

102 CMR 1.01

1.01: Introduction

102 CMR 1.00 is adopted in accordance with M.G.L. c. 28A which stresses the commitment of state government to assure every child a fair and full opportunity to reach his or her full potential. 102 CMR 1.00 includes definitions and requirements that apply to all programs that the Office licenses or approves and delineate the Office's authority to take legal action as a result of a program or facility's non-compliance with the appropriate regulations.

102 CMR 1.02

1.02: Definitions

As used in 102 CMR 1.00, 3.00, 5.00, 7.00 and 8.00, the following words shall have the following meanings unless specifically defined therein or unless the context otherwise requires:

Abuse. The non-accidental commission of any act upon a child which causes or creates a substantial risk of serious physical or emotional injury or constitutes a sexual offense under the laws of the Commonwealth.

Applicant. The individual who has been designated as the person responsible for the administration of the program or facility and is the duly authorized agent of the person applying for licensure or approval.

Approval. A certification in writing, whether regular or provisional, issued by the Office to a department, agency, or institution of the Commonwealth or any political subdivision thereof which authorizes it to operate any program licensable by the Office of Child Care Services.

Commissioner. The Commissioner of the Office of Child Care Services.

Day. Calendar day unless otherwise specified.

Disability. With respect to an individual, disability means a permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of having such an impairment; or being regarded as having such an impairment.

License. Any certification in writing, whether regular or provisional, issued by the Office to any person other than a department, agency, or institution of the Commonwealth or any political subdivision thereof, which authorizes such person to operate any program licensable by the Office for Children.

Licensee. Any person holding a license or approval issued by the Office.

Mass Regulations Title 102 Chapter 1

Neglect. The failure, either deliberately or through negligence or inability, to adequately care for, protect, or supervise children.

Office. The Office of Child Care Services.

Parent. Father or mother, guardian, or person or agency legally authorized to act on behalf of the child in place of, or in conjunction with, the father, mother, or guardian.

Person. Any individual, partnership, corporation, association, organization or trust, or any department, agency or institution of the federal government or of the Commonwealth or any political subdivision thereof.

51A Report. A report filed with the Department of Social Services pursuant to M.G.L. c. 119, § 51A alleging that a child may have been abused or neglected.

51B Report. A report of an investigation of a 51A complaint conducted by the Department of Social Services pursuant to M.G.L. c. 119, § 51B. A 51B report that is supported means that there is reasonable cause to believe that a child has been abused or neglected by a caretaker.

102 CMR 1.03

1.03: Licensure

(1) Non-Discrimination. The licensee shall not discriminate in providing services to children and their families on the basis of race, religion, cultural heritage, political beliefs, national origin, marital status, sexual orientation or disability. A statement that the program does not discriminate on these bases shall be made part of the written statement of purpose where required.

(2) Licensure or Approval Required. No person shall operate or purport to operate a program licensable by the Office of Child Care Services without a license or approval issued by the Office.

(3) Application. Any person who wishes to establish and maintain a program or facility shall file a written application with the Office in a manner, and on forms, provided by the Office.

(4) Renewal. Any person seeking to renew a license or approval shall file a written application for such renewal with the Office in a manner, and on forms, provided by the Office not less than 30 days prior to the date of expiration of his/her current license or approval. If a renewal application has been filed, a license or approval, or provisional license or approval, shall remain in effect until a determination is made by the Office on the status of the license.

Mass Regulations Title 102 Chapter 1

(5) Application Fee. The application, where applicable, shall be accompanied by a check made payable to the Commonwealth of Massachusetts. A fee schedule may be obtained from the Office.

(6) Availability of Regulations. The licensee shall have a copy of the regulations applicable to any license issued by the Office on the premises of the program and shall make it available to any person upon request.

(7) Transfer of License. A license or approval shall not be transferable from one licensee to another; from one program or facility to another; or from one owner to another.

(8) Posting of License. The provider shall post conspicuously any license issued by the Office.

102 CMR 1.04

1.04: Effective Dates and Severance

(1) Effective Date. The effective date of 102 CMR 1.00 through 8.00 *et seq.* is May 1, 1997.

(2) Licenses Issued Under Previous Standards. Any license, or approval, in effect immediately prior to the effective date of 102 CMR 1.00 through 8.00 *et seq.* shall remain in effect, unless suspended or revoked, until a new license or approval is issued or expressly refused under 102 CMR 1.00 through 8.00 *et seq.*

(3) Severance. If any provision contained in 102 CMR 1.00 through 8.00 *et seq.* or the application thereof to any person or circumstances is held invalid, the remainder 102 CMR 1.00 through 8.00 *et seq.* and the application of provisions in question to other persons not similarly situated, or to other circumstances, shall not be affected thereby.

102 CMR 1.05

1.05: Disqualifying Background Information

(1) Applicants and Family Day Care. Any applicant, licensee, provider, family day care approved assistant, family day care household member, and any person regularly on the premises when family day care children are present shall have a background free of conduct which, in the judgment of the Office, bears adversely upon applicant's or licensee's ability to care for children.

Mass Regulations Title 102 Chapter 1

(a) Such conduct shall include, but not be limited to the following:

1. criminal charges or a criminal conviction included in a CORI (Criminal Offender Record Information) report as a result of behavior that, pursuant to written policy, OCCS has determined to impair the applicant's or licensee's ability to care for children;
2. engaging in, or having engaged in, any other conduct, criminal or otherwise, determined by the Office to impair the applicant's or licensee's ability to care for children;
3. engaging in, or having engaged in conduct which results in his/her child being adjudicated to be in need of care and protection;
4. allegations of abuse or neglect of a child, supported in a 51B report;
5. use of alcohol or drugs to an extent or in a manner that is determined by the Office to impair the applicant's or licensee's ability to care for children properly.

(b) An applicant shall not qualify to receive, retain, or have renewed a license if the background of the applicant, household member, or person who is regularly on the premises is not free from conduct which adversely bears on the provider's ability to care for children.

(c) Failure to disclose relevant criminal history may result in mandatory disqualification even if such crimes do not fall under the "Mandatory Disqualification" section of the OCCS CORI Policy.

(d) A family day care home shall not have any household member or persons who are regularly on the premises whose presence would, in the judgment of the Office, be detrimental to the health and welfare of day care children, or would impede or prevent the provision of adequate day care in the home.

(2) Employees of Group Day Care, School Age, Residential Programs and Agencies Offering Child Placement and Adoption Services.

(a) Each person employed by the licensee, who has the potential for unsupervised contact with children, shall have a background free of conduct which bears adversely upon his or her ability to provide for the safety and well-being of a child. The licensee shall determine, in accordance with OCCS policy, whether an employee's or potential employee's conduct, criminal or otherwise, shall disqualify that person from employment in the program. In making this determination the licensee shall consider the following:

Mass Regulations Title 102 Chapter 1

1. Engaging in, or having engaged in conduct which results in his/her child being adjudicated to be in need of care and protection.
2. Use of alcohol or drugs to an extent or in a manner that is determined by the licensee to impair his/her ability to care for children properly.
3. Having engaged in conduct which results in criminal charges or a criminal conviction included in a CORI (Criminal Offender Record Information) report.
4. Engaging in, or having engaged in, any other conduct, criminal or otherwise, determined by the licensee, to impair the employee's ability to care for children.

(b) Each licensee shall ensure that employees shall not have the potential for unsupervised contact with children until the licensee determines that the requirements of 102 CMR 1.05(2)(a) are met.

102 CMR 1.06

1.06: Right to Visit

(1) Visits to Determine Compliance.

(a) Any employee of the Office, may, at any reasonable time, visit and inspect any facility or program operated by a person who is subject to licensure or approval by the Office in order to determine whether such facility or program is being operated in compliance with the law and with any OCCS regulations governing such programs.

(b) Any employee of the Office authorized by the Commissioner may make oral and written inquiries to determine whether a program or facility is being operated in compliance with designated regulations.

(2) Complaint Investigations.

(a) An employee of the Office, authorized by the Commissioner may visit and inspect any facility or program upon receipt of a complaint and allegations regarding compliance with any OCCS regulations governing such programs.

Mass Regulations Title 102 Chapter 1

(b) Such visits will be conducted at any reasonable time in order to determine whether any child is in jeopardy and/or whether such facility or program is being operated in accordance with any OCCS regulations governing such programs.

(c) A person duly authorized by the Director may be accompanied by an employee of any department, agency or institution of the Commonwealth during the Office's investigation process if the Office and said department, agency or institution of the Commonwealth have agreed to conduct a joint investigation.

(3) Availability of Information. The applicant or licensee shall make available any information requested by the Office to determine compliance with any Office regulations governing such programs, by providing access to his/her facilities, records, staff and references. The provider, approved assistant, household members, and other persons who are regularly on the premises, and any staff members shall provide the Office with all information required in any Office regulations governing such programs.

(4) Visit Reports. Whenever the Office finds upon inspection or through information in its possession that a program or facility is not in compliance with any applicable licensing provisions of 102 CMR, the Office shall inform the licensee in a written visit report of the observations made and the regulation(s) which the licensee has violated, and may request a plan for compliance from the licensee to be submitted within a reasonable time as determined by the Office, but in no case longer than 30 days.

102 CMR 1.07

1.07: Enforcement and Compliance with Regulations

(1) Deficiency Correction Orders.

(a) Whenever the Office finds upon inspection or through information in its possession that a program or facility is not in compliance with the regulations, the Office may order the licensee to correct any non-compliances as specified in a deficiency correction order.

(b) The deficiency correction order shall include a statement of observations and indicate which regulation(s) the licensee has violated. The order may prescribe the method(s) of compliance with the regulations; and, the order shall prescribe the time period(s) for correction, which shall be reasonable, depending on the nature of the non-compliances cited and the time required for corrections.

(2) Factors which shall be considered by the Office before imposing any sanction or fine or any action authorized under 102 CMR 1.07(4) include but are not limited to:

(a) any non-compliance at the facility or program;

Mass Regulations Title 102 Chapter 1

- (b) the risk the non-compliances present to the health, safety, and welfare of children;
- (c) the nature, scope, severity, degree, number, and frequency of the non-compliances;
- (d) the licensee's failure to correct the non-compliances;
- (e) any previous non-compliances; and
- (f) any previous enforcement action(s).

(3) Sanctions and Fines

(a) Whenever the Office finds upon inspection or through information in its possession that a person operating a program or facility is not in compliance with any OCCS regulations governing such program, the Office may, in a notice of sanction, impose one or more sanctions which may include but need not be limited to:

1. ceasing the enrollment of new children;
2. reducing the number of children a program or component of a program is licensed to serve;
3. hiring of a consultant(s) to provide technical assistance and/or training;
4. hiring of additional staff on a temporary or permanent basis; requiring the licensee to fund a monitor selected by and accountable to the Office;
5. restricting an administrator's and/or staff person's access to children;
6. requiring that an agency withdraw its approval of an adoptive, foster or shelter home.

Mass Regulations Title 102 Chapter 1

(b) Fines. The Office may levy a civil fine if it finds that an applicant or licensee has failed to comply with any plan for compliance or deficiency correction order issued by the Office provided that the plan or order included a statement notifying the licensee that failure to comply with all or part of the order may result in a civil fine levied in accordance with any OCCS regulations governing such programs.

1. Fines shall range from \$50 to \$250 for family day care, group day care, or school age child care programs; \$50 to \$1000 for any other program regulated by the OCCS.

2. Failure to comply with more than one order issued by the Office may result in the assessment of more than one fine.

(4) Probation, Suspension, Revocation, and Refusal to Issue or Renew Licenses and Approvals.

(a) Grounds. The Office may make probationary, suspend, refuse to renew, revoke, or refuse to issue a license or approval if it finds any of the following:

1. the applicant or licensee failed to comply with any applicable regulation, or any deficiency correction order, notice of sanction, suspension, agreement or terms of probation;

2. the applicant or licensee failed to pay a fine after either failing to appeal the assessment of a fine within the prescribed time or after a hearing where assessment of a fine was upheld;

3. the applicant or licensee submitted any misleading or false statement or report required under 102 CMR 1.00 through 8.00 *et seq.*;

4. the applicant or licensee refused to submit any report or make available any records required under 102 CMR 1.00 through 8.00 *et seq.*;

5. the applicant or licensee refused to admit, at a reasonable time, any employee of the Office authorized by the Commissioner to investigate or inspect, in accordance with 102 CMR 1.00; or

6. the applicant or licensee failed to obtain a license prior to opening a program or facility or prior to changing the location of a program or facility.

(b) Effect.

Mass Regulations Title 102 Chapter 1

1. Upon revocation, refusal to renew, or suspension the licensee shall immediately return the license or approval to the Office and cease providing services.

2. An applicant or licensee shall not qualify for a license or approval from the Office for five years after a final agency decision to revoke or refuse to issue or renew a license or approval held by the applicant or licensee pursuant to M.G.L. c. 28A or other similar licensing law. Thereafter, an applicant or licensee shall be eligible only if he/she can demonstrate a significant change in circumstances.

3. The Office may, at its sole discretion, entertain an application for approval or licensure prior to the expiration of five years, if it determines that a significant change in circumstances has occurred. Such exercise of its discretion shall not be appealable.

(5) Suspension in An Emergency.

(a) The Office may suspend any license or approval without a prior hearing if failure of the licensee to comply with any applicable regulation results in an emergency situation which endangers the life, health, or safety of children or staff present in the program or facility. The licensee shall be notified of any such suspension of a license or approval by written notice, hand delivered, or mailed to the licensee via first class mail, certified or registered, return receipt requested, or delivered by courier requiring a signed receipt. If a Notice of Claim for a hearing is delivered in hand or mailed to the Office via first class mail, certified or registered, return receipt requested, within five business days of the licensee's receipt of such notice, a hearing shall be held within ten business days of the receipt of such Notice of claim. The suspension shall remain in effect pending such a hearing.

(b) The sole issue at the hearing shall be whether the Office has reasonable cause to believe that the licensee's failure to comply with any applicable regulation resulted in an emergency situation which endangers the life, health, or safety of children or staff present in the program or facility. If a 51B report indicates that any abuse or neglect occurred in a family day care program or during participation in a family day care program related activity, it shall be *prima facie* evidence that an emergency exists.

(c) The licensee shall notify the parents or guardians of all children enrolled in the program or facility and all funding agencies of any such suspension of a license or approval within two business days of receipt of notice from the Office.

(d) Upon suspension, the licensee shall immediately return the license or approval to the Office and cease providing services.

(6) Follow-up to Enforcement Action.

Mass Regulations Title 102 Chapter 1

(a) Upon the expiration of the time frame(s) prescribed in a plan for compliance, deficiency correction order, or notice of sanction, a duly authorized employee of the Office will determine compliance with such plan, order, or notice, by visiting the facility or program, reviewing documents, and/or verifying compliance through whatever other means the Office deems suitable.

(b) If a determination of non-compliance with such plan, order, or notice is made, the Office may request an additional plan, issue an additional deficiency correction order or notice of sanction; or, in addition to any of the actions listed above, levy a civil fine pursuant to 102 CMR 1.00; or make probationary, revoke, suspend, refuse to issue, or refuse to renew a license or approval.

(c) 102 CMR 1.00 in no way limits the Office's authority to visit any facility or program subject to licensure or approval by the Office to determine compliance with any regulation, nor does 102 CMR 1.00 limit the Office's authority to make probationary, suspend, revoke, or refuse to issue a license or approval.

(d) Following revocation, refusal to renew or suspension, a duly authorized employee of the Office will determine compliance by visiting the facility or program, reviewing documents, and/or verifying compliance through whatever other means the Office deems suitable.

102 CMR 1.08

1.08: Rights to Appeal

(1) Request for Administrative Reconsideration.

(a) Within seven days of receipt of a deficiency correction order or notice of a sanction, the licensee may file with the General Counsel a written request for administrative reconsideration. The request shall be limited to direct and specific reasons why the notice of sanction or any item in the deficiency correction order or any portion thereof should be rescinded or modified, and the approximate time(s) requested by the licensee to take corrective measures if any.

(b) Within 15 business days after receipt of a request for reconsideration, the General Counsel shall grant, deny, or otherwise act on such request.

(c) Filing a request for administrative reconsideration shall not alter the time required for compliance with the notice of sanction or deficiency correction order.

(2) Request for a Formal Hearing.

Mass Regulations Title 102 Chapter 1

(a) An applicant whose application for a license or approval the Office intends to deny, or a licensee whose approval or license the Office intends to make probationary, revoke, suspend, or refuse to renew, or whom the Office intends to fine, may request a hearing held pursuant to the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 *et seq.* by filing a Notice of Claim for a hearing and an answer within 21 days of receipt of the Office's notice.

(b) The hearing officer shall enter a recommended decision. A final agency decision shall be issued by the Commissioner or his/her designee. Hearings shall be in accordance with the provisions of 801 CMR 1.01 *et seq.* Failure to request a hearing and file timely answers may be deemed a waiver of such right and a final agency decision may enter without further notice.

(3) Evidence at Hearings.

(a) A 51A or 51B report shall be admissible as evidence if it indicates that a child was abused or neglected:

1. by a licensee;
2. by a family day care provider, approved assistant, household member, or person regularly on the premises of the family day care home; or
3. by any staff member of a licensed facility or program; or
4. by any person regularly on the premises of a licensed facility or program; or
5. while in the care of a licensed facility or program.

(b) At any hearing involving abuse or neglect at a licensed facility or program, no child shall be required to testify. If necessary, caseworkers, parents or other adults who have talked to the child allegedly abused or neglected may testify in place of the child, and videotaped interviews with the child may be introduced. Such testimony shall be admissible at the hearing and a case based solely on such evidence shall not be subject to dismissal on the grounds that it relies in whole or in part on hearsay.

102 CMR 1.09

1.09: Notifications

Mass Regulations Title 102 Chapter 1

(1) Notification by the Office.

(a) The Office shall inform state funding agencies, or any other agency specified by the Office, of the Office's intent to impose a sanction upon a licensee or to revoke, suspend, make probationary, or refuse to renew a license or approval and shall notify them in writing of any deficiency correction order, sanction, probationary status, suspension, revocation, or refusal to renew.

(b) When corrective action has been completed, or if a suspended license or approval is restored, state funding agencies, or any other agency specified by the Office, shall be informed.

(2) Notification by the Licensee.

(a) Every licensee shall post in a conspicuous place any current license or approval issued by the Office and any notice of hearing, notice of sanction, order, or decision issued by the Office that pertains to the program or facility. Such posting shall be in an area easily viewed by visitors and employees.

(b) The Office may require that written notice of any deficiency correction order, sanction, probationary status, suspension, revocation or refusal to renew be sent by the licensee to funding agencies, referral sources, and when appropriate, parents and any other agency specified by the Office. The Office may specify the content of such notice.

(c) The Office may require the licensee to obtain a signed acknowledgement of receipt of such notice on a form specified by the Office.

(d) The Office may require the names, addresses, and telephone numbers of the parents of all children enrolled at the time of the regulatory action and during the previous five years.

(e) In Family Day Care cases, the Office may require the names of all providers for whom an approved assistant has worked.

102 CMR 3.01

3.01: Introduction

102 CMR 3.00 is adopted in accordance with M.G.L. c. 28A, particularly §§ 9 through 13, which states the policy of state government to assure every child "a fair and full opportunity to reach his/her full potential." In order to fulfill its mandate as the agency responsible for licensing residential programs, the Office has developed specific standards for

Mass Regulations Title 102 Chapter 1

residential programs to provide this opportunity to the residents they serve.

The nature and scope of 102 CMR 3.00 are based on the belief that every aspect of a program's operation affects the residents in its care. The philosophy, administrative policies, staff, physical facility and clinical, recreational, and educational services all contribute to a resident's everyday living environment, and should maintain a level of quality that promotes healthy development. While acknowledging the variety of residential program types, including group care, temporary shelter, secure detention, transition to independent living, and programs serving teen parents, 102 CMR 3.00 identifies, to the fullest extent possible, the standards and practices necessary to fulfilling the following general goals:

(a) to provide a program that is administratively and fiscally sound with clearly conceived policies and practices for the services provided to residents.

(b) to provide residents with services, which on a short-term basis meet their immediate and emergency needs, and which allow for resolution of the immediate problems or the development of long-term plans;

(c) to meet each resident's needs relating to health, nutrition, individuality and interaction with peers and adults, before it can begin to satisfy the resident's more complex needs;

(d) to meet each resident's need for space, comfort, privacy and community while protecting residents from fire, health, and accident hazards.

(e) to provide each resident with the least intrusive intervention sufficient to insure her/his safety, the safety of others, and promote healthy growth and development;

(f) to provide residents with services and an environment which, on a long-term basis, meet the special needs their families are unable to fulfill.

102 CMR 3.02

3.02: Definitions

(1) General Definitions. As used in 102 CMR 3.00, the following words shall have the following meanings unless the context otherwise requires:

Child. Any person under the age of 18 for part or all of a calendar year.

Mass Regulations Title 102 Chapter 1

Child with Special Needs. A child who, because of a disability consisting of a developmental delay or an intellectual, sensory, neurological, emotional, communication, physical, specific learning or health impairment or combination thereof, is or would be unable to progress effectively in a regular school program. This may include, but not be limited to, a school age child with special needs as determined by an evaluation conducted pursuant to M.G.L. c. 71B, § 3, and as defined by the Department of Education in 603 CMR 28.00.

Group Care Program. A program or facility that provides care and custody for one or more children by anyone other than a relative by blood, marriage or adoption on a regular 24-hour a day, residential basis. Group care program includes but is not limited to programs serving teen parents under the age of 16 years; transition to independent living programs; private residential schools that provide special services to children with special needs in which children with special needs constitute 30% or more of the school's population; and group residences or group homes. Group care program does not include family foster care; a recreational or summer camp; a hospital, ward or comprehensive center, including an intensive residential treatment program, licensed under M.G.L. c. 19, § 19 or c. 19B, § 15; a hospital, ward or comprehensive center operated by the Commonwealth; a hospital, institution for unwed mothers, convalescent or nursing home, rest home or infirmary or any program licensed under M.G.L. c. 111; any program licensed under M.G.L. c. 111E, § 5 and 7 unless the program admits children other than drug dependent children or dependency drug using children; or private residential schools except those providing special services to children with special needs as defined above.

Office. The Office of Child Care Services.

Placement Agency. A department, agency or institution of the Commonwealth, or any political subdivision thereof, or any organization incorporated under M.G.L. c. 180, one of whose principal purposes is providing custodial care and social services to children, which receives by agreement with a parent or guardian, by contract with a state agency or as a result of referral by a court of competent jurisdiction, any child, for placement in family foster care, a residential program or for adoption.

Referral Source. A parent, guardian, Massachusetts or out-of-state public or private agency responsible for the placement and/or funding of the placement of a child.

Resident. A child or other person in the care or custody of a group care, temporary shelter, transition to independent living or transitional housing program serving teen parents.

Residential Program. A group care, temporary shelter, or transition to independent living program, or a transitional housing program serving teen parents.

Secure Detention. A program for children in the custody of or detained by the Department of Youth Services, who are awaiting court appearance or long-term placement, which requires restrictive features including locked doors and windows and a high staff-child ratio to insure security.

Mass Regulations Title 102 Chapter 1

Shelter Home. A private residential home which has been approved by a temporary shelter agency to provide temporary shelter care to four or fewer children. In order to place sibling groups together in an emergency situation, this definition shall not prohibit the placement of more than four children in a home which, prior to the placement of the sibling group, contained fewer than four children.

Special Services. Any special services provided to children with special needs by a private residential school that are special education services similar to those referred to at 603 CMR 18.05(3)(a) and (b); or social, psychological or psychiatric services; or occupational or physical therapy; or speech or language therapy; or vocational rehabilitation skills; or regular nursing or medical care provided on site; or self-help skills or activities of daily living training.

Teen Parent. A lawful father or mother or pregnant adolescent who is at least 13 years of age but not yet 20 years of age.

Temporary Shelter. Care and services (as appropriate to the needs of the child) provided to a child on a regular 24 hour a day basis for a period not to exceed 45 days or in the case of placement in a secure detention facility, not to exceed 90 days. Temporary shelter shall include both temporary shelter facility and shelter home.

Temporary Shelter Program. Any facility which operates to receive children under 18 years of age for temporary shelter care during the day or night when such children request shelter therein, or when such children are placed there by a placement agency, a parent, a law enforcement

agency, or a court with authority to make such placement. Temporary shelter facility shall not mean family foster care or a group care facility, a police station or a town lockup.

Transition to Independent Living Program. Any residential program designed to serve adolescents and young adults for whom the service plan and/or treatment goal is independent living. Transition to independent living program shall not include unstaffed independent living programs where residents live in self contained units.

Transitional Housing Program Serving Teen Parents. A facility or program for parents who are at least 16 years of age in which the parents reside in a structured setting that includes educational, psychological and medical services, including counseling and basic life skills toward living independently. The facility or program shall require the parents to reside with their children.

(2) Definitions Pertaining to Restraint. As used in 102 CMR 3.00, the following words shall have the following meanings when used in the context of a restraint:

De-escalation. Strategies used to defuse a volatile situation, to assist a resident to regain behavioral control and to

Mass Regulations Title 102 Chapter 1

avoid physical intervention.

Monitoring. Observation of the physical, verbal and behavioral responses of a resident for signs of distress while being restrained.

Physical Escort. Touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing an acting out resident to walk to a safe location. A physical escort is not a physical restraint.

Physical Restraint. A behavior management technique involving the use of physical holding as a means of restricting a resident's freedom of movement. Physical restraint includes holding a resident in a standing, seated or horizontal position.

Physical Take Down. The act of bringing a resident who is being restrained to a sitting or horizontal position.

Processing. Verbal interactions between staff and a resident who has been restrained, designed to assist the resident in reviewing the behavioral incident and the restraint, with the goal of minimizing the need for future restraint.

Release. Ending the restraint hold on a resident.

Restraint. The use of any physical, mechanical or chemical means to temporarily control behavior.

Restraint Coordinator. Licensee staff member responsible for oversight of all matters related to restraint, including oversight and documentation of training, ensuring that restraints are only employed when necessary, and that the restraint method taught is being used correctly, data collection, analysis and reporting, and review, with the restraint safety committee of restraint data and staff and resident safety information.

Restraint Follow-up. Review by program management of each restraint with involved staff as part of a feedback and quality assurance process.

102 CMR 3.03

3.03: Licensure

(1) Licensure. A person may submit an application for provisional licensure to operate a program which he or she has not previously operated, or may submit an application to renew a license. The Office must determine that the care to

Mass Regulations Title 102 Chapter 1

be given in the program will protect the health and safety of the residents. The applicant shall have a background which in the judgment of the Office is free of conduct which bears adversely on the applicant's ability to provide for the safety and well being of children.

