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105 CMR 164.000: LICENSURE OF SUBSTANCE ~~ABUSE~~**USE DISORDER** TREATMENT PROGRAMS

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~~LICENSURE OF SUBSTANCE ABUSE TREATMENT PROGRAMS  
PART ONE: APPLICABLE TO ALL LICENSEES~~

164.0034: Scope

105 CMR 164.000 governs the licensure or approval and operation of every substance use disorder treatment program subject to licensure or approval by the Department **which includes separate, identifiable substance use disorder treatment programs within facilities licensed pursuant to M.G.L. c. 111, § 51 or M.G.L, c. 19, § 19.** A department, agency or institution of the federal government, the Commonwealth or any political subdivision thereof is exempt from licensure except that a department, agency or institution of the Commonwealth or subdivision thereof is subject to approval by the Department. No person, corporation, trust, authority, governmental agency, political subdivision or any other entity subject to 105 CMR 164.000 shall operate a substance use disorder treatment program ~~or treatment services~~ that **does** not comply with the requirements of 105 CMR 164.000. The Department may from time to time publish interpretations of 105 CMR 164.000 and guidelines as necessary to promote uniform application of 105 CMR 164.000, and make them available to those licensed and approved by the Department and to the public.

164.0045: Severability

Any section, subsection, paragraph, sentence, clause, phrase, or word of 105 CMR 164.000



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declared to be invalid for any reason shall be severed and shall not affect any other portion of 105 CMR 164.000, which shall remain in full force and effect.

#### 164.0056: Definitions

The following definitions shall apply to 105 CMR 164.000, unless an alternative interpretation is specifically provided:

**24-Hour Diversionary Withdrawal Management Service – 24-hour substance use disorder treatment services provided in freestanding or hospital-based settings with 24-hour, seven-day per week nursing and medical supervision that include withdrawal symptom management as part of medically supervised withdrawal and/or induction onto maintenance treatment.**

Accreditation - the process of evaluation and approval by an accrediting body.

Accreditation Survey - an onsite review and evaluation of a substance ~~abuse~~**use disorder** treatment program by an accrediting body.

Accrediting Body - an independent, not-for-profit organization or governmental entity that has been approved by the Commissioner to accredit substance ~~abuse~~**use disorder** treatment programs.

Acupuncture ~~Detoxification and Maintenance Program~~**Withdrawal Treatment Services** - a treatment program providing acupuncture services for individuals experiencing the dysfunctional effects of the use of alcohol and/or other drugs, whose primary need is ~~detoxification~~—to manage withdrawal symptoms, and thereafter, support services for maintenance of sobriety.

Acupuncturist - an individual licensed by the Board of Registration in Medicine in accordance with M.G.L. c. 112, §§ 150 through 156.

Administrator - the Executive Director, Program Director or other individual responsible for the day-to-day operations of a facility or program.

Adolescent – a child 13 through 17 years of age.

**Advanced Practice Registered Nurse - an individual licensed by the Massachusetts**

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### **Board of Registration in Nursing in accordance with M.G.L. c. 112, § 80B.**

Advertisement - in accordance with Consumer Protection regulations 940 CMR 6.00: *Retail Advertising* (including the terms Advertise and Advertising), any oral, written, graphic, or pictorial representation made by a **Licensed or Approved Provider**~~licensee~~ in the course of the solicitation of consumers of services or which encourages a person to utilize services. Advertisement includes any representation made in any media including digital or electronic media, newspaper, magazine, or other publication or on radio or television or contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, catalog, or letter, or printed on or contained in any tag or label, which is attached to or accompanies any product offered for sale. Advertisement includes any representation disseminated within Massachusetts if the advertisement is directed to consumers in Massachusetts.

