service plan for the provision of one or more Protective Services in accordance with the Emergency order as soon as possible after an M.G.L. c. 19A, § 20(b) order is granted.
  4. The Elder, a Protective Services Agency, or the Department, may, for good cause shown, and, at any time, petition the Court to modify or set aside any order of the Court pursuant to M.G.L. c. 19A, § 20(b).
  5. Where funds are not available through appropriation from the Department to directly provide one or more Protective Services under M.G.L. c. 19A, § 20(b), a Protective Services Agency shall coordinate with and utilize existing social, health, mental health, legal and other resources, as available, to provide services under a service plan.
  6. A Protective Services Agency shall insure that the services are provided in the least intrusive manner and by persons already familiar with the Elder whenever possible.
  7. A copy of all Protective Orders issued by the Court shall be placed in the Protective Services case record.

5.18: Casework Practice and Case Record Documentation

- (1) Casework Practice.
  - (a) Throughout the provision of Protective Services Casework, the Protective Services Caseworker shall:
    1. Inform the Elder of his or her rights regarding consent, including consequences and choices in the acceptance or refusal of Protective Services;
    2. Clearly explain all available service and legal options to the Elder and assist the Elder in accessing the options that he or she has chosen;
    3. Involve the Elder to the greatest extent feasible in all aspects of service provision;
    4. Respect the wishes of the Elder to the greatest extent feasible, consistent with the Elder's Decisional Capacity to consent, in all aspects of service provision, and seek to provide the least restrictive, appropriate service alternatives;
    5. Maintain contact with the Elder consistent with the service needs and service plan of the Elder and at a minimum of one home visit or in-person interview per month;
    6. Continue to develop an ongoing objective assessment of the risk factors affecting the Elder;
    7. Make casework decisions with supervisory consultation.
  - (b) Designated Protective Services Agencies shall monitor the provision of Protective Services Casework through a minimum of weekly supervision of Protective Services Caseworkers.
- (2) Case Record Documentation. Written documentation describing the Protective Services Caseworker's actions, contacts, and findings shall be maintained in the Protective Services case record. Case record documentation shall be kept current to within five business days of contacts or actions. Case record documentation shall include, but not be limited to:
  - (a) Intake information regarding reports and collateral contacts in accordance with 651 CMR 5.08 and 5.09;
  - (b) Investigation information describing causes, incidences, nature, and extent of Abuse as well as information describing the social, physical, and Decisional Capacity of the Elder in accordance with 651 CMR 5.10;
  - (c) Statements and actions by which the Elder indicated his or her refusal to participate in the Protective Services Investigation in accordance with 651 CMR 5.11.



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- (d) Progress notes shall be added to the case file immediately following the decision to screen in the report and shall include, but not be limited to:
  - 1. All activity conducted during the Investigation.
  - 2. The name of the person contacted including their agency affiliation or family relationship.
  - 3. The date (and time when responding to Emergencies), type, location and purpose of contact.
  - 4. Documentation of facts to support casework decisions including options weighed, supervisory input, and rationales for decisions made.
  - 5. Actions taken on the client's behalf and projected time lines for proposed actions.
  - 6. Descriptions of activities of other persons and agencies providing services or assistance to the Elder.
  - 7. Progress notes should clearly identify the name of the Caseworker or supervisor writing the entry.
- (e) Supporting documentation such as reports, evaluations, and Investigations obtained from case managers, nurses, doctors, lawyers, psychotherapists, police officers, coroners, and other professionals;
- (f) Service plan(s) describing services recommended, provided or arranged in accordance with 651 CMR 5.13.
- (g) Consent for services describing services provided or arranged in accordance with 651 CMR 5.15 through 5.17. The way in which consent was provided or refused, if consent is other than written (*i.e.* verbal or an affirmative act), shall be documented in the progress notes. The unsigned consent form should refer to the progress note which documents the way in which consent was provided by the Elder. Continued efforts should be made to obtain written consent to services where appropriate.
- (h) Supervisory Review. Designated Protective Services Agencies shall monitor the overall provision and documentation of Protective Services through supervisory review of case records.
  - 1. When a Protective Services Caseworker submits a completed investigation for approval, a Protective Services Supervisor shall complete the approval process within five business days.
  - 2. When a Protective Services Caseworker submits a completed Service Plan or Service Plan reassessment for approval, a Protective Services Supervisor shall complete the approval process within five days.
  - 3. The Protective Services Supervisor shall document his or her review of the case record and approval of case actions in the progress notes.