(a) All applications must be accompanied by the following documents, which shall be reviewed by the Office for completeness and compliance with 102 CMR 3.00 *et seq.*:

1. a statement of purpose as required by 102 CMR 3.04(1);
2. a statement of the ownership of the program, including the names and addresses of all owners, or, in the case of corporations, the officers as required by 102 CMR 3.04(2)(a)2;
3. a projected one year operating budget, and documentation of sufficient funds for at least three months. For an operating agency, a current financial report, appropriate fiscal portions of contracts if any, and a statement of the current rate of payment as set by the Commonwealth, if applicable;
4. a description of the intended staffing of the facility or program on a 24 hour per day, seven day per week basis including availability of emergency on-call staff;
5. organizational table, as required by 102 CMR 3.04(2)(c);
6. written policy and procedure for internal investigation of child abuse and neglect as required by 102 CMR 3.04(3)(e);
7. written procedures regarding complaints and grievances, as required by 102 CMR 3.04(3)(j);
8. personnel policies, as required by 102 CMR 3.04(6)(a);
9. job descriptions, as required by 102 CMR 3.04(6)(c);
10. salary ranges, as required by 102 CMR 3.04(6)(d);
11. plan for using volunteers, as required by 102 CMR 3.04(6)(g);

Mass Regulations Title 102 Chapter 1

12. a plan for staff orientation and training as required by 102 CMR 3.04(7);
13. written plan for referral services, as required by 102 CMR 3.05(1)(j);
14. written agreement with the placement agency, purchaser of services and parent or guardian, as required by 102 CMR 3.05(2)(d);
15. evidence of ability to comply with 102 CMR 3.05(4)(a), including a copy of the advanced degree person's resume;
16. plan for family work, as required by 102 CMR 3.06(2);
17. plan for social, psychological and psychiatric services, as required by 102 CMR 3.06(3);
18. a plan for meeting the emergency medical needs of children and evidence of access to emergency mental health services for children, as required by 102 CMR 3.06(4)(a) and 3.06(3)(a);
19. plan for health services, as required by 102 CMR 3.06(4);
20. evidence of access to schools for the provision of any necessary educational services;
21. plan for administration of medication, as required by 102 CMR 3.06(4)(k);
22. plan for educational services, as required by 102 CMR 3.06(5);
23. plan for vocational services, as required by 102 CMR 3.06(6);
24. plan for recreational services, as required by 102 CMR 3.06(7);

Mass Regulations Title 102 Chapter 1

25. plan for follow-up services, as required by 102 CMR 3.06(12);
26. plan for nutritional services, as required by 102 CMR 3.07(6);
27. description of rules for behavior management, as required by 102 CMR 3.07(7);
28. allowance policy, as required by 102 CMR 3.07(8)(b);
29. visiting, mail and telephone policies, as required by 102 CMR 3.07(9) including procedures required by 102 CMR 3.07(9)(f)1 and 2;
30. runaway procedures, as required by 102 CMR 3.07(10);
31. written policy describing search procedures, as required by 102 CMR 3.07(11);
32. plan for transportation, as required by 102 CMR 3.07(12), including documentation of insurance coverage, as required by 102 CMR 3.07(12)(g);
33. a current Certificate of Inspection or Use and Occupancy Permit issued by the Department of Public Safety or the local building inspector, as required by 102 CMR 3.08(1)(a);
34. a written report from the appropriate health inspector documenting that the facility or program is in compliance with 105 CMR 410.000 (Chapter II of the State Sanitary Code) as required by 102 CMR 3.08(1)(b);
35. documentation that the facility or program has had a fire inspection from the local fire department, as required by 102 CMR 3.08(1)(c);
36. a written plan detailing procedures for meeting potential emergencies as required by 102 CMR 3.08(2)(a);
37. written documentation of lead-free paint inspection if applicable, on the approved form as required by 102 CMR 3.08(4)(b);

38. written plan for monitoring student safety around swimming areas, if applicable, as required by 102 CMR 3.08(5)(g);

39. evidence of compliance with St. 1983, c. 233, Revenue Enforcement and Protection Program (REAP) on a form provided by the Office with the initial application;

40. the applicant's completed CORI affidavit.

(b) In addition, applications for licensure of temporary shelter home programs must include the following:

1. written statement identifying qualifications of shelter home parents as required by 102 CMR 3.09(2);

2. written physical requirements for shelter homes as required by 102 CMR 3.09(3);

3. written plan for orientation of shelter home parents as required by 102 CMR 3.09(4);

4. written procedures for completion of shelter home assessments and approval of shelter homes as required by 102 CMR 3.09(5);

5. written plan for ongoing training of shelter home parents as required by 102 CMR 3.09(8);

6. general shelter home parent agreement and agreement upon placement of an individual child as required by 102 CMR 3.09(9)(a) and (b).

(2) Term of License. A license or approval shall remain in effect beyond its term until a license renewal study is completed and a determination made by the Office on the status of the license, if the licensee has filed with the Office a request for renewal in accordance with M.G.L. c. 30A, § 13. Unless earlier revoked, suspended or made probationary:

(a) a provisional license or approval shall remain in effect for six months from the date of issuance and may be renewed once for no more than six months;

Mass Regulations Title 102 Chapter 1

(b) a regular license or approval shall remain in effect for two years from the date of issuance.

(3) Variances. The Office in its discretion may upon written request grant a variance of any regulation contained in 102 CMR 3.04 through 3.10.

(a) Any applicant wishing to request a variance shall submit a request for such in a manner and on a form prescribed by the Office. The variance request shall be accompanied by expert opinion, if applicable, written documents, and any other pertinent information the applicant wishes the Office to consider in reviewing the request. Any variance request must provide clear evidence to the satisfaction of the Office that the applicant's procedure complies with the intent of the specific regulation and the intent of the regulations taken as a whole as set forth in 102 CMR 3.01.

(b) A variance shall remain in effect for the duration of the license unless the Office receives or finds evidence that the terms of the variance have been violated or the intent of 102 CMR 3.00 has not been met.

(4) Pilot or Demonstration Projects. Proposals for pilot or demonstration projects for the innovative delivery of services related to facilities or programs will be considered by the Office upon written request. However, no project shall be implemented without prior written approval of the Office. The Office may require that specific proposals include an evaluation component to determine the effectiveness of the project and may also consider any other evidence relevant to the proposal prior to granting approval. Projects shall be implemented only on an experimental basis for a specified time period not to exceed the term of the license unless the Office receives or finds evidence that the conditions of the approval have been violated.

102 CMR 3.04

3.04: Administration of the Program

(1) Statement of Purpose. Each licensee shall maintain a written statement of purpose identifying the program's philosophy, goals and objectives and the characteristics of the residents served, intake procedures and services. The statement shall make clear which services are provided directly by the program and which will be provided in cooperation with community resources. If the licensee administers several programs at different sites, appropriate resources shall be identified for each site. The statement shall be kept current and shall be available.

(a) The licensee shall identify goals and objectives of the program and shall include generally and specifically, both short term and long term aims; provided, however, that the primary purpose of each program shall be to provide children with services to meet their immediate and basic needs and to foster the optimal growth and individual development of the residents in its care. Each program shall wherever possible work towards reintegration of the residents into the families or communities from which they came or into new families or communities when necessary.

Mass Regulations Title 102 Chapter 1

(b) The licensee shall identify the characteristics of residents to be served, as reflected in the program's eligibility criteria, and shall include identification where applicable, by:

1. age range;
2. sex;
3. residency;
4. intellectual ability or grade level;
5. physical development or health;
6. social behavior and clinical profile;
7. custody or guardianship status;
8. family involvement.

(c) The licensee shall provide evidence that it has completed its own annual written evaluation of its overall program which shall include general effectiveness in relation to stated goals and delivery of services.

(2) Organization.

(a) Each licensee shall have documentary evidence of its sources of authority to operate the program.

1. A program operated by the Commonwealth or any political subdivision thereof shall maintain documents that identify the statutory basis of its existence and the administrative framework of the governmental departments in which it operates.

2. A private program shall maintain documents that completely identify its ownership. Corporations, partnerships, or associations or sole proprietorships shall identify their current officers and board members,

Mass Regulations Title 102 Chapter 1

if any. Where applicable, documents shall include but not be limited to copies of all papers filed with the Secretary of State of the Commonwealth and/or any political subdivision of the Commonwealth.

(b) Each licensee shall designate one person who is responsible for administrative supervision and is duly authorized to act as an agent for the licensee and to oversee the operation of the program.

(c) Each licensee shall maintain an organizational table showing the administrative structure of the program, including the lines of authority, responsibility, and staff assignment. Each licensee shall familiarize residents with the organization of the program whenever that may be appropriate.

(d) Each program shall have an advisory board of at least four persons. Such board shall include at least three persons who are not employees, or family members of employees or family members of the licensee; and who are familiar with the population that the program serves and the alternatives to residential care. If the program's board of directors meets these requirements, then the board may function as the program's advisory board.

1. The advisory board shall make recommendations on the program's policy regarding program structure, program evaluation, personnel and human rights, focusing on the quality of resident life. The program shall document the reason for any differences between these recommendations and program activities.

2. The advisory board shall meet at least annually or more often if necessary to meet the above purpose.

3. Copies of the minutes of the advisory board meeting(s) shall be maintained.

(e) Each residential program which uses restraint of residents shall participate in a restraint safety committee comprised of licensee's child care staff, clinical staff and the restraint coordinator. The restraint safety committee shall regularly review restraint data and resident and staff safety information.

(3) Administration.

(a) The chief administrative person or designee shall be on the premises of the program at all times while it is in operation. All employees on duty shall know who is responsible for administrative supervision of the program at any given time.

(b) Each licensee shall establish a system of business management and staffing to assure that the facility maintains complete and accurate accounts, books and records, including required financial, personnel and resident's records.

Mass Regulations Title 102 Chapter 1

(c) Separate financial accounts shall be established for funds belonging to children and complete and accurate records shall be kept of all transactions regarding these funds.

1. These funds shall be used solely for the benefit of the resident to whom the funds belong. The resident, parent, representative, payee, etc., shall be provided an accounting of all expenditures from her/his own funds upon request.

2. These funds shall accompany a resident when he/she is discharged or transferred to another facility.

(d) In programs serving teen parents and transition to independent living programs, where residents are responsible for their own funds and accounting, the program need not maintain financial records as required by 102 CMR 3.04(3)(c).

(e) The licensee shall develop and follow procedures for conducting internal investigations within the program. Such procedures are to be used for any suspected incidents of child abuse or neglect including but not limited to incidents within the program reported to the Department of Social Services pursuant to M.G.L. c. 119, § 51A and shall be implemented upon request of the Office for any serious incident involving the health or safety of residents within the program. The procedures shall include:

1. time lines for conducting and completing the investigations;

2. the written format for the investigation report;

3. provisions for reporting suspected child abuse and neglect to the chief administrative person and to the Department of Social Services in accordance with M.G.L. c. 119, § 51A, and following the procedure required by 102 CMR 3.04(3)(g) regarding reporting to the Office;

4. the process for designating persons responsible for implementing each step of these procedures including conducting the investigations;

5. a description of the process for reviewing the investigation report and for taking corrective action if necessary.

(f) The licensee shall have a written plan for staff to file a report of abuse or neglect with the Department of Social Services, pursuant to M.G.L. c. 119, § 51A. This plan shall include the following information for staff of

Mass Regulations Title 102 Chapter 1

programs serving teen parents:

1. guidelines for reporting abuse or neglect of children by their teen parents as well as abuse or neglect of teen parents under 18 years of age by their caregivers; and
2. guidelines for determining whether incidents of neglect are reportable conditions or may be resolved by program intervention.

(g) The licensee shall have a written plan for notification of the Office as well as any other state agency or referral source which requires such notification immediately after learning that a M.G.L. c. 119, § 51A report has been filed alleging abuse or neglect of a child at the program or during program activities, including those alleging parental abuse or neglect of a child who resides at the program together with his or her teen parent.

(h) The licensee shall implement a procedure for documenting unusual and/or serious incidents such as behavioral incidents, runaways, serious injuries or accidents, property destruction, medication errors, medical and other emergencies. The procedure for documenting these incidents shall include a review of the report by the chief administrative person or his/her designee.

(i) Incident reports documenting the use of physical restraint must include at least the following: the name of the resident; the names and positions of staff involved in the restraint; the date and time of the restraint; the behavior of the resident which prompted the restraint and a description of the surrounding activities and environment at the time of the restraint; a description of the efforts by staff to de-escalate the situation and the alternatives to physical restraint attempted by staff; the justification for the physical restraint; a detailed description of the actual physical restraint, including starting and ending times; notation of what level of restrictiveness the restraint reached (standing, sitting, floor); documentation of the monitoring of the resident during the restraint; documentation of approval for continuation of the restraint longer than 20 minutes, if applicable; documentation of processing and review of the restraint with the resident following the restraint; documentation of any injury to the resident and any medical care provided; signatures of all staff involved in the restraint; and review of the incident report by the chief administrative person or his/her designee and the restraint coordinator. Each resident who has been restrained shall be offered the opportunity to comment in writing on the restraint as soon as possible within 24 hours of its occurrence. Such comment shall be attached to the restraint incident report.

(j) The licensee shall have a written procedure regarding the receipt of, consideration of, and decision on complaints and grievances from staff, parents, and residents regarding the resident's care. The procedure must include a mechanism to inform the complainant of the results of the decision.

1. The licensee shall distribute this written grievance procedure to residents and parents prior to admission and to staff during initial orientation period.
2. The licensee shall maintain written records of all decisions resulting from the grievance procedure.

Mass Regulations Title 102 Chapter 1

(k) The licensee shall provide a telephone number and a system of emergency assistance to parents and to residents while they are away from the program. This system shall be in place on a 24 hour per day seven day per week basis.

(l) The licensee may not discriminate in providing services to children and their families on the basis of race, religion, ethnic background, cultural heritage, national origin, marital status, sexual orientation or disability, or in approving shelter home parent applicants on the basis of age, sex, race, religion, ethnic background, cultural heritage, national origin, marital status, sexual orientation or disability.

(m) The licensee shall not permit more than the number of residents as specified on the license to reside in a program at any one time.

(4) Finances. The applicant or licensee shall demonstrate financial capability to carry out its program for the licensing period, except that programs which have not previously operated shall demonstrate such capacity for at least a three month period.

(a) The licensee shall keep and maintain an accurate record of receipts and expenditures which shall be audited annually.

(b) The licensee shall keep on file an annual budget for the operation of the program.

(c) An applicant for a regular two year license shall submit evidence of the rate approved by the Commonwealth for the provision of services, if applicable.

(5) Required Notifications.

(a) In case of fire or other emergency which requires the evacuation of the facility and results in the need to seek other shelter, the licensee shall notify the Office within 24 hours.

(b) Within ten days of receipt of notice of the initiation of civil, criminal, or administrative action against the licensee or any person employed by the licensee regarding the licensee's care of children and teen parents in its program or which could affect the continued operation of the program, the licensee shall notify the Office in writing.

(c) The licensee shall notify the Office as well as any other state agency or referral source which requires such

Mass Regulations Title 102 Chapter 1

notification immediately after learning that a 51A report has been filed alleging abuse or neglect of a child at the program or during program activities, including those alleging parental abuse or neglect of a child who resides at the program together with his or her teen parent. A report of abuse or neglect shall initiate an investigation by the Office and may subject the program to further legal action by the Office, DSS and the District Attorney. If a report is filed either:

1. pursuant to M.G.L. c. 119, § 51A; or

2. with the Office against a program employee, a member of the child care staff or any other person with unsupervised access to the residents, the licensee shall prohibit the allegedly abusive or neglectful person from having unsupervised contact with children until the Department of Social Services has completed its investigation and has determined that the allegation is unsupported, and the Office has investigated the allegation and determined that the employee may resume his/her normal duties.

(d) In the event of serious illness the licensee shall notify as soon as reasonably possible, the resident's parent or person other than a parent who has legal custody of the child, the referral source, and the Department of Education, when applicable.

(e) In the event of serious accident or death, the licensee shall immediately notify the resident's parent or person other than the parent who has legal custody, the referral source, the Office, and the Department of Education, when applicable. The licensee shall cooperate in arrangements made for examination, autopsy and burial.

(f) In the event of unexpected death, the licensee shall also notify the local police.

(g) In the event of a serious injury to a resident resulting in hospitalization, an incident involving firearms or dangerous weapons which results in a report to law enforcement officials, an incident involving fire which results in a response by fire officials, or an incident involving an escape from a secure facility, the licensee shall notify the Office within 24 hours of the injury or incident. The licensee, if requested by the Office, shall prepare and submit to the Office a written report regarding the injury or incident.

(h) If, during the period of licensure the program is unable to renew its health, building or fire inspection certificates, the licensee shall notify the Office and submit its plan for corrective action.

(i) The licensee shall notify the Office prior to any substantial change in the program, physical facility, staffing, population served, policies, or services offered, and within two weeks of a change in the advanced degree person for treatment planning.

(j) The licensee shall submit, on a form provided by the Office, a quarterly report of all restraints and injuries related to restraints in the program.

Mass Regulations Title 102 Chapter 1

(6) Personnel.

(a) The licensee shall describe in writing the program's current personnel policies and practices and shall make them available to all employees. These personnel policies shall include a description of:

1. Criteria and procedures for hiring, assignment, promotion, probation and suspension or dismissal of an employee;
2. The procedure for handling staff complaints;
3. Provisions for vacations, holidays, and leaves.

(b) A copy of the personnel policies shall be given to each new employee or each employee shall be informed that a copy is available upon his/her request.

(c) The licensee shall make available written job descriptions for all positions, including consultants, part-time employees, interns, volunteers and per diem workers.

(d) The licensee shall establish a written salary range including benefits covering all positions and shall provide each employee with information regarding the salary range for his/her position or the procedure for determining his/her salary.

(e) The licensee shall obtain evidence that personnel are currently certified, licensed, or registered when applicable laws require certification, licensure, or registration.

(f) The licensee shall maintain a personnel record for each employee which shall include but not be limited to:

1. employee's resume or job application;
2. copies of licenses or certification held;

Mass Regulations Title 102 Chapter 1

3. documentation of reference checks by telephone;
4. documentation of a completed CORI evaluation as required by 102 CMR 1.05;
5. documentation of participation in training, including the prevention/restraint training post-tests as required by 102 CMR 3.04(7)(a)1.b.;
6. annual evaluations as required by 102 CMR 3.04(8)(a);
7. documentation of any disciplinary actions or investigations.

(g) If volunteers are used, the licensee shall describe in writing its plan for using volunteer services. Volunteers shall be chosen for their ability to meet the needs of the children. The licensee shall have evidence of each volunteer's compliance with 102 CMR 1.05, and at least one reference check shall be conducted and documented for each volunteer.

1. Volunteers shall possess qualifications in accordance with the services they provide.
2. The licensee shall utilize volunteers only in conjunction with appropriate ongoing, scheduled supervision and training.

(7) Orientation and Training.

(a) The licensee shall provide orientation for all new employees to acquaint them with the program's philosophy, organization, policies and services.

1. Each licensee shall describe in writing the program's plan for staff orientation, which shall include at a minimum, but not be limited to the characteristics of children served; symptoms and behavioral signs of emotional disturbance; symptoms of drug overdose, alcohol intoxication, or possible medical emergency; the program's emergency and evacuation procedures, procedures for reporting suspected incidents of child abuse and neglect, orientation in first aid and C.P.R., training in universal precautions and infection control procedures, and the program's policies regarding medication, runaway children, behavior management and restraint.

- a. Each new employee (who may work with residents) of a program which utilizes restraint shall receive

Mass Regulations Title 102 Chapter 1

a minimum of 16 hours of training in the prevention and use of restraint, which shall address the needs and behaviors of the population served, relationship building, prevention of restraint, de-escalation methods, avoiding power struggles, thresholds for restraints, the physiological impact of restraint, monitoring physical signs of distress and obtaining medical assistance, legal issues, positional asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, procedures to address problematic restraints, documentation, processing with children, follow-up with staff, and investigation of injuries and complaints.

b. Prevention/restraint training shall include role-playing in de-escalation and demonstration of proficiency with each hold taught, and written post-training tests.

2. No new employee shall be solely responsible for children in care until s/he has received the minimum orientation described above.

3. No employee shall participate in a restraint until s/he has successfully completed the required prevention/restraint training.

(b) The licensee shall train all child care staff in first aid procedures.

1. The training shall include, but not be limited to, information on: bleeding, bruises, choking, falls, poisoning, objects in the eye, animal and insect bites, and convulsions.

2. Such training shall occur within one month of a new employee's beginning work unless he or she can show evidence of current first aid training.

3. Each staff shall be certified in CPR and First Aid within six months of hire. Such certification shall be kept current.

(c) The licensee shall train all child care and clinical staff in universal precautions and infection control procedures. These procedures shall include, but not be limited to: requirements for isolation, disposal of or separate care of eating utensils and linens, and any specific precautions which may be required on a case-by-case basis.

(d) Child care and clinical staff shall be instructed about the nature of the medications administered to children, documentation procedures, potential side effects, and any special precautions or requirements that may need to be observed.

Mass Regulations Title 102 Chapter 1

(e) The licensee shall provide child care staff with quarterly training on safety procedures, as provided by 102 CMR 3.08(2)(d).

(f) Programs utilizing unusual and extraordinary procedures shall train staff in all aspects of the procedures.

(g) The licensee shall provide on-going staff training programs appropriate to the size and nature of the program and staff involved. Each licensee shall describe in writing the program's plan for staff training, including the curriculum for prevention/restraint training and refresher training, if applicable.

1. In any program which utilizes physical restraint, the plan for staff training shall include a minimum of eight hours' annual refresher training for each staff in effective de-escalation and safe restraint methods, written post-training tests, and regular review of restraints implemented.

2. Full-time child care, professional and supervisory staff shall be required to attend a minimum of 24 hours of training per calendar year.

3. Part-time and weekend staff shall be required to attend a minimum of 12 hours of training per calendar year.

(8) Supervision. The licensee shall make all child care and clinical staff directly responsible to a staff person who has supervisory or administrative responsibility and who has experience suitable to the goals of the program and the responsibilities of the staff supervised. The licensee shall require child care and clinical staff to have regular, scheduled conferences with the assigned supervisor regarding children's needs and methods of meeting those needs.

(a) The supervisor(s) shall conduct and document evaluations at least yearly, of all child care and clinical staff.

(b) Evaluations shall consider the individual's job performance, including implementation of restraints, attendance at trainings and ability to implement residents' service plans.

(c) Copies of evaluations shall be maintained in a staff's personnel record and shall be available to him or her upon request.

102 CMR 3.05

3.05: Intake, Service & Discharge Planning

Mass Regulations Title 102 Chapter 1

(1) Eligibility for Admission.

(a) Each temporary shelter shall be available at all times for emergency admissions (*i.e.*, 24 hours each day, seven days each week).

(b) Each licensee shall establish written eligibility criteria for admission, as required in 102 CMR 3.04(1)(b) and shall make such criteria available upon request.

(c) The program shall only admit a resident whose needs it believes can be met by the program.

(d) Programs offering temporary shelter may admit residents on their own request for up to 72 hours. In order to provide services to a child beyond 72 hours, a program must obtain written consent of the parent having custody of the child or a legal guardian, a court order, or a written agreement with a placement agency.

(e) Programs serving teen parents and transition to independent living programs may serve a resident who is under 18 years of age upon a self-referral if the program assesses the resident to be a mature minor.

(f) Whenever possible, the licensee shall not admit a prospective resident to a program without evidence in the referral that placement in a residential program is the most appropriate plan for the resident. The licensee shall seek information from the referral source which includes evidence of attempts to provide preventive services and an examination of possible alternatives to such placement, or a statement by the referring agency as to why placement is warranted without such attempts being made.

(g) Except in cases of emergency, the licensee shall admit only those prospective residents who have had evaluations by qualified professionals covering physical, emotional, social and intellectual factors relevant to the prospective residents' situations.

(h) The licensee shall seek and document recommendations from any prior placements regarding effective and ineffective behavior de-escalation methods.

(i) For emergency admissions or admissions for purposes of evaluation, the licensee shall make appropriate and adequate provisions to meet the requirements of 102 CMR 3.05(1)(f), (g) and (h) as soon as possible after admission, provided that the licensee shall initiate the admission evaluation within one week after admission.

(j) A Shelter program shall have a written plan for providing referral services to children who cannot be admitted because the program has reached its licensed capacity or because characteristics of the child or the shelter make it inappropriate to admit the child. The plan shall provide for referral to another licensed or approved program,

Mass Regulations Title 102 Chapter 1

or placement agency.

(2) Placement Preparations.

(a) Except in cases of emergency, the licensee shall, prior to admission, provide the resident and his or her parents or guardian an opportunity to visit the program and the living unit in which the resident is likely to be placed.

(b) The licensee shall, prior to admission, (or in the case of emergency admission, within 72 hours) provide the following written materials to the resident and his or her parents or guardian(s). If the resident objects to his or her parent receiving such information the program shall not be required to provide such materials but shall maintain written documentation of the objection in the resident's file. Information required by 102 CMR 3.05(2)(b)1. through 9. shall be provided to the resident, consistent with his or her capacity to understand.

1. Statement of purpose, as specified in 102 CMR 3.04(1)(a).
2. Eligibility criteria, as specified in 102 CMR 3.04(1)(b).
3. Description of program of unusual or extraordinary treatment, if applicable, as defined in 102 CMR 3.06(11).
4. Emergency assistance system, as specified in 102 CMR 3.04(3)(j).
5. Agency grievance procedure, as specified in 102 CMR 3.04(3)(i).
6. Name of the case manager, as specified in 102 CMR 3.06(1).
7. Rules for behavior management, as specified in 102 CMR 3.07(7).
8. Visiting, mail and telephone policies, as specified in 102 CMR 3.07(9).
9. Search policy, as specified in 102 CMR 3.07(11).

Mass Regulations Title 102 Chapter 1

(c) The licensee shall establish procedures to prepare the staff and residents for the new resident's arrival and shall provide staff with appropriate information to receive the new resident and assist in his or her adjustment. This information shall include at a minimum, reason for placement, medical condition and behavior problems and specific instructions related to the individual needs of the resident, including the need for an individualized restraint method, if appropriate.

(d) For residents in care longer than 72 hours, the licensee shall enter into an agreement with the placement agency referring the resident, the purchaser of services and the parent or guardian. The placement agreement shall make clear the following responsibilities:

1. The terms and methods for paying the resident's board as well as other specific items such as personal articles or medically recommended devices outlined in 102 CMR 3.06(4)(h);
2. Provision of direct services including social, medical, psychological and psychiatric and/or counseling to the resident and his or her family;
3. Arrangements for the resident's special training or education;
4. Arrangements for contacts between the program and other persons and between the resident and other persons;
5. Arrangements for family visits and other contacts between the resident and friends, including specific information on any restrictions;
6. Responsibility for seeking judicial approval if required for administration of antipsychotic medication as required by 102 CMR 3.06(4)(k)3.d.;
7. Responsibility for transportation of the resident;
8. Responsibility for after-care services;
9. Circumstances under which residents may be discharged.
10. For children admitted for shelter care, dates of service and discharge planning conferences.

Mass Regulations Title 102 Chapter 1

(e) In programs serving teen parents, a placement agreement shall be maintained on file for both the teen parent and her or his child as follows:

1. the teen parent and child may be included on one agreement;
2. the teen parent may sign the placement agreement for her or his child unless custody or guardianship has been granted to another person;
3. if the teen parent is sixteen years old or older, the teen parent may sign her or his own placement agreement;
4. if the teen parent is under sixteen years of age, her or his parent or guardian shall sign the placement agreement; and
5. if a funding or placement agency is involved, the agency representative shall sign the placement agreement.

