

118 CMR 14.00: FILING OBJECTIONS AND ADMINISTRATIVE REVIEW

Section

- 14.01: Scope and Purpose
- 14.02: Petitions for Review
- 14.03: Entry of Care Provider's Name on the Registry
- 14.04: Removal of Care Provider's Name from the Registry: Petitions for Removal
- 14.05: Notification regarding Registrable Abuse Cases and Proceedings
- 14.06: Requests for Reconsideration
- 14.07: Objections Filed Pursuant to M.G.L. c. 66A

14.01: Scope and Purpose

118 CMR 14.00 governs the petition process available to certain parties to a M.G.L. c. 19C investigation and the objection process available to data subjects.

14.02: Petitions for Review

(1) Parties Who May File Petitions for Review. The identified abuser, or their respective legal representative, who is aggrieved by the disposition of an investigation conducted pursuant to M.G.L. c. 19C may file with the Commission an objection to the conclusion contained in the M.G.L. c. 19C investigation report, except for decisions regarding the screening of an intake, the assignment of an investigator, a jurisdictional determination, the deferral of an investigation pursuant to M.G.L. c. 19C, § 12, or findings in a Compliance Investigation Report.

(2) Grounds for Objection to a Determination of Abuse or Registrable Abuse. The grounds for filing a Petition for Review objecting to a determination of abuse are:

- (a) The investigation report is based on an investigation that was not conducted in accordance with:
 - 1. 118 CMR 5.02(1): Minimum Requirements of Abuse Investigations and/or 118 CMR 5.02(2): *Substantiated Investigations of Abuse of Persons with Intellectual or Developmental Disability*; and
 - 2. said non-compliance resulted in the reasonable likelihood of substantial prejudice to the petitioner;
- (b) The preponderance of evidence does not support the conclusions reached in the investigation report; or
- (c) The preponderance of evidence supports conclusions not reached in the investigation report.

(3) Grounds for Objection by a Care Provider to Placement on the Abuser Registry.

- (a) A care provider substantiated for registrable abuse pursuant to 118 CMR 5.02(2)(b) may file a Petition for Review to provide information that demonstrates, based upon the totality of the circumstances, the incident was isolated and unlikely to reoccur, and that the care provider is fit to provide services or supports to persons with intellectual or developmental disabilities, and that the care provider should not be placed on the registry.
- (b) Factors that may be considered by the Commission in determining whether the incident was isolated and unlikely to reoccur and the care provider is fit to provide services and supports to persons with intellectual or developmental disabilities may include, but are not limited to:
 - 1. the nature and extent of the serious physical injury, serious emotional injury, or abuse *per se* sustained by the person with an intellectual disability or person with a developmental disability; and
 - 2. relevant details about the care provider, such as whether the care provider received training relevant to the incident at issue; the care provider's employment history in working with individuals with disabilities; prior instances of similar conduct by the care provider, regardless of whether said conduct constituted abuse or abuse *per se*; any statements or communication regarding the care provider's work history and fitness to provide services and supports to persons with disabilities; and whether the care provider's conduct could reasonably be addressed through training, education, rehabilitation, or other corrective employment action and the care provider's willingness to engage in said training, education, or other corrective employment action.

14.02: continued

(4) Petition Process.(a) Petition for Review.

1. A petitioner shall file a Petition for Review which:
 - a. shall be in writing;
 - b. shall set forth with sufficient specificity, including supporting evidence and documentation, the grounds for the petition; and
 - c. shall be filed with the Executive Director of the Commission, or his or her designee.
2. Said Petition for Review shall be filed with the Commission within ten business days of the petitioner's receipt of a copy of the investigation report from the Commission.
3. For good cause shown by the petitioner, the Commission may, at its sole discretion, provide up to an additional 30 calendar days for the filing of a Petition for Review.

(b) Action upon Petition for Review.

1. Within a reasonable time from the filing of the Petition for Review, the Executive Director or his or her designee shall render a decision in writing on the issue(s) in contention in the petition, including a statement of the nature of the decision and the reasons underlying said decision.
2. A decision rendered by the Executive Director or his or her designee shall be the final and conclusive determination of the Commission of the objection raised in the filed petition in each case.

(c) Time Frames. The Commission's good faith failure to meet the time frames set forth in 118 CMR 14.00 shall not confer any rights, either expressly or impliedly, upon the petitioner.

(5) Notification of Right to Petition for Review:

(a) Notification to Caretaker. If, after investigation, the Commission determines that a caretaker has committed abuse, the Commission shall notify the caretaker of his or her right to file a petition for review of the finding with the Commission.