5.19: Reporting to District Attorneys

- (1) If the Department or its Protective Services Agency has Reasonable Cause to Believe that an Elder has died as a result of Abuse, the death shall be reported immediately to the District Attorney of the County in which the Abuse occurred. Written notification on a form provided by the Department shall be forwarded to the District Attorney as soon as possible. A Protective Services Agency shall cease the activities of the Protective Services Investigation and base the determination of Reasonable Cause to Believe on information already obtained in order that no action be taken which could jeopardize the District Attorney's ability to investigate a possible homicide and pursue criminal prosecution, where appropriate.
- (2) If a Reportable Condition is substantiated and an Investigation results in a determination that the Elder has suffered a Reportable Condition(s) other than death, the Department or Protective Services Agency shall report such determination within 48 hours to the District Attorney of the County where the Abuse occurred for further investigation. Conditions Reportable to the District Attorney by a Protective Services Agency pursuant to M.G.L. c. 19A, §§ 16(b) and 18(a) shall include, but not be limited to, the following:
  - (a) Brain damage;
  - (b) Loss or substantial impairment of a bodily function or organ;
  - (c) Fracture of a bone;
  - (d) Any serious or intentional burns;
  - (e) Disfigurement;

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- (f) Sexual assault, rape, sexual misuse or sexual exploitation;
- (g) Serious Physical Injury as the result of a pattern of repetitive actions;
- (h) Soft tissue swelling, skin bruising or tears, depending on such factors as the Elder's physical condition, circumstances under which the injury occurred, and the number and location of bruises;
- (i) Significant, unexplained weight loss;
- (j) Symptoms resulting from the use of medications or chemical restraints or the withholding of life sustaining medications;
- (k) Any other non-trivial injury;
- (l) Pressure ulcers that pose a serious medical risk for the Elder;
- (m) Financial exploitation which involves possible criminal conduct, including but not limited to, the crimes of larceny by stealing, larceny by false pretenses, larceny from the person, larceny by embezzlement, larceny by check, forgery, uttering and extortion, and which possible criminal conduct substantially and seriously affects the financial situation of the Elder;
- (m) Threats of Abuse in which a Protective Services Agency has Reasonable Cause to Believe that an individual may have the intent and apparent ability to carry out the following:
  - 1. threat to kill the Elder;
  - 2. threat to physically harm the Elder as described in 651 CMR 5.19(2)(a) through (k).

(3) If an incident occurs in an open case, determination of Reportable Condition(s) to the District Attorney may be made during the provision of ongoing services.

(4) Release of Full Report/Personal Data. Neither the provisions of M.G.L. c. 66A regarding the confidential holding of Personal Data by the Department or Protective Services Agencies, M.G.L. c. 112, § 135 regarding social worker/client privilege nor the privacy and confidentiality requirements of M.G.L. c. 19A, § 23 shall prohibit the Department, or a Protective Services Agency, from making full reports to the District Attorney regarding information obtained from the intake, investigation, or service provision stages of a Protective Services case involving a Reportable Condition to the District Attorney or the death of an Elder resulting from Abuse. The identity of the reporter of Abuse shall be included in this report. Further Personal Data of Data Subjects including, but not limited to, the case record shall be released to the District Attorney upon request.

(5) A Protective Services Agency or the Department shall, after the filing of such report, attempt to schedule a meeting with the District Attorney's Office in order to discuss any future action to be taken in the case.

(6) Reports to District Attorneys/Criminal Matters.

- (a) Any documents provided to a District Attorney in accordance with these regulations, which are thereafter subpoenaed from the District Attorney or otherwise requested from the District Attorney by any party to any pending criminal matter, shall be released or not released by the District Attorney solely in accordance with the applicable rules or procedures governing the District Attorney, and no notice to or consent from the Department or Protective Services Agency shall be required. The District Attorney shall make his or her best efforts to preserve the confidentiality of Personal Data held in such case files in accordance with M.G.L. c. 66A, the Fair Information Practices Act (FIPA), especially regarding the confidentiality of the identity of the reporter of Abuse.
- (b) Any documents from the Department or Protective Services Agency files which are subpoenaed directly from the Department or a Protective Services Agency by any party to a criminal matter to which the Department or Protective Services Agency is not a party, shall be brought by the Department or Protective Services Agency before the trial court, at which time the Department or Protective Services Agency:
  - 1. shall make the judge aware of the provisions of M.G.L. c. 19A, § 23, M.G.L. c. 66A, § 2, and M.G.L. c. 112, § 135;
  - 2. may, pursuant to 651 CMR 5.20(6), move to quash such subpoena in whole or in part if, in its opinion, the production of documents in the record would not be in the best interests of the Abused Elder;
  - 3. shall seek a specific order from the judge as to the extent and manner of release by the Department or Protective Services Agency.