(3) Intake Services.

(a) Upon admission, the licensee shall designate and prepare sleeping quarters and space for the admitted resident's personal belongings.

(b) The licensee shall assign at least one adult to help orient a newly admitted resident to the program and to the services available to the resident.

(c) The following intake services shall be provided immediately upon the admission of a child:

1. Assessment of potential emergency needs in the areas of medical, mental health, physical well-being, severe psychological disturbance, suspected drug overdose, alcohol intoxication and suicide risk. If necessary, the licensee shall assure that the child is transported immediately to a hospital or facility equipped and prepared to handle emergency situations;
2. Identification and provision of basic needs including clothing, food, hygiene and medications which the

Mass Regulations Title 102 Chapter 1

licensee shall provide or arrange for at the time of intake.

3. Assessment and documentation of any medical condition or physical infirmity which may require an individualized restraint method.

(d) The following services shall be provided within 24 hours of admission:

1. Exploration of the child's family situation, reasons for needing care and options available, as appropriate to the child's situation;

2. Completion of the face sheet form, as required by 102 CMR 3.10(1)(a);

3. Explanation of the program rules and emergency evacuation procedures to the child.

(4) Service Planning. Except as provided in 102 CMR 3.05(4)(g), within six weeks of admission the licensee shall assess the needs of the resident and develop an individual plan for services.

(a) All service plans, service plan reviews and discharge plans shall be developed by a team which includes those personnel of the program responsible for implementing the service plan on a daily basis. At least one member of the team shall have an advanced degree from an accredited school in social work, psychology, psychiatry or a related field, or be a certified Massachusetts school psychologist and experienced in providing direct treatment services to residents. The team shall include at least one child care worker who will be implementing the plan with the resident, the case manager and a person who has knowledge of the resident's educational program. The team shall request a representative from the referral source to participate in the development of the service plan and document notification of such meetings. Consistent with any court order and requirements of the referral source, parents shall be invited to attend service planning meetings. If parents are not invited, the reasons shall be documented.

(b) The team shall consult with the resident in developing his or her service plan, consistent with the resident's capacity to understand.

(c) The plan shall identify the child's needs, the services to be provided and the staff person responsible for providing or arranging for the services while the child is in care. The plan shall include the following areas: educational, vocational, health (including medical, dental and ancillary services); behavior management, (including specific individual modifications of the restraint plan, if necessary), life skills, and social services (including family work, psychological and psychiatric services and counseling). For programs serving teen parents, the team shall include an assessment of the resident's parenting skills.

Mass Regulations Title 102 Chapter 1

(d) If a resident has an Individual Education Plan (IEP) developed as a result of a M.G.L. c. 71B, Chapter 766 Team Evaluation, the IEP may be used to meet the requirements of part, but not necessarily all of the resident's service plan.

(e) The licensee shall explain all service plans, reviews and discharge plans to all child care personnel responsible for implementing the service plan on a daily basis, to the child's family or guardian, as appropriate, and to the resident in a manner consistent with her or his maturity and capacity to understand.

(f) The licensee shall provide a copy of all service plans, reviews and discharge plans to the referral source.

(g) Exceptions for Shelter Placement.

1. Service plans for children in shelter placement longer than 72 hours must be completed within seven days of admission.

2. The licensee may not be required to develop a service plan, if a service plan that meets the requirements of 102 CMR 3.05(4)(c) has been developed by the referring or placement agency. The plan shall be reviewed and modified as necessary to meet the needs of the child during his/her placement. The plan shall include planning for discharge from care and the date of the review meeting which shall occur within 15 days after admission.

3. The licensee may substitute review and approval of the service plan by a person with an advanced degree in counseling, social work, psychology or psychiatry, if an advanced degree person has not participated in the development of a child's individual service plan.

(5) Service Plan Review.

(a) The licensee shall review the progress, needs and service plan of each resident as often as necessary, but no less frequently than every six months. The team shall evaluate the child's progress and shall re-assess the child's needs in the areas required by 102 CMR 3.05(4)(c). For children whose placement extends longer than 45 days, the team shall specifically consider the child's legal status and need for guardianship, if any, and shall make recommendations regarding appropriate alternatives to residential placement.

(b) For children in shelter placement, service plan review and discharge planning meetings shall be held within 15 days of admission, or within a shorter period of time if appropriate, and every 15 days thereafter until discharge from the program. Each service plan review shall include specific recommendations for appropriate discharge planning, including anticipated date of discharge, recommended placement and identification of persons responsible for implementation of the plan.

Mass Regulations Title 102 Chapter 1

(6) Procedures for Requesting Extensions of Shelter Placements.

(a) The licensee may request an extension of time in placement in a shelter program when, due to unforeseen or extreme circumstances, a long-term plan for the care of the child cannot be implemented in 45 days. For a child placed in a secure detention facility, an extension need not be requested unless the placement extends longer than 90 days.

(b) Requests for extensions will not be required for any child who is detained, on dual status or with outstanding charges to the Department of Youth Services and who is in care as the result of a specific court order.

(c) Specific requests for extensions shall be made to the Office in the following manner:

1. A request for extension shall be made by the licensee's chief administrative person or designee;

2. A request shall be made prior to the expiration of the timelines specified above;

3. The request shall include child-specific information such as date of placement, reason(s) for extension request, current services provided by the program, dates of service and discharge planning meetings, arrangements for discharge and anticipated date of discharge;

(d) Except in extenuating circumstances, extensions may be granted for a two week period or less.

(e) The licensee shall inform the Office of the actual discharge date and/or progress toward discharge.

(f) The licensee shall maintain a record of extensions requested through the Office and indicate whether or not these extensions were approved.

(7) Discharge from Care.

(a) For each child in care less than 45 days, a discharge summary shall be developed which includes a summary of services provided, the resident's behaviors which required the use of physical restraint and the individualized restraint method which the resident required, if applicable, the child's location after discharge and the person(s) responsible for the child's care.

Mass Regulations Title 102 Chapter 1

(b) For each child in care longer than 45 days, the licensee shall assess the resident's needs and prepare a discharge plan at least 30 working days prior to the resident's discharge, except in the case of an emergency. In programs serving teen parents, one discharge plan may be completed for the family unit. The discharge plan shall include:

1. information regarding the resident's need for and the use of physical restraint, any special medical concerns related to restraint, and any necessary modifications of the restraint method, as applicable;
2. provisions for follow-up services and shall identify the persons responsible for providing follow-up services in the resident's new environment, as required in 102 CMR 3.06(12).

(c) Except in an emergency, the licensee shall permit transfer of a resident to another facility only with the consent of the parent or the person other than a parent who has legal custody of the child as applicable.

(d) In the case of an unplanned or emergency discharge, the licensee shall prepare a discharge summary which explains the circumstances of the discharge.

(e) The licensee shall identify in the resident's record her or his location immediately after discharge including the name, address, telephone number and relationship of the persons responsible for the resident's care.

102 CMR 3.06

3.06: Programs and Services

(1) Case Management. The licensee shall assign to each resident in care more than 72 hours a staff person who shall be responsible for coordinating implementation of the resident's service plan and other services provided. The licensee shall insure continuity of case management responsibilities in the absence of the case manager for an extended period of time such as vacation or leave. The case manager shall:

- (a) meet with the child on a regular basis to ensure that the child's daily needs are being met;
- (b) attend and participate in the resident's service planning, periodic review, and discharge planning meetings as required by 102 CMR 3.05(4), (5), and (7);

Mass Regulations Title 102 Chapter 1

- (c) work with persons involved in the resident's care to assure implementation of the service plan;
- (d) collaborate with other agencies who share responsibilities for the resident's welfare, and utilize appropriate community resources in providing needed services;
- (e) assure that the resident's record is maintained in compliance with 102 CMR 3.10(1);
- (f) carry a reasonable caseload which allows for an effective and timely performance of the above tasks.

(2) Family Work.

(a) Each licensee who provides care for residents for more than 72 hours shall have a written plan for family work which shall include establishing a professional relationship and maintaining regular contact with each resident's family for the purposes of:

1. notifying the family of the child's whereabouts and obtaining any necessary parental consent;
2. providing crisis intervention services and assessment as necessary;
3. assisting the family to adjust to the child's placement and separation;
4. developing a visiting plan and encouraging the family's continued interaction with their child in accordance with the child's service plan;
5. providing the family with a description and explanation of the program's method of physical restraint, if applicable; and, upon their request, providing the family with a copy of the program's prevention/restraint training curriculum.
6. informing the family of their child's progress;
7. mobilizing parent(s) strengths and resources to help them participate in planning for their child's return home or to another community environment.

Mass Regulations Title 102 Chapter 1

(b) In programs serving teen parents, the plan for family work shall include reference to fathers who remain involved with their children. Whenever possible and appropriate, fathers should share responsibilities and decision making with the teen mother and others regarding the child's health and physical care, education, and personal-social-cultural development and support.

(c) If the teen mother does not wish to have her family and/or the child's father involved, the licensee may refrain from engaging in family work provided that written documentation of the teen mother's objection is maintained in her record.

(d) If contact with a resident's family is prohibited by court order or is not clinically appropriate, the licensee may refrain from engaging in family work provided that written documentation of such circumstance is maintained.

(e) The licensee may provide family work services through staff employed directly, or through agreement with another agency.

(3) Social, Psychological and Psychiatric Services.

(a) The licensee shall provide evidence of access to emergency mental health services on a 24 hour per day, seven day per week basis. This evidence may be provided through an agreement with the Department of Mental Health or another mental health service provider responsible for evaluation, crisis intervention and facilitation of admission to an inpatient facility; an agreement with a private psychiatrist who can provide crisis intervention and facilitate inpatient admission if necessary; an agreement with an inpatient mental health facility; or an agreement with a hospital having an inpatient psychiatric unit.

(b) Licensees who provide care for children for more than 72 hours shall establish and describe in writing a plan for providing social, psychological and psychiatric services. The plan shall insure that each resident's needs for such services shall be met and the purpose of the program accomplished.

(c) As appropriate to the needs of the residents, the licensee shall provide or facilitate the provision of a range of social, psychological and psychiatric services which shall include:

1. crisis intervention;

2. evaluation and assessment;

Mass Regulations Title 102 Chapter 1

3. therapy and/or counseling for individuals and groups;
4. clinical consultation with residents, parents or guardians and staff;
5. staff development services including specific training geared to address the needs of residents in the program.

(4) Health Services.

(a) The licensee shall have a written plan for meeting the health needs of the residents served and which details the availability of qualified medical care to the program, including medical emergencies on a 24 hour per day, seven day per week basis.

(b) The licensee shall provide or arrange for residents in the facility a range of health services including:

1. evaluation and diagnosis;
2. treatment;
3. consultation;
4. preventive health services.

However, in transition to independent living programs and programs serving teen parents, the resident may be responsible for arranging, obtaining and documenting his or her own medical services and those of his or her child.

(c) At the time of placement, residents shall be provided with emergency medical/dental/ mental health care if needed.

(d) For each child placed on an emergency basis who remains in care more than 14 days, the licensee shall ensure that the child has had a recent medical and dental examination according to Department of Public Health guidelines.

Mass Regulations Title 102 Chapter 1

1. If the child has had a current exam, the licensee shall attempt to obtain documentation of it.
2. If such routine medical and dental exams have not occurred, the licensee shall, within one week, schedule an appointment for the exams.

(e) Except for children placed on an emergency basis, the licensee shall insure that at the time of placement each resident has had a medical examination not more than 30 days prior to admission where possible or within two weeks after admission. Such physical examination shall not be required, however, if the licensee obtains documentation of a physical exam conducted less than one year prior to admission and in accordance with Department of Public Health guidelines.

(f) The licensee shall insure that the medical examination at placement includes screening for lead poisoning in accordance with Department of Public Health 105 CMR 460.050(F).

(g) Preventive health services for residents shall include but not be limited to:

1. routine medical and dental examinations in accordance with Department of Public Health guidelines. Routine dental examinations should begin at age three and be scheduled annually thereafter.

- a. Medical examinations may be conducted by a licensed physician, a certified nurse practitioner or a physician's assistant.

- b. Special studies are to be carried out at the direction of a physician in accordance with the child's needs and Department of Public Health guidelines.

- c. Medical examinations shall include annual screening for lead poisoning for each child between the ages of nine months and four years in accordance with Department of Public Health 105 CMR 460.050(F);

2. immunizations and TB testing as required by the Department of Public Health;

3. reporting of communicable diseases and infections to the local Board of Health as required by M.G.L. c. 111, § 111;

Mass Regulations Title 102 Chapter 1

4. family planning information, and upon request of the resident (with any required consent of parent or guardian or placement agency), provision of or referral for family planning devices, medication and services. Any licensee whose conscience prohibits the provision of such family planning devices, medication or services, shall notify the resident, parents or referral source that the facility will not provide such services.

(h) The licensee shall insure that medically recommended glasses, hearing aids, prosthetic devices, corrective physical or dental devices or any equipment recommended or treatments prescribed by the examining physician are provided to the resident, consistent with the terms of the agreement with the placement agency and purchaser of service, 102 CMR 3.05(2)(d).

(i) The licensee may not require any child to receive medical treatment or screening when the parents of such child object on the basis of sincerely held religious beliefs. However, the program may seek a court order for medical treatment of a child if it believes such medical treatment is in the child's best interest.

(j) The licensee shall isolate children in cases of illnesses requiring isolation. Isolation shall include the least restrictive measures which will prevent the spread of disease while also addressing a child's emotional well-being.

(k) The licensee shall have written policies and procedures regarding the prescription and administration of all medication. These policies and procedures shall include the following:

1. Administration Procedures.

a. Administration by Staff. The licensee shall identify on a written list all persons authorized by law, regulation and the licensee to prescribe and/or administer prescription and non-prescription medication to a resident. The licensee shall also develop procedures to:

i. document the prescription and/or administration of medication;

ii. provide notification to attending physicians of significant changes in a resident's behavior or health that may result from medication;

iii. record significant side effects of medication.

b. Self-Administration. If the licensee allows a resident to self-administer medications or administer

Mass Regulations Title 102 Chapter 1

medications to his or her child, medication policies shall include the following:

- i. a means to assess a resident's ability to responsibly self-medicate;
- ii. training for residents concerning medications and side effects, administration procedures, safe storage, and documentation of all medications except well-child medication, such as vitamins;
- iii. the type of supervision and monitoring provided by staff.

2. Staff Training. All staff shall be provided with copies of and trained in the licensee's policies and procedures regarding administration of medication. Only staff and residents who have been trained shall administer medications.

3. Antipsychotic Medication. Antipsychotic medication shall mean drugs which are used in treating psychoses and alleviating psychotic states. The licensee shall not administer or arrange for the administration of antipsychotic medication except as follows:

a. Any antipsychotic medication shall be prescribed by a licensed physician for the diagnosis, treatment and care of the resident, and only after review of his or her medical record and observation of the resident.

b. If antipsychotic medication is prescribed, the prescribing physician shall submit a written report to the licensee detailing the necessity for the medication; the staff monitoring requirements, if any; potential side effects that may or may not require medical attention; and the next scheduled clinical meeting or series of meetings with the resident.

c. No antipsychotic prescription shall be administered for a period longer than is medically necessary, as determined by the prescribing physician after meeting with the resident; reviewing the resident's progress; and examining the resident for potential side effects. All meetings with the resident after the initial meeting shall be on a schedule determined by the physician, as sufficient to monitor the resident while on antipsychotic medication.

d. Except in an emergency, when an unforeseen combination of circumstances or the resulting state calls for immediate action, the licensee shall not administer or arrange for prescription and administration of antipsychotic medication unless informed written consent is obtained from a parent, if available, or unless judicial approval is received. The referral source shall be notified of the need for consent.

Mass Regulations Title 102 Chapter 1

e. The licensee shall inform a resident 12 years of age and older, consistent with his or her capacity to understand, about the treatment, risks and any potential side effects of such medication. The licensee shall have procedures to follow if the resident refuses to consent to administration of the medication.

f. In an emergency situation antipsychotic medication may be administered for treatment purposes without parental consent or prior judicial approval if an unforeseen combination of circumstances or the resulting state calls for immediate action and there is no less intrusive alternative to the medication. The treating physician must determine in his or her professional judgment that medication is necessary to prevent the immediate substantial and irreversible deterioration of a serious mental illness. If the treating physician determines that medication should continue informed consent or judicial approval must be obtained.

(5) Educational Services.

(a) The licensee shall describe in writing its plan for identifying and meeting the educational needs of the residents served. The licensee shall arrange for the education of each resident, in compliance with federal, state and local laws, as appropriate to the needs of each resident and consistent with the I.E.P.

(b) Each shelter program shall describe in writing its plan for obtaining information on the educational status of any child who remains in care more than 72 hours. The plan shall identify the person responsible for obtaining the information and the timeline for obtaining it. Information on educational status may be obtained directly from the child and the parent/guardian, from the school or educational program the child last attended (with the written consent of the child who is at least 14 years old or in the ninth grade, or of the parent/guardian) and from other pertinent individuals. The licensee shall use the educational information obtained while the child is still in its care to assist the responsible school district to provide an appropriate education for the child.

(6) Vocational Preparation Services. The licensee shall describe in writing its plan for meeting the resident's vocational preparation needs. For each child in care more than 45 days, the licensee shall, as appropriate to the child's situation, age and interest, assist the child in assessing his/her vocational needs including locating vocational training or employment.

(a) As appropriate to the needs of the resident the licensee shall provide, arrange or facilitate vocational services which include:

1. vocational evaluation;
2. formulation of vocational goals for the resident;
3. formulation of a plan to achieve vocational goals;

Mass Regulations Title 102 Chapter 1

4. implementation of a vocational plan, including vocational counseling, instruction, and training, and vocational placement or referral to appropriate services.

(b) The resident shall be fully involved in his or her vocational evaluation and the development of a vocational plan.

(7) Recreational Services. Licensees who provide care for children for more than 72 hours shall describe in writing their plan for meeting the recreational needs of the residents served, including the use of community resources where appropriate.

(a) The licensee shall provide or arrange for individual and group recreational programs appropriate to the age, interests and needs of each resident.

(b) The licensee shall provide a recreational program which provides for free, unplanned time for a resident to pursue individual interests, with supervision as required for his or her protection.

(c) The licensee shall assign responsibility for the recreation program to a designated staff person or persons.

(d) In programs serving teen parents, if the licensee does not directly provide recreational services, the plan shall describe the means for monitoring the teen parent's provision of appropriate recreational experiences to his or her child.

(8) Religious Services. The licensee shall make religious opportunities available to residents upon request and shall respect their religious preferences.

(9) Attendance at Legal Proceedings. The licensee shall insure that no resident attends a judicial or administrative hearing without a representative of the licensee or the referral source.

(10) Research, Fund Raising, or Publicity. The licensee shall not allow residents to participate in any activities unrelated to the resident's service plan without the written consent of the parents or a person other than the parent with custody of the child and the resident if over 14 years of age. "Activities" shall mean, but not be limited to, the following:

(a) research and experimentation which involves the resident;

Mass Regulations Title 102 Chapter 1

(b) fund raising;

(c) publicity, including photographs and/or mass media communications.

(11) Unusual or Extraordinary Treatment. Unless granted a variance by the Office prior to implementation, no licensee shall conduct unusual or extraordinary treatment. Unusual or extraordinary treatment shall include:

(a) Any experimental or extraordinary behavior modification treatment or behavior management program;

(b) Treatment or conditioning that poses known or unknown risks or involves the infliction of physical or mental pain, discomfort, or deprivation.;

(c) A treatment program for a specific resident, a specific group of residents or for all residents in the facility using a particular extraordinary treatment model, for example aversive treatment or survival training.

(12) Follow-up Services.

(a) The licensee shall establish and have in writing a plan to promote the delivery of follow-up services. The licensee shall, where possible, contact within one month of discharge each child who was in care for more than 72 hours, to determine whether needed services are being provided.

(b) The licensee shall, where possible, arrange for on-going services as necessary to facilitate the resident's adjustment to his or her new environment, except where the resident was referred by a placement agency or purchaser of service which is responsible for the resident.

(c) The licensee must document its follow-up contacts or efforts at follow-up contact with each child not receiving follow-up services from the referring or placement agency.

102 CMR 3.07

3.07: Care of Residents

Mass Regulations Title 102 Chapter 1

(1) Role of Child Care Staff. The licensee shall employ child care staff to implement individual service plans on a daily basis. Child care staff shall assist each resident with all activities of daily living, in accordance with her or his developmental level or mental age. The licensee, program employees and all members of the child care staff shall supervise residents in a manner that protects each resident from any form of abuse and neglect. No program employee, member of the child care staff nor any other person with unsupervised access to residents shall inflict any form of physical, emotional or sexual abuse, or neglect upon a resident while in the program's care and custody. Child care staff shall assist each resident in the development of self help and social skills; positive human relationships, including promoting in each resident a sense of security, belonging, and self-worth; and shall provide emotional support and guidance to residents as appropriate. Programs serving teen parents shall prepare a teen parent for the physical, social, and emotional responsibilities of pregnancy, childbirth, parenthood, and, when appropriate, care and protection of the child.

(2) Staff-Child Ratios.

(a) The licensee shall establish a written description of the staffing of the facility on a 24 hour per day, seven day per week basis. The staffing plan shall include the availability of administrative and/or clinical staff on an on-call basis for those hours when these staff are not present at the facility. The staffing pattern shall be gender-appropriate. The staffing description must include provisions for the periods of time when assigned staff are absent due to illness or vacation.

(b) The licensee must submit a current staffing schedule.

(c) The licensee shall assure that at all times a staff person certified in C.P.R. and First Aid is available in the facility.

(d) The licensee shall assure a staff-child ratio appropriate to the age, capabilities, needs and service plans of the residents in the facility, and sufficient to carry out the requirements of 102 CMR 3.00. Volunteers shall not be included in the staff-child ratio.

(e) In programs serving teen parents the licensee shall assure that staffing patterns are adequate to meet the needs of teen parents who may need assistance and supervision in learning to care for newborns. The teen parent should be responsible for providing most of the care of his or her child and staff should be available as a resource and support.

(f) In transition to independent living programs and programs serving teen parents, there may be times when it is appropriate for residents to be in the facility without staff present. The licensee shall evaluate each resident to determine his or her readiness to be unsupervised. The licensee shall have a written plan defining the periods of time residents may be left unsupervised, and the emergency assistance available when staff are not physically present.

(3) Room Assignment and Programming.

Mass Regulations Title 102 Chapter 1

(a) The licensee shall assure that all room assignments are appropriate, taking into consideration the ages and needs of residents.

(b) The licensee shall assure that appropriate programming is provided for each age group served.

(4) Clothing. The licensee shall assure that each resident has adequate, clean, and seasonable clothing as required for health, comfort, and physical well being and appropriate to age, sex, and individual needs.

(a) The licensee shall not require any resident to wear a uniform which identifies him or her as a resident of a particular facility.

(b) Each resident shall have his or her own clothing for his or her own use. Any identification on the clothing shall be inconspicuous.

(c) The licensee shall provide residents the opportunity to participate in selecting their own clothing.

(d) The licensee shall permit each resident to take his or her clothing upon discharge from the facility.

(e) In programs serving teen parents, the licensee may lend newborn clothing, provided that it makes clear to teen parents that the clothing must be returned upon discharge. The licensee shall assure that both the teen parent and his or her child have adequate clothing upon discharge.

(5) Grooming and Hygiene.

(a) The licensee shall provide each resident with grooming and hygiene articles necessary to meet his or her needs. In programs serving teen parents and in transition to independent living programs, the licensee may encourage a resident to provide his or her own grooming and hygiene articles. However, if the resident cannot provide his or her own grooming and hygiene articles the licensee shall provide the necessary articles.

1. The provision of such articles shall not be contingent upon behavior and may not be part of a level or privilege system.

Mass Regulations Title 102 Chapter 1

2. Such articles may not be sold to residents.

3. Community use of grooming and hygiene articles such as towels, tooth brushes, soap and deodorants is prohibited.

(b) The licensee shall provide each resident with the opportunity to have a daily shower or tub bath, with due regard for privacy. The licensee shall give residents assistance or supervision in bathing when they are unable to perform this function by themselves.

(c) The licensee shall encourage each resident to brush his/her teeth and provide assistance where needed

(d) The licensee shall assist each resident in learning grooming practices.

(e) For each child in care more than 72 hours, the licensee shall make arrangements for hair cutting in accordance with the wishes of the resident and consistent with good health.

(f) The licensee shall bathe or clean children upon soiling, and shall change soiled clothing. As necessary, the licensee shall conduct a toilet training program for each child in care more than 72 hours.

(g) In programs serving teen parents, the licensee shall assist the teen parent with a toilet training program for his or her child. The teen parent shall be responsible for bathing or cleaning his or her own child upon soiling and shall change soiled clothing.

(6) Nutrition. Except as provided in 102 CMR 3.07(6)(j):

(a) The licensee shall provide a nourishing well-balanced diet to all residents. The licensee shall have a written plan for nutritional services including purchase, storage, preparation and serving of food. The plan must identify one person who is responsible for the food program.

1. The licensee shall provide at least three meals daily constituting a nutritionally adequate diet.

2. The licensee shall prepare and serve meals in a manner and in an amount and at times appropriate to the nutritional needs of each resident, including special dietary needs.

Mass Regulations Title 102 Chapter 1

(b) No resident shall be denied a meal for any reason other than medical prescription. Such prescription shall be in writing and shall be carried out, as required by 102 CMR 3.06(4)(h).

(c) The licensee shall encourage residents to eat a well-balanced diet, but no resident shall be force-fed or otherwise coerced to eat against his or her will except where medically prescribed.

(d) The licensee shall serve to residents meals which are substantially the same as those served to staff unless special dietary needs require differences in diet.

(e) The licensee shall prepare tasteful meals and shall serve meals appetizingly.

(f) The licensee shall allow residents to eat at a reasonable, leisurely rate, and shall encourage normal conversation during meals.

(g) Staff shall be present and shall assure that each resident receives adequate amounts and variety of food.

(h) The licensee shall prepare menus and shall maintain copies of the menus used. Menus shall be prepared or reviewed by a person who has had training in the nutritional needs of children and the U.S.D.A. requirements for a nutritionally adequate diet.

(i) The licensee shall store, prepare, and serve all food in a manner as to be clean, wholesome, free from spoilage, and safe for human consumption.

(j) In programs serving teen parents and in transition to independent living programs, the resident may be responsible for nutritional services. If so, the licensee shall submit a written plan which describes training provided to residents regarding nutrition, budgeting, menu planning, shopping, meal preparation, and food storage. Staff shall provide adequate monitoring and supervision regarding nutrition.

(7) Behavior Management.

