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## Memorandum

To: All BSAS Licensees

From: Deirdre Calvert, LICSW, Director of the Bureau of Substance Addiction Services

Date: April 7, 2020

Re: Waiver from Certain Regulatory Requirements

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On March 10, 2020, Governor Baker declared a State of Emergency in response to the outbreak of Coronavirus Disease 2019 (COVID-19). Substance Use Disorder programs (programs) are considered essential services, and it is therefore imperative that the treatment system remain responsive to the needs of individuals seeking treatment during the public health emergency.

The Department of Public Health (DPH)/Bureau of Addiction Services (BSAS) understands the unique challenges that programs face, however, programs must ensure that operations continue, and that new patients are admitted. Towards this end, the Department is encouraging programs to consider sharing resources, utilizing telehealth whenever appropriate, and evaluating the merits of consolidating programs to maximize resources. It is the responsibility of the programs to ensure that appropriate measures are in place (e.g.; Qualified Service Organization Agreements etc.) to facilitate these changes.

Similarly, the Department continues to explore ways to provide programs additional flexibility, and recognizes the need for relief from certain regulatory requirements at this time.

Therefore, while the Department strongly encourages full compliance where programs are able, it is issuing the following blanket Waivers pursuant to 105 CMR 164.023(B) in the event that full compliance (1) presents an undue hardship; (2) that the program's non-compliance does not jeopardize the health or safety of its clients, and (3) it does not limit the program's capacity to provide the services it is licensed for.

The following Waivers are in effect until rescinded by the Department. No further action or requests for approvals are required by programs at this time.

## **PART ONE WAIVERS:**

### 164.035(E) Change of Program or Service Provision:

The Department is issuing a blanket Waiver from the 30 day notification requirement provided that the program notifies the Department at least 48 hours in advance before any change in program or service provisions is implemented. The intent of the Waiver is to provide programs with the flexibility to make changes to their programs, excluding reductions in capacity, to better serve patients and residents.

For example if programs are transitioning from serving males to incorporating females in order to accommodate need, these adjustments may be made more quickly. Similarly, if a program has the staffing to increase capacity beyond what it is licensed for (and the increase complies with all other state and local requirements), the 30 day period will be waived. This process is not intended for programs to reduce capacity. Instead, programs should contact their regional inspector to discuss operational challenges.

Additionally, to expedite the process, programs may submit their plans for changes through the Required Notification process and will not be required to submit an amendment to the application. Please note that the program must still obtain express written approval from the Department prior to implementing the proposed change.

#### *Reminder on Required Notification Procedure:*

While the Department is aware that programs may be experiencing disruptions to staffing at this time, please ensure that staff that are responsible for providing Required Notifications to the Department are properly trained in the correct procedure. The form in the link below should be sent to DPH-BSAS fax line 617-624-5395.

<https://www.mass.gov/service-details/information-for-licensed-substance-use-disorder-treatment-programs>

In the event the program does not have access to a fax, notifications can be emailed to the Regional Manager or Licensing Inspector. Please note any notification sent via email can not contain any patient identifying information

### 164.048 Staffing Pattern:

The Department recognizes the staffing challenges that programs face at this time. For this reason, the Department is temporarily withdrawing its BSAS Staffing Guidelines requiring programs to staff to license capacity, and instead will allow programs to staff according to census.

Please note, however, that programs 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. Further, programs are required to conduct Signs of Life and Safety Checks on all patients in accordance with program policy and adjusted for patient acuity. Increased frequency of patient checks shall be considered based on increased risk of overdose or decline in medical stability due to illness.

164.054(A) General Areas:

The Department recognizes that programs may require flexibility to re-purpose areas of the program in order to maintain treatment services and is issuing a blanket Waiver for this provision provided that the health, safety and dignity of the patients/residents are not compromised, and medications remain in locked storage areas.

164.072: Assessment:

Generally, where feasible and appropriate, the Department is encouraging programs to conduct assessments through telephone or using an audio-visual, real-time, two-way interactive communication system.

Further, programs may begin treatment prior to completing the assessment upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation provided that the assessment is subsequently completed in a reasonable time frame. A Qualified Health Care Professional (as defined in 164.006) must clinically assess the patient or resident prior to initiating an FDA approved medication for treatment of addiction and must otherwise be in compliance with state and federal guidelines and regulations. Note that updates in regulations from the DEA, US Health and Human Service that have been instituted in the setting of the COVID-19 pandemic have clarified that clinical assessments for buprenorphine initiation may be done via telehealth.

164.072 (G):

The Department is issuing a blanket Waiver from the requirement that if a clinician as defined in 164.006 completes the initial assessment, the assessment must receive written approval by a Senior Clinician in order to conduct the assessment Provided that reasonable efforts are made to obtain written approval of the assessment as soon as practicable.

164.073(A)(2)(9) Individual Treatment Plan:

The Department is issuing a blanket Waiver from the requirement of obtaining the patient's signature as well as the signature of staff involved in the formulation and review of the Individual Treatment Plan provided that the patient's and staff's involvement is otherwise documented in the patient/resident's record and reasonable efforts are made to obtain as soon as practicable.