~~Agency — a legal entity to which one or more license(s) or approval(s) is granted by the Department for the delivery of the service.~~

Aftercare Coordinator – an individual responsible for identifying appropriate continuing care and post discharge services and resources while working to ensure a smooth **a transition to the next phase in the adolescent’s or transition age youth’s recovery plan.**

Alcohol and Drug-free Housing or ADF Housing - a form of group housing, also known as a sober home or recovery residence, that provides an environment free from alcohol and drugs for individuals recovering from a substance use disorder who, as a condition of occupancy, agree not to use alcohol or other substances. ADF housing does not include a halfway house, residential rehabilitation unit, treatment unit, ~~detoxification~~**withdrawal management** facility, or other facility licensed by the Department under 105 CMR 164.000.

American Psychiatric Association – a professional organization of psychiatrists which defines and codifies psychiatric conditions for purposes of diagnosis.

American Society of Addiction Medicine ~~–also, or~~ ASAM - a medical society of physicians engaged in addiction treatment, education, research and program improvement.

Applicant – anyone requesting **or renewing** a license or approval from the Department to operate ~~thea~~ **substance use disorder treatment** program ~~or service.~~

Application – any application for initial or renewal licensure, ~~or approval,~~ **amendment or closure.**

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Approval - a certification, in writing, whether full or provisional, issued by the Department to a ~~provider private or public entity or institution~~ **to operate within a facility or program licensed by the Department, or to a department, agency or institution of the Commonwealth or subdivision thereof, or to a penal facility**, which authorizes it to operate a program subject to 105 CMR 164.000.

**Approved Provider – any entity holding an approval from the Department to operate a substance use disorder treatment program.**

Audit - a professional independent review, examination and verification of financial and accounting records and supporting documents by a professional, such as a Certified Public Accountant, to verify their accuracy and render an opinion as to their fairness, consistency, and conformity with Generally Accepted Accounting Principles (GAAP) and to recommend necessary changes in controls, policies, or procedures.

~~Board of Directors—the governing body of a corporation usually made up of officers of the corporation and outside (non-company) directors.—~~

~~Building—also Premises—the physical structure in which services are provided.—~~

Bureau - the Bureau of Substance ~~Abuse~~**Addiction** Services of the Department of Public Health, including its staff.

Business Day – a day on which the offices of the Commonwealth are open for regular business.

Case Aide ~~—also Orderly or Unit Assistant~~ - an individual responsible for daily management within a 24-hour structured ~~residential~~**Substance Use Disorder treatment** program.

Case Manager - an individual responsible for assisting ~~clients~~**patients or residents** to obtain needed services by providing information, referral coordination and follow-up.

Case Record - a unified, comprehensive collection of documentation concerning a ~~client~~**patient or resident** in a substance ~~abuse~~**use disorder** treatment program.

**Central Registry System - a centralized database for the collection and maintenance of records for the purposes of preventing multiple concurrent enrollments, ensuring accurate dosage delivery, and facilitating disaster management in Opioid Treatment**

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### **Programs licensed in Massachusetts.**

Certified Alcohol and Drug-free Housing - ADF housing provided by persons or entities trained and certified by a certifying body.

Chain of Custody - a process of monitoring possession of samples, such as saliva, urine or blood, to prevent tampering with the sample or the results. Chain of custody begins with collection of the sample, and continues through final reporting of test results.

Child – any person under 18 years of age.

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.

~~Client—also Patient or Resident—a person applying for admission or admitted to a program, facility or agency providing substance abuse services.~~

Clinical Supervision - a regular and specified time set aside to provide training, education and guidance to direct care staff and to oversee the provision of ~~client~~**patient and resident** services. Supervision **must be delivered by a staff member qualified to deliver supervision, preferably in the discipline of the supervisee; must be sufficient to meet the needs of supervised staff, patients, and residents; and** may be provided on an individual or group basis,~~provided that groups do not exceed eight individuals.~~

Clinician - an individual with a minimum of:

- (1) a master’s degree in one of the following disciplines or a closely related field: clinical psychology, education-counseling, medicine, psychology, psychiatric nursing,

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rehabilitative counseling, social work, and who has a minimum of one year of supervised substance ~~abuse~~**use disorder** counseling experience; or

(2) a bachelor's degree in any of the listed disciplines and a minimum of two years of supervised substance ~~abuse~~**use disorder** counseling experience; or

(3) a recognized certification or licensure including 4,000 hours of clinically supervised counseling of individuals with substance use disorders including at least 220 documented hours of supervision.