(a) Each licensee shall maintain a written statement defining rules, policies and procedures for behavior management. This statement shall provide for and include a description of the safeguards for the emotional, physical and psychological well-being of the population served. This statement shall include measures for positive responses to appropriate behavior and shall define and explain the use of behavior management procedures used in the facility including, where applicable:

Mass Regulations Title 102 Chapter 1

1. level/point systems of privileges, including procedures for the resident's progress in the program;
2. the type and range of restrictions a staff member can authorize for misbehavior of residents;
3. the form of physical restraint used, the behavioral interventions used as alternatives to restraint, including de-escalation techniques and non-confrontational approaches to angry or aggressive residents, and controls on abuse of such restraints;
4. the circumstances under which the program would restrain a resident;
5. the name of the restraint coordinator;
6. the procedure for regular review of restraint data by a restraint safety committee;
7. the names and positions of the restraint safety committee;;
8. the use of the practice of separating a resident from a group or program activity;
9. any denial or restrictions of on-grounds program services.

(b) In programs serving teen parents, the licensee's policies and procedures for behavior management shall include acceptable behavior management strategies for a teen parent to use with his or her child, and shall include:

1. a process for educating teen parents about behavior management practices;
2. statements and training prohibiting the practices stated in 102 CMR 3.07(7)(g); and
3. rules outlining the expected behavior of teen parents.

(c) When feasible and appropriate, residents shall participate in the establishment of rules, policies and procedures for behavior management.

Mass Regulations Title 102 Chapter 1

(d) Except in cases of emergency admission, the licensee shall provide residents, and parents or persons other than a parent with custody of the child with a copy of the facility's written statement prior to admission.

(e) For children admitted in emergency circumstances who remain in care more than 72 hours, the licensee shall provide to the child's parents or persons other than a parent with custody, a copy of the program's written behavior management statement.

(f) The licensee shall inform parents, persons other than a parent with custody of the child and residents of any significant changes in behavior management procedures.

(g) No resident shall be subjected to abuse or neglect, cruel, unusual, severe or corporal punishment including the following practices:

1. any type of physical hitting inflicted in any manner upon the body;
2. requiring or forcing the resident to take an uncomfortable position such as squatting or bending or requiring or forcing the resident to repeat physical movements, when used as punishment;
3. punishments which subject the resident to verbal abuse, ridicule or humiliation;
4. denial of visitation or communication privileges with family, when used as punishment;
5. denial of sufficient sleep;
6. denial of shelter, bedding, food or bathroom facilities;
7. extensive separation from the group.

(h) The licensee shall direct behavior management to the goal of maximizing the growth and development of the residents and protecting the group and individuals within it.

(i) The licensee shall directly relate consequences to the specific misbehavior and shall apply such consequences

Mass Regulations Title 102 Chapter 1

without prolonged delay.

(j) Unless the licensee obtains a variance prior to implementation, the use of any form of restraint other than physical restraint is prohibited.

1. Restraint of residents may be used only when:

a. the resident is demonstrating by his/her actions that he/she is dangerous to him/her self;

b. no other intervention has been or is likely to be effective in averting the danger.

2. No resident shall be restrained for purposes of punishment or for the convenience of others.

3. No resident may be restrained solely for non-compliance with a program rule, staff directive or expectation.

4. Only staff trained in physical restraint shall participate in restraining a child.

5. The administrative designee on the premises shall be notified immediately whenever a physical restraint is initiated. The designee shall have oversight responsibility of every physical restraint at the program.

6. After the first five minutes of each physical restraint, steps must be initiated to contact the on-call administrative or clinical staff .

7. A licensee shall assure that the form of restraint used is the least intrusive means necessary to protect the resident, other residents and staff. Any restraint procedure which includes choke holds, headlocks, full nelsons, half-nelsons, hog-tying or the use of pressure points to inflict pain is prohibited.

8. If a resident needs to be restrained for a period longer than 20 minutes, the approval of the chief administrative person or his or her designee shall be obtained. Such approval shall be based upon the resident's continued behavior justifying the need for continued restraint.

9. The physical condition of a resident who is being restrained shall be constantly monitored, as defined in 102 CMR 3.02

Mass Regulations Title 102 Chapter 1

10. The licensee shall immediately release a resident who exhibits any sign of significant physical distress during restraint and shall immediately provide the resident with any needed medical assistance.

11. A restrained resident shall be released at the first indication that it is safe to do so.

12. Following the release of a resident from a restraint, the program shall implement its processing and follow-up procedures.

13. Any resident who has been restrained more than five times in any seven day period must receive a review of his/her clinical and behavioral needs by his/her assigned case manager or clinician within three working days of the fifth restraint. If such review results in any change in services, this must be documented in the resident's service plan, as required by 102 CMR 3.05(4) and (5).

14. The licensee shall document all restraints, including any required administrative approval, and its processing and follow-up procedures in a physical restraint incident report and keep such reports in the resident's record.

(k) Any behavior management policy which results in a resident being separated from the group or program activities shall include, but not be limited to the following:

1. guidelines for staff in the utilization of such procedures;
2. persons responsible for implementing such procedures;
3. the duration of such procedures including provisions for approval by the chief administrative person or his or her designee for a period longer than 30 minutes;
4. a requirement that residents shall be observable at all times and that staff shall be in close proximity at all times;
5. a procedure for staff to directly observe the resident at least every 15 minutes;

Mass Regulations Title 102 Chapter 1

6. a means of documenting the use of such procedures if used for a period longer than 30 minutes including, at a minimum, length of time, reasons for this intervention, who approved the procedure and who directly observed the resident at least every 15 minutes.

(l) A time out room shall not be locked, except as outlined in 102 CMR 3.07(7)(n)1. through 3.

NON-TEXT PAGE

(m) Any room or space used for the practice of separation must be physically safe and appropriate to the population served by the facility.

(n) If the licensee operates a locked secure detention or treatment program, a clear and precise description of the program must be submitted which includes:

1. A description of the facility's security system including any automatic locks or safety devices on doors or windows;

2. If individual bedroom doors are locked at any time, a statement of the hours the doors will be locked, an explanation of any time doors may be locked other than during sleeping hours, a description of the procedures to insure that locks are released in the event of fire, power failure or any situation which may necessitate evacuation of the room, floor or building.

3. A plan which specifies a description of the population indicating the need for a locked room, alternative interventions to be used prior to a locked room, a physical description of the room, the method for direct observation of the child by staff and the procedure for documenting use of the room. Such plan must be submitted to the Office for approval prior to use of a locked room.

a. A locked time out room may be used only when necessary to protect the resident, other residents, or staff from immediate danger of physical harm. Locked rooms must meet all applicable state and federal regulations.

b. Use of the locked room shall not exceed 15 minutes without consultation with and approval from the chief administrative person or his or her designee. Such approval shall be necessary for each following 60 minute period. A staff person shall be in close proximity to the locked room at all times while a resident is in a locked room, and shall directly observe the resident at least every 15 minutes, and shall take appropriate measures to assure the safety of the resident.

Mass Regulations Title 102 Chapter 1

(8) Money.

(a) The licensee shall provide opportunities for residents in care more than 45 days to develop a sense of the value of money through earning, spending, giving and saving.

(b) The licensee shall have a written policy regarding allowances.

(9) Visiting, Mail and Telephones.

(a) The licensee shall have written policies which encourage and support family visits, mail, telephone calls, and other forms of communication with family, friends, or other persons.

1. Such policies shall be developed with the goal of encouraging healthy family relationships, maximizing the individual resident's growth and development, and protecting the residents, staff and program from unreasonable and unsafe intrusions.

2. Such policies shall be distributed to staff and residents, persons other than a parent with custody of the child, and parents prior to admission, when possible, or within 72 hours after admission.

(b) The licensee shall provide opportunities and encourage residents to visit and otherwise communicate with family and other persons. The licensee shall insure that visits offer reasonable privacy.

(c) No resident shall be restricted in his or her opportunities to visit with family and other persons unless such opportunities are restricted as follows:

1. by court order and in such case only to the extent of the court order;

2. by the resident's individual service plan for therapeutic reasons only. Such restrictions or denial must be no greater than necessary to achieve the therapeutic purpose. Those persons whose visitation is restricted or denied should receive an explanation from the program as to the reasons therefore.

3. due to a documented safety risk to residents or staff.

Mass Regulations Title 102 Chapter 1

(d) In programs serving teen parents, the licensee may not prohibit the other parent of a child from visiting unless there is a court order prohibiting contact, his or her behavior within the program is disruptive and/or inappropriate, or the resident teen parent does not wish to have contact with him or her.

(e) The licensee shall establish visiting hours which meet the needs of the residents and their parents.

(f) The licensee shall formulate procedures for residents visiting outside the facility, when appropriate, including:

1. A method for recording the location, the duration of the visit, and the name, address and telephone number of the person responsible for the resident while absent from the facility;

2. A method for recording the resident's return and a procedure for action if he or she fails to return.

(g) It shall be each resident's right to open and send mail unread by staff except in accordance with the following circumstances:

1. Any restrictions or censorship must be no greater than necessary to achieve the therapeutic purpose described in the individual service plan.

2. Mail restricted or censored must be returned to the sender with reasons therefore.

3. Staff may open and inspect a resident's mail for contraband only in his or her presence.

(h) Telephone communications may not be monitored or unreasonably restricted unless there are specific therapeutic reasons justifying such limitations.

1. Such therapeutic reasons must be developed in the child and/or teen parent's individual service plan and must be no greater than necessary to achieve the therapeutic purpose.

2. If phone conversations are monitored, the parties to the conversations must be informed.

(i) Communication with a resident's social worker, attorney, or clergy person may not be prohibited, restricted or censored.

Mass Regulations Title 102 Chapter 1

(10) Runaways. The licensee shall have a written policy for handling runaways and missing residents. The policy shall include:

(a) procedures for making staff and shelter home parents aware of residents with a history of running or who show potential for being runaways;

(b) preventive procedures, including interventions used to prevent or retrieve a resident from running; what dangers a resident would be exposed to if he/she ran or what danger the resident may pose to others if he/she ran. The program shall describe how staff would determine if a danger exists which is sufficient to justify using physical restraint to prevent the resident from running.

(c) procedures for staff and shelter home parents to follow in the event that a resident is missing including immediately informing the chief administrative person or his or her designee;

(d) a procedure requiring the program to notify the child's parent, person other than a parent with custody of the child, referral source and the Department of Education, when applicable, and the local police.

(11) Search.

(a) If the licensee has a practice of searching the resident and/or the resident's personal belongings, the licensee shall maintain a written statement defining the policies, procedures and circumstances for the search of residents and their personal belongings.

(b) The licensee shall provide children a copy of the written search policy within 24 hours of their admission to the program.

(c) The licensee shall provide parents or persons other than a parent with custody of the child, a copy of the written search policy within 72 hours of the child's admission.

(12) Transportation of Residents. The licensee shall describe in writing its arrangements for transporting residents. Each resident shall be provided with the transportation necessary for implementing his or her service plan. Each program shall have available means of transporting residents in cases of emergency. Whenever the licensee uses agency owned, leased or contracted vehicles or staff vehicles to transport residents, the following regulations shall apply:

Mass Regulations Title 102 Chapter 1

- (a) Appropriate supervision with adequate staff-child ratio for transportation must be maintained.
- (b) The operator of any vehicle shall be licensed in accordance with state laws.
- (c) Any vehicle used for transporting residents shall be registered, inspected and operated in accordance with state laws.
- (d) Vehicles shall be maintained in a safe operating condition and shall be equipped with a standard first aid kit.
- (e) The licensee shall not allow the number of residents riding in a vehicle at any time to exceed the number of seats therein, nor shall such vehicle be in motion until all the passengers are seated.
- (f) Residents being transported in vehicles other than buses shall be restrained in appropriate child passenger restraints or safety belts.
- (g) No vehicle shall be used to transport residents unless the licensee has assured that the following minimum amounts of liability insurance are provided:
 - injury per person- \$100,000
 - injury per accident- 300,000
 - property damage- 5,000
- (h) The licensee shall ascertain the nature of any need or problem of a resident which may cause difficulties during transportation, such as seizures, a tendency towards motion sickness, and disabilities. The licensee shall communicate such information to the operator of any transport vehicle.
- (i) The operator of a vehicle transporting children shall discharge a child only to a person known to the operator as authorized by the licensee to receive the child.

102 CMR 3.08

3.08: Physical Plant and Equipment

Mass Regulations Title 102 Chapter 1

(1) Required Inspections.

(a) The licensee shall have a certificate of inspection or Use and Occupancy Permit from the Department of Public Safety or the appropriate local building inspector certifying that the facility meets the building code applicable to that facility.

(b) The licensee shall obtain a written report from the local health inspector or from the Department of Public Health certifying that the facility is in compliance with 105 CMR 410.000 (Chapter II of the State Sanitary Code) including the following categories: kitchen areas; bathroom areas; water supply; hot water operations; heating operations; lighting and electrical operations; metering of electricity and gas; installation and maintenance of the physical plant; asbestos material used as insulation or covering; smoke detectors; exits; maintenance of structural elements; control of insects, rodents and skunks; garbage and rubbish storage and disposal; and security.

(c) The licensee shall obtain a written report of an annual fire inspection from the local fire department. The licensee shall request fire inspections on a quarterly basis and shall maintain copies of these requests and inspections at the facility.

(2) Safety Program.

(a) The licensee shall establish a written plan detailing procedures for meeting potential emergencies, such as fire, power outage, severe weather conditions and staffing problems. The procedures shall include:

1. plans for the assignment of personnel to specific tasks and responsibilities in emergency situations;
2. instructions relating to the use of alarm systems and signals;
3. systems for notification of appropriate persons;
4. specification of evacuation routes and procedures, with clearly marked diagrams.

(b) One person shall be assigned responsibility for coordination of the planning and procedures for meeting potential emergencies.

Mass Regulations Title 102 Chapter 1

(c) The licensee shall post the plans and procedures at suitable locations throughout the facility, and insure that staff are familiar with the procedures.

(d) The licensee shall conduct training on these procedures quarterly in order to:

1. assure that all personnel on all shifts are trained to perform assigned tasks and are familiar with the use of the fire-fighting equipment in the program;

2. evaluate the effectiveness of emergency plans and procedures.

(e) The licensee shall prepare residents for and conduct evacuation drills on each shift at least twice a year under varied conditions.

1. The licensee shall make special provisions for the evacuation of any residents with disabilities.

2. The licensee shall take special care to help residents with emotional or perceptual disabilities understand the nature of such drills.

3. The licensee shall maintain a written log documenting each evacuation drill including the date and time of the drill, and the time required to evacuate.

(f) The licensee shall maintain an active safety program allowing for ongoing assessment of the facility's emergency and safety procedures.

(3) Toxic Substances.

(a) The licensee shall store poisonous cleaning substances or other toxic substances in areas where they are not accessible to residents.

(b) The licensee shall assure that toxic substances and medications are not stored together.

(c) The licensee shall store medical equipment and medications under proper conditions for sanitation, preservation, and security.

Mass Regulations Title 102 Chapter 1

- (d) The licensee shall assure that all toxic substances are labeled as to the contents and antidote.
- (e) The poison control center number shall be posted conspicuously next to all telephones in the program.
- (f) In transition to independent living programs, the licensee may store toxic substances in areas which are not secured, provided that the licensee has a plan to assure safety at all times.

(4) Paint.

- (a) The licensee shall remove or make inaccessible to children paint or plaster containing lead.
- (b) All buildings, residential or otherwise, utilized by children younger than six or with a mental age younger than six shall be free of lead paint violations in accordance with 105 CMR 460.000 (Massachusetts Department of Public Health Prevention and Control of Lead Poisoning regulations). Certification shall be obtained from the Massachusetts Department of Public Health or local board of health or private inspector utilizing an inspection form approved by the Childhood Lead Poisoning Prevention Program of the Massachusetts Department of Public Health.
- (c) A licensee that obtained a letter of compliance from the Massachusetts Department of Public Health, local board of health or private inspector prior to July 1, 1988, will not be required to comply with additional deleading requirements unless so ordered by the local board of health or the Massachusetts Department of Public Health to remain in compliance with 105 CMR 460.000, or unless expanding to space not previously approved by the Office.

(5) Buildings and Grounds. The facility and its grounds shall be maintained in a sanitary, comfortable and safe condition.

- (a) The facility and grounds shall be maintained free from rodent or insect infestation by qualified persons.
- (b) Porches, elevated walkways and elevated play or recreation areas shall have barriers to prevent falls. Glass barriers shall not be used. Such barriers shall be at least 36" in height if the elevated area is more than 30" off the ground.
- (c) All exits, exit accesses and exit discharge areas shall be maintained continuously free from all obstructions or

Mass Regulations Title 102 Chapter 1

impediments to immediate use.

(d) Outdoor recreation areas and equipment shall be safe. Equipment shall be maintained in good repair, of safe design without sharp protrusions and shall be securely anchored to the ground.

1. The outdoor recreation area shall be free from hazards and dangerous machinery.

2. The outside recreation area shall be fenced, if appropriate, for the age and needs of the population served.

(e) Power tools and equipment shall be stored in a locked area and only used by children under the instruction and appropriate supervision of a staff member, except in transition to independent living programs, where such tools and equipment may be stored in areas which are not secured. The licensee must have a plan to assure safety at all times.

(f) Swimming areas shall be tested for water quality and be secured from inappropriate entry.

(g) The licensee shall have a plan for monitoring and insuring safety around swimming areas, including appropriate staff-child ratios and supervision.

(h) Any private well or water source shall be inspected and approved by the local board of health or health department.

(i) The program shall be equipped with at least one working smoke detector on each floor and at least one additional smoke detector for each separate sleeping area not connected by a common hallway.

(j) Each area for cooking and any other areas used for electrical, gas, or other heating equipment shall be equipped with a fire extinguisher which is inspected annually to insure that it is in good working order.

(k) The licensee shall maintain standard first aid kits that are accessible to each major activity area of the program. These kits shall be checked and restocked regularly.

(l) The licensee shall assure that all areas accessible to infants, toddlers and young children shall be child-proofed appropriately. Electrical outlets shall be covered, cabinets latched or locked, access to stairs barricaded, and sharp corners protected. Poisonous plants, cosmetics, appliances and small items which could be swallowed shall not be within a child's reach.

Mass Regulations Title 102 Chapter 1

(6) Physical Facility/Architectural Barriers.

(a) Requirements for Residents with Limited Mobility. The licensee shall assure that residents with limited mobility have access to those areas of the facility and grounds to which such access is necessary.

(b) Building Entrances. A program which enrolls residents requiring wheel chairs shall have at least one entrance without steps and wide enough for a wheel chair, for each building utilized by such residents.

(7) Living Units.

(a) The licensee shall design the living units to simulate the functional arrangements of a home and to encourage a personalized atmosphere for small groups of residents, unless it has been demonstrated that another arrangement is more effective in maximizing the human qualities of the specific population served. Living units shall be safe, clean and in good repair.

1. There shall be evidence of regular cleaning and maintenance routines in all areas of the facility.

2. All rooms shall be kept safe from fire hazards.

3. Hallways to bedrooms shall be illuminated at night.

(b) The licensee shall provide furniture and furnishings which are safe, appropriate, comfortable, and home-like.

1. Broken furniture and ripped upholstery shall be repaired or discarded.

2. Furniture and furnishings provided to residents shall be substantially the same as those provided to staff.

(c) All windows shall have operable screens in good repair.

(d) All incandescent or fluorescent light fixtures shall be protected with shades or covers.

Mass Regulations Title 102 Chapter 1

(e) The licensee shall provide bedrooms which have:

1. direct outside ventilation;
2. at least one operable window;
3. at least 70 square feet of space for single bedrooms, at least 50 square feet per person in bedrooms for two or more residents. In programs serving teen parents, a teen parent and his or her child may be housed in a single bedroom.

(f) The licensee shall provide a means for residents to mount pictures on bedroom walls, and to have other decorations.

(g) The licensee shall make provisions for safe keeping of each resident's money or valuables.

(h) The licensee shall provide each resident with appropriate individual furniture, and an individual closet or a designated section of a closet with clothes racks and shelves.

(i) The licensee shall provide accessible storage areas for personal possessions.

(j) The licensee shall provide each resident with his or her own bed which shall be of sufficient size to accommodate the resident comfortably. No cots or portable beds shall be used.

1. Each bed shall have a clean, comfortable, non-toxic and fire retardant mattress.
2. Sheets, pillows, pillow cases and blankets shall be provided for each bed.
3. Sheets and pillow cases shall be washed weekly or more frequently if indicated, and before use by another child.

(k) Living rooms for the residents' use shall be provided in each facility. The living area(s) shall have adequate space per resident exclusive of hallways, bathrooms, kitchens, dining areas, closets, offices, storage areas or areas

Mass Regulations Title 102 Chapter 1

regularly used for other purposes.

(8) Bathing and Toilet Facilities.

(a) Bathing and toilet facilities shall be maintained in good repair and in clean condition.

(b) The licensee shall locate and equip toilet areas so as to facilitate maximum self-help by residents.

(c) The licensee shall provide toilets, which allow for individual privacy (with partitions and doors), unless inconsistent with a toilet training program.

(d) The licensee shall provide bathing and toileting fixtures which are specially equipped, if used by residents with disabilities.

(e) Except as provided in 102 CMR 3.08(8)(k), the licensee shall provide at least one toilet for each six residents which is easily accessible to the sleeping quarters.

(f) Except as provided in 102 CMR 3.08(8)(k), the licensee shall provide at least one sink for each six residents.

(g) Except as provided in 102 CMR 3.08(8)(k), the licensee shall provide at least one tub or shower for each six residents. All tubs and showers shall be equipped with a non-slip surface or mat.

(h) The licensee shall have available hot and cold running water for all sinks, tubs and showers.

(i) The licensee shall provide mirrors at convenient heights for use by residents.

(j) The licensee shall provide a place for toiletries and for hanging towels and washcloths.

(k) In programs serving teen parents, infants and toddlers shall not be included in the ratio of bathing and toilet facilities required by 102 CMR 3.08(8)(e) through (g).

(9) Kitchens and Dining Facilities.

Mass Regulations Title 102 Chapter 1

(a) Kitchens shall be provided with all necessary equipment for the preparation, storage, serving and clean-up of all meals for all of the residents and staff regularly served by the facility. All equipment shall be maintained in a clean and safe working order.

(b) The licensee shall provide dining areas which are sufficiently large to accommodate in an uncrowded manner tables and chairs for all persons eating.

(c) The licensee shall provide dining areas which are clean, well lit and ventilated, and attractively furnished.

(d) The licensee shall provide tables and chairs of the type, size and design appropriate to the ages and needs of the residents.

(e) The licensee shall provide dining utensils and dishes appropriate to the age and needs of the residents.

1. Disposable dinnerware shall not be used on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of the residents in care.

2. Defective or damaged dishes or utensils shall not be used.

102 CMR 3.09

3.09: Shelter Homes

(1) Information to be Provided. The licensee shall provide to all prospective shelter home parent applicants and upon request to any person the following information:

(a) written information regarding the licensee's program, and the children served by the program, as required by 102 CMR 3.04(1);

(b) written grievance and appeal procedures as required by 102 CMR 3.04(3)(i);

(c) written statement identifying all qualifications required of shelter home parents, as required by 102 CMR 3.09(2);

Mass Regulations Title 102 Chapter 1

(d) written statement of physical requirements for shelter homes, as required by 102 CMR 3.09(3);

(e) written policy and procedure for orienting and assessing shelter home parent applicants, as required by 102 CMR 3.09(4) and (5).

(2) Qualifications Required of Shelter Home Parents. The licensee shall maintain a written statement identifying the qualifications required of shelter home parents, clearly identifying criteria by which shelter home parent applicants may or may not be approved.

(3) Physical Requirements for Shelter Homes. The licensee shall establish physical requirements for shelter homes, which shall include, but need not be limited to, the following:

(a) The shelter home shall be clean, safe, free of fire and other hazards, and of sufficient size to accommodate comfortably all members of the household and the approved number of children;

(b) The shelter home shall have adequate lighting and ventilation, hot and cold water supply, plumbing, electricity, and heat;

(c) The shelter home shall have sufficient furniture to allow each child to sleep in a separate bed and to have adequate storage space for his/her personal belongings;

(d) The shelter home shall have bedrooms which provide at least 50 square feet per child and shall accommodate no more than four children per bedroom;

(e) No child over one year of age shall sleep in the same room with an adult of the opposite sex;

(f) No bedroom to be used by children shall be located above the second floor unless any such floor has two means of egress;

(g) No bedroom to be used by children shall be located below the first floor unless it contains a ground level, standard door exit and at least one operable window;

(h) Shelter homes shall be furnished and maintained in a safe, appropriate and comfortable manner;

(i) The shelter home shall be equipped with smoke detectors which shall be maintained in working order;

(j) If the shelter home uses well water, it shall be tested and determined safe, and a report of the test furnished to the licensee.

Mass Regulations Title 102 Chapter 1

(4) Orientation. The licensee shall provide an orientation to the shelter home parent applicants. The orientation shall include information on the following:

- (a) the purpose and nature of shelter care;
- (b) the characteristics and needs of children placed in shelter homes;
- (c) the role of the shelter agency;
- (d) the services provided by the shelter agency;
- (e) the role and responsibilities of shelter home parents;
- (f) assessment procedures, as described in 102 CMR 3.09(5);
- (g) the approximate duration of time a child may be in placement;
- (h) the licensee's family contact and visitation policy;
- (i) child abuse reporting requirements;
- (j) crisis intervention, including restraint, if applicable;
- (k) first aid and CPR;
- (l) communicable diseases and necessary precautions;
- (m) administration of medication and requirements for documentation;
- (n) emergency planning including evacuation of the home, posting poison control phone number and appropriate storage of toxic substances;
- (o) procedures to follow in the event a child runs away from the home.

(5) Shelter Home Parent Applicant Assessments. The licensee shall, consistent with its current needs, promptly assess each shelter home parent applicant unless at any time during the course of the assessment it is determined that the shelter home parent applicant would not appropriately serve the best interests of children. No child shall be placed in a shelter home until the assessment has been completed and the home approved.

Mass Regulations Title 102 Chapter 1

- (a) The licensee shall provide each applicant with general information on the purpose and nature of shelter home care, the role and responsibilities of shelter home parents, and the services provided by the licensee.
- (b) The licensee shall require each applicant to furnish evidence of a current medical examination and a written statement from a licensed physician regarding the health and any illnesses or disabilities of all household members.
- (c) The licensee shall interview each shelter home parent applicant individually.
- (d) The licensee shall interview all other members of the applicant's household, as appropriate to the age of the member of the household.
- (e) The licensee shall make at least one visit to the applicant's home to determine if physical requirements for shelter homes are met.
- (f) The licensee shall determine that each shelter home parent applicant and all household members have a background free of conduct which bears adversely upon his or her ability to provide for the safety and well-being of children. Such conduct shall include, but not be limited to the conduct described in 102 CMR 1.05(2)(a)1. through 4.
- (g) The licensee shall conduct reference checks by telephone.
- (h) The assessment shall be summarized in a written report and shall document the following:
 - 1. motivation for providing shelter care;
 - 2. emotional stability and compatibility of the shelter home parent applicants;
 - 3. the social, education and health history of the shelter home parent applicants;
 - 4. the family composition, a description of the home and the adjustment of the applicant's own children, if any;
 - 5. the family's attitude toward accepting children for temporary shelter, including the attitudes of extended family members;
 - 6. parenting ability, including child rearing and discipline;
 - 7. at least three telephone reference checks;

Mass Regulations Title 102 Chapter 1

8. the licensee's recommendation as to the age, sex, and characteristics, including special needs, of children best served by the shelter home parent applicants;

9. evidence of each person's compliance with 102 CMR 3.09(5)(f).