164.074 Minimum Treatment Requirements:

The Department is issuing a blanket Waiver for the following:

164.074(B)  
164.074(D)  
164.074(H)  
164.074(K)

164.080(C) Grievances:

All hearings may be conducted by telephone or using an audio-visual, real-time, two-way interactive communication system.

Client Records:

164.083(B)(8) and 164.083(B)(9):

The Department is issuing a blanket Waiver requiring the signature of the patient or resident indicating receipt of the agency policy manual and the requirement for signed and dated progress notes provided that this is otherwise memorialized and reasonable efforts are made to obtain as soon as practicable.

164.083(C):

The Department is issuing a blanket Waiver to the requirement that progress notes be current, dated, and signed by the individual making the entry provided that they are otherwise memorialized in a reasonable manner. Further, group counseling and educational-session progress notes do not need to include specific comments on patient's participation and progress in the group.

164.083(D):

The Department is issuing a blanket Waiver to the requirement for quarterly record reviews; provided however, programs are encouraged to continue record reviews to the extent feasible.

**PART TWO WAIVERS:**

**Acute Services**

164.111: Acupuncture:

164.114(B):

The Department is issuing a blanket Waiver from the requirement that consultation be provided "on site" and encourages the use of telemedicine as appropriate and in the discretion of the Qualified Health Care Professional.

164.114(C) Supervision:

The Department is issuing a blanket Waiver for the requirement for a Registered Nurse to supervise the nursing staff, and programs may utilize a Licensed Practical Nurse (LPN) or other Qualified Health Care Professional (as defined under 164.006) who possesses the skills, supervision, and experience as determined by the program and/or meets the requirements under professional licensure; provided, however, that the supervisor shall be educationally prepared at or above the level of the nursing staff under his/her supervision.

164.121: Outpatient detoxification:

164.123(A):

Admission: the Department is issuing a blanket Waiver from the requirement that the admission be performed in person and encourages the use of telemedicine as appropriate and in the discretion of the Medical Director.

164.123(B):

The Department is issuing a blanket Waiver from the requirement that a physical examination be completed within 24 hours. Instead, programs may extend that period of time not to exceed 72 hours from the time of admission provided that the physical examination is initiated as soon as possible but not later than 24 hours after admission. The decision to extend the period of time to complete the physical examination is within the discretion of the Medical Director.

164.124 Staffing Pattern

164.124(C):

Supervision: The Department is issuing a blanket Waiver for the requirement for a Registered Nurse to supervise the nursing staff, and programs may utilize a LPN or other Qualified Health Care Professional (as defined under 164.006) who possesses the skills, supervision, and experience as determined by the program and/or meets the requirements under professional licensure; provided, however, that the supervisor shall be educationally prepared at or above the level of the nursing staff under his/her supervision.

164.124(D):

The Department is issuing a blanket Waiver from the requirement that a qualified physician is available “on site” at all times that services are provided, however a qualified physician must be on call. The Department encourages the use of telemedicine as appropriate and in the discretion of the Medical Director.

164.131: Inpatient Detoxification:

164.131(B):

The Department is issuing a blanket Waiver from the requirement that a physical examination be completed within 24 hours. Instead, programs may extend that period of time not to exceed 72 hours from the time of admission provided that the physical examination is initiated as soon as possible but not later than 24 hours after admission. The decision to extend the period of time to complete the physical examination is within the discretion of the Medical Director.

164.133(B)(4):

The Department is issuing a blanket Waiver from the requirement that the Medical Director review the results and recommendations if the physical examination is not performed by a physician provided that the physical examination is performed by a Qualified Health Care Professional at the discretion of the Medical Director.

164.134: Staffing Pattern:

As a reminder, the Department is temporarily withdrawing its staffing guidelines and is allowing programs to staff to census provided that programs will 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.

164.134(C) Supervision:

The Department is issuing a blanket Waiver for the requirement for a Registered Nurse to supervise the nursing staff, and programs may utilize an LPN or other Qualified Health Care Professional (as defined under 164.006) who possesses the skills, supervision, and experience as determined by the program and/or meets the requirements under professional licensure; provided, however, that the supervisor shall be educationally prepared at or above the level of the nursing staff under his/her supervision.

164.134(D):

The Department is issuing a blanket Waiver from the requirement that a qualified physician is available “on site” at all times that services is provided however a qualified physician must be on call. The Department encourages the use of telemedicine as appropriate and in the discretion of the Medical Director.

164.137 Physical Plant

164.137(D)(3), 164.137(4)(a) and (b) Sleeping Rooms:

The Department is encouraging programs to be flexible, and recognizes that they may need to repurpose existing space to ensure that patients continue to receive the treatment they require. With that intent, the Department is issuing a blanket Waiver for the above provisions provided that the health, safety and dignity of the patient is not compromised.

164.139(B)(6) Safe Storage and Administration of Medication:

The Department is issuing a blanket Waiver requiring that two staff persons perform a count of medication at the beginning of every shift and will permit this count to be performed by a single staff person.

