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ANNOTATED LAWS OF MASSACHUSETTS  
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\*\*\* Current through Act 377 of the 2008 Legislative Session \*\*\*

PART I ADMINISTRATION OF THE GOVERNMENT  
TITLE XVI PUBLIC HEALTH  
Chapter 111 Public Health  
DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH

**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 111, § 18 (2008)*

**§ 18. Powers and Duties of District Health Officer.**

Every district health officer shall inform himself respecting the sanitary condition of his district and concerning all influences dangerous to the public health or threatening to affect the same; he shall gather all information possible concerning the prevalence of tuberculosis and other diseases dangerous to the public health within his district, shall disseminate knowledge as to the best methods of preventing the spread of such diseases, and shall take such steps as, after consultation with the department and the local authorities, shall be deemed advisable for their eradication.

**HISTORY:** 1907, 537, § 3; 1914, 792, §§ 1, 5; 1919, 350, § 96.

**NOTES:**

**Federal Aspects**

17 Federal Procedure, L Ed, Health, Education and Welfare §§ 42:149 et seq.

**Code of Massachusetts Regulations**

Standards for the management of tuberculosis outside hospitals. *105 CMR 365.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**LexisNexis 50 State Surveys, Legislation & Regulations**

Nuclear and Radiologic Medicine

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CUSHING HOSPITAL AND THE CENTER ON CARE OF THE AGING, RESEARCH AND EDUCATION

**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 111, § 65A (2008)*

**§ 65A. Treatment of Extra-Pulmonary Tuberculosis, Poliomyelitis, Arthritis, Aging Persons, Crippled Children and Persons with Chronic Diseases at Lakeville State Hospital.**

The department may admit to the Lakeville hospital persons suffering from extra-pulmonary tuberculosis, persons crippled by poliomyelitis (infantile paralysis), arthritis or muscular dystrophy and other similar diseases, aging persons, crippled children as defined in the regulations of the department, and persons with chronic diseases; provided, that preference shall be given to citizens of the commonwealth.

**HISTORY:** 1924, 508, § 1; 1936, 346, § 1; 1941, 506; 1948, 412; 1952, 492; 1953, 383; 1954, 538, § 2; 1955, 220; 1957, 458; 1963, 517, § 5.

**NOTES:**

**Editorial Note**

**The 1948 amendment** struck out the reference to persons suffering from spastic paralysis and substituted a reference to crippled children.

**The 1952 amendment** inserted in this section reference to persons suffering from arthritis.

**The 1953 amendment** inserted in this section reference to muscular dystrophy and other similar diseases.

**The 1954 amendment** struck out reference to persons crippled by muscular dystrophy and other similar diseases, and inserted in place thereof reference to aging persons.

**The 1955 amendment** restored "muscular dystrophy and other similar diseases" to the language of the section.

**The 1957 amendment** provided for treatment of persons with chronic diseases at Lakeville, and eliminated the former provision as to length of prior residence in the commonwealth.

**The 1963 amendment** changed the designation of "Lakeville state sanatorium" to "Lakeville hospital".

**Federal Aspects**

17 Federal Procedure, L Ed, Health, Education and Welfare §§ 42:1203, 42:1234.

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**HIERARCHY NOTES:**

Pt. I, Tit. XVI, Ch. 111 Note

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**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 111, § 69E (2008)*

**§ 69E. Admissions; Discharges; Inpatient and Outpatient Health Services.**

The commissioner shall have general supervision and control of the Lemuel Shattuck hospital, the Rutland hospital, the Lakeville hospital, the Pondville hospital, and the Western Massachusetts hospital. Subject to appropriation and subject to the provisions of sections twenty-five B to twenty-five G, inclusive, the department shall be authorized to establish at these hospitals any inpatient or outpatient health services, including but not limited to medical, surgical, restorative, rehabilitative or chronic services, mental health and mental retardation services, extended care services, dental services, rehabilitative therapy services, family planning services, services for treatment of alcoholism and drug addiction, skilled nursing care services, intermediate care facility services, and residency care services. Subject to appropriation, the commissioner shall establish a diagnostic evaluation and treatment center for emphysema which is to include professional education and training at the Lemuel Shattuck hospital.

The department may admit patients to any of the services provided at the above hospitals subject to such rules and regulations as the department may prescribe; provided, however, that preference shall be given to residents of the commonwealth. Any such patient shall be discharged from said hospital either upon his own request or upon determination of the department but not otherwise.

**HISTORY:** 1954, 522; 1957, 459, § 2; 1958, 357; 1959, 494; 1962, 546, § 5; 1963, 517, § 7; 1973, 1167; 1975, 752, § 4.

**NOTES:**

**Editorial Note**

**The 1957 amendment** rewrote this section, including therein provisions as to Pondville and Westfield similar to those formerly in § 69A, and eliminating the provisions as to prior required residence in the commonwealth.

**The 1958 amendment** further enlarged the scope of this section by authorizing admissions also to Rutland and Lakeville State Sanatoria.

**The 1959 amendment** added the first and last sentences.

**The 1962 amendment** changed "Westfield state sanatorium" to "Western Massachusetts hospital" and changed "hospital or sanatorium" to "hospitals and sanatoria" in the section.

**The 1963 amendment** changed the designations of "Rutland state sanatorium" and "Lakeville state sanatorium" to "Rutland hospital" and "Lakeville hospital", respectively, and made other changes of a minor nature.

**The 1973 amendment** authorized the establishment of a diagnostic, evaluation and treatment center for emphysema, to include professional education and training at the Lemuel Shattuck hospital.

**The 1975 amendment** rewrote the section, rearranging and clarifying the language.

**Federal Aspects**

17 Federal Procedure, L Ed, Health, Education and Welfare §§ 42:149 et seq.

**Code of Massachusetts Regulations**

Uniform schedule of assessments for direct pay patients at public hospitals. *105 CMR 920.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 69F (2008)*

**§ 69F. Notice of Admission of Needy Person.**

Notice of admission of a needy person shall be given within ten days to the department of transitional assistance.

**HISTORY:** 1954, 522; 1974, 260, § 6; 1995, 5, § 38.

**NOTES:**

**Editorial Note**

**The 1974 amendment** struck out the words "board of public welfare of the town in which such person resided immediately prior to his admission" and inserted "department of public welfare".

**The 1995 amendment** substituted "transitional assistance" for "public welfare". Sections 141 and 142 of the amending act provides as follows:

Section 141. Each provision of this act, shall, regardless of whether it includes a specific proviso, be subject to federal approval, if required, and federal financial participation. In any case in which the state fails to receive a waiver for any said provision of this act or otherwise would fail to receive federal financial participation in the implementation of such provision, then such provision shall not be implemented unless the full amount required for said implementation without federal participation is appropriated for said implementation.

Section 142. Any provision of this act that is inconsistent with federal law or regulations shall be void unless the department receives an exemption or waiver from the federal government to implement said provision.

**Federal Aspects**

17 Federal Procedure, L Ed, Health, Education and Welfare §§ 42:149 et seq.

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 69G (2008)*

**§ 69G. Notice of Admission of Needy Person; Effect of Notice.**

In the case of a needy person not already in receipt of public assistance, the notice of admission shall constitute an application on behalf of the patient. Upon receipt of such application, the department of transitional assistance shall determine his eligibility for assistance, and if he is found eligible, he shall be granted the type of assistance for which he qualifies, from the date of the notice or application.

**HISTORY:** 1954, 522; 1974, 260, § 7; 1995, 5, § 39.

**NOTES:**

**Editorial Note**

**The 1974 amendment**, in the second sentence, substituted the word "department" for "board".

**The 1995 amendment** substituted "transitional assistance" for "public welfare". Sections 141 and 142 of the amending act provides as follows:

Section 141. Each provision of this act, shall, regardless of whether it includes a specific proviso, be subject to federal approval, if required, and federal financial participation. In any case in which the state fails to receive a waiver for any said provision of this act or otherwise would fail to receive federal financial participation in the implementation of such provision, then such provision shall not be implemented unless the full amount required for said implementation without federal participation is appropriated for said implementation.

Section 142. Any provision of this act that is inconsistent with federal law or regulations shall be void unless the department receives an exemption or waiver from the federal government to implement said provision.

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001 et seq.*

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*ALM GL ch. 111, § 69H (2008)*

**§ 69H. Charges for Support.**

The charges for the support of persons receiving care in said hospitals shall be at the rate determined by the division of health care finance and policy.

**HISTORY:** 1954, 522; 1957, 459, § 3; 1962, 546, § 6; 1968, 492, § 6; 1973, 1229, § 4C; 1998, 161, § 416.

**NOTES:**

**Editorial Note**

**The 1957 amendment** changed "hospital" to "hospitals", thereby making this section also applicable to persons receiving care in Pondville and Westfield under authority of § 69E.

**The 1962 amendment** struck out, following the word "hospitals", the words "or sanatorium".

**The 1968 amendment** rewrote the section to provide that the charges for support shall be at the rate determined by the rate setting commission.

**The 1973 amendment** deleted the reference to section 30L of chapter seven and inserted chapter six A.

**The 1998 amendment** substituted "division of health care finance and policy" for "rate setting commission established under chapter six A".

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001 et seq.*

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*ALM GL ch. 111, § 69I (2008)*

**§ 69I. Liability for Charges for Support; Certain Statements as Prima Facie Evidence in Proceedings to Collect Charges.**

A person, his executor, or administrator, shall be liable in contract for such charges except that persons in receipt of public assistance shall have their responsibility for payment of such charges fixed in accordance with the provisions of the particular category of assistance under which they are aided. Persons or kindred bound by law to support such needy persons, not eligible for public assistance, shall be assessed in accordance with a schedule approved by the department. In all proceedings under this section, the sworn written statement of a person that he is the superintendent of the hospital or that he keeps or has custody of records relating to inmates thereof, and that a person has been a duly admitted patient therein during a stated period at a stated charge, and that said charge has not been paid in whole or in part, and the sworn written statement of an official of the hospital or department that notice of admission of the said patient was given on a stated date to the department of transitional assistance, that the charges for support of said patient were determined pursuant to the provisions of section sixty-nine H, and that no satisfactory security was given for his support, shall be prima facie evidence of the said facts.

**HISTORY:** 1954, 522; 1957, 459, § 4; 1962, 546, § 7; 1974, 260, § 8; 1995, 5, § 40.

**NOTES:**

**Editorial Note**

**The 1957 amendment**, in the last sentence of the section, including a reference to sworn written statements by superintendents of Pondville Hospital and Westfield State Sanatorium, as well as of Lemuel Shattuck Hospital.

**The 1962 amendment**, in the last sentence of the section, deleted the words "or sanatorium" following the word "hospital" each time it appeared in the sentence.

**The 1974 amendment**, in the third sentence, deleted, in the clause relative to the notice of admission, the words "board of public welfare of prior residence" and inserted in its place "department of public welfare".

**The 1995 amendment** substituted "transitional assistance" for "public welfare". Sections 141 and 142 of the amending act provides as follows:

Section 141. Each provision of this act, shall, regardless of whether it includes a specific proviso, be subject to federal approval, if required, and federal financial participation. In any case in which the state fails to receive a waiver for any said provision of this act or otherwise would fail to receive federal financial participation in the implementation

of such provision, then such provision shall not be implemented unless the full amount required for said implementation without federal participation is appropriated for said implementation.

Section 142. Any provision of this act that is inconsistent with federal law or regulations shall be void unless the department receives an exemption or waiver from the federal government to implement said provision.

**Code of Massachusetts Regulations**

Uniform schedule of assessments for direct pay patients at public hospitals. *105 CMR 920.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 69J (2008)*

**§ 69J. Concessions in Institutions Under the Charge of the Department.**

The department is authorized to make contracts with private persons or corporations for the operation of concessions in institutions under its charge.

**HISTORY:** 1956, 497; 1958, 268.

**NOTES:**

**Editorial Note**

**The 1958 amendment** broadened the scope of this section by permitting contracts for concessions in (all) institutions under the charge of the Department, instead of only at Lemuel Shattuck Hospital.

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 69K (2008)*

**§ 69K. Federal Veterans' Benefits; Identification of Eligible Patients; Assistance in Collecting Benefits; Rules and Regulations; Annual Report.**

The commissioner shall identify patients at institutions subject to the control of the department who are eligible for federal veterans' benefits and shall take such steps necessary to assist said patients in collecting said benefits. Said commissioner shall promulgate rules and regulations necessary to identify such patients at such institutions who are eligible for federal veterans' benefits and to collect said benefits. Said commissioner shall report to the clerks of the house and senate on or before January first of each year, the number of patients which have been identified as eligible for veterans' benefits, the amount of said benefits which have been collected by the commonwealth under the provisions of this section, and the cost to the commonwealth of collecting said benefits.

**HISTORY:** 1982, 357, § 16.

**NOTES:**

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Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 77 (2008)*

**§ 77. Department to Provide Hospital Care and Treatment for Residents Suffering from Tuberculosis.**

The department shall have responsibility for providing hospital care and treatment for all persons resident in the commonwealth suffering from tuberculosis and who need such hospital care. Such care and treatment may be made available in hospitals within the department or under a contract basis in other public or private hospitals or sanatoria licensed for such care under section seventy-one. Contracts for such care may be made by the department under such arrangements as are determined reasonable and adequate by the department except in the case of county hospitals where contracts shall be made in accord with section seventy-eight.