Commissioner – Commissioner of Massachusetts Department of Public Health **or his or her designee**.

Commonwealth - every executive office, department, board, commission, division or authority of the Massachusetts state government or political sub-division of any of the foregoing.

~~Community Served — the population defined by substance abuse treatment need and other characteristics such as gender, language, age or residence, to whom a licensee provides substance abuse treatment services.~~

Consultation - the presentation of specific patient cases to clinicians of equal or greater expertise for the purpose of feedback, direction and guidance.

Continuum of Care – a principle of substance ~~abuse~~**use disorder** treatment that includes a range of substance ~~abuse~~**use disorder** treatment services based on six dimensions established by the American Society of Addiction Medicine: alcohol intoxication/withdrawal potential; biomedical conditions and complications; emotional/behavioral conditions and complications; treatment acceptance/ resistance; relapse continued use potential; and recovery environment.

Co-occurring Disorders - diagnosis of both a substance use disorder and one or more mental health disorders in one individual.

**Co-Occurring Enhanced – a program provided in a 24-hour, safe, structured environment, located in the community, which supports residents' recovery from addiction and moderate to severe mental health conditions as they reintegrate into the community and return to social, vocation/employment, and/or educational roles.**

Counselor – an individual who has a minimum of a high school diploma or equivalent and a minimum of one year supervised counseling experience in substance ~~abuse~~**use disorder** treatment or a closely related field.

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Day Treatment - an **intensive** outpatient ~~program~~**service** providing direct ~~client~~**patient** services through group, individual, and family substance ~~abuse~~**use disorder** counseling a minimum of 3.5 hours per day ~~five~~ **three to seven** days per week **based upon patient needs**.

Deemed Status - the acceptance by the Department of accreditation as evidence of compliance with one or more requirements of 105 CMR 164.000.

Department - the **Massachusetts** Department of Public Health.

Direct Care Staff – personnel who provide direct individual, group, educational, clinical or case management services to ~~clients~~**patients or residents** of substance ~~abuse~~**use disorder** treatment programs.

Disability – a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment (28 CFR § 35.104 **and M.G.L. c. 151B, §1**).

~~Division of Health Care Quality – also DHCQ – the division of the Department of Public Health whose responsibilities include licensing and inspecting hospitals and clinics.~~

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.

Emergency - a sudden, calamitous event that seriously disrupts the functioning of a community or society and causes human, material, and economic or environmental losses that exceed the community's or society's ability to cope using its own resources.

Executive Director - the individual duly appointed by the governing body of the **Licensed or Approved Provider**~~agency~~, who is responsible for the ~~day-to-day~~**overall** operations of the **Licensed or Approved Provider**~~agency~~ providing substance ~~abuse~~**use disorder** treatment services.

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Facility – a substance ~~abuse~~ **use disorder** intervention or treatment ~~provider~~ **agency** that is publicly or privately owned, for-profit or not-for-profit **which is not part of or located at a penal institution and which is not operated by the federal government.**

Family Therapist – an individual licensed by the Massachusetts Board of Registration of Allied Mental Health Professions in accordance with M.G.L. c. 112, § 165.

First Offender Driver Alcohol **or Controlled Substance** Education ~~Services or (DAE)~~ - an outpatient **program** ~~service~~ providing psycho-educational and counseling interventions for individuals adjudicated by a court as first offenders of laws prohibiting driving under the influence of intoxicating liquor or controlled substances.

Food Service Personnel – staff who prepare and serve meals, oversee food storage, and are responsible for sanitary care of food preparation and serving equipment.

Full-time Equivalent ~~or (FTE)~~ - a minimum of 35 hours per week per each staff position.

**Induction** – **the process of initial dosing with medication for OUD treatment until the patient reaches a state of stability; also called initiation.**

**Intensive 24-Hour Diversionary Withdrawal Management** - 24-hour substance use disorder treatment services provided in hospital-based settings that include daily medical management and primary nursing interventions with 24-hour, seven-day per week nursing and medical supervision that include withdrawal symptom management as part of medically supervised withdrawal and/or induction onto maintenance treatment.

