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TO: BSAS LICENSEES, PROVIDERS, AND STAKEHOLDERS

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

**SUBJECT: UPDATES TO REGULATIONS RELATED TO STAFFING
105 CMR 164.000 – LICENSURE OF SUBSTANCE USE DISORDER TREATMENT PROGRAMS**

DATE: SEPTEMBER 27, 2023

This document is intended to issue guidance to all providers licensed/approved otherwise referred to as “providers” by the Massachusetts Department of Public Health’s (DPH) Bureau of Substance Addiction Services (BSAS) regarding compliance with new requirements for staffing in BSAS’ regulation for *Licensure of Substance Use Disorder Treatment Programs*, 105 CMR 164.000.

BSAS recognizes that each situation has its unique facts and circumstances and encourages stakeholders with specific questions to contact your Regional License Inspector: <https://www.mass.gov/service-details/information-for-licensed-substance-use-disorder-treatment-programs>

BSAS encourages all providers to review the updated regulation 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>

Changes to Existing Definitions in 105 CMR 164.005:

Please see the following list of amendments that impact staffing requirements, with changes indicated in **bold**:

- **Program Director**: The definition for Program Director has been revised to the individual employed by the **Licensed or Approved Provider** who is responsible for the **administrative and programmatic** day-to-day operations of a program of substance use disorder treatment services and may provide **supervision of all non-clinical staff**.

- **Qualified Health Care Professional**: The definition for Qualified Health Care Professional has been revised to a **Practitioner**, Registered Nurse, or Licensed Practical Nurse trained to do physical assessments.
- **Recovery Specialist**: Recovery Specialists will now be required to **complete the orientation requirements pursuant to 105 CMR 164.044(B)(1) and population-specific addiction treatment training requirements pursuant to 105 CMR 164.004(B)(2)(f)** to provide guidance and direction to residents **or patients** and oversee resident **or patient** activities to ensure conformance with program policies.
- **Senior Clinician**: The definition for Senior Clinician has been revised to an individual who is a **LADC I, or other independently licensed individual** who has at least a **master's degree in one of the following disciplines or a closely related field**: clinical psychology, education-counseling, medicine, mental health, psychology, psychiatric nursing, rehabilitative counseling, social work; and **two years of supervised substance use disorder counseling experience**; and at least **one-year full-time equivalent year of clinical supervisory experience**.
 - This role may also be known as the Clinical Director or the Clinical Supervisor
 - **Prior to January 1, 2028, Senior Clinicians may include an individual who** possesses at least a **master's degree** in one of the following disciplines or a closely related field: clinical psychology, education-counseling, medicine, mental health, psychology, psychiatric nursing, rehabilitative counseling, social work; has **two years of supervised substance use disorder counseling experience**; and at least **one year full-time equivalent year of clinical supervisory experience**; **and has previously acted as a Senior Clinician for more than two years.**
 - The addition of this glide path into the definition of Senior Clinician is meant to allow individuals who have served as a Senior Clinician for at least 2 years the opportunity to continue to serve as Senior Clinician while pursuing independent licensure.
 - The glide path only applies to individuals who have served as a Senior Clinician in a BSAS Licensed or Approved SUD Treatment Program for at least 2 years prior to the promulgation of the updates to 105 CMR 164 on November 11, 2022.
 - This includes individuals who, prior to the promulgation of the updates to 105 CMR 164, served as a Senior Clinician for more than two years in the same BSAS Licensed or Approved SUD Treatment Program in which they are currently employed, **and** individuals who cumulatively, have served as a Senior Clinician for more than 2 years in any BSAS Licensed or Approved SUD Treatment Program prior to the promulgation of the updated regulations.
 - In these two scenarios a Licensed or Approved Provider would not be required to submit a waiver request to BSAS, pursuant to 105 CMR 164.023, for an applicable individual to meet the definition of Senior Clinician until January 1, 2028.
 - However, if a Senior Clinician was hired prior to, or after the promulgation of the regulations on November 11, 2022, and has not served as a Senior Clinician for at least 2 years, a waiver request would need to be submitted

to BSAS for the definition of Senior Clinician pertaining to the new requirement for independent licensure.

New Definitions in 105 CMR 164.005:

- **Aftercare Coordinator**: an individual responsible for identifying appropriate continuing care and post discharge services and resources while working to ensure a smooth transition to the next phase in the adolescent's or transition age youth's recovery plan.
- **Children's Services Assistant**: a person with, at minimum, an Associate in Arts or equivalent education and training in child development, child psychology, and childhood education and at least 3 years of experience working with families and children, substance use and mental health disorders who works under the supervision of the Child Service Coordinator and assists in developing the children's part of the service plan, overseeing the children's activities, parenting classes, and educational needs of the children.
- **Children's Services Coordinator**: a person with, at minimum, a Bachelor's degree in Early Childhood Education, Special Education, Psychology, or a related field, or a Bachelor's degree in an unrelated field with 4 courses or 12 credits in Early Childhood Education, Special Education, Psychology, or a related field who has experience or knowledge of parent-child dyadic work.
- **Educational Coordinator**: an individual responsible for coordinating the educational progress of adolescents or transition age youth during treatment, who acts as a liaison between school districts or placements and the adolescents or transition age youth residents of residential treatment program, to ensure the residents are receiving and completing work and who support the residents in completing this educational work while at the residential treatment program.
- **Practitioner**: a Physician, Physician Assistant, or Advanced Practice Registered Nurse as those terms are defined in 105 CMR 164.005, acting within the applicable scope of service and pursuant to state and federal law.