**HISTORY:** 1959, 413; 1961, 608, § 2.

**NOTES:**

**Editorial Note**

**The 1961 amendment** struck out former § 77 and inserted in place thereof a completely new § 77. The 1961 amendment is part of an act providing for the reorganization of tuberculosis care and treatment in the commonwealth and places control thereof in the department of public health. In so providing, section one of the amending act repealed sections 66, 66A, 76, 85B, 85C, 88B, 89, 90, 91A and 91B of this chapter; section two replaced this section and sections 78 through 83A, without affecting section 78A, with nine new sections numbered 77 through 83B and sections three through eleven of the 1961 act amended sections 85, 85A, 86, 87, 87A, 88, 92, 94E and 116 of this chapter. Sections 12-14 of the 1961 amending act, provides as follows:

Section 12. During the interval between enactment and the effective date of this act the department is hereby authorized to enter into negotiations and to make contractual arrangements with such hospitals as it determines for the care and treatment of tuberculous patients as authorized under this act, such contracts to become effective and binding on the parties on the effective date of this act. Also during the interval between enactment and the effective date of this act, counties or municipalities providing care and treatment for tuberculous patients in institutions with whom the department does not make contracts for the care and treatment of such patients after the effective date of this act shall co-operate with the department in taking the necessary steps to discontinue the care of tuberculous patients in such institutions on or before the effective date of this legislation. To provide for such discontinuance, such municipalities and counties may during such interval make contracts under the existing law in chapter one hundred and eleven of the General Laws for the care and treatment of their tuberculous patients with state tuberculosis hospitals or with such other tuberculosis hospitals as will continue to function as tuberculosis hospitals under contract with the department after the effective date of this act. After having made arrangements for their tuberculous patients, such municipal or county institutions may convert to chronic disease hospitals or homes for the care and treatment of aging persons as provided in

the existing provisions of said chapter one hundred and eleven. On the effective date of this act, if any such counties or municipalities have failed to make such arrangements for the care and treatment of their tuberculosis patients, all tuberculous patients remaining in such hospitals or sanatoria shall become subject to the same financial responsibility as is provided under this act under the amended section eighty of said chapter one hundred and eleven. Within six months after the effective date of this act, all such patients remaining in such hospitals or sanatoria shall be transferred by order of the department to state tuberculosis hospitals or other hospitals continuing to function as tuberculosis hospitals under contracts with the department and before the time such patients can be transferred the department shall pay such municipalities or counties the sum of sixty dollars per week for the care and treatment of such patients.

Section 13. Upon the effective date of the transfer of any city or county sanatorium to the department of public health, the officers and employees serving therein shall, subject to appropriation, become employees of the department of public health and shall not be discharged, removed, suspended, laid off or transferred from the latest office or employment held by them without their consent, lowered in rank or compensation, nor shall their office or positions be abolished, except for just cause and in the manner provided for in sections forty-three and forty-five of chapter thirty-one, and upon the effective date of such transfer said officers and employees who are members of the county, municipal or the State-Boston Retirement System and any amounts credited to their accounts shall be transferred to the annuity savings fund of the State Retirement System. Any such employee so transferred shall retain his civil service, tenure, retirement, seniority, vacation, holiday or sick leave rights, if any, which may have accrued to him at the time of such transfer. If any such employee, except an employee who is unable to perform the duties of his office or position because of service in the military or naval forces of the United States, shall refuse, or neglect, within thirty days after his right to transfer under this act accrues, to transfer to the service of the department of public health he shall thereupon be retired by said city with the same rights and allowances as if he had voluntarily retired at the expiration of such thirty days.

Notwithstanding the above provisions, the director of personnel and standardization shall arrange for the inclusion into the classified service of the commonwealth of all persons affected by this section, after first determining the duties actually performed by such persons at said sanatorium while in the employ of said city or county immediately prior to the effective date of this act, in a position of like duties or substantially the same irrespective of whether or not the title is the same as that held by him at the said sanatorium. Such person shall be allocated in the general salary schedule, in force as of March first, nineteen hundred and sixty, in the step-in-range of the job group to which such allocated position has been assigned which will give to such transferred person a salary at least equal to the salary he was receiving on March first, nineteen hundred and sixty-one, irrespective of the years of service in the position held by him. If any person affected is already receiving a larger salary than that provided in the job group to which his position has been allocated, then such person shall be allocated in the job group he would have been allocated, but for this reason, at the maximum step-in-grade but his salary shall be the same as it was immediately prior to transfer. The provisions of this section shall not apply to any person employed at said sanatorium whose employment commenced after March first, nineteen hundred and sixty-one.

Section 13A. If a county or municipal institution has been providing in-patient care and treatment for tuberculous patients or if a county or municipal institution licensed for the care of chronic disease patients has also been providing care and treatment for tuberculous patients, and if such care and treatment has been discontinued under the provisions of this act and the institution has not been conveyed to the commonwealth, and if the officers and employees serving therein cannot be placed in employment in the respective county or municipal system, then said officers or employees who have been serving in positions that are not classified under the provisions of chapter thirty-one of the General Laws, may be assigned by the director of personnel and standardization, with the approval of the appointing authority, to vacant permanent positions not so classified, with like or substantially the same duties, in any department, board or commission of the commonwealth. If said director is unable to assign such an employee to a vacant permanent position, the name of such employee shall be placed on a reemployment list which shall be maintained by said director and any such employee shall be assigned as herein provided to any permanent position not classified under the provisions of said chapter thirty-one which becomes vacant. If an employee of such an institution is classified under the provisions of chapter thirty-one of the General Laws, such employee may be transferred to the service of the commonwealth in accordance with the civil service laws and rules.

The provisions of this section shall not apply to any person employed at such an institution whose employment commenced after March first, nineteen hundred and sixty-one. (Added, 1963, 619.)

Section 14. Section eighty-one of chapter one hundred and eleven of the General Laws, as appearing in section two of this act, shall be effective on the date of the passage of this act and all other sections shall become effective on January first, nineteen hundred and sixty-three.

**Code of Massachusetts Regulations**

Hospital or sanatorium treatment standards for tuberculosis. *105 CMR 360.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*40A Am Jur 2d, Hospitals and Asylums §§ 3, 4, 14.*

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*ALM GL ch. 111, § 78 (2008)*

**§ 78. Contracts with County Institutions for Care and Treatment of Tuberculous Patients; Rules and Regulations.**

Where county institutions are utilized for providing such care and treatment, the department is authorized to enter into a contract with the county commissioners of the respective counties upon terms satisfactory to the contracting parties under which the county institutions will admit tuberculous patients and give them care and treatment in compliance with the terms of the contract and the regulations of the department in regard thereto. Such contracts shall be made for periods of not longer than two years and may be renewed upon such terms as are satisfactory to the parties. Should the department determine that a particular county institution will no longer be utilized for such tuberculosis care and treatment, it must give written notice of such intention to the county commissioners at least one year in advance of such discontinuance. If such notice is given and would take effect after the expiration of an existing contract, the terms of the existing contract shall remain in effect until the end of the notice period unless a new contract is entered into by the parties. Under the terms of contracts entered into under this section the department shall pay the institutions so utilized for all general health supplies, care, services and accommodations furnished each patient under the contract, the rates established by the division of health care finance and policy.

The department is hereby authorized to adopt regulations concerning the care and treatment of tuberculous patients in hospitals under such contract arrangements. If a hospital or sanatorium is not in compliance with these regulations the department may refuse to utilize it for such contract care.

**HISTORY:** 1961, 608, § 2; 1968, 492, § 7; 1973, 1229, § 4D; 1998, 161, § 421.

**NOTES:**

**Editorial Note**

**The 1961 amendment** replaced existing § 78, and provided for contracts for care and treatment by the department, instead of the county.

**The 1968 amendment** struck out the fifth and sixth sentences in the first paragraph and inserted a new sentence in their place to provide that the rate setting commission shall determine the rate under which the department shall pay the institutions.

**The 1973 amendment** struck out the reference in the fifth sentence to sections 30K to 30P of chapter seven and inserted the reference to chapter six A.

**The 1998 amendment**, in the first paragraph, substituted ", the rates established by the division of health care finance and policy" for "the rate or rates established by the rate setting commission under chapter six A".

**Acts 1967, Ch. 61**, entitled "An act designating a certain hospital in Worcester County as the Worcester County Hospital", provides as follows:

The hospital established under the provisions of sections seventy-eight to ninety, inclusive, of chapter one hundred and eleven of the General Laws, and under section one of chapter three hundred and sixty-eight of the acts of nineteen hundred and twenty-eight by the county commissioners of Worcester county, sometimes referred to as the Worcester County Sanatorium, shall hereafter be known and designated as the Worcester County Hospital.

**Code of Massachusetts Regulations**

Standards of admission, treatment, transfer, and discharge of tuberculosis patients. *105 CMR 360.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*40A Am Jur 2d, Hospitals and Asylums §§ 3, 4, 14.*

**CASE NOTES**

The evident purpose and intention of the legislature in making provision for the establishment of tuberculosis hospitals was to create tuberculosis hospital districts as separate entities to be managed by the county commissioners of their respective counties as trustees. *In re Peck (1924) 250 Mass 261, 145 NE 532, 1924 Mass LEXIS 1172.*

It appeared from former § 78 and the former following sections that the entire cost of the hospital completed and equipped, as well as the annual costs for the care, maintenance and repair of the hospital, was to be paid by the towns liable. *In re Peck (1924) 250 Mass 261, 145 NE 532, 1924 Mass LEXIS 1172.*

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*ALM GL ch. 111, § 80 (2008)*

**§ 80. Liability for Costs for Care and Treatment of Tuberculous Patients; Apportionment to Cities and Towns.**

Each city and town shall pay to the commonwealth its share of the cost of providing general health supplies, care, services and accommodations for any tuberculosis patient resident in such city or town hospitalized under section 78 or section 79 a sum equal to one-half the reasonable cost as established by the division of health care finance and policy. If a patient is able to pay or if a third party payor is responsible, the department shall collect from the patient or the payor such rates as are established by said division. Fifty per cent of the amount so received on account of any patient shall be credited against the payment charged to a city or town on account of such patient as authorized in this section.

For the purposes of this section, the term "resident" means any person having his principal living quarters in such city or town and having no present intention to move to another city or town, or, in the case of a person who is an inmate or patient in an institution, in the city or town in which he last maintained a residence outside of an institution; provided, however, that any tuberculous patient determined to be a chronically non-resident person and a special problem for tuberculosis disease control shall not be charged as a resident of any city or town, and shall be the financial responsibility of the state. For the purposes of this section an "institution" shall include any sanatorium, hospital, rest home, convalescent or nursing home, for the operation of which a license is required by law; any facility conducted by an agency incorporated under chapter one hundred and eighty; and any facility operated by municipal, county, state and federal governments. For purposes of this section the term "chronically non-resident" means a person who evidences by his past conduct an inability or unwillingness to establish and maintain a residency with any degree of permanency and whose instability and general living standards in exposing himself and others to infection makes him a special problem for tuberculosis disease control in the commonwealth. If a city or town requests that a patient be classified as chronically nonresident as indicated in this section, the division of sanatoria and tuberculosis may so classify him. If on such a request, the said division of sanatoria and tuberculosis does not agree to so classify the patient, the city or town may appeal this decision to a three-member board made up as follows: The public health council shall appoint the members of the board who shall serve without compensation. In the first appointments, one member shall be appointed for three years, one for two, and one for one year with all appointments thereafter being for three years. One member of the board shall be a medical director of a municipal health department, one member shall be a non-medical public health administrator or agent of a municipal health department, and one member shall be a person experienced in social work on a municipal or state level. On any such appeal the board shall hold a hearing and may affirm or reverse such decision. The decision of the board shall be final.

Patients who are receiving or are eligible to receive public assistance shall have their responsibility to pay such charges to their city or town of residence fixed in accordance with the provisions of the particular category of public assistance applicable to them.

**HISTORY:** 1961, 608, § 2; 1965, 362; 1968, 492, § 10; 1973, 1229, § 4G; 1998, 161, §§ 424, 425.

**NOTES:**

**Editorial Note**

**The 1961 amendment** struck out the former text of § 80, substituting entirely new matter therefor.

**The 1965 amendment**, in the second paragraph, inserting in the first sentence the words ", or, in the case of a person who is an inmate or patient in an institution, in the city or town in which he last maintained a residence outside of an institution" and added a new sentence following the first sentence.

**The 1968 amendment** rewrote the first paragraph to provide that the rate basis for payments by cities and towns to the commonwealth shall be as established by the rate setting commission.

**The 1973 amendment** struck out the reference in the first sentence to sections 30K to 30P of chapter seven and inserted the reference to chapter six A.

**The 1998 amendment**, by § 424, in the first paragraph, substituted the first two sentences for two which read: "Each city and town shall pay to the commonwealth as its share of the cost of providing general health supplies, care, services and accommodations for any tuberculosis patient resident in such city or town hospitalized under sections seventy-eight and seventy-nine of this chapter a sum equal to one half the reasonable cost as established by the rate setting commission under chapter six A. If a patient is able to pay or if a third party payor is responsible, the department shall collect from the patient or the payor such rates as are established by the rate setting commission."; and by § 425, in the second paragraph, substituted "said division of sanatoria and tuberculosis" for "division" the second time it appears.

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*40A Am Jur 2d, Hospitals and Asylums §§ 3, 4, 14.*

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*ALM GL ch. 111, § 81 (2008)*

**§ 81. Program for Control and Eradication of Tuberculosis; Out-patient and Diagnostic Facilities.**

The department shall have responsibility for conducting programs aimed at controlling and eradicating tuberculosis in the commonwealth. It may establish, foster, and give such aid and assistance as it deems necessary for the establishment and maintenance of out-patient and diagnostic facilities for tuberculosis within tuberculosis hospitals, in other institutions, or in collaboration with local boards of health. It shall provide co-ordination and consultation to local boards of health in gathering and disseminating information on a state-wide basis regarding the prevalence of tuberculosis in the commonwealth.

**HISTORY:** 1961, 608, § 2.

**NOTES:**

**Editorial Note**

**The 1961 amendment** replaced the former text of this section with completely new matter.

**Code of Massachusetts Regulations**

Hospital or sanatorium treatment standards for tuberculosis. *105 CMR 360.001* et seq.

Standards for the management of tuberculosis outside hospitals. *105 CMR 365.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*40A Am Jur 2d, Hospitals and Asylums §§ 3, 4, 14.*

**CASE NOTES**

Department of Public Health has broad authority to conduct programs to control and eradicate tuberculosis. *Langton v. Commissioner of Correction (1993) 34 Mass App 564, 614 NE2d 1002, 1993 Mass App LEXIS 613*, review denied (1993) *416 Mass 1101, 618 NE2d 71, 1993 Mass LEXIS 477*.