**Interim Maintenance Treatment** - maintenance treatment provided in an opioid treatment program in conjunction with appropriate medical services while a patient is awaiting transfer to a program that provides comprehensive maintenance treatment.

~~Inpatient Detoxification Service – a residential program of substance abuse evaluation and withdrawal symptom care provided in freestanding or hospital-based settings.~~

~~Levels of Care – the range of substance abuse treatment services based on patient placement criteria defined by the American Society of Addiction Medicine.~~

License - authorization, in writing, issued by the Department upon its determination that the applicant is ~~a~~ responsible and suitable ~~agency~~ to operate a substance ~~abuse~~ **use disorder**

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treatment program ~~under the authority granted to the Department by M.G.L. c. 111B, §§ 6, 6A and 6B; e. 111E, § 7; e. 90, §§ 24 and 24D.~~

Licensed Alcohol and Drug Counselor (LADC) - an individual who has applied for and has been deemed qualified under applicable sections of 105 CMR 168.000: *Licensure of Alcohol and Drug Counselors* and duly licensed by the Department to provide treatment for individuals with a substance use disorder as a Licensed Alcohol Drug Counselor I (LADC I), Licensed Alcohol Drug Counselor II (LADC II) or Licensed Alcohol Drug Counselor (LADC) Assistant.

Licensed Practical Nurse - an individual licensed by Massachusetts Board of Registration in Nursing in accordance with M.G.L. c. 112, § 74A.

Licensee**ed Provider** - any **entity, including its controlling parent (corporation)** ~~person~~ holding a license ~~or approval~~ from the Department to operate a substance ~~abuse~~**use disorder** treatment program. In the case of a **Licensed Provider**~~licensee~~ which is not a natural person, the term **Licensed Provider**~~licensee~~ shall also mean any shareholder owning 5% or more of the outstanding stock; any limited partner owning 5% or more of the partnership interests and any general partner of a partnership **Licensed Provider**~~licensee~~; any trustee of any trust **Licensed Provider**~~licensee~~; **any receiver or trustee in bankruptcy; any manager of a Limited Liability Company and any member of a Limited Liability Company with a 5% or more membership interest;** any sole proprietor of any **Licensed Provider**~~licensee~~ which is a sole proprietorship; any mortgagee in possession; and any executor or administrator of any **Licensed Provider**~~licensee~~ which is an estate.

Limited Liability Company - **an unincorporated organization formed under M.G.L.c. 156C.**

Maintenance Treatment – **providing medications to achieve and sustain clinical remission of signs and symptoms of substance use disorder, including but not limited to opioid use disorder, and support the individual process of recovery without a specific endpoint.**

Massachusetts Prescription Awareness Tool (MassPAT) – **the online prescription monitoring program database created pursuant to M.G.L. c. 94C, §24A.**

Medical Clearance - determination by **the Provider's** physician, nurse practitioner, physician assistant, registered nurse, or a licensed practical nurse duly licensed/certified in the Commonwealth of Massachusetts that **treatment by the Provider is appropriate based upon**



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**an individual's condition and that the individual is not exhibiting withdrawal or other medical symptoms that would require a higher level of care**~~an individual shows no signs or symptoms of withdrawal requiring medical monitoring or management.~~

Medical Director - a physician licensed to practice medicine in the Commonwealth of Massachusetts, with specialized training in addiction medicine, who assumes responsibility for administering all medical services performed by the program, either by performing them directly or by delegating specific responsibility to authorized program physicians and qualified healthcare professionals functioning under the Medical Director's direct supervision.

Medically Supervised Withdrawal - dispensing, administering, or prescribing of an FDA-approved medication for the treatment of **substance use disorder, including but not limited to** opioid use disorder, in gradually decreasing doses to alleviate adverse physical or psychological effects incident to withdrawal from the continuous or sustained use of opioid drugs. The purpose of medically supervised withdrawal is to bring a patient maintained on maintenance medication to a medication-free state within a target period.