(6) Notification of the Results of the Assessment. The licensee shall notify each shelter home parent applicant in writing of the results of the assessment within two weeks of the last meeting with the applicant.

(7) Disapproval and Appeals. Shelter home parent applicants not approved shall be provided an explanation in writing of the reasons for such disapproval. Such explanation shall also include written procedures for the applicant to appeal the agency decision, in accordance with 102 CMR 3.04(3)(i).

(8) Training of Shelter Home Parents. The licensee shall provide an ongoing training program to develop shelter home parents' skills in meeting the needs of children and in fulfilling their responsibilities as shelter home parents.

(9) Agreements with Shelter Home Parents.

(a) General Shelter Home Parent Agreement. The licensee shall enter into a written agreement with every shelter home parent applicant in his or her native language whom the licensee has assessed and approved to become a shelter home parent. This agreement shall be signed and dated and reviewed annually by the licensee and each shelter home parent and shall include:

1. the name and address of the licensee and the name and address of the shelter home parent;
2. a statement defining the responsibilities of the shelter home parents;
3. a statement defining the responsibilities of the licensee for providing services to children and shelter home parents;
4. a statement describing state law and agency requirements regarding child rearing and discipline practices, including a statement prohibiting shelter home parents from using any physical punishment upon any child;
5. the range of payments to be made to shelter home parents for board and care of children, and the frequency of such payments, if applicable;
6. the method for closing a shelter home or for removing a child from the home;
7. the method for registering complaints and obtaining administrative review of the licensee's decisions affecting shelter home parents and the child, pursuant to the agency grievance procedure required by 102 CMR

Mass Regulations Title 102 Chapter 1

3.04(3)(i);

8. the responsibility of the licensee to provide, and the shelter home parents' responsibility to participate in, ongoing training programs;

9. the responsibility of the licensee to make shelter home parent's annual review available to them;

10. a statement that no shelter home parent shall give up full-time residential care of any child to anyone other than the licensee or a person designated by the licensee, unless ordered to do so by a court of competent jurisdiction;

11. a statement which assigns responsibility for payment of liability insurance to protect the shelter home parents from personal liability for certain damages relating to the provision of shelter care, and which advises the shelter home parents to review any insurance policies they personally may have to determine extent of coverage;

12. a statement which assigns responsibility for payment in the event of damage to or loss of the shelter home parents' property by reason of the child, and which advises the shelter home parents to review any insurance policies they personally may have in order to determine the extent of their coverage;

13. a statement requiring the shelter home parents to notify the licensee in the following circumstances:

a. in advance of any vacation or trip which would result in the family being away from their usual place of residence overnight when a child is in placement;

b. immediately in the event of a death or serious injury to the child;

c. within 24 hours of any significant changes in the status or health of household members including, but not limited to: death, divorce, separation, serious illness or hospitalization;

14. a statement outlining the responsibility of the shelter home parent to report any suspected incidents of abuse or neglect to the Department of Social Services and to the licensee;

15. a plan for the care of the child or children during any extended absences of the shelter home parents which shall have as a priority the maintenance of the children's stability;

16. provisions for termination of the agreement.

(b) Required Agreement Upon Placement of an Individual Child. For children in care more than 72 hours, the licensee shall enter into a written agreement with the shelter home parent caring for the child. This agreement shall be in the shelter home parent's native language and shall be signed and dated by the licensee and each shelter home parent. It shall include:

Mass Regulations Title 102 Chapter 1

1. the full name and address of the child placed in the shelter home pursuant to the agreement;
2. child's date of birth;
3. child's school grade and school attended;
4. pertinent medical information and any available developmental information;
5. a description of any special abilities or behavioral problems the child may have;
6. a summary of the child's placement history and social history when providing this information is not contrary to the best interests of the child;
7. child's custody or guardianship status;
8. name and address of the child's parents, when appropriate, and parents' or relatives' involvement and arrangements for visiting;
9. religious requirements for the child, when applicable;
10. arrangements for clothing for the child;
11. name, office address and office phone number of the social worker responsible for the child;
12. a phone number to contact the social worker responsible for the child in case of emergencies or the number of the licensee's 24 hour telephone service;
13. a statement authorizing the shelter home parents to obtain routine and emergency medical and dental care for the child;
14. provisions for visits by the social worker with the child and shelter home parents;
15. the conditions under which the agreement may be terminated and the child removed from the home.

(c) Explanation of Agreements. The licensee shall explain every term of the agreements required in 102 CMR 3.09(9)(a) and (b) to each shelter home parent in his or her native language before they are signed and shall provide each shelter home parent with a copy of each agreement.

Mass Regulations Title 102 Chapter 1

(10) Information Prior to Decision to Accept a Child. The licensee shall provide each shelter home parent prior to or at the time of placement sufficient information about each child to be placed to enable the shelter home parent to determine if s/he will accept the child. This information shall include, when available, but need not be limited to, the age, sex, race, and medical condition of the child, information regarding the reason for placement, and a description of any behavioral problems the child may have.

(11) Information to Child Prior to Placement in a Shelter Home. The licensee shall provide information to each child prior to or at the time of placement in a shelter home which includes:

- (a) specific rules and expectations of the licensee;
- (b) rules which may be specific to the shelter home and emergency procedures for evacuating the home;
- (c) any daily schedule required for the child's participation in the shelter program;
- (d) emergency information including name and phone number of agency worker.

(12) Assignment and Responsibilities of the Shelter Home Case Manager. Each shelter home shall be assigned a case manager who shall be responsible for providing direct services to the shelter home. The case manager shall assist the shelter home parents with any matters concerning the shelter home parents or their family which may impact on their ability to provide shelter care. Such assistance shall include the obtaining of services provided by the licensee and aid in applying for other services. The case manager shall visit the shelter home at least once a month while there is a child placed in the home.

(13) Requirement for Annual Review. The licensee shall annually review in person with each shelter home parent his or her performance and experiences in providing shelter care during that year, including review of responsibilities outlined in the general shelter home parent agreement, and shall provide each shelter home parent with the results of the review in writing. The shelter home parent may dispute the results of the review in writing. The shelter home parent's statement shall become part of the shelter home parent's record. The review shall include, but not be limited to:

- (a) a review with each shelter home parent of his or her performance and experiences in providing shelter care;
- (b) reference to any services provided to the shelter home on its own behalf;
- (c) a summary of the shelter home parents' participation in orientation and training.

(14) Emergency Removal. The licensee shall develop procedures to ensure that a child(ren) may be removed immediately in cases of emergency when the licensee determines that the health or safety of the child(ren) would be endangered by remaining in the shelter home. The emergency removal procedures may be initiated at the request of the shelter home parent. The licensee shall maintain a written record of such removal which shall be available to the

Mass Regulations Title 102 Chapter 1

shelter home parents and the Office. The licensee shall notify the shelter home parents in writing of the specific reasons for the removal and shall provide them with information about the agency grievance procedure.

(15) Closing of Shelter Home. In cases where the licensee determines that the shelter home is unable to meet the needs of children, the licensee shall send a written notice of intent to close the home to the shelter home parents. The notice shall contain an explanation of the specific reasons for the intended closing, and information about the agency grievance procedure. Except in cases of emergency, the home may not be closed nor, consistent with each child's service plan, the children removed until the shelter home parents, if they so desire, have had the opportunity to access the grievance procedure. Upon the closing of a shelter home, all agreements with the shelter home parents shall terminate.

102 CMR 3.10

3.10: Records and Confidentiality

(1) Residents' Records. Except as provided in 102 CMR 3.10(1)(k), the licensee shall maintain a written record for each resident which includes:

(a) a face sheet which identifies each resident by the following information, where available:

1. the name, date of admission, date of birth, place of birth, citizenship, and primary language of the resident, if other than English;
2. father's name, mother's name and parents' marital status;
3. name, address and telephone number of parents, legal guardian, and closest relative available in case of emergency;
4. sex, race, height, weight, color of hair, color of eyes, and identifying marks; medical condition significant to the resident's well being, including allergies and current medications;
5. description of the resident's ability for self-preservation;
6. referring agency, name of social worker and telephone number;

Mass Regulations Title 102 Chapter 1

7. custody, guardianship and/or commitment status;

8. date of discharge and resident's location after discharge;

9. individual or agency responsible for follow-up contact with the resident.

(b) copy of complete evaluations as required by 102 CMR 3.05(1)(f) and (g);

(c) documentation of intake services, as required by 102 CMR 3.05(3)(c);

(d) written assessment of needs and the individual service plan as required by 102 CMR 3.05(4);

(e) written reports of periodic reviews as required by 102 CMR 3.05(5);

(f) written report of the discharge conference and summary as required by 102 CMR 3.05(7);

(g) written summary of any follow-up services provided, as required by 1.02 CMR 3.06(12);

(h) health records may be included in the case record or maintained at a designated health location, such as a nurse's office, provided that coordination of records occurs. Health records indicating resident's health while enrolled in a program shall include:

1. documentation of physical and dental examinations as required by 102 CMR 3.06(4);

2. a record of prescribed medications administered to the residents.

(i) all necessary authorizations and consents, including the placement agreement required by 102 CMR 3.05(2)(d), all consents required for the medical care of the resident and Interstate Compact Documents, where applicable;

(j) copies or originals of all correspondence relating to the placement, treatment, progress and discharge of the resident;

Mass Regulations Title 102 Chapter 1

(k) copies of all incident reports as required by 102 CMR 3.04(3)(h) and (i).

(l) Programs serving teen parents shall maintain a written record for each child of a teen parent which includes at the least:

1. written information as specified in 102 CMR 3.10 (1)(a), (g), (i), and (j);

2. service plan information required by 102 CMR 3.10(1)(c) shall include documentation of health care, routine child care, and if relevant, behavior management and education;

If the licensee maintains a separate record for the child(ren) of teen parents, the parent's record and the child's record shall be cross-referenced. One discharge plan and summary of services provided may be completed for the resident and his or her family unit.

(2) Shelter Home Records. The licensee shall maintain a written record for each shelter home which includes:

(a) shelter home parents' written application;

(b) summary of shelter home study and assessment of shelter home parents;

(c) documentation of a completed CORI evaluation on shelter home parent applicants and all adult household members prior to approval as shelter home parents;

(d) documentation of telephone reference checks;

(e) record of each child placed in the shelter home, including the child's full name, date of placement, and date of discharge;

(f) periodic progress reports, at least annually, as required by 102 CMR 3.09(13);

(g) copy of the licensee's written agreement or contract with shelter home parents;

Mass Regulations Title 102 Chapter 1

(h) all correspondence concerning the shelter home;

(i) any other information necessary to furnish a basis for review, study, and assessment of the shelter home;

(j) at any time when a shelter home is closed, the date and reasons for the closing and a copy of the written notification to the shelter home parents.

(3) Authentication and Updating. The licensee shall maintain records and logs which shall be legible, dated and signed by the individual making the entry. The licensee shall continually update all information in each resident's record.

(4) Maintenance. The maintenance, retention, dissemination, duplication, storage and periodic destruction of resident's records shall accord with the following:

(a) If a licensed program is subject to approval by the Massachusetts Department of Education, the licensee shall maintain, retain, disseminate, duplicate, store and destroy all resident's records in a manner which complies with the Massachusetts Student Records Regulations (MSRR), and shall not be bound by 102 CMR 3.10(4)(b);

(b) If a licensed program is not subject to MSRR, the licensee shall maintain its resident's records for a period of seven years in the following manner:

1. Information contained in a resident's record is privileged and confidential.

2. Such information may be distributed or released as necessary to persons directly related to implementing the resident's service plan without written consents.

3. Such information may not be distributed or released to persons not directly related to implementing the resident's service plan unless appropriate consents are obtained.

(5) Access to Records. Residents' records shall be the property of the licensee who shall have written procedures which provide for:

(a) accessing a resident's records by a resident (taking into account his or her capacity to understand), parent(s),

Mass Regulations Title 102 Chapter 1

person other than the parent who has custody or a person not directly related to the service plan;

(b) identifying person(s), if any, whose consent(s) is required before information in a resident's records may be released;

(c) duplicating and costs for duplicating, if any;

(d) releasing information contained in a resident's record;

(e) making available summaries of progress reports in lieu of the entire case records;

(f) securing the information contained in a resident's record against loss, defacement,

tampering or unauthorized use;

(g) storing and preserving a resident's record.

(6) Storage and Preservation. If a program intends to cease operation, it shall submit to the Office a written plan for the storage and preservation of residents' records at least 120 days before ceasing operation.

(7) Communication Logs. Each licensee shall maintain a log or record system to assure communication among staff and continuity of service. The log shall be in writing and kept on a daily basis unless the size or staffing pattern require another frequency.

(8) Admissions Register. Each shelter program shall keep and maintain a current register of all children admitted to and discharged from the program, documenting at a minimum, the child's name, date and time of admission, date and time of discharge, location after discharge and person responsible.

102 CMR 3.11

3.11: Applicability and Effective Date of 102 CMR 3.00

(1) Obligation to Comply. 102 CMR 3.00 reflects basic standards for the operation of residential programs serving

Mass Regulations Title 102 Chapter 1

children and teen parents. Office of Child Care Services licensure shall not relieve facilities of their obligation to comply with any other applicable state or federal statutory or regulatory requirements or requirements set forth in their contracts with the referral sources. Whenever possible, these other statutory regulatory and contractual requirements shall be construed in a manner that is consistent with 102 CMR 3.00.

(2) Severability. If any provision contained in 102 CMR 3.00 or the application thereof is held invalid to any person or circumstances the remainder of 102 CMR 3.00 and the application of the provision in question to other persons not similarly situated, or to other circumstances, shall not be affected thereby.

(3) Effective Date. The effective date of 102 CMR 3.00 is May 1, 1997.

(4) Prior Licenses. Any license or approval in effect immediately prior to the effective date of 102 CMR 3.00 shall, notwithstanding its expiration date, remain in effect, unless suspended or revoked, until a new license or approval is issued or expressly refused or revoked under 102 CMR 3.00.

102 CMR 5.01

5.01: Introduction

102 CMR 5.00 is adopted in accordance with M.G.L. c. 28A which states the policy of state government to assure every child a fair and full opportunity to reach his or her full potential. These standards are intended to protect the dignity of children, birth families and adoptive families; to fulfill every child's right to a permanent, loving, and caretaking family; and to ensure that the child is the primary client of all placement agencies. A placement agency's philosophy, administrative policy and services to and for children shall be directed toward strengthening a child's relationship first with his birth family; providing a child with a parental substitute who will offer the child a secure family relationship during temporary placement or with a shelter program when necessary; and offering the child a permanent family relationship in an adoptive family when appropriate. M.G.L. c. 28A, § 11(c) and M.G.L. c. 210, § 11A prohibit private adoptions and require that children be placed for adoption only through licensed placement agencies offering adoption services. 102 CMR 5.00 identifies the following general goals for each agency placing children in foster, adoptive or residential placement:

(a) administrative and fiscal competence;

(b) policies and practices that serve to strengthen family life, provide continuity of care, and work to attain permanency for children;

(c) a staff that is professionally qualified and competent to work with residential care staff and adoptive, foster, and birth parents toward providing children with a positive self-image and a sense of security in preparation for placement;

Mass Regulations Title 102 Chapter 1

(d) an environment of caring that is characterized by a total commitment to provide a timely reunification of the birth family or an alternative permanent plan for each child in care, with consideration given to placing children in families of the same cultural background when it meets the best interest of the children;

(e) an atmosphere that is cooperative and respectful of families considering serving children as temporary or permanent family resources.

102 CMR 5.02

5.02: Definitions

As used in 102 CMR 5.00, the following words shall have the following meanings unless the context otherwise requires:

Adoption. The establishment of the legal relationship of parent and child in accordance with the provisions of M.G.L. c. 210 *et seq.*

Adoptive Home. Any family home selected and approved by a licensed placement agency for the placement of a child with the intent of adoption.

Adoptive Parent. An individual who has been approved by the licensee to adopt a child.

Adoptive Parent Applicant. An individual who has applied to be an adoptive parent.

Child. Any person under the age of 18 during part or all of a calendar year.

Children with Special Needs. Children who, because of disabilities consisting of developmental delays or intellectual, sensory, neurological, emotional, communication, physical, specific learning or health impairments or combinations thereof, are or would be unable to progress effectively in a regular school program. This may include, but not be limited to, children with special needs as determined by their age, their membership in a minority group, their need to be kept with other siblings or by an evaluation conducted pursuant to M.G.L. c. 71B, § 3, Evaluation and Assessment of Children for Special Education Programs.

Family Foster Care. Substitute parental care in a family given in a private residence for up to six foster children on a regular, 24 hour a day, residential basis by anyone other than a relative by blood, marriage, or adoption. In order to place siblings in the same residence in emergency situations, this definition shall not prohibit the placement of more than six foster children in a home which prior to the placement of the sibling group contains fewer than six foster children. Nothing in this definition shall prohibit a licensee from considering a child's relatives for approval as foster parents. Family foster care shall not mean placement in an adoptive home other than a legal risk adoption placement.

Mass Regulations Title 102 Chapter 1

Foster Care. Placement of a child or children in family foster care.

Foster Parent. An individual who provides temporary substitute parental care for a child or children under an agreement with a licensed or approved placement agency.

Group Care Program. A program or facility that provides care and custody for one or more children by anyone other than a relative by blood, marriage or adoption on a regular 24-hour a day, residential basis. Group care program includes but is not limited to programs serving teen parents under the age of 16 years; transition to independent living programs; private residential schools that provide special services to children with special needs in which children with special needs constitute 30% or more of the school's population; and group residences or group homes. Group care program does not include family foster care; a recreational or summer camp; a hospital, ward or comprehensive center, including an intensive residential treatment program, licensed under M.G.L. c. 19, § 19 or c. 19B, § 15; a hospital, ward or comprehensive center operated by the Commonwealth; a hospital, institution for unwed mothers, convalescent or nursing home, rest home or infirmary or any program licensed under M.G.L. c. 111; any program licensed under M.G.L. c. 118E, § 7 unless the program admits children other than drug dependent children or dependency drug using children; or private residential schools except those providing special services to children with special needs as defined above.

Identified Adoption. A type of adoption which involves the location by a potential adoptive parent, or someone on his/her behalf, of a parent who is willing to consider releasing his/her child for adoption. The child is surrendered directly to an agency licensed or approved by the Office in accordance with 102 CMR 5.00 *et seq.* or the child is surrendered in another state in accordance with the laws of such state with the intent that the child be placed in a previously designated adoptive home. An agency retains the right to thereafter refuse to place a child in the designated home based on the results of a completed adoptive parent assessment. The identity of birth parents and adoptive parents need not be known to one another.

Independent or Private Adoption. Any placement of a child for adoption in Massachusetts made by anyone other than an adoption placement agency licensed or approved by the Office. Such adoptions are illegal unless made pursuant to M.G.L. c. 28A, § 11(c) and M.G.L. c. 210, § 11A.

Interstate Compact. Compact on the placement of children from one state to another. M.G.L. c. 119 Appendix § 2-1 *et seq.*

Legal Risk Adoption Placement. A placement of any child in a foster home which has been approved for pre-adoptive placement, who has not been surrendered for adoption or has not been the subject of a completed petition pursuant to M.G.L. c. 210, § 3 and whose permanent plan is adoption.

Mediated Cooperative Adoption. A type of adoption in which a child-centered permanent plan is developed and the birth parents are engaged in a cooperative planning process. Mediated cooperative adoption cultivates on-going communication and mutual exchange of information between birth and adoptive families.

Open Adoption. A type of adoption in which the birth and adoptive parents are identified to one another, and which may include ongoing communication between birth and adoptive parents.

Placement Agency. A department, agency, or institution of the Commonwealth, or any political subdivision thereof, or any organization incorporated under M.G.L. c. 180, one of whose principal purposes is providing custodial care and social services to children, which receives by agreement with a parent or guardian, by contract with a state agency

Mass Regulations Title 102 Chapter 1

or as a result of referral by a court of competent jurisdiction, any child under 18 years of age, for placement in family foster care or in a residential program, or for adoption.

Residential Program. A group care facility, temporary shelter facility, transition to independent living program or transitional housing program serving teen parents.

Secure Detention Facility. A facility or shelter home for children in the custody of or detained by the Department of Youth Services, who are awaiting court appearance or long-term placement, which requires restrictive features including locked doors and windows and a high staff-child ratio to insure security.

Shelter Home. A private residential home which has been approved by the temporary shelter program to provide temporary shelter care to four or fewer children.

Special Services. Any special services provided to children with special needs by a private residential school that are special education services similar to those referred to at 603 CMR 18.05(3)(a) and (b); or social, psychological or psychiatric services; or occupational or physical therapy; or speech or language therapy; or vocational rehabilitation skills; or regular nursing or medical care provided on site; or self-help skills or activities of daily living training.

Temporary Shelter. Care and services (as appropriate to the needs of the child) provided to a child on a regular 24 hour a day basis for a period not to exceed 45 days or in the case of placement in a secure detention facility, not to exceed 90 days. Temporary shelter shall include both temporary shelter facility and shelter home.

Temporary Shelter Facility. Any facility which operates to receive children under 18 years of age for temporary shelter care during the day or night when such children request shelter therein, or when such children are placed there by a placement agency, a parent, a law enforcement agency, or a court with authority to make such placement. Temporary shelter facility shall not mean family foster care or a group care facility, a police station or a town lockup.

Transition to Independent Living Program. Any group care facility designed to serve adolescents and young adults for whom the service plan and/or treatment goal is independent living. Transition to independent living program shall not include unstaffed independent living programs where residents live in self contained units.

Transitional Housing Program Serving Teen Parents. A facility or program for parents who are at least 16 years of age in which the parents reside in a structured setting that includes educational, psychological and medical services, including counseling and basic life skills toward living independently. The facility or program shall require the parents to reside with their children.

102 CMR 5.03

5.03: Licensure

(1) Adoption Application Fee. An application for a license to offer adoption services shall be accompanied by a check made payable to the Commonwealth of Massachusetts. A fee schedule can be obtained from the Office.

Mass Regulations Title 102 Chapter 1

(2) Provisional License. An applicant who has not previously operated a placement agency shall apply for a provisional license and must provide the documents required by 102 CMR 5.03(2)(a) through (c), as applicable, and shall demonstrate that services rendered by the placement agency are adequate to protect the health and safety of the children and families. The placement agency shall agree to comply with the laws of Massachusetts, of other states, of the federal government, and foreign nations and federal immigration laws if applicable.

(a) All placement agencies shall submit the following:

1. Evidence of the applicant's compliance with 102 CMR 1.05;
2. A statement of purpose as required by 102 CMR 5.04(1), including a clear definition of the services provided by the agency to children, birth, foster and adoptive parents, foster and adoptive parent applicants and adult adoptees, as required by 102 CMR 5.04(1)(a)4.;
3. A statement of the ownership of the placement agency, including the names and addresses of all owners, corporate officers and board members as required by 102 CMR 5.04(2)(a);
4. A written plan of financial capability projected for at least a 12 month period, including:
 - a. A projected one year operating budget and documentation of sufficient funds for at least three months. An operating agency must submit financial documents in accordance with the standards set by the Public Charities Division of the Office of the Attorney General of the Commonwealth, including a current operating budget and appropriate fiscal portions of contracts, if any. The operating budget must specify the salaries of all full time employees, and all bonuses and other benefits. The budget must also specify all rent or mortgage payments, as well as any payments for vehicles owned, rented or leased by the agency;
 - b. A cash flow plan including projected revenue, lines of credit and cash or liquid asset reserves sufficient to enable the agency to meet expenses for at least a 12 month initial period;
 - c. A list of all revenue sources and amounts of revenue anticipated from these sources;
 - d. A copy of the agency's policy on designated financial responsibility, as required by 102 CMR 5.04(7);

Mass Regulations Title 102 Chapter 1

- e. Any other evidence of financial viability.

- 5. Grievance and appeal procedures, as required by 102 CMR 5.04(3)(g) and (h);

- 6. A procedure for emergency communications, as required by 102 CMR 5.04(3)(k);

- 7. Personnel policies, as required by 102 CMR 5.04(5)(a);

- 8. Evidence that personnel are currently certified or licensed, as required by 102 CMR 5.04(5)(d), and are qualified to provide direct services to children and families, as required by 102 CMR 5.05(2);

- 9. A plan for staff orientation and training, as required by 102 CMR 5.04(5)(e) and (f);

- 10. Written procedures for the evaluation of children and the development of service plans for children and their families, as required by 102 CMR 5.06 and 5.07;

- 11. Policy and procedure for the selection of appropriate placements, in accordance with 102 CMR 5.08(6);

- 12. Written description of and procedures for the orientation and assessment of foster and adoptive homes, as required by 102 CMR 5.10(2) and (5);

- 13. Written qualifications of foster and adoptive parents, as required by 102 CMR 5.10(3);

- 14. Written physical requirements for foster and adoptive homes, as required by 102 CMR 5.10(4);

- 15. Policy and procedures regarding payments and reimbursements for the care of any child, which shall specify the method, amount, and frequency of payments;

- 16. Evidence of compliance with St. 1985, c. 233, Revenue Enforcement and Protection Program (REAP) on a form provided by the Office with the application;

(b) In addition, placement agencies offering foster care services shall submit the following:

Mass Regulations Title 102 Chapter 1

1. Policy and procedures for meeting the health needs of the children served, as required by 102 CMR 5.11(3) and (4);
2. Policy and procedures for providing psychological and psychiatric services to children and families, as required by 102 CMR 5.11(5);
3. Policy and procedures for meeting the educational needs of the children served, as required by 102 CMR 5.11(6);

(c) In addition, placement agencies offering adoption services shall submit the following:

1. The written information on alternatives, as required by 102 CMR 5.09(1)(a);
2. Written procedures for legalizing an adoption, as required by 102 CMR 5.10(18);
3. Evidence of the availability of licensed foster care, as required by 102 CMR 5.11(2).

(3) Regular License. A person seeking to apply for or to renew a regular license shall comply with all regulations and shall submit a signed application for licensure and all materials required for provisional licensure. In addition:

(a) All placement agencies shall submit the following:

1. An organizational table, as required by 102 CMR 5.04(2)(c);
2. A plan for involving birth, foster, and adoptive parents and adult adoptees, in the development of agency policy, as required by 102 CMR 5.04(2)(f);
3. A written policy and procedure for internal investigations and reporting allegations of child abuse and neglect, as required by 102 CMR 5.04(3)(d), (e) and (f);
4. Job descriptions and salary ranges, as required by 102 CMR 5.04(5)(b) and (c);

Mass Regulations Title 102 Chapter 1

5. A plan for the use of volunteers, as required by 102 CMR 5.04(5)(j);

6. A plan, if applicable, for the training of foster and adoptive parents who are caring for special needs children, as required by 102 CMR 5.10(13).