Department of Correction was authorized to compel all inmates to undergo testing for tuberculosis administered by Department of Public Health, in order to avert potential public health crisis in correctional facilities throughout Commonwealth, after 3 inmates at one correctional facility were diagnosed with active tuberculosis. *Langton v.*

*Commissioner of Correction (1993) 34 Mass App 564, 614 NE2d 1002, 1993 Mass App LEXIS 613, review denied (1993) 416 Mass 1101, 618 NE2d 71, 1993 Mass LEXIS 477.*

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*ALM GL ch. 111, § 81A (2008)*

**§ 81A. Intradermal Tuberculin Tests.**

No ordinance, by-law, rule or regulation of a board of health or the requirements of any public or private institution, school or college shall be enacted, promulgated, or continued in effect which would require a chest x-ray examination to show freedom from tuberculosis in a communicable form, unless the recipient of such x-ray is known to be tuberculin positive. Any report required by such ordinance, by-law, rule or regulation showing freedom from tuberculosis in a communicable form shall be based upon a negative intradermal tuberculin test that is administered and interpreted in a manner approved by the commissioner. In the case of a person whose tuberculin test is positive, a statement by a physician, based upon the results of a standard chest x-ray film shall be required, and such other laboratory and clinical examinations as may be necessary for the exclusion of tuberculosis in a communicable form.

**HISTORY:** 1977, 513.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*40A Am Jur 2d, Hospitals and Asylums §§ 3, 4, 14.*

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*ALM GL ch. 111, § 94 (2008)*

**§ 94. Cities and Towns Having Isolation Hospitals May Receive Persons from Adjoining Towns.**

The board of health of any town which has established or which may hereafter establish within its limits a hospital for the reception of persons having smallpox or any other disease dangerous to the public health may receive for care and treatment in such hospital persons from an adjoining town who are infected with any of said diseases.

**HISTORY:** 1902, 206, § 1; 1906, 365, § 4.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*40A Am Jur 2d, Hospitals and Asylums §§ 5, 6, 14, 16.*

**CASE NOTES**

The facts that a city had not established an isolation hospital in accordance with RL c 75, § 40, and that persons ill with smallpox were not removed to a hospital but were kept in the dwelling where they fell ill, did not preclude city from recovering the expenses incurred in connection with such persons from the city of their legal residence. *Haverhill v. Marlborough (1905) 187 Mass 150, 72 NE 943, 1905 Mass LEXIS 951.*

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*ALM GL ch. 111, § 94A (2008)*

**§ 94A. Hospitalization of Certain Persons with Active Tuberculosis; Certification, Transportation.**

(a) The board of health of any city or town, or any member thereof, or two physicians licensed to practice medicine in the commonwealth, may certify to the commissioner any non-hospitalized person who (1) is afflicted with active tuberculosis, (2) is unwilling or unable to accept proper medical treatment, and (3) is thereby a serious danger to the public health.

(b) On receipt of such certification the commissioner or his agent shall conduct or have conducted an examination of such person, and, if he concurs in the certification shall file a petition in the district court under section ninety-four C for the hospitalization of such person. If, however, such person refuses to submit to examination, the commissioner may order him to be hospitalized immediately at the tuberculosis treatment center, established under section ninety-four D for a fifteen-day observational period.

(c) If the commissioner or his agent concurs in the certification of the board of health, and finds that such person is in need of immediate hospitalization for the protection of the public health, he may order him to be hospitalized immediately at the tuberculosis treatment center for a fifteen-day emergency observational period.

(d) The commissioner or his agent may call on the police department of the city or town whose board of health certified such person, or the police department of the place where such person is present, to provide the transportation to the tuberculosis treatment center.

(e) If the patient is sent to the tuberculosis treatment center under this section, the superintendent thereof shall, at the expiration of fifteen days, either release the patient or file a petition with the district court under section ninety-four C. The patient may be detained at the center pending disposition of the petition.

**HISTORY:** 1956, 615, § 1; 1964, 419, § 1.

**NOTES:**

**Editorial Note**

**Section 2 of the inserting act** provides as follows:

Section 2. No person shall be committed under sections ninety-four A to ninety-four C, inclusive, of chapter one hundred and eleven of the General Laws, until the treatment center established under section ninety-four D of said chapter has been established and is in operation, and is approved by the commissioner of public health.

**The 1964 amendment** struck out the words "state sanatorium" wherever appearing in the section and inserted in place thereof, in each instance, the word "tuberculosis."

**Code of Massachusetts Regulations**

Determining active tuberculosis. *105 CMR 350.001 et seq.*

Massachusetts contingency plan. *310 CMR 40.0001 et seq.*

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

*29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.*

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*ALM GL ch. 111, § 94B (2008)*

**§ 94B. Hospitalization of Certain Persons with Active Tuberculosis; Detention; Transfer to Treatment Center.**

If any active tuberculosis patient in a municipal, county, state or private sanatorium or hospital indicates his desire to leave the institution against the medical advice of the superintendent or manager of the institution in accord with the accepted medical policy of the institution, and the superintendent or manager determines that to allow his release would be a serious danger to the public health, he may detain the patient, or, if he fears the patient may try to leave the hospital, he may request the local police department to transport the patient immediately to the tuberculosis treatment center established under section ninety-four D.

If the superintendent or manager detains the patient at his own institution, he shall immediately file a petition in the district court under section ninety-four C for the prolonged hospitalization of the patient. The patient may be detained at the institution pending disposition of the petition.

If the patient is transported to the tuberculosis treatment center he shall be detained there no longer than fifteen days, and upon the expiration of that time he shall be released, unless a petition for the prolonged hospitalization of such patient is filed by the superintendent thereof in the district court under section ninety-four C.

**HISTORY:** 1956, 615, § 1; 1964, 419, § 2.

**NOTES:**

**Editorial Note**

**The 1964 amendment** struck out the words "state sanatorium" appearing in the first and third paragraphs and inserted in place thereof, in each instance, the word "tuberculosis."

**Cross References**

For the provisions of 1956, 615, § 2, see Editorial Note under ALM GL § 94A.

**Code of Massachusetts Regulations**

Determining active tuberculosis. *105 CMR 350.001* et seq.

Standards of admission, treatment, transfer, and discharge of tuberculosis patient. *105 CMR 360.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.

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*ALM GL ch. 111, § 94C (2008)*

**§ 94C. Court Commitment to Treatment Center Certain Persons with Active Tuberculosis.**

Any justice or associate justice of the district court may commit to the tuberculosis treatment center established under section ninety-four D, for prolonged hospitalization, any person afflicted with active tuberculosis and residing in or present in the jurisdiction of the court, concerning whom a petition has been filed in accordance with sections ninety-four A and ninety-four B.

The procedure for commitment shall be as follows:--

(1) If the petition is filed by the commissioner of public health or his agent under section ninety-four A in a nonemergency situation, the court shall appoint two physicians experienced in the diagnosis, care and treatment of tuberculosis to examine the person and report to the court on his condition and on his willingness and ability to accept proper medical treatment, and to give their opinion on whether or not it would be a serious danger to the public health to allow the person to be unhospitalized. Neither of these physicians shall be on the full-time staff of a state, county or municipal tuberculosis hospital.

The court shall give the person notice of his right to a hearing on the matter of his commitment. If the person does not request a hearing, the judge may order his commitment on the basis of the physicians' reports. If a hearing is requested, the court shall allow the person a reasonable time to prepare his case. The court need not see the person or hear him in open court if it is deemed inadvisable by the physicians because of his contagious condition. If, however, it is determined that the person cannot be present because of his condition, he must be given notice of this fact and of his right to have counsel and witnesses present at the hearing. In the latter case, the court shall appoint legal counsel to represent the person's interests at the hearing if he does not have his own legal counsel.

If the judge finds the person is afflicted with tuberculosis and is unwilling or unable to accept proper medical treatment, and is thereby a serious danger to the public health, the judge shall commit the person to the care and custody of the commissioner, to be cared for and treated at the tuberculosis treatment center.

(2) If the petition is filed by the superintendent of the tuberculosis treatment center under section ninety-four A or ninety-four B, or under section ninety-four B by the superintendent or manager of another sanatorium or hospital, the judge shall give notice to the patient of his right to a hearing on the matter of his commitment. If a hearing is requested it shall be granted and the commitment procedure and medical examination shall be conducted in compliance with paragraph (1). If no hearing is requested the judge may, on the basis of the petition of the superintendent and on such other evidence as he may require, order the person committed.

**HISTORY:** 1956, 615, § 1; 1964, 419, § 3.

**NOTES:****Editorial Note**

**The 1964 amendment** struck out the words "state sanatorium" wherever appearing in the section and inserted in place thereof, in each instance, the word "tuberculosis."

**Cross References**

For the provisions of 1956, 615, § 2, see Editorial Note under ALM GL § 94A.

**Code of Massachusetts Regulations**

Reportable diseases and isolation and quarantine regulations. *105 CMR 300.001* et seq.

Determining active tuberculosis. *105 CMR 350.001* et seq.

Standards for the management of tuberculosis outside hospitals. *105 CMR 365.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.

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*ALM GL ch. 111, § 94D (2008)*

**§ 94D. State Hospital Treatment Center for Certain Persons with Active Tuberculosis.**

The department shall establish a tuberculosis treatment center in one of the state hospitals, or may contract with a county, municipal or general hospital for the custody, care, treatment and rehabilitation of patients hospitalized under sections ninety-four A to ninety-four C, inclusive. Such center or hospital shall be equipped with adequate safeguards to prevent the escape of such patients. Such center or hospital shall be under the supervision of its superintendent, subject to the provisions of this chapter, or of any rules or regulations made by the commissioner.

The commissioner may construct facilities similar to said treatment center at any state hospital, and all such facilities, including facilities provided by contract for the same purpose, shall constitute the treatment center, as used in sections ninety-four A to ninety-four C, inclusive. On any hospitalization under said sections, the commissioner may assign the patients to whichever facility he deems best suited to care for them. The commissioner may transfer such patients from one such facility to another if he deems it advisable.

**HISTORY:** 1956, 615, § 1; 1964, 419, § 4.

**NOTES:**

**Editorial Note**

**The 1964 amendment** rewrote this section.

**Code of Massachusetts Regulations**

Determining active tuberculosis. *105 CMR 350.001 et seq.*

Massachusetts contingency plan. *310 CMR 40.0001 et seq.*

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

*29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.*

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*ALM GL ch. 111, § 94E (2008)*

**§ 94E. Financial Responsibility for Patients at Tuberculosis Treatment Center; Legal Residence Not Affected by Hospitalization.**

The full financial responsibility for the care and treatment of patients hospitalized at the tuberculosis treatment center shall be on the commonwealth. The placing of such financial responsibility on the commonwealth for the patients shall in no way affect the residence or other matters concerning the family or dependents of the patients.

**HISTORY:** 1956, 615, § 1; 1961, 608, § 10; 1964, 419, § 5; 1974, 260, § 9.

**NOTES:**

**Editorial Note**

**The 1961 amendment** struck out at the end of the first sentence the words "and the patients shall be considered unsettled tuberculosis cases for this purpose".

**The 1964 amendment** struck out the words "state sanatorium" and inserted in place thereof the word "tuberculosis."

**The 1974 amendment** affected the second sentence to strike out the reference to place of settlement and insert "residence".

**Code of Massachusetts Regulations**

Determining active tuberculosis. *105 CMR 350.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

*29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.*

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*ALM GL ch. 111, § 94F (2008)*

**§ 94F. Discharge from Tuberculosis Treatment Center; Declassification, Transfer to Other Institution.**

Any person hospitalized at the treatment center may be discharged therefrom by the superintendent at any time he determines that it is in the best interest of the patient and of the public health so to do.

The superintendent may also declassify the patient as under the care and custody of this center and transfer him to an open ward at the same hospital, or transfer him to another sanatorium or hospital, state, county, municipal or private, if he deems it in the best interest of the patient and the public health. The admission of the patient to such other institutions shall be in accordance with the requirements of law for admission to such institutions.

**HISTORY:** 1956, 615, § 1; 1964, 419, § 6.

**NOTES:**

**Editorial Note**

**The 1964 amendment**, in paragraph 2, struck out the word "sanatorium" the first time it appeared and inserted in place thereof the word "hospital" and inserted after the word "sanatorium," the second time it appeared, the words "or hospital."

**Code of Massachusetts Regulations**

Determining active tuberculosis. *105 CMR 350.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

*29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.*

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*ALM GL ch. 111, § 94G (2008)*

**§ 94G. Petition for Release from Tuberculosis Treatment Center; Court Ordered Release.**

Any person hospitalized at the treatment center may petition the district court which committed him to release him therefrom. Such petition shall not be made until six months after the original court commitment. If such petition is denied, another such petition shall not be filed until six months after the date of denial of a previous petition.

The court may order the person released from the treatment center if it finds such person is no longer affected with active tuberculosis, or is willing and able to accept proper medical treatment, and is thereby no longer a danger to the public health.

**HISTORY:** 1956, 615, § 1.

**NOTES:**

**Code of Massachusetts Regulations**

Determining active tuberculosis. *105 CMR 350.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.

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*ALM GL ch. 111, § 94H (2008)*

**§ 94H. Regulations Regarding Tuberculosis; Determination of Active Cases, Minimum Standards for Outpatient Treatment.**

The commissioner and the public health council may make regulations concerning the content of the certification made by boards of health and physicians under section ninety-four A, including the definition of, and the methods for determining active tuberculosis. The commissioner and public health council may make regulations concerning the minimum standards for proper medical treatment for active tuberculosis patients cared for outside a hospital, so that such patients will not be a menace to the public health.

**HISTORY:** 1956, 615, § 1.

**NOTES:**

**Code of Massachusetts Regulations**

Determining active tuberculosis. *105 CMR 350.001* et seq.

Standards of admission, treatment, transfer, and discharge of tuberculosis patients. *105 CMR 360.001* et seq.