Medication for Addiction Assisted Treatment - use of a medication approved by the federal Food and Drug Administration (FDA), ~~in combination with counseling and behavioral therapies,~~ for the treatment of ~~an opioid-related~~ **a** substance use disorder.

Medication for Treatment of Opioid Use Disorder – use of a medication approved by the FDA for the treatment of an opioid use disorder.

Medication Unit - ~~a facility established as part of, but geographically separate from, an opioid treatment program from which licensed private practitioners or community pharmacists dispense or administer opioid agonist treatment or collect samples for drug testing or analysis.~~ a component of an OTP that is geographically separate from a brick-and-mortar OTP. As such, a medication unit engages in the treatment of opioid use disorder, including maintenance and/or detoxification treatment with narcotic drugs in Schedules II–V, at a location or locations remote from, but within the State as, the licensed, certified, and registered OTP, and operates under the licensure and certification of the Brick-and-Mortar OTP.

Mental and Behavioral Disorders due to Psychoactive Substance Use – the variety of disorders defined by the World Health Organization which are attributable to the use of one or more psychoactive and/or addictive substances.

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**Mental Health** – any condition pertaining to mental health as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

**Mental Health Service** – a separate, identifiable service providing diagnosis and treatment to individuals seeking treatment for mental health conditions, which may integrate treatment for co-occurring substance use disorder, and their families.

**Mobile Opioid Treatment Program (Mobile OTP)** - an OTP operating from a motor vehicle that serves as a mobile component of the brick-and-mortar OTP. As such, a mobile OTP engages in the treatment of opioid use disorder, including maintenance and/or detoxification treatment with narcotic drugs in Schedules II–V, at a location or locations remote from, but within Massachusetts as, the licensed, certified, and registered OTP, and operates under the licensure, certification, and registration of the OTP. The Mobile OTP is described in DEA regulation 21 CFR Part 1300.

~~Need~~—a demand for services exceeding availability of services.

~~Nurse Practitioner~~—an individual licensed by the Massachusetts Board of Registration in Nursing in accordance with M.G.L. c. 112, § 80B.

**Office Based Addiction Treatment (OBAT)** – a type of outpatient service not subject to 105 CMR 164.000 providing medication for addiction assisted treatment services that is provided outside of licensed or approved SUD Opioid treatment programs by appropriately licensed clinicians to patients with addiction. ~~and in concert with other medical and psychosocial interventions to achieve and sustain maintenance and recovery.~~Includes but is not limited to MAT in a primary care office, MAT in a hospital clinic setting, and office based opioid treatment serving under 300 patients.

**Office Based Opioid Treatment (OBOT)** - a type of Office Based Addiction Treatment provided by a corporate entity, other than a hospital or clinic licensed under M.G.L. c. 111, § 51, or an opioid treatment program licensed under M.G.L. c. 111E, doing business in the Commonwealth, which has more than 300 patients receiving treatment for treatment of opioid dependence with an FDA-approved narcotic medication used for ~~detoxification~~**withdrawal management** or maintenance by a qualified health care professional who is registered with the U.S. Department of Justice Drug Enforcement Agency, as required by 21 U.S.C. § 823(g) (known as DATA 2000), in a health care professional's office setting or in a primary care center, **and is associated with the corporate entity by contract, fee for service, or other arrangement other than as members of the practice.**

**Opioid Treatment Program (OTP)** - a SAMHSA-certified program, usually comprised of a

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facility, staff, administration, patients, and services, that engages in supervised assessment and treatment, using approved medications, of individuals who are addicted to opioids.

**Original License** – a license, including a provisional license, issued to a facility not previously licensed; or a license issued to an existing facility, in which there has been a change in ownership or location.

