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**TO: BUREAU OF SUBSTANCE ADDICTION SERVICES LICENSED AND APPROVED PROVIDERS**

**FROM: DEIRDRE CALVERT, DIRECTOR, BUREAU OF SUBSTANCE ADDICTION SERVICES**

**SUBJECT: PROGRAM CLOSURE**

**DATE: JANUARY 17, 2024**

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This document is intended to issue guidance to all Licensed and Approved Providers by the Massachusetts Department of Public Health's (DPH or Department) Bureau of Substance Addiction Services (BSAS) regarding temporary, permanent, and emergency program closures in substance use disorder (SUD) treatment services.

BSAS encourages the review of applicable regulation guidance and recommends that stakeholders with specific questions contact their License Inspector:  
<https://www.mass.gov/service-details/information-for-licensed-substance-use-disorder-treatment-programs>

BSAS encourages all providers to review the new regulation, promulgated in November 2022, in its entirety, which may be found at the following link: <https://www.mass.gov/regulations/105-CMR-16400-licensure-of-substance-abuse-treatment-programs>

**Permanent and Temporary Program or Service Closure | Required Notification to BSAS**

Pursuant to 164.035 (B) & (C), 164.086, 164.087, and 164.535 (B) & (C), 164.586, 164.587 and 164.620 (B), (C), and (D), Licensed and/or Approved Providers must notify BSAS, each patient, resident, and staff member of the program, the public, and each labor organization that represents the facility's workforce at the time of notice, of any planned temporary or permanent program or service closure.

Regulation requires that notice of the planned closure must be made to BSAS in writing at least 90 calendar days prior to service or program closure (except for Providers Approved under 105 CMR 164.600, who must follow all applicable BSAS-issued standards). The notification of

closure must be documented in each patient's or resident's record. The notification of closure shall specify the date of closure.

Pursuant to 105 CMR 164.087 (C) and 105 CMR 164.587 (C), the Commissioner may waive the 90-day time frame for initial notification of program or service closure in circumstances where the Commissioner has determined such a waiver is necessary to protect the health, safety, and well-being of the patients and residents served by the program. All requests for waiver of any regulatory requirement are subject to 105 CMR 164.023, 164.523, and 164.623. The waiver form can be located within this link. All waiver applications are to be completed and sent to the program's License Inspector via email.

In addition to notifying BSAS, providers must comply with their other state and federal regulating authorities' communication expectation regarding the closure.

For all required notification forms and waiver applications please see our website here: <https://www.mass.gov/info-details/information-for-licensed-substance-use-disorder-treatment-programs>

### **Permanent and Temporary Program or Service Closure | Expectations of Provider**

Providers may only close after approval from BSAS. To close a program or service, permanently or temporarily, Providers shall submit a program closure application to BSAS through BSAS eLicensing on Virtual Gateway. For more information on how to submit a closure application to BSAS, Providers are encouraged to contact their License Inspector. Contact information can be found on our website here: <https://www.mass.gov/service-details/information-for-licensed-substance-use-disorder-treatment-programs>

Providers must develop a written referral plan in collaboration with each patient and resident which includes a plan for continuing the patient's or resident's SUD treatment. This includes directly connecting patients and residents to an appropriate provider for continued treatment. If required, the Provider shall coordinate with BSAS and the patient or resident to ensure an appropriate referral is completed.

With appropriate consent, the Provider shall transfer the record of the patient or resident to the new treatment program or, if the record is not transferred, the Program shall make every effort to provide a copy of the record to all current patients or residents.

When permanently closing a program or service, Providers must ensure that all records not transferred to a new facility with the patient or resident are securely stored for the remainder of the seven-year period in accordance with 105 CMR 164.085(A). Providers shall prepay the full cost of such storage and shall enter into appropriate contracts to ensure that the records are maintained for the entire period, and that the records are destroyed at the end of the applicable period in a manner that protects confidentiality.

In the event of a temporary program closure, it should be noted that temporary closures may not exceed 6 months. If a Provider indicates need for a temporary closure beyond 6 months, BSAS

will redirect the Provider to complete a permanent closure application. Providers that permanently close may reapply for the program or service licensure, and, when approved by BSAS, may reopen.