Minimum standards for treatment of active tuberculosis outside hospitals. *105 CMR 365.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

*29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.*

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*ALM GL ch. 111, § 121 (2008)*

**§ 121. Treatment of Venereal Diseases and Tuberculosis in Certain Institutions; Payment of Expense.**

An inmate of a public charitable institution or a prisoner in a penal institution who is afflicted with a venereal disease, as defined under section six or pulmonary tuberculosis shall be forthwith placed under medical treatment, and if, in the opinion of the attending physician, it is necessary, he shall be isolated until danger of contagion is passed or the physician determines his isolation unnecessary. If at the expiration of a prisoner's sentence he is afflicted with a venereal disease, as defined under section six or pulmonary tuberculosis in its contagious or infectious stages, or if, in the opinion of the attending physician of the institution or of such physician as the authorities thereof may consult, his release would be dangerous to public health, he shall be placed under medical treatment in the institution where he has been confined. Thereupon the authorities of such institution shall notify the department of public welfare of his condition and said department shall provide for his hospitalization and medical care at an institution until, in the opinion of the attending physician of the institution wherein he is being treated, the symptoms have disappeared and his release will not endanger the public health. Notice of a prisoner's release hereunder to the department of public welfare shall be made to the department of public health. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the town where he resides, after notice of the expiration of his sentence and of his condition to such town, or, if he is a state charge, by the commonwealth after like notice to the department of public welfare.

**HISTORY:** 1891, 420; RL 1902, 75, § 48; 1920, 306; 1928, 155, § 3; 1945, 555; 1948, 129, § 6; 1974, 260, § 10.

**NOTES:**

**Editorial Note**

**The 1948 amendment** broadened the first two sentences by making them apply to all venereal diseases.

**The 1974 amendment** affected the fifth sentence, striking out "has a settlement" and inserting "resides" and striking out "the board of public welfare thereof" and inserting "such town".

**Code of Massachusetts Regulations**

Standards for medical records and physical examinations in correctional facilities. *105 CMR 205.001* et seq.  
 Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**CASE NOTES**

Department of Correction was authorized to compel all inmates to undergo testing for tuberculosis administered by Department of Public Health, in order to avert potential public health crisis in correctional facilities throughout Commonwealth, after 3 inmates at one correctional facility were diagnosed with active tuberculosis. *Langton v. Commissioner of Correction* (1993) 34 Mass App 564, 614 NE2d 1002, 1993 Mass App LEXIS 613, review denied (1993) 416 Mass 1101, 618 NE2d 71, 1993 Mass LEXIS 477.

The words "public charitable institution," as used in this section, should be confined to charitable institutions supported by the state, county or municipality to which persons are committed. 5 Op A G 652, 653.

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PART I ADMINISTRATION OF THE GOVERNMENT  
TITLE XII EDUCATION  
Chapter 71 Public Schools

**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 71, § 1 (2008)*

**§ 1. Maintenance of Public Schools; Subjects of Instruction; Twelve-Month School Year Authorized.**

Every town shall maintain, for at least the number of days required by the board of education in each school year unless specifically exempted as to any one year by said board, a sufficient number of schools for the instruction of all children who may legally attend a public school therein. No town shall hold double sessions in any public school, if in any other public school of comparable grade levels in such town there are vacant spaces for more than thirty-five children, the number of such vacant spaces to be computed without exceeding a maximum of thirty-five children to a classroom. The board of education may suspend the application of the preceding sentence in a particular town for a limited period. Such schools shall be taught by teachers of competent ability and good morals, and shall give instruction and training in orthography, reading, writing, the English language and grammar, geography, arithmetic, drawing, music, the history and constitution of the United States, the duties of citizenship, health education, physical education and good behavior. Instruction in health education shall include, but shall not be limited to: consumer health, ecology, community health, body structure and function, safety, nutrition, fitness and body dynamics, dental health, emotional development, and training in the administration of first aid, including cardiopulmonary resuscitation. The department of education shall pay for the cost of any such instruction in cardiopulmonary resuscitation; provided, however, that a school committee may by majority vote decide that such instruction shall not be offered. In connection with physiology and hygiene, instruction as to the effects of alcoholic drinks and of stimulants, including tobacco, and narcotics on the human system, as to tuberculosis and its prevention, as to detection and prevention of breast and uterine cancer, and as to fire safety, including instruction in the flammable qualities of certain fabrics, and as to the prevention and treatment of burn injuries, shall be given to all pupils in all schools under public control, except schools maintained solely for instruction in particular subject areas. The department of education is hereby directed in collaboration with the Massachusetts Center for Global Education, to establish a task force for the purpose of developing a model curriculum for grades kindergarten through twelve in global education and international studies. A copy of said curriculum shall be sent to the superintendent of schools for each school district in the commonwealth. The department shall encourage each school district to implement said curriculum, or a variation thereof. No pupil shall be required to take or participate in instruction on disease, its symptoms, development and treatment, whose parent or guardian shall object thereto in writing on the grounds such instruction conflicts with his sincerely held religious beliefs, and no pupil so exempt shall be penalized by reason of such exemption. Such other subjects as the school committee considers expedient may be taught in the public schools. The board of education shall adopt rules and regulations for the establishment of a twelve-month school year. Any city, town or school district by vote of its school committee may maintain and operate on a continuous twelve-month basis a sufficient number of schools for the instruction of all children who may legally attend a public school therein in accordance with such rules and regulations. Nothing herein contained shall be construed as to authorize said board to require the establishment of a twelve-month school year in any city, town or school district the school committee of which has not voted to establish, maintain and operate such a twelve-month school year.

The advisory council on violence prevention established by *section 1G of chapter 15* shall recommend for approval by the board of education a model curriculum for grades kindergarten through 12 in education programs on violence prevention for the purpose of informing students of the harmful effects of teenage violence, weapons and illegal drug use and of promoting community and social responsibility. The department of education shall send a copy of said curriculum to the superintendent of schools for each school district in the commonwealth. The department shall encourage school districts to implement said curriculum or a variation thereof.

**HISTORY:** CL 136, 305; 1692-3, 26, § 5; 1789, 19, § 1; 1823, 111; 1826, 143, § 1; RS 1836, 23, § 1; 1839, 56, § 1; 1850, 229; 1857, 206, § 1; 1858, 5; 1859, 263; GS 1860, 38, § 1; 1862, 7; 1870, 248, § 1; 1876, 3, § 1; PS 1882, 44, § 1; 1884, 69; 1885, 332; 1894, 231; 1894, 320, § 1; 1898, 496, § 1; 1900, 218; RL 1902, 42, § 1; 1908, 181; 1910, 524; 1911, 247; 1917, 169; 1918, 257, § 174; 1919, 5; 1919, 350, § 56; 1920, 2; 1921, 360; 1923, 222, § 1; 1953, 137; 1962, 11; 1962, 301, § 1; 1965, 572, § 14; 1966, 187; 1971, 922, § 1; 1972, 66; 1973, 651; 1974, 753; 1977, 408; 1977, 916; 1990, 355, § 1; 1998, 422.

#### NOTES:

##### Editorial Note

**The 1953 amendment**, in the second (now fourth) sentence, added music as one of the required subjects.

**The first 1962 amendment**, (Ch. 11), in the first sentence, changed the required number of school days from 160 days to 180 days.

**The second 1962 amendment**, (Ch. 301), in the second (now fourth) sentence, replaced "good behavior, indoor and outdoor games and athletic exercise" with "physical education, and good behavior".

**The 1965 amendment**, in the first sentence, substituted "the number of days required by the board of education" for "one hundred and eighty days", and changed a reference to the department of education to a reference to the board.

**The 1966 amendment** inserted two new sentences following the first sentence placing certain restrictions upon schools holding double sessions.

**The 1971 amendment** added three sentences relative to the establishment of a twelve-month school year.

**The 1972 amendment** rewrote the last two sentences to provide that acceptance of a twelve-month school plan shall be by vote of the school committee, instead of by vote of the city council or town meeting as formerly.

**The 1973 amendment** added a requirement that fire safety, including instruction in the flammable qualities of certain fabrics and the prevention and treatment of burns, be taught in the public schools.

**The 1974 amendment** rewrote the fourth and fifth sentences relative to health education, deleting the references to physiology and hygiene and inserting a reference to instruction on the effects of tobacco on the human system.

**The first 1977 amendment**, (Ch. 408), added to the section, as part of the program of the study of physiology and hygiene, instruction in the early detection and prevention of breast and uterine cancer.

**The second 1977 amendment**, (Ch. 916), rewrote the fifth sentence, adding training in first aid, including cardiopulmonary resuscitation.

**The 1990 amendment**, inserted new eighth, ninth and tenth sentences, relative to global education and international studies curriculum. Section 2 of the amending act provides as follows:

Section 2. On or before June thirtieth, nineteen hundred and ninety-two, the department of education shall report to the joint committee on education the status of the curriculum developed pursuant to section one of this act and the implementation thereof and make a recommendation regarding the future of the task force established pursuant to said section one.

**The 1998 amendment** added the second paragraph.

**Acts 1993, ch. 71, § 72**, entitled "An act establishing the Education Reform Act of 1993", which was approved, with emergency preamble, June 18, 1993, provides as follows:

Section 72. Each school district in the commonwealth shall no later than September first, nineteen hundred and ninety-four submit to the board of education a plan to eliminate the general track, so-called, in all district schools. Said plan shall indicate what program options a school district may determine necessary to offer students in place of general track programming and may include, but not be limited to, the creation or expansion of the following:- techprep, 2+2 programs so-called, apprenticeships and worksite training, job corps type programs, alternative learning centers, vocational-occupational programs, and college preparation programs. Said plan may also include collaboration between school districts toward accomplishment of this goal. The commissioner shall, no later than December first, nineteen hundred and ninety-five, submit an action plan to the board and the general court to eliminate the general track, so-called, in all school districts in the commonwealth. The action plan shall be based on the plans submitted by school districts and shall include funding recommendations. The commissioner shall also provide technical assistance to school districts in the development of curricula to facilitate the elimination of the general track.

### **Cross References**

For sections of Acts 1965, ch. 572, which are not a part of the General Laws, see Editorial Note to ALM GL *c 15 § 1*.

### **Federal Aspects**

Instruction as to nature and effect of alcoholic drinks and narcotics, *20 USCS § 111*.

Prohibition of federal control of education, *20 USCS § 1232a*.

### **Code of Massachusetts Regulations**

School year and school day, *603 CMR 27.01* et seq.

School improvement project, *603 CMR 38.05*.

### **Annotations**

Regulations as to fraternities and similar associations connected with educational institution. *10 ALR3d 389*.

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers. *64 ALR4th 642*.

Constitutionality of teaching or suppressing teaching of Biblical creationism or Darwinian evolution theory in public schools. *102 ALR Fed 537*.

Constitutionality of teaching or otherwise promoting secular humanism in public schools. *103 ALR Fed 538*.

### **Law Reviews**

Garda, *Untangling Eligibility Requirements Under the Individuals with Disabilities Education Act*. *69 Mo L Rev 441* (Spring, 2004).

Schlueter, *Parental Rights In The Twenty-First Century: Parents As Full Partners In Education*, *32 St Mary's L.J. 611* (2001)

### **Web References**

Board of Higher Education, see [www.mass.edu/](http://www.mass.edu/)

Department of Education, see [www.doe.mass.edu/](http://www.doe.mass.edu/)

Education Law Association, see [www.educationlaw.org/](http://www.educationlaw.org/)

Legal Information Institute's Education Law Overview, see [www.law.cornell.edu/topics/education.html](http://www.law.cornell.edu/topics/education.html)

Massachusetts Corporation for Educational Telecommunications, see [www.mcet.edu](http://www.mcet.edu)

Massachusetts Educational Financing Authority, see [www.mefa.org/](http://www.mefa.org/)

Massachusetts Health and Educational Facilities Authority, see [www.mhefa.state.ma.us/](http://www.mhefa.state.ma.us/)

## **CASE NOTES**

1. In general 2. Length of school year 3. Employment of teachers 4. --Salaries 5. Courses of instruction 6. Approval of non-public schools 7. Closing of schools

### **1. In general**

It is manifest that this and following sections are mandatory, prescribing what towns are compelled to do. *Cushing v. Newburyport (1845) 51 Mass 508, 1845 Mass LEXIS 191.*

Public schools must be maintained and cost thereof must be raised by taxation year by year under this section and ALM GL c 71 § 34. *Brown v. City Council of Cambridge (1935) 289 Mass 333, 194 NE 88, 1935 Mass LEXIS 979.*

Express grant of authority to school committees to contract for furnishing of transportation of school children is not in ALM GL c 71, but is in ALM GL c 40 § 4. *Eastern M. S. R. Co. v. Mayor of Fall River (1941) 308 Mass 232, 31 NE2d 543, 1941 Mass LEXIS 659.*

For a discussion of powers of school committee in relation to making of contracts which are mere business contracts, such as transportation of school children, and not relating to education primarily, see *Eastern M. S. R. Co. v. Mayor of Fall River (1941) 308 Mass 232, 31 NE2d 543, 1941 Mass LEXIS 659.*

Under this section, duty is imposed upon all towns and cities in Commonwealth to provide and maintain schoolhouses properly furnished for accommodation of children entitled to attend public schools. *Molinari v. Boston (1955) 333 Mass 394, 130 NE2d 925, 1955 Mass LEXIS 599.*

Cities and towns are fundamental geographical units charged with administering elementary and secondary schools, except as to those towns which are very small and those joining regional school district. *Murphy v. School Committee of Brimfield (1979) 378 Mass 31, 389 NE2d 399, 1979 Mass LEXIS 798.*

Statute enacted in 1789 [St. 1789 ch. 19] was Commonwealth's first comprehensive school law, and required towns to maintain schools in proportion with number of inhabitants. *McDuffy v. Secretary of Executive Office of Educ. (1993) 415 Mass 545, 615 NE2d 516, 1993 Mass LEXIS 372.*

Every city or town is required to maintain schools, and two or more cities or towns may join together to form regional school district. *McDuffy v. Secretary of Executive Office of Educ. (1993) 415 Mass 545, 615 NE2d 516, 1993 Mass LEXIS 372.*

Duty of maintaining public schools and providing public school education is placed with cities and towns, and delegated to municipality's elected school committee. *McMann v. State Ethics Com. (1992) 32 Mass App 421, 590 NE2d 693, 1992 Mass App LEXIS 403.*

"Year" in this section is to be construed as meaning financial year of town for which annual appropriations are made. *1 Op AG 577.*

### **2. Length of school year**

For a case where city sought exemption under provisions of ALM GL c 71 §§ 1 and 4A, which provisions require that schools be kept open for number of days determined by board, such exemption being necessary to enable city to obtain its share of state aid funds under ALM GL c 70, see *Lawrence v. State Board of Education (1970) 357 Mass 200, 257 NE2d 461, 1970 Mass LEXIS 804.*

Attorney General on behalf of state board of education properly sought enforcement against city of Boston and school committee of obligation to provide minimum number of school days. *Board of Education v. Boston (1982) 386 Mass 103, 434 NE2d 1224, 1982 Mass LEXIS 1431.*

Superior Court judge properly granted injunctive and declaratory relief requiring city of Boston to fund public schools adequately for 180 days, notwithstanding exhaustion by school committee of statutory appropriation, so long as city has funds in any account which can be used to fulfill obligation. *Board of Education v. Boston (1982) 386 Mass 103, 434 NE2d 1224, 1982 Mass LEXIS 1431.*

Cities and towns are required to operate public schools for minimum term of 180 days. *Board of Education v. Boston (1982) 386 Mass 103, 434 NE2d 1224, 1982 Mass LEXIS 1431.*

City of Boston, and not state board of education, is responsible for enforcing obligation to provide minimum number of days in school year. *Board of Education v. Boston* (1982) 386 Mass 103, 434 NE2d 1224, 1982 Mass LEXIS 1431.