Outpatient Counseling – an outpatient **substance use disorder treatment service** designed to help patients achieve changes in alcohol and/or drug use and addictive behaviors and often address issues that have the potential to undermine the patient’s ability to cope with life tasks without the addictive use of alcohol, other drugs, or both. Outpatient counseling services may offer several therapies and service components, including individual and group counseling, motivational enhancement, family therapy, educational groups, occupational and recreational therapy, psychotherapy, MAT, or other skilled treatment services.~~providing individual, group, couple and family therapies for adults, and transition age youth, and adolescents.~~

Outpatient ~~Detoxification Program~~**Withdrawal Treatment Service** – a program of ambulatory substance ~~abuse~~**use disorder** treatment that provides clinical management of withdrawal symptoms through medical, ~~counseling, and~~ ancillary treatment, **treatment with FDA-approved medications for the treatment of addiction, and may include counseling.**

~~Parent~~ – father or mother, guardian, or person or agency legally authorized to act on behalf of the child in place of, or in conjunction with, the father, mother, or guardian.

~~Part One~~ – the first portion of 105-CMR-164.000, from 105-CMR-164.000 through 164.087, containing requirements for applicants and licensees providing or seeking to provide any substance abuse treatment regardless of level of care.

~~Part Two~~ – the second portion of 105-CMR-164.000, from 105-CMR-164.100 through 164.454, containing requirements for applicants and licensees providing or seeking to provide substance abuse treatment services for specific levels of care.

~~Patient~~ – ~~also Client or Resident~~ - a person applying for admission or admitted to a program, ~~facility or agency~~ providing **acute or ambulatory** substance ~~abuse~~**use disorder** services.

**Penal facility** - an institution, or any part thereof, other than an institution, or any part thereof operated by the federal government, for the detention or confinement of persons

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**accused or convicted of crime, including, but not limited to, jails, prisons, houses of correction and correctional institutions, providing services especially designed for the treatment of drug dependent persons.**

Pharmacist – an individual registered by the Massachusetts Board of Registration in Pharmacy in accordance with M.G.L. c. 112, § 24.

Physician - an individual licensed by the Massachusetts Board of Registration in Medicine in accordance with M.G.L. c. 112, § 2.

Physician Assistant - an individual who is registered by the Board of Registration of Physician Assistants in accordance with M.G.L. c. 112, § 9I.

**Practitioner – a Physician, Physician Assistant, or Advanced Practice Registered Nurse as those terms are defined in 105 CMR 164.005, acting within applicable scope of service and pursuant to state and federal law.**

~~Prescription Monitoring Program – a program of the Department, authorized under M.G.L. c. 94C, § 24A, which collects dispensing information on specified controlled substances dispensed pursuant to a prescription, and provides prescription history information to prescribers, dispensers, licensing bodies, and law enforcement agencies, as appropriate.~~

~~Primary Facility – the main premises of a facility licensed to provide substance abuse treatment services.~~

Program - a substance use disorder treatment program.

Program Director – the individual employed by the **Licensed or Approved Provider** ~~licensee~~ who is responsible for the **administrative and programmatic** day-to-day operations of a program of substance ~~abuse~~ **use disorder** treatment services **and supervision of all non-clinical staff.**

Program Sponsor – the person responsible for the operation of an opioid treatment program.

**Provider - a substance use disorder treatment program, including units within a facility or program licensed by the Department of Mental Health or the Department, located within a penal facility, or operated by a department, agency or institution of the Commonwealth or subdivision thereof.**

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Provisional License – a license or approval granted by the Department to an applicant for a period not to exceed six months, in accordance with provisions of 105 CMR 164.011(F)4: ~~Provisional License~~.

Psychiatrist - a physician licensed by the Massachusetts Board of Registration in Medicine and certified by the American Board of Psychiatry and Neurology or an equivalent body.

Psychologist - an individual licensed by the Massachusetts Board of Registration of Psychologists in accordance with M.G.L. c. 112, §§ 118 through 121.

Qualified Health Care Professional - a **PractitionerPhysician**, Registered Nurse, ~~Nurse Practitioner, Physician's Assistant~~ or Licensed Practical Nurse trained to do physical assessments, duly licensed, certified or registered as such in the Commonwealth of Massachusetts, and practicing within the scope of applicable Massachusetts and federal regulations.