Summary of Changes to 105 CMR 164.048: Staffing Pattern

Historically, BSAS Staffing Guidelines required programs to staff to license capacity, however, the new regulations will allow programs to staff according to the census. Please note that providers will be required to continue 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.

The Provider is 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.

Please see the following amendments to sections regarding staffing in the Regulation, with revisions indicated in **bold**:

164.048: Staffing Pattern

(A) The **Licensed or Approved Provider** shall provide an adequate number of qualified personnel to fulfill the service objectives **and needs of each patient or resident served based upon acuity, patient assessments, treatment plans, and other relevant factors as determined by the Licensed or Approved Provider**. At a minimum, such staffing shall include a **Program Director who shall administer the day-to-day operations of the facility and who shall be on the premises during regular business hours**. In the absence of the Program Director, a professional staff person shall be designated to act in their place. The Licensed or Approved Provider shall provide the designee with contact information for the administration in the event of an emergency.

While a Program Director has always been required, the requirement has been moved from 105 CMR 164.030 (E) Governance to 164.048 Staffing Pattern.

(D) The Licensed or Approved Provider shall establish a staffing pattern **sufficient to meet the program's patient or resident acuity**, which includes paid staff in numbers, qualifications, and shift coverage to ensure:

- (1) **Required services are provided;**
- (2) **Safety of patients, residents, and staff; and**
- (3) **The program operates in accordance with 105 CMR 164.000.** The Department may issue guidance specifying minimum numbers of staff and may determine that a staffing pattern is insufficient to ensure 105 CMR 164.048(D)(1) through (3). **Providers must make every reasonable effort to provide sufficient staff in order to guarantee admissions up to their licensed capacity.**

Department of Mental Health (DMH) Licensees, Bureau of Health Care Safety and Quality (HCQ) Licensees, and Agencies of The Commonwealth

As part of the changes to the Regulation, BSAS created a separate section "Part Three" which applies to substance use disorder programs operated by agencies of the Commonwealth, such as the Department of Mental Health (DMH), and/or operated within a facility already licensed by an agency of the Commonwealth, such as the Bureau of Health Care Safety and Quality (HCQ). The new Part Three is intended to streamline licensure for Commonwealth operated or licensed programs. These requirements were previously located under 105 CMR 164.012: *License*.

- The staffing pattern requirements for DMH, HCQ, and other agencies of the Commonwealth falling within this section are located at 105 CMR 164.548: Staffing Pattern. Programs must provide sufficient staffing to meet the needs and safety of the patients, allow for the provision of required services, and meet all other requirements of the regulation.
- Providers under Part Three of the Regulation will now be required to have a Program Director.

All service settings under Part Three are now required to have a multi-disciplinary team per 105 CMR 164.548 (A) 2.

Historically, BSAS Staffing Guidelines required programs to staff to license capacity, however, the new regulations will allow programs to staff according to the census.

Additional Staffing Changes for All Providers

- Programs providing withdrawal management under 105 CMR 164.132, may now be able to provide a less intensive service using its existing license as long as the program has the required programming and required staff for that service setting. Programs will be expected to demonstrate evidence of staffing capacity to provide the less intensive service.
- Any program that serves persons who identify as male, female, or non-binary must now have a plan in place to ensure at least one direct care staff person on-site who identifies male, female, and/or non-binary on each overnight shift.
- Other Practitioners (please see new definition above) may provide medical evaluations and sign orders pursuant to their scope of licensure as a result of the revised definition of Qualified Health Care Professionals.
- Nursing supervision allows for Licensed Practical Nurses or other Qualified Health Care Professionals with appropriate skills and supervision experience to provide supervision. For changes related to Supervision please see: <https://www.mass.gov/doc/ar-9802-the-lpn-in-charge-or-nurse-supervisor-role-0/download>

Coverage Minimums

Please see the following coverage minimums for each service setting and the applicable sections of the Regulations:

- 24-hour Diversionary Withdrawal Management Services (section 164.134)
- 24-hour Diversionary Services for Adolescents (patients under 18 years) (section 164.134(B)(8))
- Adult Clinical Stabilization Service (CSS) (sections 164.150 and 164.153)
- Adult Residential Rehabilitation Services (RRS) (section 164.424(B))
- Co-occurring Enhanced Residential Services (sections 164.423(F) and 164.424)
- Residential Rehabilitation Services for Adults with Families (section 164.433)
- Residential Rehabilitation Services for Adolescent and Transitional Age Youth (sections 164.440 and 164.444)
- Operating Under the Influence Second Offender Program (section 164.454)
- Outpatient (sections 164.200 and 164.202(D))
- Outpatient Withdrawal Treatment Services (sections 164.202(D) and 164.208)
- Acupuncture Withdrawal Management (sections 164.243 and 164.202)
- Office Based Opioid Treatment (OBOT) (section 164.202(D))
- Opioid Treatment Program (section 164.314)