Board of education lacks authority to waive substantial part of school year, such as 20 percent of legislatively-required minimum. *Board of Education v. Boston* (1982) 386 Mass 103, 434 NE2d 1224, 1982 Mass LEXIS 1431.

Mayor of Boston has power to enforce limit of statutory appropriation to school committee by requiring it to expend funds at rate which permits city to meet obligation to provide minimum school year. *Board of Education v. Boston* (1982) 386 Mass 103, 434 NE2d 1224, 1982 Mass LEXIS 1431.

Failure of school committee to comply with regulations pertaining to number of school days may result in loss of portion of state and federal aid. *School Committee of Burlington v. Burlington Educators Asso.* (1979) 7 Mass App 41, 385 NE2d 1014, 1979 Mass App LEXIS 1114.

Term "school year" is not restricted to period of time when actual teaching occurs but refers to period during which teachers in particular system are obligated by their contracts of employment with school committees to render services in public schools in both teaching and non-teaching capacities. *Fortunato v. King Philip Regional School Dist. Committee* (1980) 10 Mass App 200, 406 NE2d 426, 1980 Mass App LEXIS 1221.

### **3. Employment of teachers**

Person's duties as teacher-coach are in performance of city's obligation under this section, as are duties of teacher, because this section requires instruction "in indoor and outdoor games and athletic exercise." *Murphy v. Boston* (1958) 337 Mass 560, 150 NE2d 542, 1958 Mass LEXIS 702.

Question of number of days striking teachers would be permitted to work is one of educational policy which could not be lawfully delegated to arbitrator. *School Committee of Burlington v. Burlington Educators Asso.* (1979) 7 Mass App 41, 385 NE2d 1014, 1979 Mass App LEXIS 1114.

Term "school year" is not restricted to period of time when actual teaching occurs but refers to period during which teachers in particular system are obligated by their contracts of employment with school committees to render services in public schools in both teaching and non-teaching capacities. *Fortunato v. King Philip Regional School Dist. Committee* (1980) 10 Mass App 200, 406 NE2d 426, 1980 Mass App LEXIS 1221.

Indictment of nontenured junior high school teacher for possession with intention to distribute cocaine was "misconduct in office" under ALM GL c 268A § 25 and warranted suspension. *Dupree v. School Committee of Boston* (1983) 15 Mass App 535, 446 NE2d 1099, 1983 Mass App LEXIS 1265.

### **4. --Salaries**

This section as it appeared in St. 1898, ch. 496, § 1, raised minimum school year from twenty-four to thirty-two weeks. If aggregate sum paid teachers by town for thirty-two weeks' work is same as aggregate sum previously paid them for twenty-four, effect is that town reduces their salaries, and board of education does not have right to approve payment from income of school fund to such town under St. 1896, ch. 408. *1 Op AG 576.*

### **5. Courses of instruction**

Provision in this section requiring public schools to give instruction and training in indoor and outdoor games and athletic exercise, was based upon petition for legislation to provide physical training for pupils in elementary and secondary schools of Commonwealth. *Brine v. Cambridge* (1929) 265 Mass 452, 164 NE 619, 1929 Mass LEXIS 1077.

### **6. Approval of non-public schools**

Conditions for approval of home school proposal consistent with liberty interest of parents include (1) approval must be obtained in advance; (2) parents must be given opportunity to explain proposal and present witnesses on their behalf; (3) superintendent or school committee must detail reasons for any rejection of home school proposal, and give parents opportunity to revise proposal to remedy its inadequacies; (4) proposed curriculum and number of hours of instruction must meet statutory requirements; (5) parents must be competent to teach children; (6) superintendent or school committee must have access to textbooks and instructional materials to be used by parents; and (7) children may be subjected to periodic standardized testing. *Care & Protection of Charles* (1987) 399 Mass 324, 504 NE2d 592, 1987 Mass LEXIS 1160.

In action by church to enjoin Massachusetts town's efforts to apply approval requirements of ALM GL c 76 § 1 to church school, town's conduct did not violate church's rights under free exercise clause of *First Amendment of United States Constitution*. *New Life Baptist Church Academy v. East Longmeadow* (1989) 885 F2d 940, 1989 US App LEXIS 13435, cert den (1990) 494 US 1066, 108 L Ed 2d 784, 110 S Ct 1782, 1990 US LEXIS 1727.

### **7. Closing of schools**

School committee has broad powers and duties in management of public schools, including power to close schools. *Citywide Parents Council, Inc. v. School Committee of Boston* (1989) 27 Mass App 739, 542 NE2d 1043, 1989 Mass App LEXIS 520, review denied (1989) 406 Mass 1101, 546 NE2d 375, 1989 Mass LEXIS 364 .

School committee's second vote to close and consolidate certain public schools was lawful even though committee had voted about 2 weeks earlier to close and consolidate schools without holding hearing required by its own rules, since second vote was taken immediately after public hearing was held. *Citywide Parents Council, Inc. v. School Committee of Boston* (1989) 27 Mass App 739, 542 NE2d 1043, 1989 Mass App LEXIS 520, review denied (1989) 406 Mass 1101, 546 NE2d 375, 1989 Mass LEXIS 364.

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\*\*\* Current through Act 377 of the 2008 Legislative Session \*\*\*

PART I ADMINISTRATION OF THE GOVERNMENT  
TITLE XVIII PRISONS, IMPRISONMENT, PAROLES AND PARDONS  
Chapter 127 Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons  
PRISONERS

**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 127, § 16 (2008)*

**§ 16. Physical Examination of Prisoners.**

The superintendents of the correctional institutions of the commonwealth, and the keepers and superintendents of jails and houses of correction shall cause a thorough physical examination to be made by a competent physician of each inmate in their respective institutions committed for a term of thirty days' imprisonment or more. In conducting the examination special attention shall be given to determining the presence of communicable diseases, particularly venereal diseases as defined under section six of chapter one hundred and eleven and pulmonary tuberculosis.

**HISTORY:** 1918, 58, § 1; 1919, 199, § 1; 1924, 309, § 1; 1933, 77, § 1; 1941, 344, § 13; 1948, 129, § 8; 1955, 770, § 18; 1957, 771, § 9; 1979, 485, § 20.

**NOTES:**

**Editorial Note**

**The 1948 amendment** broadened the last sentence by making it apply to all venereal diseases.

**The 1955 amendment** rewrote the first sentence of this section.

**The 1957 amendment** changed "principal officers" to "superintendents".

**The 1979 amendment** substituted "superintendents" for "masters".

**Code of Massachusetts Regulations**

Initial screening and physical examination. 103 CMR 960.02.

**Annotations**

Relief under Federal Civil Rights Acts to state prisoners complaining of interference with access to courts. *23 ALR Fed 6*.

**CASE NOTES**

Policy of placing new inmate transferred from another facility in administrative segregation until evaluation can be made of appropriate treatment and placement is prudent exercise of judgment in connection with maintenance of security. *Blake v. Commissioner of Correction (1989) 403 Mass 764, 532 NE2d 671, 1989 Mass LEXIS 18*.

Commissioner of Correction is obligated to take measures to protect physical well-being of all persons in care of Department of Correction, and may determine whether prisoners have communicable diseases, including tuberculosis. *Langton v. Commissioner of Correction (1993) 34 Mass App 564, 614 NE2d 1002, 1993 Mass App LEXIS 613*, review denied (1993) 416 Mass 1101, 618 NE2d 71, 1993 Mass LEXIS 477.

Department of Correction was authorized to compel all inmates to undergo testing for tuberculosis administered by Department of Public Health, in order to avert potential public health crisis in correctional facilities throughout Commonwealth, after 3 inmates at one correctional facility were diagnosed with active tuberculosis. *Langton v. Commissioner of Correction (1993) 34 Mass App 564, 614 NE2d 1002, 1993 Mass App LEXIS 613*, review denied (1993) 416 Mass 1101, 618 NE2d 71, 1993 Mass LEXIS 477.

In a suit wherein a prisoner alleged violation of his rights under the Eighth Amendment and various civil rights statutes, the motion for summary judgment filed by the correctional health center and others (defendants) was denied as the record showed that defendants denied the prisoner of prescribed knee brace and shoe inserts and the prisoner had yet to receive the pegylated interferon therapy or treatment for his hip condition that he was prescribed. The court held that, having all been diagnosed by physicians as mandating treatment, the prisoner's health problems met the threshold requirement for qualifying as serious medical needs under the standard set forth in case law. *Malik v. UMass Corr. Health (2007) 23 Mass L Rep 101, 2007 Mass Super LEXIS 361*.

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PART I ADMINISTRATION OF THE GOVERNMENT  
TITLE XVIII PRISONS, IMPRISONMENT, PAROLES AND PARDONS  
Chapter 127 Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons  
PERMITS TO BE AT LIBERTY AND DISCHARGE

**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 127, § 151 (2008)*

**§ 151. Care of Disabled Prisoner after Expiration of Sentence.**

When a prisoner at the expiration of his sentence is in such condition from bodily infirmity or disease as to render his removal from a correctional institution inexpedient, the principal officer of such institution may, with the approval of the physician, authorize his temporary care at said institution, and shall forthwith report to the commissioner all of the circumstances. If it shall appear to the commissioner that such care may be required for a period longer than sixty days, he shall ascertain whether said discharged prisoner is suffering from tuberculosis or from any other disease for which treatment facilities are available in hospitals or sanatoria under the supervision of the department of public health, and in such case he shall notify the commissioner of public health who shall, if he finds that such facilities are available, receive the discharged prisoner; and if no facilities are available in the department of public health, the commissioner of correction shall notify the commissioner of public welfare, who shall receive said discharged prisoner at the Tewksbury hospital.

**HISTORY:** 1853, 388; GS 1860, 71, §§ 40-42; 1864, 169; 1874, 170, § 1; PS 1882, 222, § 25; RL 1902, 225, § 131; 1906, 243, § 2; 1919, 350, § 87; 1928, 155, § 56; 1932, 180, § 25; 1956, 731, § 11; 1958, 613, § 8D; 1974, 260, § 25.

**NOTES:**

**Editorial Note**

**The 1956 amendment** inserted a new section in place of the former section, considerably expanding the provisions as to care.

**The 1958 amendment** changed "Tewksbury state hospital and infirmary" to "Tewksbury hospital".

**The 1974 amendment** struck near the end of the section "board of public welfare in the town where said prisoner has settlement, who shall receive him or direct his transfer to a hospital at their expense; and if said prisoner has not settlement in any town in the commonwealth, the commissioner of correction shall notify the".

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PART I ADMINISTRATION OF THE GOVERNMENT  
 TITLE XVI PUBLIC HEALTH  
 Chapter 111 Public Health  
 DANGEROUS DISEASES

**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 111, § 95 (2008)*

**§ 95. Powers and Duties of Boards in Cases of Infectious Diseases.**

If a disease dangerous to the public health breaks out in a town, or if a person is infected or lately has been infected therewith, the board of health shall immediately provide such hospital or place of reception and such nurses and other assistance and necessaries as is judged best for his accommodation and for the safety of the inhabitants, and the same shall be subject to the regulations of the board. The board may cause any sick or infected person to be removed to such hospital or place, if it can be done without danger to his health; otherwise the house or place in which he remains shall be considered as a hospital, and all persons residing in or in any way connected therewith shall be subject to the regulations of the board, and, if necessary, persons in the neighborhood may be removed. When the board of health of a town shall deem it necessary, in the interest of the public health, to require a resident wage earner to remain within such house or place or otherwise to interfere with the following of his employment, he shall receive from such town during the period of his restraint compensation to the extent of three fourths of his regular wages; provided, that the amount so received shall not exceed two dollars for each working day.

**HISTORY:** 1701-2, 9, §§ 1, 2; 1792, 58, § 5; 1797, 16, § 1; RS 1836, 21, §§ 16, 17, 40; 1837, 244, §§ 1, 2; 1838, 158; 1848, 119; GS 1860, 26, §§ 16, 17, 44; PS 1882, 80, §§ 40, 41, 75; RL 1902, 75, § 42; 1906, 225; 1906, 365, § 1; 1907, 445.