Qualified Service Organization – an individual, partnership, corporation, federal, state or local government agency, or any other legal entity, which:

- (1) provides services to a **Licensed or Approved Provider**~~licensee~~; and
- (2) has entered into a written agreement with the **Licensed or Approved Provider**~~licensee~~.

Qualified Service Organization Agreement (QSOA) - a signed and dated document describing the agreed upon terms of a service relationship between the **Licensed or Approved Provider**~~licensee~~ and the qualified service organization, which meets the requirements of 42 CFR Part 2.

Recovery Home – a residential rehabilitation program that conforms to ~~American Society of Addiction Medicine~~ **ASAM** criteria for Medium-intensity Residential Services.

Recovery Specialist - a staff person ~~in a residential rehabilitation program~~ who **completes 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 provides guidance and direction to residents **or patients**, and oversees resident **or patient** activities to ensure conformance with program policies.

Referral – a process through which a **Licensed or Approved Provider** directly refers a

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**patient or resident for treatment or placement in a substance use disorder treatment program or other provider type upon securing the patient's or resident's treatment or placement in such a program or other provider type.**

Registered Nurse - an individual licensed by the Massachusetts Board of Registration in Nursing in accordance with M.G.L. c. 112, § 74.

**Resident - a person applying for admission or admitted to a Residential Rehabilitation program providing substance use disorder services.**

Residential Rehabilitation – a **L**icensed **or Approved Provider**facility that provides a therapeutic, planned regimen of substance ~~abuse~~**addiction** treatment and education services for persons in the early stages of recovery from addiction who require safe and stable living environments in order to develop recovery skills. Services are provided in a 24 hour live-in setting, with 24 hour per day staffing. **Service models may include Recovery Homes, Social Model Recovery Homes, Therapeutic Communities, and Transitional Support Services.**

Satellite Office - an office operating at a site physically separate from the main premises of a **Licensed or Approved Provider**facility ~~licensed to that~~ provides outpatient substance ~~abuse~~**use disorder** treatment services. A satellite office must be open to ~~clients~~**patients** at least 20 hours per week and must offer a minimum of 40 staff hours a week of substance ~~abuse~~**use disorder** treatment services.

Second Offender Aftercare - an educational and treatment program of a licensed outpatient facility for individuals who have been convicted of a second Driving While Under the Influence offense and who have completed, or are awaiting placement in, a 14 day Driving Under the Influence (DUI) second offender residential program.

Senior Clinician - an individual who is a LADC I, or ~~another~~ **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 ~~in a supervisory role~~.

**(a) Prior to January 1, 2026, 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,**

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**psychology, psychiatric nursing, rehabilitative counseling, social work; and two years of supervised substance use disorder counseling experience; at least one year full time equivalent year of clinical supervisory experience; and has acted as Senior Clinician for more than two years.**

**(b) This role may also be known as the Clinical Director or the Clinical Supervisor.**

Social Model Recovery Home - a Residential Rehabilitation program that conforms to the ASAM criteria for Low Intensity Residential Services.

~~State Authority—the Department of Public Health, designated by the Governor or other appropriate state official designated by the Governor, to exercise the responsibility and authority within the Commonwealth for governing the treatment of opiate/opioid addiction with an opioid drug.~~

State Opioid Treatment Authority (SOTA) - ~~also, State Authority~~, personnel of the Bureau authorized to approve requests for exceptions to limitations on take-home doses of methadone, and to review hearing decisions to terminate a **client/patient** from an opioid treatment program.

**Substance Use Education Program: an education program within a penal facility which focuses on reducing risk to recidivate and may include information about substance use prevention, misuse and addiction. Individuals enrolled in a Substance Use Education Program may simultaneously be enrolled in a Substance Use Disorder Treatment Program and/or receive individual medical treatment from a licensed provider for Substance Use Disorder management or treatment. Substance use education programs are not intended to provide treatment directly and therefore are not subject to licensure under 160.000.**

~~Substance Abuse Treatment or~~ Substance Use Disorder Treatment - an evidence based practice intended to assess status, reduce symptoms, or mitigate the effects of substance misuse, substance use disorders, **that/or may also treat** co-occurring disorders; reduce risk of relapse and associated harm; or restore or establish well-being for individuals and families; provided, that said practice shall include, but not be limited to, care coordination, case management, medical, pharmacological, psychological, psycho-educational, rehabilitative, or social services and therapies.