7. All intake evaluation, service plan, and face sheet forms and placement agreements and contracts to be used with clients.

(b) In addition, placement agencies offering adoption services shall submit the following:

1. Written information required at intake and prior to surrender, as required by 102 CMR 5.09(1) and (2);

2. A written description of follow-up services, as required by 102 CMR 5.09(4) and 5.10(19).

(4) Term of License. A license or approval shall remain in effect beyond its term until a license renewal study is completed and a determination made by the Office on the status of the license, if the licensee has filed with the Office a request for renewal in accordance with M.G.L. c. 30A, § 13. Unless earlier revoked, suspended or made probationary:

(a) a provisional license or approval shall remain in effect for six months from the date of issuance and may be renewed once for no more than six months;

(b) a regular license or approval shall remain in effect for two years from the date of issuance.

(5) Evidence of Ability to Comply with 102 CMR 5.00. A placement agency, its principal officers, and applicant whether licensed or applying for a license shall demonstrate an ability to offer placement services in a manner which complies with 102 CMR 5.00. An applicant may be ineligible for licensure if the Office finds any of the following:

(a) The agency has been denied the authority to provide child care services;

(b) The agency, applicant or principal officer has been found negligent or convicted of a crime related to the provision of child care services;

Mass Regulations Title 102 Chapter 1

(c) The agency, applicant or principal officer is under state or federal indictment for a crime related to the provision of child care services;

(d) The Office determines that the information set forth in 102 CMR 5.03(4)(a) through (c) would impair the placement agency's ability to comply with 102 CMR 5.00;

(e) The applicant has a background which, in the judgement of the Office, includes conduct which bears adversely on his/her ability to provide for the safety and well-being of children.

(6) Variances.

(a) The Office in its discretion may upon written request grant a variance of any regulation contained in 102 CMR 5.04 through 5.13. Any applicant wishing to request a variance shall submit a request for such in a manner and on a form prescribed by the Office. The variance request shall be accompanied by expert opinion, if applicable, written documents, and any other pertinent information the applicant wishes the Office to consider in reviewing the request. Any variance request must provide clear evidence to the satisfaction of the Office that the applicant's procedure complies with the intent of the specific regulation and the intent of the regulations taken as a whole as set forth in 102 CMR 5.01.

(b) The Office shall act upon a request for variance and shall notify the applicant or licensee of its decision in a timely fashion. In its written notification, the Office shall state the reason for refusing or granting a variance request. A grant or denial of a variance request shall be considered a final agency decision.

(c) A variance shall remain in effect for a specified time period not to exceed the duration of the license unless the Office receives or finds evidence that the terms of the variance have been violated or the licensee is not complying with the intent of 102 CMR 5.00 *et seq.* At the time of license renewal the licensee may resubmit the variance request.

(7) Pilot or Demonstration Projects. Proposals for pilot or demonstration projects for the innovative delivery of services related to placement will be considered by the Office upon written request. However, no project shall be implemented without prior written approval of the Office. The Office may require that specific proposals include an evaluation component to determine the effectiveness of the project and may also consider any other evidence relevant to the proposal prior to granting approval. Projects shall be implemented only on an experimental basis for a specified time period not to exceed the term of the license unless the Office receives or finds evidence that the conditions of the approval have been violated.

102 CMR 5.04

5.04: Administration of the Placement Agency

Mass Regulations Title 102 Chapter 1

(1) Statement of Purpose. Each licensee shall maintain a written statement of purpose. The primary purpose of each agency shall be to assure that, whenever possible, each child will be raised by a permanent, loving and caretaking family. Agencies shall actively recruit foster and adoptive parents from diverse cultural, ethnic and socio-economic backgrounds. Each agency shall, to the extent consistent with the best interest of the child, promote the optimal growth and individual development of all persons receiving its services.

(a) This statement shall include the following:

1. The agency's philosophy, goals and objectives;
2. The characteristics of children and families served;
3. The types of placements provided, including family foster care, residential, and adoption, specifying the type of adoption placements provided, *e.g.* identified, open, intercountry, interstate, infant, special needs, if applicable;
4. A description of the services provided to children, birth parents, foster and adoptive parent applicants, foster and adoptive parents and adult adoptees;
5. A plan for the annual evaluation of its services, which shall give special attention to its performance in promoting permanency for the children in its care.

(b) This statement shall make clear which services are provided directly by the agency, by referral, or through written agreements with other persons. If the licensee administers several programs at different locations, appropriate services and resources shall be identified for each location.

(c) The licensee shall keep this statement current by reflecting substantial changes in the agency's purpose, policy, procedures and services, and shall submit any revised statements to the Office. The licensee shall make this statement available upon request to any person.

(2) Organization.

(a) Each licensee shall have documentary evidence of its sources of authority to operate the agency.

Mass Regulations Title 102 Chapter 1

1. An agency operated by the Commonwealth or any political subdivision thereof shall keep and maintain documents that identify the statutory basis of its existence and the administrative framework of the governmental departments in which it operates.

2. Each other agency shall maintain documents that identify its ownership as a corporation subject to M.G.L. c. 180, current list of officers, articles of incorporation, by-laws and identity of its incorporators.

(b) Each licensee shall designate one person who is responsible for administrative supervision, and is duly authorized to act as an agent for the licensee and to oversee the operation of the agency.

(c) Each licensee shall maintain an organizational table showing the administrative structure of the agency, including the lines of authority, responsibility, communications and staff assignment.

(d) Each licensee shall have an advisory board of at least four persons. Such board shall include at least three persons who are not employees, family members of employees, or family members of the licensee. The advisory board members shall be familiar with children's needs and placement activities. If the agency's board of directors meets the requirements of 102 CMR 5.04(2)(d) then the board may function as the agency's advisory board.

1. The advisory board shall make recommendations on the agency's policy regarding agency structure, agency evaluation, personnel and services provided. The agency shall document the reason for any differences between these recommendations and the agency's activities.

2. The advisory board shall meet at least annually or more often if necessary to meet the above purposes.

3. Copies of the minutes of the advisory board meetings shall be maintained.

(e) The licensee shall provide evidence that it has completed its own annual written evaluation of its overall program which shall include general agency effectiveness in relation to its stated goals and objectives.

(f) Each licensee shall have a procedure for involving foster and adoptive parents, birth parents, and adult adoptees, in the development of agency policy.

(3) Administration.

Mass Regulations Title 102 Chapter 1

(a) Each licensee shall designate one person who shall manage the operation of the agency in accordance with policies established by the agency board of directors.

(b) All employees on duty shall know who is responsible for administrative supervision of the agency at all times.

(c) Each licensee shall establish a system of business management and staffing to assure that the agency maintains complete and accurate accounts, books and records, including required financial, personnel and children's, foster and adoptive parent applicants', foster and adoptive parents' and birth parents' records.

(d) The licensee shall develop a written plan and follow procedures for conducting investigations within the agency or in foster or adoptive homes supervised by the agency. Such procedures are to be used for any suspected incidents of child abuse and/or neglect and cases of death or serious injury to a child placed by the agency. The licensee shall within 24 hours forward a copy of its investigation report to the Office.

(e) The licensee shall have a written plan for staff to file a report of abuse or neglect with the Department of Social Services, pursuant to M.G.L. c. 119, § 51A.

(f) The licensee shall have a written plan for notifying the Office within 24 hours after learning that a 51A report has been filed alleging abuse or neglect of a child placed in an adoptive home by the agency, and for notifying the Office within 24 hours of the death or injury resulting in hospitalization of a child in placement.

(g) Grievance Procedure. The agency shall have written guidelines which establish an equitable procedure for receiving, considering, deciding upon and appealing complaints from children, birth parents, foster and adoptive parents and foster and adoptive parent applicants and staff. A copy of the complaint policy shall be made available to all persons receiving services. A signed acknowledgement of receipt of the complaint policy must be maintained in the child's, birth parents', foster parent's, adoptive parent's, and foster or adoptive parent applicant's file. The complaint policy must include at a minimum:

1. a provision that the complaint will be handled by someone other than the person who worked directly on the complainant's case;

2. an indication whether the complaint may be filed in writing or verbally;

3. time frames for decisions on complaints;

Mass Regulations Title 102 Chapter 1

4. a requirement that written agency decisions be sent to the complainant along with the written appeal process in the language spoken by the complainant.

(h) Grievance Procedure Appeal. The appeal procedure shall include the opportunity for the complainants to avail themselves of at least one level of administrative review above line staff and their immediate supervisors. Such procedure shall include but not be limited to:

1. a statement that the appeal must be filed in writing;

2. time lines for filing and making a decision on an appeal;

3. a requirement that an appeal decision be sent in writing to the complainant in the language spoken by the complainant.

(i) Record of Complaints, Grievances and Appeals. The licensee shall maintain written records of all decisions resulting from complaint, grievance and appeal procedures.

(j) Provision of and Explanation of Agreements. The licensee shall provide birth parents, foster and adoptive parents a clear explanation in their own language of every term of any agreement before they sign it. The licensee shall provide birth parents, foster and adoptive parents with a copy of any agreement they sign.

(k) Emergency Assistance. The licensee shall provide a telephone number and a system of emergency assistance to adoptive parents, birth parents and children. This system shall be in place on a 24 hour per day, seven day per week basis.

(4) Required Notifications.

(a) Upon request of the Office, each agency shall make available to the Office any information required to be kept and maintained under 102 CMR 5.00. Each agency shall also make available to the Office any other information reasonably related to the evaluation of the placement agency.

(b) The licensee shall provide prior notification in writing to the Office of any change of location or ownership of the agency.

(c) Prior to any substantial changes in the program, the licensee shall give written notification to the Office of

Mass Regulations Title 102 Chapter 1

the intent to change. Notice shall be given to allow the Office sufficient time to determine whether any change in licensing status is necessary. Substantial changes include any reduction of services or staff, major changes in the population to be served, and/or significant revision of the policies and procedures required by 102 CMR 5.00 *et seq.*

(d) The licensee shall provide notification in writing to the Office of any change in the chief administrative person of the agency or any change in the person with the advanced degree as required by 102 CMR 5.05(2). Such notification shall occur within two weeks after such a change occurs.

(e) Within ten days of receipt of notice of the initiation of civil, criminal, or administrative action against the licensee or any person employed by the licensee, the licensee shall notify the Office in writing. Such notification is required only if the legal proceedings arise out of circumstances related to the care of children, adoptive parents, adoptive parent applicants, or birth parents, or to the continued operation of the agency, excluding individual custody, guardianship, or adoption proceedings.

(f) The licensee shall immediately report to the Office any serious incident or death of any child who is in the care or custody of the licensee.

(5) Personnel.

(a) The licensee shall describe in writing the agency's current personnel policies and practices. A copy of the personnel policies shall be given to each new employee or s/he shall be informed that a copy is available upon his or her request. The personnel policies shall include a description of:

1. criteria and procedures for hiring, assignment, promotion, probation, and suspension or dismissal of an employee;
2. non-discrimination statement;
3. the procedure for handling staff complaints;
4. provisions for vacations, holidays, and leaves.

(b) The licensee shall make available written job descriptions for all positions, including consultants, part-time employees, interns, volunteers and per diem workers. The job descriptions shall include the prerequisites and responsibilities required for each position.

Mass Regulations Title 102 Chapter 1

(c) The licensee shall establish and describe in writing a salary range including benefits covering all positions and shall provide each employee with information regarding the salary range for his/her position or the procedure for determining his/her salary.

(d) The licensee shall obtain evidence that personnel are currently certified, licensed, or registered where applicable laws require certification, licensure, or registration.

(e) The licensee shall provide orientation for all new employees to acquaint them with the agency's philosophy, organization, program, practices and goals. Each licensee shall describe in writing the agency's plan for staff orientation.

(f) The licensee shall provide on-going staff training regarding adoption and foster care appropriate to the size and nature of the agency and staff involved. The training shall include, but not be limited to, current issues in placement. Each licensee shall describe in writing the agency's plan for staff training.

(g) The licensee shall assign each social worker and counselor a supervisor who has prior experience suitable to the goals of the agency as required by 102 CMR 5.05(2). The supervisor shall conduct regularly scheduled supervisory sessions, which may include individual supervision, group supervision and/or consultation, for the following purposes:

1. to provide continuity of planning for the child and the family;
2. to assure the best possible services for each child;
3. to evaluate the worker's job performance;
4. to promote the worker's professional growth.

(h) The licensee shall require annual written evaluations of its social work staff. The licensee shall afford each social worker or supervisor the opportunity to participate in his/her evaluation, read his/her completed evaluation, comment upon it in writing and sign it. Such written evaluations shall be kept and maintained in the employee's personnel record.

(i) The licensee shall maintain a personnel record for each employee. Such record shall be made available to the Office upon request, and shall include:

Mass Regulations Title 102 Chapter 1

1. employee's resume or job application;
2. copies of licenses or certifications held;
3. documentation of reference checks by telephone;
4. annual evaluations as required by 102 CMR 5.04(5)(h);
5. documentation of training as required by 102 CMR 5.04(5)(f);
6. documentation of any disciplinary actions or investigations;
7. documentation of completed CORI evaluation as required by 102 CMR 1.05(2).

(j) If volunteers or interns are used, the licensee shall describe in writing its plan for using volunteer services. The licensee shall have evidence of each volunteer's compliance with 102 CMR 1.05(2). At least one reference check shall be conducted and documented on each volunteer.

1. Volunteers shall possess qualifications in accordance with the services they provide.
2. The licensee shall utilize volunteers in conjunction with an appropriate orientation and on-going, scheduled supervision and training.

(6) Finances. The applicant or licensee shall demonstrate financial capability to carry out its program for the licensing period. The licensee shall maintain an accurate record of receipts and expenditures, which shall be audited annually. The licensee shall keep on file at the agency and file with the Office its annual operating budget. The operating budget must specify the salaries of all full time employees, and all bonuses and other benefits. The budget must also specify all rent or mortgage payments, as well as any payments for vehicles owned, rented or leased by the agency.

(7) Designated Financial Responsibilities. The licensee shall have a written policy describing the licensee's, the birth parents', the foster parents', the adoptive parents', and the adoptive parent applicants' respective financial responsibilities, if any, for the entire foster care and adoption process. The policy shall include provisions for assisting

Mass Regulations Title 102 Chapter 1

less affluent persons to become adoptive parents by means that may include a sliding fee scale. The policy shall include the specific information on fees as outlined below and shall be provided to birth parents, foster and adoptive parent applicants. The fees established by the licensee for services provided to families, foster and adoptive families and children shall be reasonable.

(a) Prior to contracting to deliver services, the licensee shall provide an estimated written cost for all services to all parties above who provide payment, as set forth in 102 CMR 5.04(7)(d), as well as the agency's written policy on refunds, as set forth in 102 CMR 5.04(7)(f).

(b) If the licensee is not providing certain services directly to its clients, the licensee shall identify in writing for the birth parents, the adoptive parents, and the adoptive parent applicants the services which they must obtain for themselves. The licensee shall also identify those services which it will provide directly and those which it will provide through agreement or contract.

(c) If the licensee uses a schedule for payments, the licensee shall provide the clients with written information concerning initial payments and frequency and conditions for subsequent payments.

(d) The licensee shall provide to adoptive parents an itemized statement of the actual cost of each service below and shall indicate if it was a service provided by a person contracted outside the agency. It shall include the name and address of the payee, the amount of payment, date of payment and to whom each such service was delivered. If the licensee provides intercountry adoptions through specific sources, the licensee may enter into general, rather than child-specific agreements with these sources. The licensee need not provide the itemized information required below, but may substitute the provisions of the general agreement:

1. medical services for child and birth mother;
2. legal services for the surrender and/or adoption of the child;
3. counseling services;
4. homestudy services;
5. foster care services;
6. pre and post placement social services;

Mass Regulations Title 102 Chapter 1

7. living expenses for birth mother;
8. transportation;
9. follow-up services;
10. such other services as may be reasonably foreseeable.

Nothing in 102 CMR 5.00 shall require the licensee to release identifying information.

(e) The licensee shall provide fee information to prospective applicants in writing at the time of initial inquiry. Such fee information shall include an itemized statement of costs as required by 102 CMR 5.04(7)(d), if such costs are not included in a flat fee for service or sliding fee scale, and the agency's policy for assisting less affluent persons to become adoptive parents.

(f) The licensee shall have a written, understandable and reasonable policy for refunding any unexpended fees.

(8) Misleading Information. The licensee shall not knowingly and willfully make any statement or prepare or use any document that is known to be false or conceal or misrepresent any material fact, in connection with the provision of services to birth parents, foster or adoptive parents, foster or adoptive parent applicants or children.

102 CMR 5.05

5.05: General Casework Management

(1) Requirement for Social Services. The licensee shall provide social services to all children in care and to their families pursuant to the service plans described in 102 CMR 5.07(1) and (7).

(a) A licensee may make an agreement with another licensed or approved placement agency, person, or facility, which will assure prompt, effective, equal and confidential services for specific children or families. However, if prompt, effective, equal, and confidential services cannot be obtained by such agreements, the licensee shall provide such services directly.

(b) The licensee shall assure that there is assigned to each child in care and each parent of any child in care a

Mass Regulations Title 102 Chapter 1

social worker who shall assure that the child and family receive the services identified in the service plan.

(c) If the social worker assigned to the child is different from the one assigned to the parents, the foster family or the adoptive family, the licensee shall arrange for at least monthly consultations between the social workers regarding progress toward achievement of the permanent plan. The licensee shall designate one of the social workers to monitor implementation of the plan.

(d) Any social worker who notes concerns or significant changes in the child or foster home must promptly inform all workers assigned to the child or family of such concerns. Consistent with the terms of its interagency agreement(s), the licensee shall promptly notify all agencies which approve the home of concerns about or significant changes in the home.

(e) Except in adoption placement cases, the assigned social worker shall visit the child and the child's birth family at least once per month. On each such visit the social worker shall determine whether the child is receiving services required by the service plan. The visits between the social worker and child shall take place in the child's foster family home or residential facility periodically and shall include communication with the foster parents and other household members, and residential program staff.

(2) Qualifications of Social Service Personnel. Any social work staff providing direct services to a child or family shall have or be supervised by an employee who has an advanced degree in social work or a related clinical field, and at least five years of experience in providing direct and clinical services to children and families which demonstrates a knowledge and understanding of placement, family reunification and/or adoption services and issues, as appropriate to the services provided.

(3) Responsibility of Social Work Staff. The social worker shall work toward implementing a permanent plan for the child as quickly as possible. In addition, the social worker shall maintain contact with the child and his birth family for the purposes of:

(a) assisting the child and his/her birth family to adjust to placement and separation;

(b) developing a visiting plan and encouraging the family's continued interaction with the child, when called for by the service plan;

(c) informing the birth family of the child's progress, as appropriate;

(d) helping the child to cope with problems experienced in the family foster home or residential program;

Mass Regulations Title 102 Chapter 1

(e) reinforcing the birth parent(s)' strengths and resources to help them participate in service planning for their child;

(f) helping parents obtain services needed to make it possible for the child and family to be reunited, when called for by the service plan; and

(g) ensuring continuity of planning for the child and family.

(4) Case Management. The licensee shall insure continuity of case management responsibilities in the absence of the social worker for an extended period of time such as vacation, sick leave, leave of absence, and holidays.

102 CMR 5.05

5.05: General Casework Management

(1) Requirement for Social Services. The licensee shall provide social services to all children in care and to their families pursuant to the service plans described in 102 CMR 5.07(1) and (7).

(a) A licensee may make an agreement with another licensed or approved placement agency, person, or facility, which will assure prompt, effective, equal and confidential services for specific children or families. However, if prompt, effective, equal, and confidential services cannot be obtained by such agreements, the licensee shall provide such services directly.

(b) The licensee shall assure that there is assigned to each child in care and each parent of any child in care a social worker who shall assure that the child and family receive the services identified in the service plan.

(c) If the social worker assigned to the child is different from the one assigned to the parents, the foster family or the adoptive family, the licensee shall arrange for at least monthly consultations between the social workers regarding progress toward achievement of the permanent plan. The licensee shall designate one of the social workers to monitor implementation of the plan.

(d) Any social worker who notes concerns or significant changes in the child or foster home must promptly inform all workers assigned to the child or family of such concerns. Consistent with the terms of its interagency agreement(s), the licensee shall promptly notify all agencies which approve the home of concerns about or significant changes in the home.

(e) Except in adoption placement cases, the assigned social worker shall visit the child and the child's birth family

Mass Regulations Title 102 Chapter 1

at least once per month. On each such visit the social worker shall determine whether the child is receiving services required by the service plan. The visits between the social worker and child shall take place in the child's foster family home or residential facility periodically and shall include communication with the foster parents and other household members, and residential program staff.

(2) Qualifications of Social Service Personnel. Any social work staff providing direct services to a child or family shall have or be supervised by an employee who has an advanced degree in social work or a related clinical field, and at least five years of experience in providing direct and clinical services to children and families which demonstrates a knowledge and understanding of placement, family reunification and/or adoption services and issues, as appropriate to the services provided.

(3) Responsibility of Social Work Staff. The social worker shall work toward implementing a permanent plan for the child as quickly as possible. In addition, the social worker shall maintain contact with the child and his birth family for the purposes of:

- (a) assisting the child and his/her birth family to adjust to placement and separation;
- (b) developing a visiting plan and encouraging the family's continued interaction with the child, when called for by the service plan;
- (c) informing the birth family of the child's progress, as appropriate;
- (d) helping the child to cope with problems experienced in the family foster home or residential program;
- (e) reinforcing the birth parent(s)' strengths and resources to help them participate in service planning for their child;
- (f) helping parents obtain services needed to make it possible for the child and family to be reunited, when called for by the service plan; and
- (g) ensuring continuity of planning for the child and family.

(4) Case Management. The licensee shall insure continuity of case management responsibilities in the absence of the social worker for an extended period of time such as vacation, sick leave, leave of absence, and holidays.

102 CMR 5.06

5.06: Intake Evaluations

(1) Intake Evaluation Requirements. Upon referral or request for services and prior to accepting any parent's surrender of his/her child for adoption, the licensee shall complete a full evaluation by qualified professionals, unless such an evaluation has been documented in the referral or application. Where possible, the licensee shall involve both parents of any child referred and the child, taking into account the child's capacity to understand, in the intake evaluation.

(2) Scope of Intake Evaluation. The intake evaluation shall include but not be limited to the following:

(a) developmental, social, educational, and medical and mental health history of the child, including prenatal factors where possible;

(b) social, medical, and mental health history of the birth parent(s), grandparents, and siblings;

(c) special talents, abilities or interests of child and birth family;

(d) an assessment of the strengths, resources and needs of the child and his/her family, including, but not limited to financial needs, in order to determine the need for supportive family services, foster care or adoption;

(e) documentation of the child's legal status, including custody or guardianship, and whether or not the child is free for adoption;

(f) child's full name, citizenship, religion, race and ethnic background;

(g) full names and ages of the parent(s), siblings, close relatives, and other kinship connections;

(h) for adoption placement, a copy of the child's birth certificate.

102 CMR 5.07

5.07: Service Planning Requirements

Mass Regulations Title 102 Chapter 1

(1) Development of Initial Service Plan. Upon completion of the intake evaluation and prior to placement except in cases of emergency, the licensee shall develop a written service plan for the child and his family. In developing the plan, the licensee shall consider the needs of the child for stability and permanency. The service plan shall include:

(a) the goals for the child and his family;

(b) the services to be provided for the child and his family to achieve reunification or an alternative permanent plan within the shortest possible period of time. Such services may include information on alternatives to placement or types of placement, supportive family services, psychological and psychiatric services, medical, dental and ancillary services, educational and vocational services, and post placement services;

(c) persons responsible to arrange the services identified;

(d) a plan for the nature and frequency of parental contacts and visits with the child, if appropriate.

(2) Emergency Placement. In emergency situations necessitating immediate foster care or residential placement, the licensee shall initiate the evaluation and development of the service plan within one week of placement. The evaluation and service plan shall be completed within six weeks of placement. Upon completion of the evaluation and service plan, the licensee shall review the child's current placement and shall transfer the child, if necessary, to a more appropriate placement in accordance with the service plan.

(3) Limited Evaluations and Service Plans for Short-Term Placements. When the application or referral for foster care or residential placement indicates that such placement will be limited to six weeks or less, and adoption is not the goal for the child, the licensee may complete a limited evaluation and service plan appropriate for the short-term placement in place of the evaluation and service plan required by 102 CMR 5.06 and 5.07(1).

(4) Service Plans Available.

(a) The licensee shall explain all service plans, updates and reviews to the child, the foster parents, adoptive parents, residential program staff, to the agency having custody or guardianship of the child, and to the child's parents.

(b) The licensee shall provide a copy of all service plans, updates and reviews to the birth parents. Summaries of all service plans shall be available to the child's foster parents, adoptive parents and residential program upon request.

Mass Regulations Title 102 Chapter 1

(5) Updated Service Plan. Within six weeks of family foster home or residential placement, the social worker responsible for the child shall review the appropriateness of the child's placement. The social worker shall update the child's individual service plan if necessary.

(6) Consultation With Appropriate Persons. All service plan reviews and updates shall be completed by the child's social worker following consultation with the worker's supervisor, the child, the foster parents, adoptive parents, residential program staff, and/or any other professionals as appropriate.

(7) Periodic Review of Service Plan.

(a) Periodically and at least every six months from the date of placement, until family reunification or adoption finalization, the licensee shall review the service plan for each child. The review shall include an assessment of the child's and his birth and adoptive family's progress and needs; a review of the services being provided to the child, birth family, and adoptive family; a reconsideration of the child's legal status with the goal of establishing a permanent plan for the child and an examination of alternatives to any temporary placement. The service plan shall be revised if necessary.

(b) If after six months of foster care or residential care (or earlier if the licensee deems it to be appropriate), the licensee determines that the child's family has not been interested and involved in maintaining a relationship with their child, or in assuming parental responsibility, the licensee shall consider adoption as an alternative to foster care and shall make a decision whether to petition for termination of parental rights under Massachusetts General Laws. The licensee shall file such a petition, or document the reasons why that course was not chosen in the child's record. Such a consideration of adoption as an alternative to foster care shall take place at least every six months thereafter.

102 CMR 5.08

5.08: Placement Requirements

(1) Documentation of Need. No child shall be placed without written evidence that placement is the most appropriate plan for the child. Such evidence shall include written documentation of:

(a) the purpose of placement;

(b) a record of previous placements, if any;

Mass Regulations Title 102 Chapter 1

- (c) reasons why placement is considered necessary and appropriate;
- (d) a record of attempts to provide preventive services and examination of possible alternatives to placement, or a statement as to why placement is warranted without such attempts being made;
- (e) an estimate of the duration of the need for placement;
- (f) a description of the types of placement which would best meet the child's needs;
- (g) a description of the conditions under which the child shall be returned home, if reunification is the goal.

(2) Authority to Place a Child in Foster Care or Residential Care. The licensee shall have evidence of the authority to place a child in foster or residential care when it has a copy of the following:

- (a) a court order giving custody or guardianship of the child to the licensee;
- (b) a contract with any agency legally authorized to provide foster care or residential care;
- (c) a written agreement with the child's parent(s) or legal guardian;
- (d) a request for foster care or residential care by the child himself, with any legally required parental consent.