**NOTES:**

**Code of Massachusetts Regulations**

Reportable diseases and isolation and quarantine regulations. *105 CMR 300.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

*29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.*

**CASE NOTES**

1. In general 2. Scope of authority of board 3. Liability of board

**1. In general**

The provision of this section that "if a disease which is dangerous to the public health breaks out in a town," the board of health shall immediately provide a hospital or place of reception, applies to cities as well as towns. *Barry v. Smith (1906) 191 Mass 78, 77 NE 1099, 1906 Mass LEXIS 1228.*

Apparently the legislature intended to give relief only to wage earners, and the statute does not help one who has merely lost the profits of a business. *McFadden v. East Bridgewater (1938) 301 Mass 153, 16 NE2d 686, 1938 Mass LEXIS 1021.*

## **2. Scope of authority of board**

Where possession is taken under this section, the owner cannot maintain an action of contract against the town for the use and occupation of the house during the time it was so held by the board of health. *Spring v. Hyde Park (1884) 137 Mass 554, 1884 Mass LEXIS 313.*

A member of the board of health of a town has no authority, against the consent of the owner or occupant, to take possession of a dwelling house in which a contagious disease exists, and of the furniture therein, to the exclusion of such owner or occupant, and to carry away and destroy portions of the furniture, or to station a person on the premises with instructions to prevent ingress and egress, except in the manner pointed out in this section. *Brown v. Murdock (1885) 140 Mass 314, 3 NE 208, 1885 Mass LEXIS 359.*

The owner of a house in a city which, while in the possession of a tenant at will, is taken and used, without the owner's consent, may maintain an action against the members of the board for the injury to his reversion, if it appears that such use of the house diminished its rentable value. *Hersey v. Chapin (1894) 162 Mass 176, 38 NE 442, 1894 Mass LEXIS 34.*

A tenant at will in possession of a house in a city cannot, as against the rights of the owner, authorize the board of health of the city to establish in the house a hospital for patients afflicted with an infectious disease, and to maintain such a hospital there to the damage of the reversion. *Hersey v. Chapin (1894) 162 Mass 176, 38 NE 442, 1894 Mass LEXIS 34.*

Under the provisions of this section it is within the power of the proper officers of a city either to remove to a hospital the persons who have fallen ill of smallpox or to care for them in the houses where they reside, and no person can be removed to a hospital against his will unless in the opinion of the city's board of health and of the attending physician the case cannot be isolated properly in the house where the patient resides. *Haverhill v. Marlborough (1905) 187 Mass 150, 72 NE 943, 1905 Mass LEXIS 951.*

## **3. Liability of board**

If the board of health of a city, having established a smallpox hospital in performance of the duty imposed on it by this section, maintains the hospital in a negligent and careless manner, it is liable to one injured by their acts if they have been personally guilty of misfeasance and the hospital has in consequence become a nuisance, but it is not liable for mere non-feasance. *Barry v. Smith (1906) 191 Mass 78, 77 NE 1099, 1906 Mass LEXIS 1228.*

Members of the board of health of a city in fixing the location of a smallpox hospital are exercising a discretion required by them as public officers by this section, and are not liable for negligence in exercising it, and in an action against them by the owner of land adjoining such a hospital for injury to his land caused by its establishment, it is right to exclude evidence offered by the plaintiff to show that the defendants were negligent and careless in locating the hospital. *Barry v. Smith (1906) 191 Mass 78, 77 NE 1099, 1906 Mass LEXIS 1228.*

The owner of a dwelling house in a city whose board of health has established a smallpox hospital under this section, is not injured if the board of health in doing so has violated RL c 75, § 37, which prohibits the establishment of a hospital within a certain distance of inhabited dwelling houses in an adjoining town or city without its consent. *Barry v. Smith (1906) 191 Mass 78, 77 NE 1099, 1906 Mass LEXIS 1228.*

Proof that the defendant members of the board of health maintained a hospital in a negligent and careless manner and that their carelessness made the hospital a nuisance to the plaintiff does not go far enough to charge the defendants with liability, and evidence thus offered should be excluded. *Barry v. Smith (1906) 191 Mass 78, 77 NE 1099, 1906 Mass LEXIS 1228.*

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*ALM GL ch. 111, § 96 (2008)*

**§ 96. Warrants to Remove Persons Infected with Disease Dangerous to Public Health.**

A magistrate authorized to issue warrants may issue a warrant directed to the sheriff of the county or his deputy, or to any constable or police officer, requiring him, under the direction of the board of health, to remove any person infected with a disease dangerous to the public health or who is a carrier of the causative agent thereof, or to take control of convenient houses and lodgings, and to impress into service and use such convenient houses, lodgings, nurses, attendants and other necessaries. The removal authorized by this section may be made to a hospital in any town established for the reception of persons having diseases dangerous to the public health; provided, that the assent of the board of health of the town to which such removal is to be made shall first have been obtained.

**HISTORY:** 1701-2, 9, § 3; 1742-3, 17, § 1; 1797, 16, § 4; RS 1836, 21, § 19; GS 1860, 26, § 19; 1877, 211, § 1; PS 1882, 80, § 43; RL 1902, 75, § 46; 1902, 206, § 2; 1906, 365, § 2; 1915, 12; 1938, 265, § 8.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

13 Am Jur Pl & Pr Forms (Rev), Habeas Corpus, § 110.

29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.

**CASE NOTES**

The board of health of a city cannot, without the consent of the owner, lawfully establish and use premises as a hospital for patients sick with the smallpox, except under a warrant issued in accordance with the provisions of this section. *Hersey v. Chapin (1894) 162 Mass 176, 38 NE 442, 1894 Mass LEXIS 34.*

Where the board of health of a city has established a smallpox hospital on land hired for the purpose, it has no right to enclose with a rope the driveway belonging to an adjoining proprietor and to exclude him and his tenants from it without his consent and without action under this section, and if this is done by it or by persons in its presence and under its direction, it is liable to the proprietor for the damages suffered by him from this cause. *Barry v. Smith (1906) 191 Mass 78, 77 NE 1099, 1906 Mass LEXIS 1228.*

The lease and use by a board of health of a building as an isolation hospital for the care of smallpox victims and the consequent impregnation of the structure with the sources of that contagion constitutes waste for which the mortgagee can recover, unless the injury can be effectively removed by disinfection. *Delano v. Smith (1910) 206 Mass 365, 92 NE 500, 1910 Mass LEXIS 810.*

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*ALM GL ch. 111, § 96A (2008)*

**§ 96A. Transportation of Infected Person to Another Town.**

No town shall transport or permit to be transported to another town any person infected with a disease dangerous to the public health, without first obtaining the assent of the board of health of the town to which the patient is to be transported; but this requirement shall not apply to transportation to a hospital except under section ninety-six.

**HISTORY:** 1938, 265, § 9.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.

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*ALM GL ch. 111, § 97 (2008)*

**§ 97. Limitation of Sections 95 and 96.**

Sections ninety-five and ninety-six, so far as they confer authority for the removal of patients from their homes, shall apply only to persons residing in boarding houses or hotels, or to two or more families occupying the same dwelling, or in other cases where, in the opinion of the board, the patient cannot properly be isolated.

**HISTORY:** 1838, 158; 1840, 39; 1848, 119; GS 1860, 26, § 51; 1872, 189; PS 1882, 80, § 82; RL 1902, 75, § 56; 1906, 365, § 3; 1938, 265, § 10.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 52, 59-61, 63, 64, 99.*

*29 Am Jur Proof of Facts 305, Negligent and Deceptive Practices in Diagnosis and Treatment of Tuberculosis.*

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*ALM GL ch. 111, § 98 (2008)*

**§ 98. Removal of Nuisance, Infected Articles or Persons; Permits from Board of Health.**

Boards of health may grant permits for the removal of any nuisance, infected articles or sick person within the limits of their towns.

**HISTORY:** 1816, 44, § 12; RS 1836, 21, § 15; GS 1860, 26, § 15; PS 1882, 80, § 39; RL 1902, 75, § 86.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 74-77.*

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*ALM GL ch. 111, § 99 (2008)*

**§ 99. Warrant to Secure Infected Articles.**

If upon application of the board it appears to a magistrate authorized to issue warrants that there is just cause to suspect that baggage, clothing or goods found within the town are infected with any disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy or to any constable, require him to impress as many men as said magistrate may judge necessary to secure such baggage, clothing or goods, and to post said men as a guard over the house or place containing such articles to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

**HISTORY:** 1751-2, 12, § 1; 1797, 16, § 5; RS 1836, 21, § 20; GS 1860, 26, § 20; 1877, 211, § 1; PS 1882, 80, § 44; RL 1902, 75, § 87.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 74-77.*

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*ALM GL ch. 111, § 100 (2008)*

**§ 100. Warrants to Take Houses for Safe Keeping of Goods.**

The magistrate may, by the same warrant, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may remove them thereto or otherwise detain them until, in its opinion, they are freed from infection.

**HISTORY:** 1751-2, 12, § 3; 1797, 16, § 5; RS 1836, 21, § 21; GS 1860, 26, § 21; 1877, 211, § 1; PS 1882, 80, § 45; RL 1902, 75, § 88.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 74-77.*

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*ALM GL ch. 111, § 101 (2008)*

**§ 101. Officers May Command Aid; Penalty.**

The officers, in executing the warrant, may command aid and may break open any house, shop or other place mentioned in the warrant. Whoever, being commanded by said officers to assist in the execution of the warrant, neglects or refuses so to do shall forfeit not more than ten dollars.

**HISTORY:** 1751-2, 12, §§ 1, 2; 1797, 16, § 5; RS 1836, 21, § 22; GS 1860, 26, § 22; PS 1882, 80, § 46; RL 1902, 75, § 89.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 74-77.*

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*ALM GL ch. 111, § 102 (2008)*

**§ 102. Payment of Expenses of Securing, Transporting and Purifying Articles.**

The expense of securing, transporting and purifying such articles as fixed by the board shall be paid by the owners or by the town, as the board may determine. For any article of furniture or wearing apparel ordered destroyed by the board the town may recompense the owner to an amount not exceeding fifty dollars.

**HISTORY:** 1751-2, 12, § 2; 1797, 16, § 5; RS 1836, 21, § 23; GS 1860, 26, § 23; PS 1882, 80, § 47; RL 1902, 75, § 90; 1903, 306.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 74-77.*

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*ALM GL ch. 111, § 103 (2008)*

**§ 103. Compensation for Houses, Necessaries Impressed.**

If a sheriff or other officer impresses or takes up any houses, stores, lodging or other necessaries, or impresses men, the town where such persons or property are so impressed shall pay a just compensation to the persons entitled thereto. Compensation for taking or impressing property may be recovered under chapter seventy-nine.

**HISTORY:** RS 1836, 21, § 24; GS 1860, 26, § 24; PS 1882, 80, § 48; RL 1902, 75, § 58.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 104 (2008)*

**§ 104. Notice of Infected Places; Penalty for Removal of Notice.**

If a disease dangerous to the public health exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection and may give public notice of infected places by such means as in their judgment may be most effectual for the common safety. Whoever obstructs the selectmen, board of health or its agent in using such means, or whoever wilfully and without authority removes, obliterates, defaces or handles such public notices which have been posted, shall forfeit not less than ten nor more than one hundred dollars.

**HISTORY:** 1792, 58, § 6; RS 1836, 21, § 41; 1838, 158; GS 1860, 26, § 45; 1873, 2, § 2; PS 1882, 80, § 76; RL 1902, 75, § 43; 1938, 265, § 11.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 105 (2008)*

**§ 105. Penalty for Violation of Regulations.**

If a physician or other person who is in any of the hospitals or places of reception mentioned in section ninety-five, or who attends, approaches or is concerned with them, violates a regulation of the board of health relative thereto, he shall forfeit not less than ten nor more than one hundred dollars.

**HISTORY:** 1792, 58, § 6; RS 1836, 21, § 42; 1838, 158; GS 1860, 26, § 46; PS 1882, 80, § 77; RL 1902, 75, § 44.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 106 (2008)*

**§ 106. Travelers from Infected Places Outside Commonwealth; License; Penalty.**

The board of health of a town near to or bordering upon an adjoining state may in writing appoint suitable persons, who shall attend at places by which travelers may pass from infected places without the commonwealth, and who may examine such travelers as the board suspects of bringing any infection dangerous to the public health, and, if necessary, restrain them from traveling until licensed thereto by the board of health of the town to which they may come. A traveler coming from an infected place who, without such license, travels within the commonwealth, unless to return by the most direct way to the state whence he came, after he has been cautioned to depart by the persons so appointed, shall forfeit not more than one hundred dollars.

**HISTORY:** 1739-40, 1, § 3; 1742-3, 17, § 3; 1797, 16, § 3; RS 1836, 21, § 18; GS 1860, 26, § 18; PS 1882, 80, § 42; RL 1902, 75, § 45.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health §§ 59-61, 63, 64.*

**Annotations**

Validity and construction of curfew statute, ordinance, or proclamation. *59 ALR3d 321.*

Validity, construction, and effect of juvenile curfew regulations. *83 ALR4th 1056.*

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*ALM GL ch. 111, § 107 (2008)*

**§ 107. Transportation of Infected Dead Bodies Regulated; Penalty.**

No person shall convey or cause to be conveyed through or from any town in the commonwealth the body of any person who has died from any disease dangerous to the public health, except in accordance with such rules and regulations as may be made from time to time by the department. No town clerk, or clerk or agent of the board of health, shall give a permit for the removal of such a body until he has received from the board of health of the town where the death occurred a certificate stating the cause of death, and that said body has been prepared so as to preclude danger of contagion or infection by its transportation. The certificate shall be delivered to the agent or person receiving the body. The department shall formulate such rules and regulations pertaining to funerals of all persons dying from any disease dangerous to the public health as it deems necessary to prevent the spread of infection. Whoever violates any provision of this section or any rule or regulation made hereunder shall forfeit not more than twenty-five dollars.