If a proposed closure is temporary, Providers must submit the following as part of their closure application to BSAS:

- A narrative describing the reason for temporary closure;
- A plan to ensure continuity of treatment for patients or residents during the temporary closure;
- The date the program or service expects to close and re-open;
- A plan for re-opening which shall include, at a minimum, the following components:
  - Any anticipated changes in bed numbers (if applicable) upon re-opening.
  - Any anticipated impact on service delivery, program oversight and supervision upon re-opening.
  - Any anticipated staffing changes upon re-opening, and how new and existing staff will be onboarded prior to re-opening.
  - Any anticipated impact on existing program policies and procedures, and how these will be addressed prior to re-opening.
- Written affirmation that the program will submit a Required Notification to BSAS at least 14 business days prior to the proposed re-open date.

For more information on how to submit a closure application to BSAS, please contact your BSAS Licensing Inspector. All contact information is available here: <https://www.mass.gov/info-details/information-for-licensed-substance-use-disorder-treatment-programs>

### **Program License Expiration**

It is the responsibility of all Licensed or Approved Providers to submit a timely renewal application in accordance with 105 CMR 164.000. Applications for renewal must be submitted to the Department 60 days prior to the expiration of the License or Approval. Should a Provider fail to submit a timely renewal application, and remain unresponsive to outreach attempts by BSAS, the License or Approval shall expire and BSAS shall formally notify the Provider in writing of the permanent closure to the expired License or Approval.

Providers shall ensure that at least two individuals maintain access to the eLicensing system at all times; notifications from the system will be issued 90 days in advance of the license expiration date allowing access to the renewal application.

### **Reopening Following Temporary Closure**

To reopen or resume operations following a temporary closure, the Provider must receive approval from BSAS through an application within the BSAS eLicensing Virtual Gateway. Providers must receive an updated license from BSAS to resume SUD treatment services.

As the anticipated date to reopen approaches, as indicated in the plan for reopening within the temporary closure application (described above), the Provider shall send a Required Notification to BSAS at least 14 business days prior to the anticipated reopening date.

Following receipt of the Required Notification, BSAS will direct the Provider to complete the appropriate application in BSAS eLicensing. As part of the application, the provider shall respond to all application questions, including the following related to the provider's plan to reopen:

- Identify the number of beds that will be reopening (if applicable)
  - To ensure sufficient staffing for the number of beds that will be coming back on-line, the staff to patient/resident ratios must conform to applicable service setting staffing requirements.
- Updated staffing and schedules.
- Provide evidence of onboarding any new staff (if applicable)
- Describe the plan for conducting supervision and oversight.
- Identify any changes in service delivery.
- Submit any updated policies and procedures because of the change in service delivery.

BSAS reserves the right to conduct a site inspection before approving the Provider's application to reopen or resume services.

Once the application to reopen is approved the Licensing Inspector will provide an updated copy of the License or Approval. The Provider may then reopen and resume SUD treatment services.

### **Emergency Program Closure | Required Notification to BSAS**

If a Provider determines that the health, safety, or well-being of patients or residents is in imminent danger because of conditions existing within the program, and, as a result, must interrupt or suspend services of the program on an emergency basis, the Provider shall notify BSAS immediately upon becoming aware of the danger to patients or residents and comply with 105 CMR 164.086 and 105 CMR 164.062.

Providers should contact their Licensing Inspector. All contact information is available here: <https://www.mass.gov/info-details/information-for-licensed-substance-use-disorder-treatment-programs>

In addition to notifying BSAS, providers must comply with their other state and federal regulating authorities' communication expectation regarding the emergency closure.

### **Maintenance of Essential Services for Providers Who Store/Dispense Medication**

When a Provider who stores and/or dispenses medication closes for any reason, including in the event of an emergency, the closure plan must include provisions for safe storage of medication and for continuity of SUD treatment services for patients and residents. Licensed and Approved Providers must ensure continuity of essential services through modification of operations, subject to approval by the Department, which are specific to the type of applicable closure.

### **Applicable Regulations in 105 CMR 164 for Program Closures**

164.035 (B) & (C): Required Notification

164.062: All Hazard and Emergency Planning and Procedures

164.087: Closure

164.085 (B): Transfer and Storage of Service Records

164.086: Interruption or Suspension of Service

164.304 (B) Closure or Cessation of Operation (Opioid Treatment Program)

***DMH licensees, HCQ licensees, and Agencies of the Commonwealth***

164.535 (B) & (C): Required Notification

164.586: Interruption or Suspension of Service

164.587: Closure

***Penal Facilities***

164.605: Scope

164.620 (B), (C) & (D): Required Notification