(3) Authority to Place a Child for Adoption. A placement agency shall have evidence of the authority to place a child for adoption when it has a copy of the following:

- (a) a voluntary surrender signed by the birth parent(s) in accordance with the law of the country or state where the surrender is taken;
- (b) evidence of termination of parental rights and the grounds for termination;
- (c) verification of compliance with M.G.L. c. 119, § 36, or Interstate Compact on the Placement of Children, M.G.L. c. 119 Appendix § 2 for interstate adoptions;

Mass Regulations Title 102 Chapter 1

(d) verification of compliance with M.G.L. c. 119, § 36 and the immigration laws of the United States for intercountry adoptions;

(e) verification of compliance with the Indian Child Welfare Act of 1978 Pub. L. 95-608, 92 Stat 3069, 25 U.S.C. 1901, *et seq.*, and the Multi-Ethnic Placement Act, 42 U.S.C. 5115a;

(f) verification that the child placed for adoption is not registered with the federal register for missing children PL 92-145 or with the Massachusetts Central Register, required by M.G.L. c. 22A. If the licensee is unable to obtain such verification, it must be able to document that it has attempted to obtain the information from the federal or state register. In those cases where the birth mother is already receiving services from the licensee at the time of the child's birth, such verification need not be obtained.

(4) Agreements with Parents for Foster or Residential Placement.

(a) Agreement Upon Placement. The licensee initially accepting a child for foster or residential placement (and the licensee placing a child in foster or residential care, if different) shall enter into a written agreement with the parents of the child, or shall note the reason for failure to enter such an agreement in the child's record. Such agreement shall be in the language spoken by the parents and shall be consistent with any court order transferring custody of the child to the licensee. The agreement shall be signed prior to placement of the child, when possible. It shall include the following:

1. the name and address of the agency, of each parent signing the agreement, and of the child to be placed in foster or residential care;
2. the legal basis for placement, if any;
3. the reason for placement;
4. a statement of the responsibilities of the licensee for the child. The licensee shall require every parent placing his child to authorize any foster parent of the child or residential program in which the child is placed to authorize routine medical care, other medical care identified in the child's service plan, and any emergency medical care for the child, subject to the exception in 102 CMR 5.08(13). No parent shall be deemed to have made any delegation of responsibilities unless it is specified explicitly in the agreement;
5. a summary of the service plan, including a statement of the services which the agency agrees to provide to the child and to the parents, and identification of any services to be provided by another agency;

Mass Regulations Title 102 Chapter 1

6. a statement describing the frequency, duration and location of the social worker's visits to the parents;
7. a statement of the parents' responsibilities to the child which continue during foster or residential care, including the frequency, duration, location and purpose of the parents' visits with the child;
8. the date placement will begin and the expected duration of placement of the child;
9. a statement of any financial payments required of the parent for the foster care or residential care of the child;
10. a statement that the agency will notify the parents in the event of serious illness or accident to the child; and
11. a statement of the rights of the parent and the agency to terminate the agreement.

(b) Review and Termination of Agreements with Parents. The agreement shall be reviewed and changed, if necessary, not more than six months after the date of the initial agreement. It shall automatically end at the end of one year from the date of the initial agreement, or at a specified date, whichever comes first. The agreement may be re-negotiated or renewed. In the event the parents are unavailable or unwilling to renegotiate the agreement or to assume parental responsibilities, the licensee shall obtain an appropriate court order in order to retain custody of the child.

(c) Return of Child upon Termination of Agreement with Parents. If the agreement is terminated, the licensee may retain custody of the child for a maximum of seven days, (if consistent with the agreement under 102 CMR 5.08(4)(a)), during which time the child shall be prepared for return to the parents, or the agency shall obtain an appropriate court order.

(5) Agreements with Other Agencies or with Residential Programs.

(a) If the licensee refers any child to another placement agency to place the child in a family foster home, or to a residential program, both agencies or the licensee and residential program, shall enter into an agreement defining their respective roles and responsibilities for providing services to the child and to his family. Such agreement shall include:

Mass Regulations Title 102 Chapter 1

1. the terms and methods for paying board and other expenses;
2. conditions under which direct services (including social, medical, psychological and psychiatric) are to be provided to a child and his family;
3. arrangements for special training or education;
4. arrangements for contacts between the agencies or agency and residential program including sharing information regarding concerns which may arise during placement;
5. arrangements for family visits and other contacts between the resident and friends, including specific information on any restrictions;
6. responsibility for seeking judicial approval if required for administration of antipsychotic medication;
7. responsibility for transportation;
8. estimate of the time the child is expected to be in placement;
9. circumstances under which the child may be removed from a family foster home or residential program or under which services to the child or family may be terminated;
10. legal responsibilities;
11. responsibility for after-care services; and
12. for children placed in shelter care, dates of service and discharge planning conferences.

(b) If the licensee works with another agency or person to effect the adoption of a child, the licensee shall enter into a written agreement which shall include but not be limited to the following:

1. responsibility for the provision of direct services, including assessment, counseling, information on

Mass Regulations Title 102 Chapter 1

alternative plans for the child, service planning, placement, adoptive home evaluation, post-placement supervision, finalization and follow-up;

2. financial and legal responsibilities of the respective parties;

3. child's legal status at time of the agreement;

4. documentation of the agency's or person's legal authority to place children or to facilitate adoption.

(c) If an adoptive parent intends to adopt a child from a foreign country and chooses to communicate for that purpose directly with persons living in that country, and chooses to obtain services from such persons, the licensee need not enter into an agreement with such persons, as described in 102 CMR 5.08(5)(b).

(6) Required Licensure or Evaluation of Placement; Finding of Capability. The licensee shall place a child only in a licensed residential program, or a foster or adoptive home which has been evaluated according to 102 CMR 5.10(5) and which the licensee has found capable of meeting the particular child's needs. The licensee shall consider the following factors in making a placement decision: child's ethnicity, race and native language; special physical and emotional needs of the child; placement with relatives; maintaining continuity of current relationships; and the current household composition. No child may be placed in an adoptive home until at least 30 days have elapsed since the initiation of the assessment process. The initiation of the assessment process is defined as the first, in-person meeting pertaining to the assessment between the prospective adoptive parent(s) and a qualified representative of the licensee.

(7) Placement Outside the Commonwealth. No licensee shall place a child outside the Commonwealth unless the foster or adoptive home is approved and supervised by a licensed or otherwise legally authorized agency, or unless the residential program is licensed or otherwise legally authorized to operate.

(8) Registration with Adoption Resource Exchange. Each licensee shall register with the Massachusetts Adoption Resource Exchange (MARE) any child free for adoption for whom the agency has been unable to identify a specific adoptive family or initiate the adoption process with a prospective adoptive family within 60 days of surrender. The licensee shall inform adoptive parents that they may register themselves with a resource exchange.

(9) Consideration of Former Foster Parents.

(a) Whenever a child previously placed in family foster care by the licensee requires foster care placement, previous foster parents shall be considered for the present placement, or documentation why such consideration has not been made shall be maintained.

Mass Regulations Title 102 Chapter 1

(b) Whenever a foster child is freed for adoption, the licensee shall notify the foster parents in writing. The licensee shall consider the child's foster parents as potential adoptive parents if the child has been in their care for six months, provided that the foster parents notify the licensee of their desire to adopt within two weeks after they are notified of the child's release. The licensee shall decide on the foster parents' request to adopt within three months. Nothing in 102 CMR 5.00 shall prohibit the licensee from considering the foster parents as potential adoptive parents if the child has been in the foster parents care less than six months, or if the foster parents do not notify the licensee of their desire to adopt within two weeks.

(10) Placement of Siblings. Siblings shall be placed in the same foster or adoptive home unless the licensee documents a written explanation in the children's record as to why such placement is not in the best interest of the children.

(11) Medical Examination at Placement. At the time of placement, the licensee shall determine the date of the child's most recent medical examination. If an examination has occurred within the time period specified in 102 CMR 5.11(4)(a), the licensee shall obtain a record of it and enter it in the child's record. If such an examination has not occurred within the specified time period, or a determination is made that an examination is necessary, the licensee shall arrange for the medical examination of the child. Such examination shall be arranged within seven days of placement and shall include:

(a) a recording of the child's health history, including prenatal information where available, early developmental history and all immunizations;

(b) a recording of the child's present physical condition including growth and development, vision and hearing, nutritional status, and evidence of communicable disease;

(c) tuberculosis skin test or chest x-ray, if indicated;

(d) for all children between the ages of nine months and six years screening for lead poisoning if indicated;

(e) except in the case of voluntary infant placement, psychiatric assessment or psychological evaluation;

(f) recommendations concerning restricted activities;

(g) recommendations concerning future examinations, care and treatment or immunizations.

(12) Dental Examination at Placement. At the time of placement, and as appropriate to the age of the child, the licensee shall determine the date of the child's most recent dental examination. If an examination has occurred within the preceding six months, the licensee shall obtain a record of it and enter it in the child's record. If such an examination

Mass Regulations Title 102 Chapter 1

has not occurred within the preceding six months, or a determination is made that an examination is necessary, the licensee shall arrange for such an examination to take place as soon as possible.

(13) Exceptions to Medical Requirements.

(a) If the licensee determines that the placement will be no longer than six weeks, a medical examination need not be provided. However, this shall not preclude provision of medical services if needed by the child or as recommended by the Department of Public Health for well infant care.

(b) In cases of international adoption, the licensee shall arrange for the medical and dental examinations and care required by 102 CMR 5.08(11) and (12) as soon as possible after placement, but in no case later than 30 days after placement.

(c) The licensee shall not require any child to receive medical treatment or screening when the parent or guardian of such child objects thereto on the basis of his or her sincerely held religious beliefs. However, the program may seek a court order for medical treatment or screening of a child if it believes such medical treatment or screening is in the child's best interest.

(14) Obligation of Licensee for Expenses. Consistent with the child's service plan and the agreements with parents and foster parents, the licensee shall pay for all expenses incurred on behalf of the child which are not paid for by public funds or third party insurance available to the child.

(15) Payments to Birth Parents Restricted. The licensee shall not place a child(ren) with any potential adoptive parent who has provided payment, money, consideration or services to that child's birth parent.

(16) Transfer of Placement.

(a) Change in Placement. Any change in a child's placement must be based on a documented assessment of the child's needs.

(b) Alternative Placement. Whenever the licensee determines that a child has been placed in a family foster home or residential facility unsuitable for his needs, the licensee shall evaluate his situation and consider an alternative placement. The licensee shall carry out any transfer in a manner which is sensitive to the needs of the child. Except in an emergency, transfer shall be made only with the consent of the person or agency having legal custody of the child.

(c) Notification. In the event of transfer of placement, the licensee shall notify the child's foster parents as

Mass Regulations Title 102 Chapter 1

provided by 102 CMR 5.10(15) or (16), and shall notify in writing the child's parents and any other agency having responsibility for the child.

(d) Documentation. The licensee shall document in the child's record the reason for transfer of placement, date of transfer, and the child's new place of residence.

102 CMR 5.09

5.09: Services to Birth Parents in Adoption

It is the responsibility of the adoption placement agency to support the birth parents in making an informed decision and to ensure that this decision is made without pressure placed on the birth parents and with their full consideration of alternative plans. The licensee shall provide the birth parent(s) with adequate counseling and education to assist them in reaching an informed decision regarding the surrender of their child for adoption. Such counseling and education shall be provided by a licensed clinician. The licensee may meet the requirements of 102 CMR 5.09 by an agreement with other agencies or persons.

(1) Information At Intake. The licensee shall provide the following information to birth parents in writing at intake:

(a) information regarding alternatives to adoption;

(b) a statement that they have the right not to be coerced by any person into relinquishing a child for adoption;

(c) a statement that the licensee has the sole discretion to determine the placement of the child. Nothing in 102 CMR 5.00 shall prohibit an agency from considering a birth parent's request for an identified placement;

(d) information about the different types of adoption, *e.g.* identified, open, intercountry, interstate, infant, special needs;

(e) information regarding the legal result of voluntary surrender or involuntary termination of parental rights;

(f) a statement that the birth parent(s) have the right to their own attorney, and that the licensee's attorney does not represent the birth parent(s);

(g) a statement that the birth parents have the right to designate the religious denomination of their child's

Mass Regulations Title 102 Chapter 1

adoptive home, as set forth in M.G.L. c. 210, § 5B;

(h) the licensee's criteria used to select adoptive parents;

(i) copies of all documents they may possibly be asked to sign;

(j) a statement that the licensee cannot enforce any voluntary agreements (written and/or unwritten) entered into between birth parents and adoptive parents.

(2) Information Prior to Surrender. The licensee shall provide the following information to birth parents in writing prior to surrender of their child for adoption:

(a) a description of the adoptive parent(s) identified for the child, including the adoptive parent's interests, talents, and lifestyle. If the adoptive parents have not been identified prior to surrender, the licensee must inform the birth parents as soon as adoptive parents have been identified.

(b) information regarding their right and responsibility to update the information in their case record at the agency at any time, and the procedure to do so;

(c) the processes that children may use to locate their birth parents and that birth parents may use to locate their children. The information shall include, but not be limited to, a description of the rights of adoptive children to obtain certain information pertaining to their birth families upon reaching majority age, as set forth in M.G.L. c. 210, § 5D, Release of Certain Information Concerning Adoptive Persons;

(d) the licensee's policy regarding contacting birth parents in cases of adoption disruption to determine if they desire and are able to care for the child. The licensee shall document birth parents' requests regarding such future contact.

(3) Financial Assistance. Birth parents have the right and responsibility to make an informed and uncoerced decision about the possible placement for adoption of their child. Birth parents shall neither benefit nor suffer financially as a result of their pregnancy. It is expected that birth parents will assume responsibility, in accordance with their ability to pay, for their own living, medical and transportation expenses. The licensee may assist the birth parents in meeting their physical and material needs in accordance with its policy for financial assistance and the provisions of 102 CMR 5.09(3). For purposes of 102 CMR 5.09(3), payment shall mean the provision of money, goods, or services and shall include any compensation, consideration, donation, gift, or reimbursement.

(a) The licensee shall have a written policy describing the licensee's payment of expenses incurred by birth

Mass Regulations Title 102 Chapter 1

parent(s) as permitted by 102 CMR 5.09(3)(b) and (c). The policy may provide for payment to assist the birth mother in obtaining adequate medical care, to protect the legal rights of the birth parent(s), to provide for transportation to obtain medical, legal, counseling and other allowed services of the agency, and/or to assist the birth mother with living arrangements when her source of income or financial support is disrupted during her pregnancy. The licensee shall ensure that the payment of expenses does not impair the birth parent's ability to make an informed and uncoerced decision regarding the possible placement of the birth parent's child for adoption.

1. The policy shall include provisions for an evaluation of the birth mother's need for financial assistance for medical care, living expenses and transportation, and shall describe the licensee's means of determining the need for additional support. The evaluation shall consist of a review of the financial resources available to the birth mother, including, but not limited to: family support, health insurance and/or other sources designated to pay for medical, living expenses and transportation. Payment for medical care, living expenses and transportation may be made only on the basis of the evaluation.

2. A record of this evaluation shall be shared with the birth parents and maintained as part of the intake evaluation specified in 102 CMR 5.06(2)(d).

(b) The licensee may make payment for the services listed below on behalf of the birth mother as determined by the evaluation of need for financial assistance specified in 102 CMR 5.09(3)(a)1.:

1. Living Expenses: Payment for reasonable and necessary living expenses of a birth mother shall not exceed \$980 per month. Living expenses shall be limited to: lodging, food, utilities and clothing. Payment for living expenses of a birth mother shall not be made for more than a total of eight months, including no more than six months during the pregnancy and six weeks after the child is born. Based on the documented individual health or safety needs of the mother, living expenses may be provided for an additional two weeks.

2. Medical Expenses: Payment for pre-natal, birthing and other pregnancy related medical expenses, including childbirth education shall be permitted. Payment for such services shall be reasonable and shall not exceed the prevailing rates of the community in which the care is provided. No payment for medical expenses of birth mothers incurred more than 30 days after delivery shall be made except that payment may be made for one post-partum medical visit or in case of a pregnancy related need for further medical services. Such expenses shall include but not be limited to: payment to medical personnel, medical facilities, ambulance services and pharmacies.

3. Transportation: Payment for necessary transportation to obtain medical, legal, counseling and other allowed services shall be permitted. Payment for transportation shall be reasonable, and shall not exceed the local prevailing rates for transportation. In addition, payment for the airfare of the birth parent(s), together with one parent of the birth mother if she is a minor, any dependent children of the birth parent(s) who must be transported with the birth parent(s) to receive the adoption services of the licensee, shall be permitted in an amount not to exceed round trip coach fare on a common carrier from and to the birth parent(s)' established place of residence. Payment may be made for no more than two such round trip airfares. Reasonable payment for necessary food and lodging expenses associated with such transportation shall be permitted.

Mass Regulations Title 102 Chapter 1

4. Support Services: A licensee may provide services or payment for reasonable and necessary educational, vocational, recreational and religious services to a birth mother as specified in her individual service plan provided that the total value of such services shall not exceed \$500. per month. The licensee shall maintain adequate and individual invoices and/or records documenting the provision of such services, which will be subject to routine audit.

(c) Payment for legal services related to the relinquishment and adoption process for the birth parents shall be permitted. Payment for such services shall be reasonable and shall not exceed the prevailing rates of the community in which they are provided.

(d) Payment for legal and medical expenses, other than medications shall be made directly to personnel or facilities providing such services.

(e) The licensee shall maintain a record including receipts and/or bills of all payments made under 102 CMR 5.09(3).

(f) Birth parents shall be notified in writing prior to the payment of any allowable expense, that such payment, if provided, shall not be contingent upon placement of their child for adoption.

(g) No payment shall be made directly to the birth parent, or to anyone on behalf of the birth parent, by anyone other than by the licensee.

(h) No payment shall be made for expenses incurred by or on behalf of the birth parent(s) prior to completion of the intake evaluation required by 102 CMR 5.06.

(i) Payment of expenses for services required by 102 CMR 5.00 such as counseling (102 CMR 5.09) and foster care (102 CMR 5.11(2)) are not prohibited by 102 CMR 5.09(3).

(j) All other payments by the licensee to or on behalf of birth parents are prohibited under 102 CMR 5.00.

(4) Follow-up Services. The licensee shall make available at no cost to the birth parents, either directly or by referral, any necessary services to the birth parent(s) following adoption placement of their child. These services shall include the following:

(a) factual information pertaining to any adoption services provided at the agency, including those permitted by

Mass Regulations Title 102 Chapter 1

M.G.L. c. 210, § 5D;

(b) counseling concerning adoption related issues such as identity, roles and relationships;

(c) counseling and other services which support placements;

(d) assistance in joining or developing support groups;

(e) general information regarding current adoption issues, practices and laws.

102 CMR 5.10

5.10: Services to Foster and Adoptive Parents

(1) Information to be Provided. The licensee shall provide in writing to all prospective foster and adoptive parent applicants and upon request to any person the following information:

(a) information regarding the licensee's program and the needs of children in the Commonwealth for family foster care and adoption;

(b) its statement identifying all qualifications required of foster parents or adoptive parents, and evaluation, approval and orientation procedures, as required by 102 CMR 5.10(2), (3), and (5);

(c) its statement of physical requirements for foster or adoptive homes, as required by 102 CMR 5.10(4).

(d) grievance and appeal procedures as required by 102 CMR 5.04(3)(g) and (h);

(e) policy regarding financial responsibilities, as required by 102 CMR 5.04(7).

(f) a copy of the adoption program budget (current year) as required by 102 CMR 5.03(2)(a)4.a.;

Mass Regulations Title 102 Chapter 1

(g) a current list of the Board of Directors and Advisory Board (if different), including names and addresses;

(h) the address and telephone number of the regional Office of Child Care Services.

(2) Orientation. The licensee shall provide an orientation for foster and adoptive parent applicants. The orientation shall include general information on the following:

(a) the characteristics, needs and number of children available for foster care and adoption placement;

(b) the role of the placement agency, the children served by the agency, and the services provided by the placement agency;

(c) the agency philosophy and policy regarding discipline of children;

(d) separation and loss, and the circumstances under which children require placement;

(e) the procedures to finalize an adoption, and the legal rights and responsibilities of foster and adoptive parents, as required by 102 CMR 5.10(10) and (18);

(f) fostering or adopting children with special needs, as appropriate;

(g) for adoptive parent applicants, the purpose, nature and types of adoption; disclosure that the licensee cannot enforce any agreements (written and/or unwritten) entered into between birth parents and adoptive parents; the legal procedures for adoption; and the approximate duration of time from approval or assignment of a child to placement of a child, and the agency's assignment procedures; and the process children may use to locate birth parents and that birth parents may use to locate children.

(3) Qualifications Required of Foster and Adoptive Parents. The licensee shall keep and maintain a written statement identifying the qualifications required of foster and adoptive parents, clearly identifying criteria by which foster and adoptive parent applicants may be or may not be approved for placement of a child.

(4) Physical Requirements for Foster and Adoptive Homes. The licensee shall establish physical requirements for foster and adoptive homes, which shall include but need not be limited to the following:

Mass Regulations Title 102 Chapter 1

(a) The home must be clean, safe, free of obvious fire and other hazards, and of sufficient size to accommodate comfortably and appropriately all members of the household and the approved number of foster or adopted children to be placed;

(b) The home shall have adequate lighting and ventilation, hot and cold water supply, plumbing, electricity, and heat;

(c) The home shall have sufficient furniture to allow each child to sleep in a separate bed and to have adequate storage space for his personal belongings;

(d) The home shall be equipped with smoke detectors in working order;

(e) If the home uses well water, it shall be tested and determined safe, and a report of the test furnished to the licensee;

(f) For foster care, the following additional requirements shall apply:

1. The home shall have bedrooms which provide at least 50 square feet per child and shall accommodate no more than four children per bedroom.

2. No foster child over one year of age shall sleep in the same room with an adult of the opposite sex.

3. No bedroom to be used by foster children shall be located above the second floor unless any such floor has two means of egress.

4. No bedroom to be used by foster children shall be located below the first floor unless it contains a ground level, standard door exit and at least one operable window.

(5) Evaluation of Applicants. The licensee shall, consistent with its current needs, promptly evaluate foster and adoptive parent applicants. The assessment shall be completed by a social worker who meets the requirements of 102 CMR 5.05(2). The assessment shall include at least one meeting in the applicant's home. No assessment can be considered complete unless all of the requirements of 102 CMR 5.10(5) have been met, and for adoption approval, until 30 days have elapsed since the beginning of the assessment.

(a) The licensee shall interview applicants individually at least once, and as often as is necessary to determine

Mass Regulations Title 102 Chapter 1

the applicants' qualifications to foster or adopt a child.

(b) The licensee shall interview all other members of the applicants' household, as appropriate to the age of the member of the household.

(c) The licensee shall determine that each applicant and each adult household member has a background free of conduct which in the judgement of the licensee, bears adversely upon his or her ability to provide for the safety and well being of children. In making this determination, the licensee shall consider the following:

1. Engaging in, or having engaged in, conduct which results in his or her child being adjudicated in need of care and protection;

2. Use of alcohol or drugs to an extent or in a manner that impairs his or her ability to care for children properly;

3. Having engaged in conduct which results in a CORI (Criminal Offender Record Information) report or having engaged in any other conduct, criminal or otherwise, that is determined by the licensee to impair the individual's ability to care for children.

- a. A CORI report shall consist of arrest, pending criminal charges or criminal charges that have been finally disposed of for any offense involving sexual or physical abuse, any offense involving children and violent or drug-related crimes, including driving under the influence of alcohol or drugs.

- b. A CORI report shall also consist of the report of a restraining order entered pursuant to M.G.L. c. 209A, violations of such restraining orders and other arrests, pending charges or findings relative to abuse of adult or child family members.

(d) The assessment shall be summarized in a written report and shall document the dates and location of assessment activities, and:

1. motivation for fostering or adoption;

2. emotional stability and compatibility of the applicants;

3. the social, education and health history of the applicant;

Mass Regulations Title 102 Chapter 1

4. the family composition (including pets), a description of the home, including sleeping areas, and the adjustment of the applicant's own children, if any;
5. the family's attitude toward accepting a foster or adopted child; the applicant(s)' relationships with extended family, and the attitudes of extended family members toward accepting a foster or adopted child;
6. parenting ability, including child rearing and discipline;
7. the family's attitude toward the birth parents of the child, and about visitation, if applicable;
8. characteristics of children desired, including age, sex, abilities or disabilities, behavior, and characteristics of children parents are not willing to foster or adopt;
9. at least three written references;
10. a written statement from a licensed physician regarding the health of each member of the household;
11. evidence of birth certificates, marriage certificates and/or divorce decrees;
12. evidence of each person's compliance with 102 CMR 5.10(5)(c);
13. for adoptive parent applicants, expectations for a child, including the family's plans to discuss adoption with the child;
14. review of the adoptive parent applicant's financial ability to care for an adopted child; and
15. the licensee's conclusions regarding the applicant(s)' ability to meet the physical, developmental, emotional and educational needs of a child or children; the licensee's recommendation as to the age, sex and characteristics of children which the applicant(s)' home can safely accommodate and which the foster or adoptive parent applicant(s) can best serve.

Mass Regulations Title 102 Chapter 1

(e) The licensee may perform a limited foster or adoptive parent assessment in the following circumstances:

1. if the licensee receives a foster or adoptive parent assessment from another agency licensed or approved by the Office completed not more than twelve months prior to the current application for approval;
2. if the licensee receives a foster or adoptive parent assessment performed in another state in accordance with the laws of such state, completed not more than twelve months prior to the current application for approval;
3. if a placement does not occur within 12 months of approval of the foster or adoptive parent by the licensee.

(f) A limited foster or adoptive parent assessment shall be a review of the previous foster or adoptive parent assessment for compliance with 102 CMR 5.10(4) and (5), and verification that such information remains current.

(g) The licensee shall notify each foster or adoptive parent applicant in writing of the results of the assessment within one month of the last visit to the applicant. The licensee shall provide the applicant with a copy of the evaluation upon request.

(h) Foster and adoptive parent applicants not approved for placement shall be provided an explanation in writing of the reasons for such disapproval. Such explanation shall also include written procedures for the applicant to appeal the agency decision, in accordance with 102 CMR 5.04(3)(g) and (h).

(6) Homes Previously Approved. If the licensee intends to approve for placement of foster children a home which is concurrently approved by another agency for the placement of foster children, the licensee must enter into an agreement with all approving agencies regarding the sharing of appropriate information about the home and children placed therein. Such information shall include, but not be limited to:

(a) significant changes in the behavior or clinical profile of children placed in the home, which may pose a risk to other children or adults in the home;

(b) concerns regarding the foster family which may impact their ability to provide appropriate care for children in the home.

(7) Agreements with Foster Parents.