**HISTORY:** 1883, 124, § 2; 1887, 335; 1897, 437, § 6; RL 1902, 78, § 43; 1938, 265, § 12.

**NOTES:**

**Code of Massachusetts Regulations**

Transportation and funerals of persons dead of diseases dangerous to public health. *105 CMR 310.001* et seq.  
Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*22A Am Jur 2d, Dead Bodies §§ 1, 6, 7, 39, 40.*

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*ALM GL ch. 111, § 108 (2008)*

**§ 108. Removal of Sick Prisoners.**

If a prisoner in a jail or house of correction has a disease which, in the opinion of the physician of the board of health or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall, in writing, direct his removal to a hospital or other place of safety, there to be provided for and securely kept until its further order. If he recovers from the disease, he shall be returned to his former place of confinement. If the person so removed has been committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

**HISTORY:** 1816, 44, § 10; RS 1836, 21, §§ 25, 26; GS 1860, 26, §§ 25, 26; PS 1882, 80, §§ 49, 50; RL 1902, 75, § 47; 1931, 426, § 15.

**NOTES:**

**Code of Massachusetts Regulations**

Standards for medical records and physical examinations in correctional facilities. *105 CMR 205.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

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*ALM GL ch. 111, § 109 (2008)*

**§ 109. Householder to Give Notice of Dangerous Diseases; Penalty.**

A householder who knows or has cause to believe that a person in his family or house is infected with a disease dangerous to the public health shall forthwith give notice thereof to the board of health of the town where such householder dwells, unless a physician is in attendance. Upon the death, recovery or removal of such person, the householder shall disinfect to the satisfaction of the board such rooms of his house and articles therein as, in the opinion of the board, have been exposed to infection or contagion, but the board may in its discretion, disinfect all such premises as, in its opinion, have been exposed to any disease dangerous to the public health, at the expense of the town, and may employ any proper and competent person to so disinfect. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

**HISTORY:** 1742-3, 17, §§ 5, 6; 1792, 58, § 7; RS 1836, 21, § 43; GS 1860, 26, § 47; PS 1882, 80, § 78; 1884, 98, § 1; 1890, 102; RL 1902, 75, § 49; 1905, 251, § 1; 1907, 480; 1910, 269; 1914, 177; 1919, 350, § 96; 1938, 265, § 13.

**NOTES:**

**Code of Massachusetts Regulations**

Reportable diseases and isolation and quarantine regulations. *105 CMR 300.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health § 98.*

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*ALM GL ch. 111, § 111 (2008)*

**§ 111. Physicians to Report Names of Persons Infected with Certain Diseases; Penalty.**

If a physician knows or has cause to believe that a person whom he visits is infected with a disease dangerous to the public health, or if either eye of an infant whom or whose mother [,] a physician, or a hospital medical officer registered under section nine of chapter one hundred and twelve, visits, becomes inflamed, swollen and red, or shows an unnatural discharge within two weeks after birth, he shall immediately give written notice thereof, signed by him, to the board of health of the town where the patient is being attended by him. If the board of health which receives such written notice is the board of health of a town other than that wherein the patient dwells, it shall, immediately upon receipt of such notice, send a copy thereof to the board of health of the town wherein the patient dwells; and, in addition thereto, the board of health which receives such written notice, whether or not it is the board of health of the town wherein the patient dwells, shall send a copy thereof to the board of health of the town in which the patient is known to have contracted such disease and to the board of health of each town in which he is known to have exposed any person to such disease. If a physician or such a hospital medical officer refuses or neglects to give the notice required by this section he shall be punished by a fine of not less than fifty nor more than two hundred dollars.

The foregoing provisions of this section shall not apply to tuberculosis, nor shall the foregoing provisions of this section and the provisions of section one hundred and nine apply to venereal diseases as defined under section six, except in the case of eye infections in infants under two weeks of age. Any person having tuberculosis or a venereal disease shall be reported to local boards of health either directly or through the department in accordance with such special rules and regulations as the department may make, having due regard for the best interests of the public.

**HISTORY:** 1827, 129; RS 1836, 21, § 44; GS 1860, 26, § 48; PS 1882, 80, § 79; 1884, 98, § 2; 1891, 188; RL 1902, 75, § 50; 1905, 251, § 2; 1907, 480; 1919, 350, § 96; 1920, 244, § 2; 1938, 265, § 14; 1948, 129, § 2; 1983, 38.

**NOTES:**

**Editorial Note**

**The 1948 amendment** broadened the second paragraph, so as to exclude all venereal diseases (with certain exceptions) from the provisions of sections 109 and 111, and broadened the report requirement of the paragraph to include all such diseases.

**The 1983 amendment** rewrote the second paragraph so as to expand its applicability to include tuberculosis in addition to venereal diseases.

**Code of Massachusetts Regulations**

Reportable diseases and isolation and quarantine regulations. *105 CMR 300.001 et seq.*

Cancer registry regulations. *105 CMR 301.001* et seq.

Reporting and control of sexually transmitted diseases (STDs). *105 CMR 340.001* et seq.

Regulations for determining active tuberculosis. *105 CMR 350.001* et seq.

Standards for the management of tuberculosis outside hospitals. *105 CMR 365.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

### **Jurisprudence**

*39 Am Jur 2d, Health § 98.*

### **CASE NOTES**

The evident purpose of this section and § 110 is that the board of health may be informed without delay of the existence of a most serious disease with which very young children may be affected, so that immediate and scientific treatment may be received and blindness prevented. *Medlin v. Bloom (1918) 230 Mass 201, 119 NE 773, 1918 Mass LEXIS 944.*

Violation of section by physician is evidence of negligence. *Medlin v. Bloom (1918) 230 Mass 201, 119 NE 773, 1918 Mass LEXIS 944.*

The notice of contagious disease, required by this section to be given by the attending physician, should be given to the authorities of the city or town in which the patient is under treatment, rather than to the authorities of the city or town where the patient resides. *5 Op A G 614, 626.*

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*ALM GL ch. 111, § 111C (2008)*

**§ 111C. Report of Exposure of Police, Fire, Medical, Corrections Employees to Certain Infectious Diseases; Notice of Exposure; Confidentiality; Immunity from Liability.**

Any person, including without limitation, a police officer, fire fighter, emergency medical technician, corrections officer, ambulance operator or attendant who, while acting in his professional capacity, attends, assists, or transports a person or deceased person to a health care facility licensed under section fifty-one of chapter one hundred and eleven, and who sustains an unprotected exposure capable of transmitting an infectious disease dangerous to the public health, shall immediately, upon arrival at such facility, provide to the admitting agent or other appropriate employee of the said facility a standardized trip form. The department shall prepare and distribute said standardized trip form, which shall include, but need not be limited to the names of persons who believe they have had such unprotected exposure, and the manner in which such exposure occurred.

"Infectious diseases dangerous to the public health" shall be defined by department regulations which shall be promulgated pursuant to this section.

"Unprotected exposure capable of transmitting an infectious disease dangerous to the public health" shall be defined in regulations promulgated by the department and shall include, but not be limited to, instances of direct mouth-to-mouth resuscitation, or the co-mingling of the blood of the patient and the person who has transported the patient to the health care facility.

Any health care facility licensed under section fifty-one of chapter one hundred and eleven which, after receiving a transported individual or deceased person, diagnoses the individual or deceased person as having an infectious disease dangerous to the public health as defined pursuant to the provisions of this section, shall notify orally within forty-eight hours after making such a diagnosis, and in writing within seventy-two hours of such diagnosis, any individual listed on the trip report who has sustained an unprotected exposure which, in the opinion of the health care facility is capable of transmitting such disease. Such response shall include, but not be limited to, the appropriate medical precautions and treatments which should be taken by the party who has sustained the unprotected exposure; provided, however, that the identity of the patient suspected of having such disease shall not be released in such response, and shall be kept confidential in accordance with the provisions of section seventy. The department shall determine the method by which the response to the trip report is conveyed, and shall assure the patient or deceased person's legal representative or next of kin, if there is no legal representative is informed of those individuals who have been notified of his disease pursuant to this section, and that the response is directed only to those parties who have sustained an unprotected exposure to an infectious disease.

Notwithstanding the provisions of any general law or special law to the contrary, no hospital, or agent, employee, administrator, doctor, official or other representative of said reporting institution shall be held jointly or severally liable either as an institution, or personally, for reporting pursuant to the requirements of this section, if such report was made

in good faith. All such parties, provided they have operated in good faith, shall otherwise be afforded total immunity from civil or criminal liability as a result of fulfilling the provisions of this section or the regulations promulgated in accordance with this section.

**HISTORY:** 1987, 696; 1989, 341, § 67; 1990, 113, §§ 1, 2; 1992, 286, § 172.

**NOTES:**

**Editorial Note**

**The 1989 amendment** changed the definition of "Unprotected exposure capable of transmitting an infectious disease dangerous to the public health" to "Unprotected exposure capable of transmitting an infectious disease dangerous to the public health".

**The 1990 amendment**, in the first sentence of the first paragraph, following the second appearance of "person", inserted "or deceased person", in the first sentence of the fourth paragraph, following the first and second appearance of "individual", inserted "or deceased person", respectively, and in the third sentence, following "patient", inserted "or deceased person's legal representative or next of kin, if there is no legal representative".

**The 1992 amendment**, in the first sentence of the first paragraph, after the words "acting in his" deleted "or her" and in the third sentence of the fourth paragraph, after the words "notified of his" deleted "or her".

**Code of Massachusetts Regulations**

Implementation of MGL c 111 and 111C regulating the reporting of infectious diseases dangerous to the public health. *105 CMR 172.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Jurisprudence**

*39 Am Jur 2d, Health § 98.*

**Treatise References**

Becker, *Health Care Law: A Practical Guide (Matthew Bender) § 20.03.*

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**GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY**

*ALM GL ch. 111, § 112 (2008)*

**§ 112. Local Board of Health to Notify Department of Case of Disease Dangerous to Public Health.**

If the board of health of a town has had notice of a case of any disease declared by the department dangerous to the public health therein, it shall within twenty-four hours thereafter give notice thereof to the department, stating the name and the location of the patient so afflicted, and upon request the department shall forthwith certify any such reports to the department of public welfare.

**HISTORY:** 1883, 138, § 1; 1886, 101, § 4; 1893, 302, § 1; RL 1902, 75, § 52; 1907, 480; 1916, 55; 1919, 350, §§ 87, 96; 1925, 215; 1938, 265, § 15.

**NOTES:**

**Code of Massachusetts Regulations**

Reportable diseases and isolation and quarantine regulations. *105 CMR 300.001 et seq.*

Treatment of persons suffering from venereal disease unable to pay for private medical care. *105 CMR 345.001 et seq.*

Massachusetts contingency plan. *310 CMR 40.0001 et seq.*

**CASE NOTES**

Until Gen Sts 1918, ch. 130, from which § 113 derives, went into effect the notice required by this section was a condition precedent to the right of the city or town to maintain an action against the commonwealth for the payment of expenses, as provided in § 116. *5 Op A G 250, 299, 303.*

Where boards of health and planning denied approval of a developer's application for definitive subdivision approval on the ground that the locus was contiguous to a known hazardous waste site and that the developer had not provided any information to show the absence of contamination at the locus, the developer's motion for summary judgment, alleging the board of health was powerless to consider questions of water quality at the subdivision approval stage, was denied; the board had plenary power to to remove or prevent nuisances, sources of filth, and causes of sickness under ALM GL c 111, §§ 31, 122. *Stately Homes, Inc. v. Escolas (2004) 17 Mass L Rep 349, 2004 Mass Super LEXIS 44.*

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*ALM GL ch. 111, § 113 (2008)*

**§ 113. Records and Reporting of Dangerous Diseases; Penalty.**

Every board of health shall keep a record of all reports received pursuant to sections one hundred and nine to one hundred and eleven, inclusive, containing the name and location of all persons who are infected, their disease, the name of the person reporting the case, the date of such report, and other information required by the department. Such records shall be kept in the manner or upon forms prescribed by the department. The board of health shall forthwith give information to the school committee of all diseases dangerous to the public health so reported to it. Every board of health shall appoint some person, who may or may not be a member of the board, who shall give notice to the department, as provided in the preceding section, of any person infected with a disease dangerous to the public health; and in case of the absence or disability of such appointee, the board of health shall appoint another person to perform this duty during such absence or disability. Such appointments and the acceptance thereof by the persons so appointed shall be placed upon the records of the board. Any person, having accepted such appointment, who wilfully refuses or wilfully neglects or through gross negligence fails to give such notices shall be punished by a fine of not more than fifty dollars.

**HISTORY:** 1884, 98, §§ 3, 4; RL 1902, 75, § 51; 1915, 52; 1918, 130, § 1; 1919, 350, § 96; 1938, 265, § 16.

**NOTES:**

**Cross References**

Certain Hospitals and Clinics to Keep Records of Cases; Inspection, Copies, Destruction, ALM GL *c 111 § 70.*

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001 et seq.*

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*ALM GL ch. 111, § 114 (2008)*

**§ 114. Forfeiture of Claim.**

A claim of a town against the commonwealth for reasonable expenses incurred by the board of health in making the provision required by law for persons infected with a disease dangerous to the public health shall not be defeated by reason of the failure on the part of the board to give notice of such disease to the department under section one hundred and twelve, if such claim is otherwise a valid claim against the commonwealth.

**HISTORY:** 1883, 138, § 2; 1893, 302, § 2; RL 1902, 75, § 53; 1918, 130, § 2; 1919, 350, § 96.

**NOTES:**

**Code of Massachusetts Regulations**

Cremation of bodies received from outside Massachusetts. *105 CMR 315.001* et seq.

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**CASE NOTES**

This section is not retroactive. *5 Op A G 250, 299.*

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*ALM GL ch. 111, § 115 (2008)*

**§ 115. Recovery of Expenses for Removal of Nuisance or for Preservation of Public Health.**

Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, for which any person is liable, may be recovered in contract.