1. Said notification shall be provided to the caretaker by first-class mail to the caretaker's last known address.
2. If notice provided pursuant to 118 CMR 14.02(5)(a)1. cannot be accomplished, the Commission, at its sole discretion, may provide for any other means of service that is necessary and effective.
3. Unless otherwise established by the petitioner, and subject to the provisions of 118 CMR 14.02(5)(a)2., the petitioner shall be deemed to have received notification three business days after mailing by the Commission.

(b) Notification to Care Provider. If the Commission determines that a care provider has committed registrable abuse pursuant to 118 CMR 5.02(2)(b), the Commission shall:

1. notify the care provider of his or her:
 - a. right to file a petition for review of the finding of registrable abuse with the Commission;
 - b. right to appeal the final decision of the Commission that the care provider committed registrable abuse to the division; and
 - c. right to seek removal of his or her name from the registry as provided in M.G.L. c. 19C, § 15(g).
2. Said notification shall be provided to the care provider by certified mail, return receipt requested and by separate first-class mail to the care provider's last known address.
3. Unless otherwise established by the petitioner, and subject to the provisions of 118 CMR 14.02(5)(b)2., the care provider shall be deemed to have received notification three business days after first-class mailing by the Commission.
4. If notice pursuant to 118 CMR 14.02(5)(b)2. cannot be accomplished, the Commission, at its sole discretion, may provide for any other means of service that is necessary and effective.
5. Said notification shall instruct the care provider of the opportunity to offer evidence that the incident was isolated and unlikely to reoccur and that the care provider is fit to provide services or supports to persons with intellectual or developmental disabilities pursuant to 118 CMR 14.02(3).

14.03: Entry of Care Provider's Name on the Registry

- (1) If, after notification has been made to the care provider pursuant to 118 CMR 14.02(5)(b) and no petition for review is received by the Commission within the timeframe as prescribed by 118 CMR 14.02(4)(a), then the Commission shall enter the care provider's name and date of birth, and any other unique identifiers which confirm the identity of a care provider, on the registry.
- (2) In any petition decision on an objection filed pursuant to 118 CMR 14.02(3), the Commission shall notify the care provider of his or her right to appeal said decision with the division by initiating an appeal in the form and manner prescribed by the division within 13 business days after mailing of such decision to the care provider's last known address by the Commission.
- (3) If, after a final decision by the Commission pursuant to 118 CMR 14.02(4)(b)2. on a petition for review that the care provider has committed registrable abuse, the care provider does not seek further review with the division as provided by 118 CMR 14.03(2), then the Commission shall enter on the registry the care provider's name and date of birth, and any other unique identifiers which confirm the identity of the care provider
- (4) If the care provider seeks review of a petition decision with the division, the Commission shall not enter the care provider's identifying information on the registry, unless and until the division issues a final decision affirming the finding of the Commission. Upon said affirmance by the division, the Commission shall enter the care provider's name and date of birth, and any other unique identifiers which confirm the identity of a care provider, on the registry.

14.04: Removal of Care Provider's Name from the Registry: Petitions for Removal

- (1) Five years following the entry of the care provider's name on the registry as provided in 118 CMR 14.03, or five years after the conclusion of any prior petition initiated under 118 CMR 14.04, the registered abuser shall have the right to petition for removal from the registry.
 - (a) Said petition shall be in the form as prescribed by 118 CMR 14.02(4)(a)1.; and
 - (b) Said petition shall set forth the grounds on which the registered abuser asserts that, based upon the preponderance of evidence, in considering the totality of the circumstances it is no longer in the interest of persons with intellectual or developmental disabilities and it is no longer in the public interest to exclude the registered abuser from working as a care provider.
- (2) In reviewing a petition filed pursuant to this section, the Commission's consideration of the totality of the circumstances since the care provider's name was entered on the registry or the last petition for removal may include, but need not be limited to, the following factors:
 - (a) The nature and seriousness of the offense that caused the care provider to be placed on the registry;
 - (b) any subsequent education, training, counseling, or other efforts at rehabilitation made by the registered abuser;
 - (c) the registered abuser's employment history, including statements of current or former employers;
 - (d) any statement or communication by the victim of registrable abuse or if applicable, his or her legal representative;
 - (e) the status or outcome of any criminal investigation or proceeding related to the abuse at issue;
 - (f) the outcome of any other regulatory, administrative, licensing, or disciplinary proceeding pertaining to the registered abuser; and
 - (g) any material changes in life circumstances of the registered abuser.