Mass Regulations Title 102 Chapter 1

(a) General Foster Parent Agreement. The licensee shall enter into a written agreement in his native language with every foster parent applicant whom the licensee has evaluated and approved to become a foster parent. This agreement shall be signed and dated by the licensee and each foster parent, and shall be renewed annually. The agreement shall include:

1. the name and address of the licensee and the name and address of the foster parent;
2. a statement defining the responsibilities of the foster parents;
3. a statement defining the responsibilities of the licensee for providing services to foster children and foster parents;
4. a statement describing state law and agency requirements regarding child rearing and discipline practices;
5. the range and frequency of payments to be made to foster parents for board and care of foster children;
6. the method for closing a foster home or for removing a child from the home;
7. the responsibility of the licensee to provide, and the foster parents' responsibility to participate in, orientation and on-going training programs;
8. a statement that no foster parent shall give up full time residential care of any foster child to anyone other than the licensee or a person designated by the licensee, unless ordered to do so by a court of competent jurisdiction;
9. a statement that no foster child shall be moved out of state without consent of the licensee;
10. a statement that the foster parent shall notify the licensee in the following circumstances:
 - a. 60 days prior to moving out of state;
 - b. in the event of a vacation or trip which would result in the family being away from their usual place of residence overnight;

Mass Regulations Title 102 Chapter 1

c. immediately in the event of a death or serious injury to the foster child;

d. within 24 hours of any significant changes in the status and health of household members including, but not limited to: death, divorce, separation, serious illness or hospitalization.

11. a statement that the foster parent shall immediately notify a child's social worker of any concerns regarding a child's safety which arise during placement;

12. a plan for the care of the foster child or children during any extended absences of the foster parents which shall have as a priority the maintenance of the children's stability;

13. a statement informing the foster parent regarding liability insurance to protect the foster parents from personal liability for certain damages relating to the provision of foster care;

14. a statement which assigns responsibility for payment in the event of damage to or loss of the foster parents' property caused by the foster child, and advising the foster parents to review any insurance policies they personally may have in order to determine the extent of their coverage.

15. provisions for termination of the agreement.

(b) Required Agreement Upon Placement of an Individual Child. The licensee shall enter into a written agreement in his native language with every foster parent with whom the licensee places a child, prior to the placement of the child, or in case of emergency within three days after placement. The agreement shall be signed and dated by the licensee and each foster parent, and shall be revised (if necessary) as appropriate, but in no event less often than every six months. The agreement shall include:

1. the full name and address of the child placed in the family foster home pursuant to the agreement;

2. child's date of birth;

3. child's school grade and school attended;

Mass Regulations Title 102 Chapter 1

4. pertinent medical information and any available developmental information;
5. a description of the child's behavior and any special abilities or problems the child may have;
6. a summary of the child's placement history and social history where providing this information is not contrary to the best interests of the child;
7. child's custody or guardianship status, including legal basis for foster care and whether or not the child is free for adoption;
8. name and address of the child's parents, when appropriate, and parents' or relatives' involvement and arrangements for visiting;
9. religious requirements for the child, when applicable;
10. arrangements for clothing for the child;
11. the amount and frequency of payment to the foster parents for the board and other expenses of the foster child;
12. name, office address, office phone number, and day in office of the social worker responsible for the child;
13. an emergency telephone number or the number of the licensee's 24 hour telephone service;
14. a statement authorizing the foster parents to obtain routine and emergency medical and dental care for the child;
15. a statement identifying the person authorized to undertake other actions with regard to the child, such as the authorization of the child's special education plan under St. 1972, c. 766.
16. the specific responsibilities of the licensee and foster parents required for implementation of the foster child's service plan;

Mass Regulations Title 102 Chapter 1

17. provisions for specific services and for visits by the social worker with the child and foster parents;

18. the conditions under which the agreement may be terminated and the child removed from the home.

(8) Information Prior to Decision to Accept a Foster Child. The licensee shall provide each foster parent prior to placement sufficient information about each foster child to be placed with him (including a description of his service plan) to enable the foster parent to determine if he will accept the child. This information shall include, when available, but need not be limited to, the age, sex, race, and medical condition of the child, information regarding the reason for placement and a description of any behavioral problems the child may have.

(9) Information Prior to Decision to Accept an Adoptive Child. Prior to placement (or assignment in the case of an international adoption), the licensee shall provide each adoptive parent with an opportunity to meet the child to be placed. For international adoption placements, a photograph of the child taken not more than three months prior to the assignment shall be made available. To enable the adoptive parents to make an informed decision, the licensee shall provide in writing complete information, to the extent available, to the adoptive parents, including:

(a) identifying information including child's first name;

(b) sex and date of birth or estimated age;

(c) reports of complete medical examination;

(d) all information available regarding the medical history, mental health history, special talents, abilities or interests, race and national origin of the child and birth family, and any other information which would be relevant to the growth and development of the child;

(e) developmental history including a chronological summary of the child's reactions to any caretakers, any special traumas (physical and/or emotional) in the child's life;

(f) educational information on the child's grade level, educational performance, and special skills or interests, if the child is of school age;

(g) social report including the child's general responses to his/her peers, his/her general temperament, and responses to authority and discipline;

Mass Regulations Title 102 Chapter 1

(h) description of current living situation including a description of how the child came into care, type of placement setting (*i.e.*, orphanage, private home, foster care), first names of any siblings in placement, if available, their ages and the continuing relationship of the birth family with the child, if any;

(i) a summary of the child's current legal status, including any legal actions taken to establish the child's eligibility for adoption in accordance with laws of the state or foreign countries. The licensee shall inform adoptive parents that legal risk placements are foster care placements;

(j) information, if any, on all previous caretakers including length of time in care, circumstances for placing the child and removing the child from the caretaker;

(k) a statement explaining why any of the above information is omitted or incomplete. A copy of the statement and the information required by 102 CMR 5.10(8)(a) through (j) shall be maintained in the adoptive family's and child's records.

(10) Rights and Responsibilities of Adoptive Parents. Prior to placement, the licensee shall inform the adoptive parents of their rights and responsibilities regarding the child prior to legalization of the adoption. Such information shall include but not be limited to medical care, travel outside the state and any other areas where law requires consent of parents or guardians.

(11) Responsibilities of the Social Worker for the Foster Home. Each foster home shall be assigned a social worker or homefinder/family resource worker who shall:

(a) be responsible for providing direct services to the foster family;

(b) visit the family in the foster family home at least quarterly and otherwise be available to assist the foster parents as requested;

(c) meet with the foster parents to address any concerns regarding the family's ability to provide care for children.

(12) Responsibilities of the Social Worker for the Adoptive Home. The licensee shall assign a social worker who will be responsible for providing direct services to the adoptive family until the adoption is finalized. The social worker shall assist the adoptive parents and the child with any adoption-related matters and shall:

Mass Regulations Title 102 Chapter 1

(a) make monthly supervisory contacts with the adoptive parents, beginning no later than two weeks after placement, and continuing until the adoption decree is entered. Beginning no later than six weeks after placement, such contacts shall be face to face at least every other month. At least two contacts shall be in the adoptive parent home with the child and parents;

(b) inform the adoptive parents in writing of any postponement of the legalization of the adoption, the reasons for such postponement, the actions which the licensee determines are needed to remedy such postponement and the time frames within which such actions must be taken;

(c) provide updated medical and/or psychological information regarding the birth family to the adoptive family. Relevant information about siblings shall be included;

(d) assist the adoptive parents and the child in obtaining any needed services;

(e) inform the adoptive parents of their right to update the information in their case record at the agency at any time;

(f) document in case notes in adoptive family records all contacts with children and adoptive families;

(g) assist the adoptive parents in maintaining, when appropriate, contact with siblings and providing support services for older sibling groups.

(13) On-going Training. The licensee shall provide a mandatory on-going training program to develop foster parents' skills in meeting the needs of foster children, and in fulfilling their responsibilities as foster parents. In addition, the licensee shall provide or arrange for special training for foster and adoptive parents caring for children with special needs, including training in physical restraint, if appropriate.

(14) Requirement for Annual Review. The licensee shall annually review in person with each foster parent his or her performance and experiences in providing foster care during that year. The licensee shall provide each foster parent with the results of the review in writing. The foster parent may dispute the results of the review in writing, which shall become part of the foster parent's record. The review shall include:

(a) a review of responsibilities outlined in the general foster parent agreement;

(b) consultation with each social worker involved with children in the home;

Mass Regulations Title 102 Chapter 1

(c) reference to any services provided to the foster family on its own behalf;

(d) a summary of the foster parents' participation in orientation and training.

(15) Notification of Removal of Foster Child. Except when a child is being returned to his family or placed directly in an adoptive family, the licensee shall give foster parents at least one week advance notice of the removal of any foster child who has been in their home for six weeks and the reason for the removal. Whenever there is an immediate need to reunite the child with his parent or guardian, the licensee must maintain a written explanation of such need. The written record shall be available to the foster parents and the Office for Children.

(16) Emergency Removal of Child. In cases of emergency when the licensee determines that the health or safety of the child or children would be endangered by remaining in the foster home, adoptive home or residential program, the child(ren) may be removed immediately. The licensee shall maintain a written record of such removal which shall be available to the Office for Children. The licensee shall notify the foster parents, adoptive parents or residential program in writing of the specific reasons for the removal.

(17) Closing of Foster Home. In cases when the licensee determines that the foster home is unable to meet the needs of foster children, the licensee shall send a written notice of intent to close the home to the foster parents. The notice shall contain an explanation of the specific reasons for the intended closing, and information about the agency grievance procedure. Except in cases of emergency, the home shall not be closed nor the foster children removed until the foster parents, if they so desire, have had the opportunity to complete all steps in the grievance procedure.

(18) Legal Procedures for Adoption. The licensee shall inform the adoptive parents in writing of the legal procedures involved in petitioning for and legalizing a decree of adoption. The licensee shall represent or assist in arranging for representation of the adoptive parents in such legal procedures.

(19) Follow-Up Services. The licensee shall make available, either directly or by referral, any necessary services to adoptive parents after the finalization of the adoption. These services shall include those required by 102 CMR 5.09(4).

102 CMR 5.11

5.11: Services to Foster Children

(1) Communication. The licensee shall assure that children in placement have reasonable access to communication through telephone and mail. Such access may be restricted only for therapeutic reasons, documented in the child's service plan.

(2) Licensed Foster Care Prior to and Following Adoption Placement. The licensee shall provide, either directly or through agreement, licensed foster care for any child prior to or following surrender of the child for adoption and until

Mass Regulations Title 102 Chapter 1

an appropriate adoptive home for the child can be selected. Licensed foster care shall also be provided in the event that a child is removed from a prospective adoptive family.

(3) Health Services-General. The licensee shall assure the availability of a range of medical and dental services to foster children, in order to promote the children's complete physical, mental and social well-being. Such services shall include but need not be limited to:

- (a) evaluation and diagnosis;
- (b) treatment;
- (c) preventive health services;
- (d) developmental and rehabilitative services; and
- (e) consultation in any of the above areas.

(4) Health Services-Specific. Subject to the exception contained in 102 CMR 5.08(13), the licensee shall provide or arrange for health services to foster children which include but need not be limited to:

- (a) physical examinations at intervals recommended by current Department of Public Health policy;
 - 1. The physical examination shall include examination of vision and hearing, routine screening, laboratory tests ordered by the examining physician, and special studies when determined by the physician to be necessary;
 - 2. The physical examination required at two years of age shall include a screening for lead poisoning and a statement signed by a physician or an employee of a health care agency stating that the child has been screened;
- (b) annual dental examination, beginning at age three;
- (c) immunizations as required by the Department of Public Health;

Mass Regulations Title 102 Chapter 1

(d) tuberculosis control;

(e) reporting of communicable diseases and infections in accordance with the law;

(f) family planning information, and upon request of the parent or the child (with any required consent of parent or guardian), provision of or referral for family planning devices, medication, and services. Any licensee whose conscience prohibits the provision of such family planning devices, medication or services, may refer such child to a resource which will provide such devices, medication, and services, or shall notify the child or parents that the agency will not provide such referral.

(5) Range of Psychological and Psychiatric Services. The licensee shall provide or arrange for a range of psychological and psychiatric services in order that each child's and family's needs for psychological or psychiatric services will be met. Such services shall include:

(a) evaluation and assessment;

(b) therapy; and

(c) consultation with children, parents, foster parents and the staff and administration of the licensee.

(6) Arrangements for Education. The licensee shall arrange for the education of each child in care, in compliance with state and local laws, and shall document the child's educational plan in the child's record.

(7) Representation at Hearings. The licensee shall have a representative present at all judicial and administrative hearings regarding the child.

(8) Unauthorized Activities. The licensee shall not allow children to participate in any activities unrelated to the service plan of the child or to any agreements with the parent or guardian without the written consent of the parent or guardian and of the child if over 14 years of age. "Activities" shall mean but not be limited to the following:

(a) research or experimentation which involve the child;

(b) fund raising;

(c) publicity, including photographs and participation in the mass media, except in cases where such publicity is related to finding adoptive or family foster homes for children.

102 CMR 5.12

5.12: Discharge from Placement

(1) Reuniting of Child with Family. As soon as the licensee determines that the parent or parents are able to assume parental responsibility for the child, or as provided in the agreement between the parents and the licensee, the child and the family shall be reunited.

(2) Development of Discharge Plan.

(a) Prior to discharge from foster care or residential care and except in cases of emergency, the licensee shall consult parents, foster parents or the residential program, and other personnel involved in the development and implementation of the child's service plan in order to develop a written discharge plan.

(b) The discharge plan shall be explained to the child, the child's parents, foster parents or residential program, and to any agency having custody or guardianship of the child. A copy of the plan shall be made available upon request to such people or agencies.

(c) The discharge plan shall include provision for appropriate services in the child's new environment, and shall identify parties responsible for providing after-care services.

(3) Emergency Termination. In cases when discharge from placement is made on an emergency basis, a written discharge summary shall be developed in consultation with the foster parents or residential program and with any other personnel involved in the development and implementation of the child's service plan.

(4) Follow-up Contact. The licensee shall maintain contact with each child for at least three months after termination of foster care or residential care, and shall provide on-going services as necessary to facilitate the child's adjustment to his new environment and to maintain the goals of the service plan. If such contact is not maintained, the licensee shall include in the child's record a clear explanation of the reason.

(5) Requirements in Event of Death.

(a) In the event of death of a child in foster care or residential care, the licensee shall immediately notify the

Mass Regulations Title 102 Chapter 1

child's parents and the agency having custody or guardianship of the child.

(b) The licensee shall cooperate in arrangements for examination, autopsy and burial.

102 CMR 5.13

5.13: Record Keeping Requirements

(1) General Record Keeping Requirements

(a) The licensee shall maintain records for children, their birth parents, foster parents and adoptive parents, and foster and adoptive parent applicants, as required by 102 CMR 5.13.

(b) Legibility and Authentication of Records. All records shall be legible, dated and signed by the individual making the entry.

(c) Updating Records. The licensee shall continually update all information in children's, foster parent's and adoptive parent's records. The licensee shall have a written policy describing its procedures for updating any information provided by birth parents, foster parents, adoptees and adoptive parents following the adoption decree. Such policy shall include a statement that the licensee will encourage all parties to provide updated information.

(d) Coordination of Records. If the licensee maintains a separate record for the child and the birth parents, the licensee shall have and follow a written procedure to make certain that all information pertinent to the child is in the child's records and all information pertinent to the birth parents is in the birth parents' records.

(e) Confidentiality of Records. Information contained in children's, birth parent's, foster and adoptive parent's records shall be privileged and confidential, provided, however that

1. the licensee shall make summaries of children's progress reports available upon request to parents or guardians and foster parents. Such summaries may be oral unless parents request such summaries to be in writing. When reports and information are made available, the licensee shall provide staff assistance in interpreting them to parents or guardians and foster parents.

2. the licensee shall make foster parents' annual review available to foster parents. When reports or information are made available, the licensee shall provide staff assistance in interpreting them to foster

Mass Regulations Title 102 Chapter 1

parents.

(f) Distribution of Records. Children's, foster and adoptive parent applicants', and foster and adoptive parents' records shall be the property of the licensee. The licensee shall establish written procedures governing access to, duplication of, and dissemination of such information.

(g) Storage and Preservation of Records. The licensee shall secure the information contained in these records against loss, defacement, tampering, or unauthorized use. If an agency intends to cease operation, it shall submit to the Office a written plan for the storage and preservation of these records at least 15 business days before ceasing operation. The licensee shall not destroy records and shall provide for their preservation and transfer.

(2) Children's Records. The licensee shall maintain a written record for each child which includes:

(a) A face sheet which identifies the child by the following information:

1. the name, date of referral, date of birth, place of birth, citizenship, language spoken (if other than English), and religion of the child;
2. birthfather's name and cultural background, birth mother's name, maiden name and cultural background;
3. name, telephone number, and addresses of parents, legal guardian, or closest relative available in case of emergency;
4. sex, race, height, weight, color of hair, color of eyes, identifying marks of the child and cultural background;
5. medical condition significant to the child's well-being;
6. name of the responsible social worker of the licensee;
7. name and phone number of the agency having custody of the child, if different from the licensee;
8. custody or guardianship status of the child;

Mass Regulations Title 102 Chapter 1

9. name, address, and telephone number of current caretaker of child;

10. referring agency, name of social worker and telephone number.

(b) The following documentary information, as applicable:

1. referring agency or person;

2. sources of financial support;

3. evidence of authority to place the child, as required in 102 CMR 5.08(2) and (3);

4. all authorizations, consents and agreements with birth parents;

5. record of each placement, including dates of placement, and names, addresses and telephone number of each placement;

6. reports of any transfers of placement as required by 102 CMR 5.08(16)(d);

7. the rates of payment to any foster parent, and any change made therein, for the care of the child;

8. the date and location of any judicial or administrative hearing involving the child, including reason for the hearing, and summary of its outcome;

9. all pertinent correspondence concerning the child and birth family;

10. the signed acknowledgement indicating receipt of the agency's complaint policy, as required by 102 CMR 5.04(3)(g);

Mass Regulations Title 102 Chapter 1

11. any referral of the child for adoption or any application to adopt the child, and action taken;
12. case notes documenting contacts and services set forth in 102 CMR 5.05(1) and (3), 5.06 and 5.07.

(c) The following reports about the child:

1. the evaluation required by 102 CMR 5.06(1);
2. all service plans, reviews and updates, as required by 102 CMR 5.07;
3. medical records indicating the child's health history and medical evaluations and services received;
4. discharge plan or summary as required by 102 CMR 5.12(2) and (3).

(d) Exception for Short-Term Placements. If the foster care or residential placement is limited to six weeks or less, the records may include the limited evaluation and service plan allowed by 102 CMR 5.07(3) in place of the complete evaluation, service plan and reviews required by 5.06(1) and 5.07(1), (2), (5) and (7), and need not include the date and location of any judicial or administrative hearing involving the child, as required by 5.13(2)(b)8.

(3) Foster and Adoptive Parent Records. The licensee shall maintain a written record for adoptive and foster parents which includes:

- (a) foster or adoptive parents' written application;
- (b) a narrative description of the foster or adoptive parent assessment, as required by 102 CMR 5.10(5)d.;
- (c) evidence of references and medical statements, as required by 102 CMR 5.07(5)(d)9. and 10. and certificates or decrees, as required by 102 CMR 5.10(5)(d);
- (d) case notes documenting services set forth in 102 CMR 5.10, including 5.10(11) and (12);

Mass Regulations Title 102 Chapter 1

(e) record of each child placed in the foster or adoptive home, including the child's full name and date of placement, and payment rates for foster parents;

(f) all correspondence and/or communications concerning the adoptive family;

(g) any written agreements for services, including the agreements required by 102 CMR 5.10(7)(a) and (b);

(h) the signed acknowledgement indicating the receipt of the agency's complaint policy, as required by 102 CMR 5.04(3)(g);

(i) documentation of completed CORI evaluation, as required by 102 CMR 5.10(5)(c);

(j) for foster parents, annual service reviews;

(k) any other information necessary to furnish a basis for review, study, and evaluation of the foster or adoptive home;

(l) the date and reasons for closing a foster home and a copy of the written notification to the foster parents, if applicable.

(4) Placement Register. Each licensee shall keep and maintain a permanent register of all children placed. The register shall include the child's birth name, date of birth, date of placement and name of placement.

102 CMR 5.14

5.14: Applicability of 102 CMR 5.00

(1) 102 CMR 5.00 *et seq.* reflects basic standards for the operation of placement agencies. Office for Children licensure shall not relieve agencies of their obligation to comply with any other applicable international treaties, state or federal statutory or regulatory requirements or requirements set forth in their contracts with referral sources. Whenever possible, these other statutory, regulatory and contractual requirements shall be construed in a manner that is consistent with 102 CMR 5.00 *et seq.*

(2) If any provision contained in 102 CMR 5.00 *et seq.* or the application thereof is held invalid to any person or

Mass Regulations Title 102 Chapter 1

circumstance, the remainder of 102 CMR 5.00 and the application of the provision in question to other persons not similarly situated, or to other circumstances, shall not be affected thereby.

(3) Any license or approval in effect immediately prior to the effective date of 102 CMR 5.00 shall, notwithstanding its expiration date, remain in effect, unless suspended or revoked, until a new license or approval is issued or expressly refused or revoked under 102 CMR 5.00.

102 CMR 12.01

12.01: Introduction

102 CMR 12.00, adopted in accordance with St. 1990, c. 521, § 7, as amended by St. 1991, c. 329, stress the commitment of state government to provide employees with affordable child care for the purpose of allowing employees to be gainfully employed. Pursuant to St. 1990, c. 521, § 7, as amended by St. 1991, c. 329, on and after July 1, 1992, no contract for goods and services of any type shall be awarded by the State or any of its authorities to an employer having 50 or more full-time employees unless the employer has established a dependent care assistance program (“DCAP”) or cafeteria plan whose benefits include a DCAP. As alternatives to a cafeteria plan whose benefits include a DCAP, an employer may offer its employees child care tuition assistance or on-site or near-site subsidized child care placements. In fulfilling its mandate to develop minimum standards for child care tuition assistance and on-site or near-site subsidized child care placements, the Office for Children has developed 102 CMR 12.00.

102 CMR 12.02

12.02: Definitions

As used in 102 CMR 12.00, the following words shall have the following meaning unless the context otherwise requires:

Award. The notification to an employer of the State’s decision to enter into a contract with said employer for the procurement of goods or services.

Child. A child of the employee under age 13 for whom the employee is entitled to claim an exemption on his or her federal income tax return; a dependent 13 years of age through 21 years of age inclusive for whom the employee is entitled to claim an exemption on his or her federal income tax return who is physically incapable of caring for himself or herself, and who regularly spends at least eight hours each day in the employee’s household; or a child of the employee who is not a dependent but who regularly is in the employee’s legal or physical custody for at least six months of the year.

Contract. A legally binding and enforceable written agreement to provide goods or services in consideration of compensation to be paid by the State. For the purposes 102 CMR 12.00, the term “Contract” shall not refer to:

- (a) grants-in-aid;

Mass Regulations Title 102 Chapter 1

(b) Provider Participation Agreements issued under the State's Medical Assistance (Medicaid) Program;

(c) amendments, renewals, and extensions of contracts, as defined by applicable statutes and procurement regulations, awarded prior to July 1, 1992;

(d) procurement of goods or services pursuant to 802 CMR 2.28 (PD); or

(e) procurement in which funds are earmarked by law for a specifically identified contractor or class of contractors.

Exempt Employer. Any employer which certifies that it employs fewer than 50 full-time (35 hours per week) employees on the date of the award of the contract.

Legal Child Care. Care and supervision of infants and children licensed pursuant to M.G.L. c. 28A or otherwise permitted by applicable law, arranged for the purpose of allowing the employee to be gainfully employed. Examples of such care and supervision include the following: in-home care providers, au pair services, care by relatives, homemaker services, family day care homes, group day care homes, day care centers, preschool programs, nursery schools, private kindergartens, before and after-school programs, temporary shelter care programs and programs which offer night care, and summer day camps for children.

Near-site. The child care facility is within three miles or 15 minutes travel time, whichever is less.

On-site. On the premises.

Placement. A reserved slot at a legal child care facility that meets the needs of the child(ren) of the employees.

Qualified Employer. An employer which certifies that it has established a dependent care assistance program which may be a cafeteria plan whose benefits include a dependent care assistance program, or child care tuition assistance, or on-site or near-site subsidized child care placements to its employees.

Qualifying Individual. A child of the employee under age 13 for whom the employee is entitled to claim an exemption on his or her federal income tax return; a dependent for whom the employee is entitled to claim an exemption on his or her federal income tax return who is physically or mentally incapable of caring for himself or herself, and who regularly spends at least eight hours each day in the employee's household; the employee's spouse who is physically or mentally incapable of self-care and who regularly spends at least eight hours each day in the employee's household; or a child of the employee who is not a dependent but who regularly is in the employee's legal or physical custody for at least six months of the year.

Secretary. The Secretary of the State's Executive Office for Administration and Finance or his or her designee.

State. The Commonwealth of Massachusetts and any authority established as a public instrumentality of the Commonwealth of Massachusetts.

Mass Regulations Title 102 Chapter 1

Subsidized Child Care. Child care provided by an employer or another at less than the actual charge for child care at that particular child care facility.

Tuition Assistance. Monetary assistance by an employer to or on behalf of employees toward the cost of providing child care. Such assistance may include vouchers, cash assistance, or reimbursement.

102 CMR 12.03

12.03: General Rules

(1) General Rule. Except as provided in 102 CMR 12.03(2), the State shall not make an Award of any Contract to an employer unless said employer is a Qualified or Exempt Employer.

(2) Special Emergency. Notwithstanding the provisions of 102 CMR 12.03(1), the State may make an Award of a Contract to an employer which is neither Qualified nor Exempt upon certification by the procuring governmental unit and the Secretary that:

(a) failure to award a contract to the particular employer would pose a substantial threat to the life, health, safety, or welfare of persons or the protection of property;

(b) there is only one employer which, by virtue of unique capabilities or circumstances, proprietary technology, exclusive copyrights, patents or licenses, monopoly status (including all cases in which the contractor is a public department or utility), is qualified to deliver the goods or perform the services specifically required and failure to deliver the goods or perform the services specifically required would involve the health or safety of the people or their property; or

(c) requiring compliance with 102 CMR 12.03 would violate federal law, contravene the orders of a court of competent jurisdiction or cause the loss of federal funds.

(3) Discrimination. Contributions or benefits provided pursuant to 102 CMR 12.04 shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents consistent with Internal Revenue Code Section 129. Discrimination will result in possible adverse action on the contract or a refusal to enter into a contract.

102 CMR 12.04

12.04: Minimum Standards

Mass Regulations Title 102 Chapter 1

(1) Dependent care assistance program. A qualified employer which offers its employees a dependent care assistance program shall meet the requirements of Sections 125 or 129 of the Federal Internal Revenue Code of 1986 or any successor section, as amended and in effect for the taxable year.

(2) Minimum standard applicable to tuition assistance and on-site or near-site subsidized child care placements. A qualified employer which chooses to offer to its employees either tuition assistance or on-site or near-site subsidized child care placements shall contribute in cash or in kind a minimum amount equal to at least .25% of the employer's annual gross payroll. For the purposes of 102 CMR 12.04(2), employee is defined as any person who is regularly scheduled to work for an employer for at least 17½ hours per week.