5.20: Privacy and Confidentiality Requirements

(1) Generally. All records containing Personal Data concerning an Elder for whom a report of alleged Abuse has been made under M.G.L. c. 19A, § 15 to the Department, the Elder Abuse Hotline, guardianship agencies, Protective Services Agencies or other agencies holding Personal Data shall not be public records and shall be governed by M.G.L. c. 66A, 801 CMR 3.00: *Privacy and Confidentiality* and 651 CMR 5.00.

(2) Agreement with Holder of Personal Data. The Department shall enter into an agreement with the provider of the Elder Abuse Hotline service, each guardianship agency, and each Protective Services Agency whereby each Agency agrees to act as a Holder of Personal Data and comply with the aforementioned regulations regarding the holding of Personal Data as a result of performing a governmental or public function or purpose.

(3) Separate Personal Data System. Each Holder of Personal Data under the Protective Services Program shall establish a Personal Data System separate and distinct from any other records of information it may hold in the usual course of business in compliance with the legal requirements identified in 651 CMR 5.20(1) regarding Personal Data.

(4) Access to Personal Data by Third Parties. Each Holder maintaining Personal Data shall not allow any agency or individual other than the employees of the Department or other Holder agency under the Protective Services Program to gain access to Personal Data unless such access is authorized by statute or regulations, or is authorized by the Data Subject whose Personal Data is sought except for the following:

Medical or psychiatric data may be made available to a physician treating a Data Subject upon the request of said physician, if a medical or psychiatric emergency arises which precludes the Data Subject's giving approval for the release of such data, but the Data Subject shall be given notice of such access upon termination of the emergency. The identity of the reporter shall be deleted prior to the release of any such information.

(5) Discretionary Release of Information. Subject to the limitations established in 651 CMR 5.08(2)(c)2., the Department may release or direct a Protective Services Agency to release any records, documents, data, information, or any portion thereof to a relevant government agency in furtherance of efforts to serve a compelling public interest to protect the health, safety, and welfare of Elders; for the purpose of conducting an effective Investigation; or for the purpose of providing effective Protective Services Casework, subject to the following limitations:

(a) The exercise of the Department's discretion shall be based upon a balancing of the respective interests of the public in the protection of the privacy of those who may be affected by the release of information, and the public interest in protecting vulnerable Elders within the Commonwealth.

(b) The discretionary release of information shall be limited to only that portion of the information necessary to satisfy the public interest underlying the release of the information:

(c) Personal Data of Data Subjects and of reporters of abuse that are contained in such records shall be redacted from the records when disclosure of such information is not required by the public interest underlying the discretionary release of such records; and

(d) Prior to the release of any such records containing Personal Data information pursuant to 651 CMR 5.20(5)(c), the general counsel of the Department or his or her designee shall review the records and remove any portion of the records which:

1. may be considered attorney work product or privileged; and
2. may be personally identifying or confidential information regarding any third party data subject and the individual who reported the abuse to the Protective Services Program.

(6) Response to Requests for and/or Production of Documents in Criminal Cases. Any party to a criminal action who seeks testimony and/or production of documents other than those documents previously released by the Department or a Protective Services Agency to the District Attorney pursuant to 651 CMR 5.19(3) shall do so by subpoena. Upon receipt of the subpoena, and prior to the date set therein for appearance or production of documents in Court, the employee of the Department or Protective Services Agency subject to such subpoena shall consult with his or her supervisor and legal counsel.

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The Department or Protective Services Agency may, in its discretion, move to quash such subpoena, in whole or in part if, in its opinion the testimony and/or production of documents would not be in the best interests of the Elder. If such testimony and/or production of documents is provided, it shall not include the identity of the reporter of Abuse under M.G.L. c. 19A, § 15.

651 CMR 5.19(6) shall apply to cases in which the above mentioned testimony and/or production of documents has been sought as a result of a report to the District Attorney pursuant to M.G.L. c. 19A, § 15(b) or 18(a) or in other criminal cases.

