



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
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To: BSAS Licensed and/or Approved Providers
From: Deirdre Calvert, Director, Bureau of Substance Addiction Services
Re: Clarification of Operational and Licensed Capacity and Expectation of Providers
Date: February 27, 2024

This memo is to clarify operational and licensed capacity of BSAS Licensed or Approved bedded services and expectation of Providers who operate bedded programs.

Background

As indicated in the [105 CMR 164 Staffing Regulation Guidance](#), Providers are required to staff to license capacity. However, updates to 105 CMR 164 allow programs to staff according to the census. Providers are required to admit new patients up to their license capacity as needed and must have staff on call to ensure operational continuity should the census increase.

Licensed and Approved Providers are expected to demonstrate minimum staffing requirements as outlined in the [BSAS Staffing Guidelines](#). Unless the Department is notified of a temporary change in an operational capacity, insufficient staffing should not be a barrier to admissions up to a Provider's licensed capacity. Providers are expected to have sufficient staff to respond to an increase in the census.

The operational and licensed capacity of a BSAS Licensed or Approved Provider should align. However, given workforce challenges across the Commonwealth, BSAS recognizes that operational capacity may occasionally fall below the Licensed or Approved Capacity of a program.

Definitions

Licensed or Approved Capacity is the maximum limit at which a program may admit patients. This appears as a number of beds listed on a BSAS License or Approval. Providers may not admit patients beyond their Licensed or Approved Capacity

Operational Capacity is the number of patients a program is currently capable of serving based on staffing available.

Guaranteeing Admissions Up to Licensed Capacity

Pursuant to 105 CMR 164.048 (D) and 105 CMR 164.548 (B) 1&3 Providers must make every reasonable effort to provide sufficient staff in order to guarantee admissions up to their licensed capacity.

Providers must conform to applicable patient to staff ratios as outlined in BSAS Staffing Standards. To view BSAS Staffing Standard grids please see the Resources section here: <https://www.mass.gov/info-details/information-for-licensed-substance-use-disorder-treatment-programs>.

If a Provider is unable to admit a patient to their Licensed or Approved capacity because of an insufficient staffing ratio or is unable to establish shift coverage to ensure the required services are provided, the safety of patients, residents and staff, and the program is operating in accordance with 105 CMR 164.000, then the Provider reduce operational capacity below their Licensed Capacity and must notify BSAS of this change.

To submit a required notification to BSAS, please use the form here: <https://www.mass.gov/doc/health-and-safety-required-notification-form-0/download>

Pursuant to 105 CMR 164.040 Written Policies, Providers must have an admissions policy, which includes the process for direct referrals to like services if unable to admit patients because of changes in operational capacity. In the event of a change in operational capacity, the admission policy should identify where patients would be referred, the description for the process, and a process for waitlist management.

Notification of Temporary Changes in Operational Capacity

Pursuant to 105 CMR 164.035 (D), 105 CMR 164.535 (D), and 105 CMR 164.620 (E) Change of Program or Service Provision a Licensed or Approved Provider shall submit a required notification at least 30 calendar days before any change in program or service provision, which includes a reduction in operational capacity below the licensed capacity. However, if a change in operational capacity is a result of unforeseen staffing challenges, a required notification must be sent to the Department within 24 hours following the change.

Notification regarding changes in operational capacity informs the HelpLine of bed availability in Massachusetts. The Helpline is a statewide, public resource for finding substance use treatment.

Notification of a change in Operational Capacity must include the reason for the change, the plan for hiring vacant positions, and timeline for returning to admissions up to Licensed Capacity.

Extended Changes to Operational Capacity

In certain instances, the Operational Capacity of a program may temporarily fall below the Licensed Capacity because of short term staffing challenges. However, Providers with extended or prolonged changes in Operational Capacity may be required by BSAS to amend their Licensed Capacity to align with Operational Capacity.

During the renewal process and site inspection, BSAS will review and determine the staffing vacancies and coverage pattern. It is the responsibility of the Provider to identify the Licensed Capacity within renewal applications. The Licensed Capacity identified must align with coverage plans according to minimum staffing requirements as outlined by the Department to ensure health and safety.

If the Operational Capacity has dipped below Licensed Capacity for an extended period of time, it is within the discretion of the Department and BSAS, pursuant to 105 CMR 164.011 (E), to align the Licensed or Approved Capacity and Operational Capacity of the program during the renewal process.