**HISTORY:** 1849, 211, § 6; GS 1860, 26, § 49; PS 1882, 80, § 80; RL 1902, 75, § 54.

**NOTES:**

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**CASE NOTES**

An action to recover money expended from the treasury of a city or town by its board of health to remove a nuisance may be maintained in the name of the city or town. *Salem v. Eastern R. Co. (1868) 98 Mass 431, 1868 Mass LEXIS 318.*

The remedy under this section is exclusive. *Train v. Boston Disinfecting Co. (1887) 144 Mass 523, 11 NE 929, 1887 Mass LEXIS 225.*



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*ALM GL ch. 111, § 116 (2008)*

**§ 116. Payment of Certain Expense Regulated.**

Reasonable expenses incurred by boards of health or by the commonwealth in making the provision required by law for persons infected with smallpox or other disease dangerous to the public health, other than tuberculosis, shall be paid by such persons, or, if such person is a minor, by his parents, if he or they are able to pay; otherwise, by the town where he has a residence upon the approval of the bill by the board of health of such town or by the department of public health of such town or by the department of public health when such person is determined to be a chronically nonresident person.

For the purposes of this section the term "chronically nonresident person" means a person who evidences by his past conduct an inability or unwillingness to establish and maintain a residency with any degree of permanency and whose instability and general living standards in exposing himself and others to infection makes him a special problem for control in the commonwealth of smallpox or other disease dangerous to the public health.

**HISTORY:** 1701-2, 9, §§ 1, 2; 1797, 16, § 1; RS 1836, 21, § 16; 1837, 244, § 1; 1848, 119; GS 1860, 26, § 16; 1874, 121, § 2; PS 1882, 80, §§ 40, 83; RL 1902, 75, § 57; 1902, 213, §§ 1, 3; 1907, 386, § 1; 1909, 380; 1919, 350, §§ 87, 96; 1926, 241, § 3; 1927, 91; 1931, 394, § 117; 1943, 275, § 1; 1961, 608, § 11; 1964, 339, § 1; 1967, 508.

**NOTES:**

**Editorial Note**

**The 1961 amendment**, in the first sentence of the section, inserted "other than tuberculosis".

**The 1964 amendment** rewrote this section.

**The 1967 amendment** added in the first paragraph, after the words "such persons" the words ", or, if such person is a minor," struck out at the end of the sentence the words "as defined in section eighty," and added a new paragraph to define a chronically nonresident person.

**Code of Massachusetts Regulations**

Massachusetts contingency plan. *310 CMR 40.0001* et seq.

**Annotations**

Infant's liability for medical, dental, or hospital services. *53 ALR4th 1249*.

**CASE NOTES**

## 105 CMR 172.001

Dog bite requiring anti-rabid treatment is a disease dangerous to the public health within the meaning of this section. *Bryant v. Nolin (1927) 261 Mass 358, 158 NE 791, 1927 Mass LEXIS 1358.*

After a physician has once reported a case of tuberculosis to the local board of health, in the event that the patient leaves the city or town temporarily, he is not obliged under the provisions of law, when the patient returns, to report the case again to the local board of health, nor is the latter obliged so to report it to the state department of health. *4 Op A G 470, 474.*

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*105 CMR 172.001 (2008)*

172.001: Definitions

Care Provider shall mean any person including, without limitation, an emergency medical technician (EMT), an EMS first responder (EFR), both as defined in *105 CMR 170.020*, a first responder, as defined in *105 CMR 171.050* or corrections officer, who, while acting in his or her professional capacity, attends, assists or transports a person to a health care facility.

## 105 CMR 172.001

Designated Infection Control Officer shall mean the officer appointed by each ambulance service, EMS first response (EFR) service, as defined in *105 CMR 170.020*, and first responder agency, as defined in *105 CMR 171.050*, for the purposes of, but need not be limited to, (1) receiving notifications of exposures to infectious diseases dangerous to the public health from health care facilities and (2) notifying the indicated care provider(s) of an exposure to an infectious disease dangerous to the public health.

Infectious Disease Dangerous to the Public Health for the purpose of *105 CMR 172.000* shall mean:

- (1) Airborne Diseases
  - (a) Infectious tuberculosis (Mycobacterium -- pulmonary, laryngeal and others)
  - (b) Measles, Mumps, Rubella, and Chickenpox
- (2) Bloodborne Diseases
  - (a) Hepatitis B
  - (b) Human immunodeficiency virus infection (including acquired immunodeficiency syndrome (AIDS))
  - (c) Hepatitis C
- (3) Uncommon or Rare Diseases
  - (a) Diphtheria (Corynebacterium diphtheria)
  - (b) Meningococcal disease (Neisseria meningitidis)
  - (c) Plague (Yersinia pestis)
  - (d) Hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, and other viruses yet to be identified)
  - (e) Rabies
  - (f) Severe Acute Respiratory Syndrome (SARS) (including infection with the SARS-associated coronavirus)
  - (g) Smallpox, monkeypox and infection with any other orthopox virus in humans (including vaccinia).

Diagnosis for the purposes of *105 CMR 172.000* shall mean a determination by a physician that a person is currently suffering from an infectious disease dangerous to the public health and is capable of transmitting said infectious disease or demonstrates laboratory evidence of exposure to such a disease.

Health Care Facility shall mean any hospital, clinic or institution that is licensed by the Department under *M.G.L. c. 111, § 51*.

Patient shall mean any individual attended to or assisted by a care provider and who is transported to any health care facility.

Transporting Care Provider shall mean the care provider who transports the patient to a health care facility.

Trip Record shall mean a report or other written record, such as a dispatch record, generated by all services to document every response to an EMS call, including each time an EMS vehicle or first response vehicle is dispatched, whether or not a patient is encountered or ultimately transported by an ambulance service.

Unprotected Exposure shall mean an exposure capable of transmitting a bloodborne infectious disease dangerous to the public health as defined in *105 CMR 172.001* and is limited to the following:

- (1) Puncture wounds - including punctures resulting from:
  - (a) used needles;
  - (b) glass and other sharp objects contaminated with blood; or
  - (c) human bites;

105 CMR 172.001

- (2) Blood to blood contact through open wounds, which includes: open cuts, sores, rashes, abrasions or conditions that interrupt skin integrity; and
- (3) Mucous membrane contact - including such contact as would occur with mouth to mouth resuscitation or eye splashing with infected fluids. Such fluids would include: blood, sputum, oral and nasal secretions.

Unprotected Exposure Form shall mean a standardized form, developed and distributed by the Department of Public Health, which shall contain, but need not be limited to, the following:

- (1) identifying information about the patient, including his/her name, address and incident location;
- (2) identifying information about the ambulance and EFR service(s) and first responder agency(ies) that responded to the call;
- (3) identifying information about the care provider who may have sustained an unprotected exposure including his/her name, address, and the specific nature of his/her potential exposure; and
- (4) name of the designated infection control officer for the service completing the report.

**REGULATORY AUTHORITY**

*105 CMR 172.000: M.G.L. c. 111 and 111C*

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*105 CMR 172.002 (2008)*

172.002: Submission and Maintenance of the Unprotected Exposure Form

(A) Immediately upon arrival at a health care facility, the transporting care provider shall provide the admitting agent or appropriate employee of the health care facility with an Unprotected Exposure Form for every patient transported from whom the care provider may have suffered an unprotected exposure.

(B) Other care providers who may have sustained an unprotected exposure shall file at the health care facility to which the patient was transported an Unprotected Exposure Form for every patient from whom he or she may have suffered an unprotected exposure, within 24 hours of said exposure.

(C) Each health care facility shall maintain the Unprotected Exposure Form in one safe and centralized location on its premises in accordance with *105 CMR 172.006*. Such forms shall be so maintained for a minimum of seven years and shall be made available promptly to any agent of the Department seeking to determine compliance with *105 CMR 172.000*. The forms may be released by the health care facility only in accordance with federal or state law or regulation, court order, or subpoena.

(D) In the case of a patient identified on an Unprotected Exposure Form who is transferred to another health care facility before a diagnosis of an infectious disease dangerous to the public health has been made, the transferring facility shall file a copy of the Unprotected Exposure Form(s) with the receiving facility.

(E) Any health care facility receiving an Unprotected Exposure Form pursuant to *105 CMR 172.002(D)* shall comply with all applicable requirements of *105 CMR 172.000 et seq.*

REGULATORY AUTHORITY

*105 CMR 172.000*; M.G.L. c. 111 and 111C

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*105 CMR 172.003 (2008)*

172.003: Notice to Care Providers Who Have Sustained an Exposure to an Infectious Disease Dangerous to the Public Health

(A) Any health care facility that diagnoses a patient as having a bloodborne infectious disease dangerous to the public health, as defined in *105 CMR 172.001*, shall notify orally, and in writing, the designated infection control officer for the care provider(s) submitting the Unprotected Exposure Form who has sustained an unprotected exposure that in the opinion of the health care facility is capable of transmitting such disease. Oral notification shall occur within 48 hours of diagnosis. Written notice of such exposure shall occur within 72 hours of diagnosis. Upon notification, the designated infection control officer shall notify the exposed care provider.

(B) Any health care facility that diagnoses a patient as having an airborne or uncommon or rare infectious disease dangerous to the public health, as defined in *105 CMR 172.001*, shall notify the designated infection control officer for the care providers who transported the patient as soon as practicable, but not later than 48 hours after diagnosis. Upon notification, the designated infection control officer shall notify the exposed care provider.

(C) The notice shall include, but need not be limited to: the appropriate precautions and actions that should be taken by the care provider who has sustained the exposure to an infectious disease dangerous to the public health, the identity of the disease to which the individual has been exposed, instructions to the care provider to contact his/her personal physician for medical follow-up, and information regarding immediate precautions necessary to prevent transmission of the disease to others. The notice shall clearly indicate that such exposure does not constitute a diagnosis of an infectious disease dangerous to the public health.

(D) Notice to the care provider(s) who has sustained an exposure to an infectious disease dangerous to the public health shall be made in a manner so as to assure that such notice is conveyed by the health care facility only to the designated infection control officer for the individual(s). Delivery of the written notice by common carrier such as first class mail to the designated infection control officer shall satisfy these terms. Upon notification, the designated infection control officer shall notify the exposed care provider.

(E) The identity of the patient diagnosed as having an infectious disease dangerous to the public health as defined in *105 CMR 172.001* shall not be released either orally or in writing by the health care facility to the designated infection control officer for the care provider or to the care provider who has sustained the exposure and the patient's name shall be kept confidential in accordance with *M.G.L. c. 111, § 70*.

(F) The health care facility shall notify only those designated infection control officers for the care provider(s) who has sustained an exposure to an infectious disease dangerous to the public health that, in the opinion of the facility, is capable of transmitting the disease.

REGULATORY AUTHORITY

*105 CMR 172.000*: M.G.L. c. 111 and 111C

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*105 CMR 172.004 (2008)*

172.004: Notice To A Patient Diagnosed as Having an Infectious Disease Dangerous to the Public Health

(A) Any health care facility that notifies a designated infection control officer for a care provider who has sustained an exposure to an infectious disease dangerous to the public health, shall inform the patient diagnosed as having an infectious disease dangerous to the public health, as defined in *105 CMR 172.000*, or the patient's legal guardian, if known, that a designated infection control officer for the exposed care provider(s) has been notified of an exposure capable of transmitting his/her disease pursuant to *105 CMR 172.000*.

(B) The health care facility's notice to the patient shall confirm that only the designated infection control officer for the care provider(s) who has sustained the exposure to an infectious disease dangerous to the public health, as defined in *105 CMR 172.000*, has been notified of such exposure, that the patient's name has been kept confidential, and that the notice of the exposure and recommendations concerning precautions and actions will be given to the exposed care provider(s).

(C) The health care facility shall not delay notice to the designated infection control officer for the care provider as required under *105 CMR 172.003* in order to first notify a patient under *105 CMR 172.004*.

REGULATORY AUTHORITY

*105 CMR 172.000: M.G.L. c. 111 and 111C*

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*105 CMR 172.005 (2008)*

172.005: Record of the Notice

The health care facility shall clearly document notice to the designated infection control officer for the care providers and patients as required by *105 CMR 172.000*.

REGULATORY AUTHORITY

*105 CMR 172.000*: M.G.L. c. 111 and 111C

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*105 CMR 172.006 (2008)*

172.006: Policies and Procedures

(A) Each health care facility shall develop and implement written policies and procedures for complying with the provisions of *M.G.L. c. 111, § 111C* and *105 CMR 172.000*.

(B) Such policies and procedures at a minimum shall address the following:

- (1) Identification of the person(s) authorized to receive the Unprotected Exposure Form;
- (2) Identification of the person(s) qualified to determine whether or not the reported unprotected exposure is capable of transmitting a bloodborne infectious disease dangerous to the public health as defined in *105 CMR 172.001*;
- (3) Identification of the authorized person(s) responsible for notifying the designated infection control officer for the care providers who have sustained an exposure that in the opinion of the health care facility is capable of transmitting an infectious disease dangerous to the public health;
- (4) Identification of the person(s) qualified to recommend the appropriate precautions, instructions and other advice to be given to the designated infection control officer for the care provider(s) who has sustained an exposure(s) to an infectious disease dangerous to the public health;
- (5) Maintenance of the confidentiality of the Unprotected Exposure Form and of the identity of the patients and care providers; and
- (6) Procedures to ensure that all reasonable efforts will be made to inform the patient of his or her diagnosis of an infectious disease dangerous to the public health prior to informing, within the time frame set forth in *105 CMR 172.000*, the designated infection control officer for the care provider who has sustained an exposure to an infectious disease dangerous to the public health.

REGULATORY AUTHORITY

*105 CMR 172.000*: M.G.L. c. 111 and 111C



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*105 CMR 172.007 (2008)*

172.007: Declaring an Infectious Disease Immediately Subject to Notification to Care Providers and Patients Under 105 CMR 172.000

In addition to the infectious diseases dangerous to the public health as defined in *105 CMR 172.001*, the Commissioner, as necessary to reduce morbidity and mortality among care providers, may declare, on a time-limited basis, other infectious diseases newly recognized or recently identified as infectious diseases dangerous to the public health and subject to the provisions of *105 CMR 172.000*. Such declarations shall be authorized for a period of time not to exceed 12 months. Continued application beyond 12 months of the requirements of *105 CMR 172.000* to infectious diseases so declared by the Commissioner as dangerous to the public health shall be pursuant to a revision of *105 CMR 172.000*.

REGULATORY AUTHORITY

*105 CMR 172.000*: M.G.L. c. 111 and 111C