(7) The Department and any designated Protective Services Agency shall, in addition to 651 CMR 5.20, comply with 801 CMR 3.00: *Privacy and Confidentiality*.

(8) Defense to Civil or Criminal Action. No person providing notification or information to a District Attorney or testimony in Court pursuant to M.G.L. c. 19A, § 23 shall be liable in any civil or criminal act by reason of such action.

(9) Testimony Involving Release of Personal Data Allowed in Certain Matters. No provision of M.G.L. c. 66A regarding the confidential holding of Personal Data by the Department or Protective Services Agencies, or any other provision of law relating to confidential data or confidential communications shall prohibit the Department, by its appropriate employees, or any Protective Services Agency, by its appropriate employees from testifying in any of the following types of judicial proceedings involving the client where the employee has acquired the information which is the subject of his or her testimony while conducting an Investigation or providing Protective Services in accordance with M.G.L. c. 19A, § 18:

- (a) A petition for a Protective Order through the Court, or for the appointment of a Guardian or Conservator under M.G.L. c. 19A, § 20(a);
- (b) A petition seeking an Order for Emergency Protective Services under M.G.L. c. 19A, § 20(b);
- (c) A petition seeking the appointment, discharge, or other order regarding a Guardian, Conservator, or guardian *ad litem* under M.G.L. c. 190B;
- (d) A complaint requesting protection from abuse filed under M.G.L. c. 209A, § 3, or any subsequent Court hearing involving such complaint.

Any party other than the Department, to a legal action set forth in 651 CMR 5.20(9)(a) through (c), or (d), who seeks testimony and/or the production of documents from the Department or any Protective Services Agency in accordance with this section shall do so by subpoena, except as allowed in 651 CMR 5.20(10).

The Department, or a Protective Services Agency may, in its discretion, move to quash such subpoena seeking such testimony or the release of such documents if, in its opinion such testimony or production of documents would be contrary to the best interests of the Abused Elder(s) in question. If such testimony, or the production of documents is provided, it shall not include the identity of the reporter of Abuse under M.G.L. c. 19A, § 15.

(10) Testimony or Release of Personal Data in Other Civil Matters. Whenever any Department or Protective Services Agency documents including that in the form of testimony are sought by compulsory legal process in any civil process other than those set forth in 651 CMR 5.20(9), the Department or Protective Services employee shall consult with his or her supervisor and legal counsel as soon as possible following receipt of such subpoena or other compulsory process. The Department or Protective Services Agency shall not release such documents until the Department or Protective Services Agency has notified each Data Subject identified in the documents so that he or she may take responsive action if so desired. Such efforts at notification may be oral or written, including oral notice by telephone. Such efforts at notification shall be documented.

The Department or Protective Services Agency may, in its discretion, move to quash such subpoena, in whole or in part if, in its opinion the testimony and/or production of documents would not be in the best interests of the Elder. If such testimony and/or production of documents is provided, it shall not include the identity of the reporter of Abuse under M.G.L. c. 19A, § 15.

## 5.20: continued

(11) Access to Confidential Records During Court Proceedings.

(a) In all proceedings brought under M.G.L. c. 19A, §§ 20(a) and 20(b) or c. 190B in which the Department or Protective Services Agency is a party, or holds a Protective Services case record on the Elder who is the subject of the petition, a copy of the entire Protective Services case record excluding the identity of the reporter and including the pertinent M.G.L. c. 19A, § 15(a), 15(b) or 15(c) reports, may be made available on request to any of the following:

1. A Court appointed guardian *ad litem*;
2. An officer of the Court assigned by the judge;
3. An attorney for the Department, Protective Services Agency or Elder; or
4. An attorney for the petitioner seeking: appointment as a fiduciary, or seeking an order under M.G.L. c. 19A, § 20(a); an order under M.G.L. 19A, § 20(b); guardianship or conservatorship of the Abused Elder under M.G.L. c. 190B, except where there is Reasonable Cause to Believe that said petitioner is responsible for a Reportable Condition to the Elder who is the subject of the petition, or where the Designated Protective Services Agency is engaged in determining whether or not there is Reasonable Cause to Believe that said petitioner is responsible for such Reportable Condition.

