



The Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Mental Health

Office of the General Counsel

25 Staniford Street

Boston, Massachusetts 02114-2575

MAURA T. HEALEY

Governor

KIMBERLY DRISCOLL

Lieutenant Governor

KATHLEEN E. WALSH

Secretary

BROOKE DOYLE

Commissioner

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General Counsel

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NOTICE OF COMMENT PERIOD

Pursuant to the authority of M.G.L. c. 19, ss. 1, 18 and M.G.L. c. 123, s. 2 and in accordance with M.G.L. c. 30A, the Department of Mental Health will hold a Comment Period for the purpose of receiving written testimony on its proposed amendments. The Department describes the substance of the amendments as follows:

104 CMR 33.00 Designation and Appointment of Qualified Mental Health Professionals

The Department of Mental Health is proposing an amendment to regulation 104 CMR 33.00 (104 CMR 33.03(20)) to implement a recent amendment to GL. ch. 123 §18(a), inserting new §18(a)1/2, which permits the Court to transfer incarcerated individuals to facilities of the Department of Mental Health or to Bridgewater State Hospital under specified circumstances. The Trial Court has issued a form order for such transfers that requires “a qualified advanced practice registered nurse, physician, or psychologist” to examine the individual and report to the Court in writing their opinion, supported by clinical findings. Pursuant to GL. ch 123 §1, “qualified” clinicians are those who are “designated by and meet qualifications required by the regulations of” DMH. The proposed regulation establishes the process for such designation and sets qualifications for clinicians authorized to perform the 18(a)1/2 evaluations ordered by the Court.

COMMENT PERIOD

A Comment Period will be held by the Department from February 2, 2024, ending on February 23, 2024.

WRITTEN TESTIMONY AND COMMENTS: To submit written testimony or comments, email your testimony to: DMH-regulations@state.ma.us as an attached Word or PDF document or as text within the body of the email; with the name of the regulation in the subject line. All written testimony or comments must include the sender’s full name, mailing address, and organization or affiliation, if any. Written testimony may also be submitted by USPS to: Office of the General Counsel, Department of Mental Health, 25 Staniford Street, Boston, MA 02114. Comments/testimony must be received by the Department **NO LATER THAN February 23, 2024, at 5:00 p.m. when the Comment Period ends.**

INFORMATION: The proposed regulations are posted on the DMH website and can be viewed at: <https://www.mass.gov/service-details/dmh-proposed-regulations> or request a copy in writing from DMH Regulations, 25 Staniford Street, Boston, MA 02114 or email: DMH-regulations@state.ma.us. DMH may adopt a revised version of the proposed actions, taking into account relevant comments and any other practical alternatives that come to its attention.

By Order of the Department of Mental Health
Brooke Doyle, Commissioner



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Small Business Impact Statement (As required by M.G.L. c. 30A §§ 2, 3 & 5) <u>104 CMR 33.00: Designation and Appointment of Qualified Mental Health Professionals</u>		
CMR No: 104 CMR 33.00		
Estimate of the Number of Small Businesses Impacted by the Regulation: None		
Select Yes or No and Briefly Explain		
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?