14.05: Notification regarding Registrable Abuse Cases and Proceedings

In a form and manner prescribed by the Commission, the Commission shall notify the department, the care provider's last known employer(s), the victim of registrable abuse, and if applicable, the guardian of said victim of the following:

14.05: continued

- (1) a substantiated finding of registrable abuse against a care provider;
- (2) the care provider has filed a petition with the Commission;
- (3) the Commission has issued a decision on a petition by a care provider;
- (4) the care provider has initiated an appeal of a petition decision with the division;
- (5) the division has issued a decision on an appeal of a petition decision;
- (6) the care provider has sought judicial review of a decision by the division; or
- (7) any final decision issued by a court as it pertains to the finding of registrable abuse or removal from the registry by the care provider.

14.06: Requests for Reconsideration

- (1) The alleged victim or his or her legal representative, who is aggrieved by the disposition of an investigation conducted pursuant to M.G.L. c. 19C may file with the Commission a request for reconsideration. The alleged victim shall not be considered aggrieved by decisions regarding the screening of an intake, the assignment of an investigator, the deferral of an investigation pursuant to M.G.L. c. 19C, § 12, a jurisdictional determination, a finding of abuse or registrable abuse that has been substantiated against one or more abusers, or a Commission decision on a Petition for Review or Petition for Removal.
- (2) The grounds for filing a request for reconsideration are:
 - (a) The investigation report was not conducted in accordance with:
 1. 118 CMR 5.02(1): *Minimum Requirements of Abuse Investigations*; or 118 CMR 5.02(2): *Additional Minimum Requirements of Investigations of Registrable Abuse*; and
 2. said noncompliance resulted in the reasonable likelihood of substantial prejudice to the alleged victim; or
 - (b) The conclusions reached in the investigation report are not supported by the preponderance of evidence.
- (3) Action upon Request for Reconsideration.
 - (a) Within a reasonable time frame from the filing of a Request for Reconsideration, the Executive Director or his or her designee shall render a decision in writing on the issue(s) in contention in the Request, including a statement of the nature of the decision, and the reason underlying said decision. If the decision finds that further investigation is warranted, said investigation shall proceed in accordance with 118 CMR 5.06: *Commission Review of Investigation Report*.
 - (b) A decision rendered by the Executive Director or his or her designee shall be the final and conclusive determination of the Commission of the grounds raised in the Request for Reconsideration.

14.07: Objections Filed Pursuant to M.G.L. c. 66A

- (1) Objections by Data Subjects regarding Data Held by the Commission.
 - (a) A data subject who objects to the accuracy, completeness, pertinence, timeliness, relevance or dissemination of personal data held by the Commission regarding him or her, may file an objection with the Executive Director of the Commission pursuant to M.G.L. c. 66A.
 - (b) The objection shall:
 1. be in writing; and
 2. set forth with specificity the reason(s) for the objection.
 - (c) Within a reasonable time after the receipt of such an objection, the Executive Director or his or her designee shall review the objection and:

14.07: continued

1. correct or amend the personal data if there is no disagreement with the data subject as to whether the change or amendment should be made; or
 2. if there is disagreement with the data subject as to whether the change or amendment should be made, assure the data subject's claim is noted and included as part of the data subject's personal data and included in any subsequent disclosure or dissemination of the disputed data.
- (d) notify the data subject in writing of a decision and the reasons underlying said decision.
- (2) Objection by Data Subjects to Denial of Access to Data Held by the Commission.
- (a) A data subject who objects to the Commission's denial of access to that person's own data held by the Commission may file an objection with the Executive Director of the Commission pursuant to M.G.L. c. 66A.
- (b) Such objection shall be:
1. in writing; and
 2. filed within 30 days of the data subject's receipt of notification of said denial to access to data held by the Commission.
- (c) Within a reasonable time after the receipt of such an objection, the Executive Director or his or her designee shall review the objection and send written notification of his or her decision to the objector, including a statement of the nature of the decision and the reasons therefore. Said objection and decision shall be retained by the Commission.
- (d) The action taken by the Executive Director or his or her designee pursuant to 118 CMR 14.03 shall be the final and conclusive administrative determination concerning denied access to the data held by the Commission.
- (3) Time Frames. The time periods contemplated by 118 CMR 14.07 may be extended by the Executive Director or his or her designee for good cause shown. The Commission's good faith failure to meet the time frames set forth within 118 CMR 14.07 shall not confer any rights, either expressly or impliedly, upon the objector.
- (4) Judicial Relief. Any data subject who wishes to challenge any decision of the Executive Director of the Commission regarding personal data may seek judicial review of said decision pursuant to M.G.L. c. 214, § 3B. In the event of any civil action filed pursuant to M.G.L. c. 214, § 3B, the failure to exhaust available administrative remedies shall be an absolute defense.

REGULATORY AUTHORITY

118 CMR 14.00: M.G.L. c. 19C, §§ 3, 3(b), 3(g), 3(i) and 15; c. 66, c. 66A, and c. 214, § 3B.