(b) The written request shall contain a statement from the requesting party that any material disclosed shall not be further duplicated nor divulged to any person not a party to the particular proceeding, unless by order of the Court. Reasonable fees for copying records shall be charged.

(c) Whenever the Department or a Protective Services Agency has reason to believe that disclosure to any individual named above of all or a portion of the Protective Services case record would be contrary to the Elder's best interest, the Department or Protective Services Agency shall bring to the Court's attention the reason(s) for denying access.

(12) Expungement of Reports and Investigations. The Department and Protective Services Agencies shall expunge all Personal Data within its control regarding a Data Subject where a report of alleged Abuse cannot be substantiated. The Holder shall, within three years of such determination:

- (a) Destroy said report and any other records containing Personal Data created because of the receipt of said report; or
- (b) Physically remove therefrom all personal identifiers; provided however, that the agency holding Personal Data obligated to investigate may create and hold whatever statistical records it needs for purposes of planning and reporting.

(13) Protective Services Case Records which have been closed and not reopened shall be retained by a Protective Services Agency for a period of seven years after which time the case records may be destroyed by a Protective Services Agency.

5.21: Non-discrimination in Service Delivery

Neither a Protective Services Agency nor its sub-contractors or sub-grantees shall deny services to or otherwise discriminate in the delivery of services to any person who otherwise meets the eligibility criteria for the Protective Services Program, on the basis of race, color, religion, sex, age, sexual orientation, national origin, ancestry, physical or mental handicap or because such a person is a recipient of federal, state, or local public assistance or housing subsidies. A Protective Services Agency shall comply with all applicable provisions of:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*);
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations promulgated thereunder, (45 CFR 85);
- (3) M.G.L. c. 151B, § 4(10); and
- (4) The Americans with Disabilities Act of 1990 (P.L. 101-366).

**5.22: Non-discrimination in Employment**

Neither a Protective Services Agency nor its sub-contractors and/or sub-grantees shall discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sexual orientation, sex, religion or physical or mental handicap. A Protective Services Agency, its sub-contractors and/or sub-grantees shall comply with the applicable provisions of the following:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);
- (2) M.G.L. c. 151B, § 4(1);
- (3) The Department's policies regarding Discrimination Based on Age in Agencies and Organizations in Receipt of Funds from the Department of Elder Affairs (EOEA PI-96-34);
- (4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations promulgated pursuant thereto (45 CFR 85); and
- (5) The Americans with Disabilities Act of 1990 (P.L. 101-366).

**5.23: Subjects of Research Projects**

A Protective Services Agency and its subcontractors and sub-grantees shall comply with the applicable provisions of the Department of Elder Affairs policies regarding Protection of Clients Who Are Participants in Research Projects (EOEA PI-96-33, *e.g.* Elder Rights Review Committee).

**5.24: Affirmative Action**

A Protective Services Agency shall maintain and adhere to an Affirmative Action Plan consistent with the requirements applicable to the Executive Offices of the Commonwealth of Massachusetts.

**5.25: Waivers**

- (1) **Waiver-request by Secretary.** The Secretary of the Department, or his or her designee, may, in his or her discretion, waive one or more of the requirements of 651 CMR 5.00, for good cause shown, and if such a waiver would not violate any applicable federal or state law or regulation. Such a waiver shall clearly identify that section of the Protective Services Program regulations to be waived; the conditions that have made such a waiver necessary; the steps that have been taken to insure that future waivers will not be necessary; the consequences to the Protective Services Program or Elders of not granting the waiver request.
- (2) **Other Waivers.** All other requests for waivers shall be made in writing to the Secretary by the President of the Board of Directors or Chief Executive Officer of the organization making such a request and shall set forth the information required in the second sentence of 651 CMR 5.25(1).

**5.26: Annual Report**

The Department shall report annually on its activities and the activities of designated agencies providing Protective Services to Elders under the Protective Services Program. Such report shall be submitted to the Governor, the General Court and the public no later than 120 days following the end of each fiscal year. The contents of such report shall include, but not be limited to:

- (1) Statistical information about the number and types of reports received during the prior fiscal year;
- (2) Aggregate information indicating the results of the Investigations conducted by Protective Service Agencies;

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- (3) Information on the types and costs of services provided under the authority of 651 CMR 5.00 during the prior fiscal year.

REGULATORY AUTHORITY

651 CMR 5.00: M.G.L. c. 19A, §§ 6, 16(d), 16(e), 18(a), 22 and 25.