### **164.200 OUTPATIENT SERVICES**

Where appropriate, the Department is strongly encouraging programs to provide services through telehealth based on state and federal guidance.

### **164.300: Opioid Treatment Programs**

#### 164.304(B)(2) Drug Screening:

The Department is waiving the requirement for OTPs to conduct at least 15 random drug screens per year to align with the Federal Regulation which requires a minimum of 8 random screens.

Please note that the OTP will still be required to document measures taken to prevent adulteration of samples and to ensure a chain of custody.

#### 164.304(C)(1)-(4) Administration of Opioid Maintenance

On March 18, 2020, the Department issued Guidance regarding Take Home doses which can be found here:

[https://www.mass.gov/info-details/covid-19-guidance-and-directives?\\_ga=2.70486488.950545567.1585231030-2009124979.1539355632#other-guidance-](https://www.mass.gov/info-details/covid-19-guidance-and-directives?_ga=2.70486488.950545567.1585231030-2009124979.1539355632#other-guidance-)

An emailed sent on March 23, 2020 to OTPs further clarified the Guidance to allow OTPs to provide Take Home doses for patients who may need dose increases subject to the clinical judgment of the Medical Director.

#### 164.304(H): Annual Physical Examination:

The Department is issuing a blanket Waiver from the requirement that the patient have an annual physical examination.

#### 164.308(A): Diversion Control:

The Department is issuing a blanket Waiver for this provision.

#### 164.309(D)(6): Hearing Procedures for Involuntary Termination from an Opioid Treatment Program:

OTPs should make arrangements to conduct hearings by telephone or using an audio-visual, real-time, two-way interactive communication system.

As a result, OTPs may not have the ability to audio record hearings. The Department encourages OTPs to comply with this requirement if possible, however it is not required at this time provided that contemporaneous notes are taken of the hearing and that all other required documentation for the OTP appeal hearing process is in place and documented.

164.314(C): Supervision:

The Department is issuing a blanket Waiver for the requirement for a Registered Nurse to supervise the nursing staff, and programs may utilize an LPN or other Qualified Health Care Professional (as defined under 164.006) who possesses the skills, supervision, and experience as determined by the program and/or meets the requirements under professional licensure; provided, however, that the supervisor shall be educationally prepared at or above the level of the nursing staff under his/her supervision.

**Residential Rehabilitation**

164.404(F)(3)(a)-(d), 164.404(F)(3)(g), and 164.404(F)5(a) and (b): Sleeping Rooms

The Department recognizes that programs may require flexibility to re-purpose areas of the program in order to maintain treatment services and is issuing a blanket Waiver for these provisions provided that the health, safety and dignity of the residents are not compromised. For example, while cots may have to be used, it is not acceptable for patients to sleep on the floor.

164.420 Residential Rehabilitation for Adults

164.422(E):

The Department is issuing a blanket Waiver for programs to refer residents for a complete physical examination within 30 days of admission.

164.423: Program Components:

The Department encourages the use to telemedicine where appropriate at the discretion of the program director and otherwise meets state and federal guidelines.

164.424: Staffing Pattern:

As a reminder, the Department is temporarily withdrawing its staffing guidance and allowing programs to staff to census at this time, provided that programs will continue to admit new residents as needed, and must have staff on call to ensure operational continuity should the census increase.

164.424(C):

The Department is issuing a blanket Waiver from the requirement that the nurse be on site at all times provided that one is on call. The program may use telehealth where appropriate.

The Department is issuing a blanket Waiver for the requirement for a Registered Nurse to supervise the nursing staff, and programs may utilize an LPN or other Qualified Health Care Professional (as defined under 164.006) who possesses the skills, supervision, and experience as determined by the program and/or meets the requirements under professional licensure; provided, however, that the supervisor shall be educationally prepared at or above the level of the nursing staff under his/her supervision.

#### Residential Rehabilitation for Adults with their Families

##### 164.432 (F): Parenting and Life Skill Education:

Where appropriate, the Department is strongly encouraging programs to provide services through telehealth in accordance with applicable state and federal guidance.

##### 164.433 Staffing Pattern:

As a reminder, the Department is temporarily withdrawing its BSAS Staffing Guidelines requiring programs to staff to license capacity, and instead will allow programs to staff according to census at this time, provided that programs will continue to admit new residents as needed, and must have staff on call to ensure operational continuity should the census increase.

##### 164.442 (D) Medical Examination:

The Department is issuing a blanket Waiver from the requirement that a physical examination be conducted within 2 weeks of admission provided that it is performed as soon as practicable.

##### 164.440 Residential Rehabilitation for Adolescents:

##### 164.444 Staffing Pattern:

As a reminder, the Department is temporarily withdrawing its BSAS Staffing Guidelines requiring programs to staff to license capacity, and instead will allow programs to staff according to census at this time, provided that programs will continue to admit new residents as needed, and must have staff on call to ensure operational continuity should the census increase.

For the latest information, visit the DPH 2019 Novel Coronavirus website which is updated frequently: [www.mass.gov/2019coronavirus](http://www.mass.gov/2019coronavirus).

**CDC website:** <https://www.cdc.gov/coronavirus/2019-ncov/index.html>