Substance ~~Abuse~~ Use Disorder Treatment License for Department of Mental Health Licensed Facility – authorization, in writing, issued by the Department upon its determination that a mental health facility licensed by the Department of Mental Health (DMH) under M.G.L. c. 19, § 19, meets applicable requirements of 105 CMR 164.000 to ensure the safety and adequacy



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of the substance ~~abuse~~ **use disorder** treatment program.

~~Substance Abuse Treatment Program or~~ Substance Use Disorder Treatment Program - an organized system of services containing a mission, philosophy and model of substance use disorder treatment designed to address the needs of ~~clients~~ **patients or residents**.

Substance Use Disorder – **any condition pertaining to substance use disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders**~~the range of conditions associated with alcohol, tobacco and other drug use, including substance dependence, abuse and withdrawal as defined by the American Psychiatric Association.~~

Supervision - a regular and specified time set aside to provide **non-clinical training, education and guidance to staff**,~~other than direct care staff~~. **Supervision must be sufficient to meet the needs of supervised staff, patients, and residents, and may be provided on an individual or group basis.**

Therapeutic Community - a Residential Rehabilitation program that conforms to ASAM criteria for High-intensity Residential Services.

Tobacco Free - an environment free of tobacco use including **e-cigarettes and** the use of smokeless tobacco, such as snuff and chewing tobacco.

Training - educational programs, workshops and other structured opportunities for staff aimed at improving skill, knowledge and service provision.

Transfer of Ownership - shall include but not be limited to the following:

- (1) a transfer of a majority interest in the ownership of the substance ~~abuse~~ **use disorder** treatment program;
- (2) in the case of a for profit corporation, transfer of a majority of any class of the stock thereof;
- (3) in the case of a partnership, transfer of a majority of the partnership interest;
- (4) in the case of a trust, change of the trustee or a majority of trustees;
- (5) in the case of a not-for profit corporation, such changes in the corporate membership and/or trustees as the Department determines to constitute a shift in control of the **operation of the Licensed or Approved Providers**~~service~~; or
- (6) where foreclosure proceedings have been instituted by a mortgagee in possession.

**Transfer of ownership also means any change in the ownership interest or structure of a**



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**substance use disorder treatment program or the program's parent corporation(s) that the Commissioner determines to effect a change in control of the operation of the substance use disorder treatment program. The Commissioner may, in his or her discretion, determine a proposed transaction does not rise to the level of a transfer of ownership.**

**Transition Age Youth – a young person aged 16 through 25 years of age.**

Transitional Support Service – a short-term Residential Rehabilitation program.

Viral Hepatitis – for purposes of 105 CMR 164.000, viral hepatitis refers to **Hepatitis A**, Hepatitis B, and Hepatitis C.

**Withdrawal Symptom Management – the process of initial dosing with FDA-approved medication for the treatment of addiction, including but not limited to opioid use disorder, until the patient reaches a state of stability, also known as induction.**

World Health Organization – an agency of the United Nations which directs and coordinates UN authority on international public health, and which compiles classifications of diseases and disorders.

Written Notice:

- (1) a letter sent by registered or certified mail; or
- (2) a written statement, receipt of which is documented by dated signature of both the individual sending and the individual receiving the notice. The period of time stated in the written notice shall be calculated beginning on the first business day following receipt of written notice.

## **PART ONE: LICENSING AND APPROVAL PROCEDURES AND REQUIREMENTS**~~Licensing Procedures and Requirements~~

**164.006: Part One Scope: The provisions of 105 CMR 164.006 through 105 CMR 164.087 apply to all substance use disorder treatment providers, except for those providers who currently hold a license from the Department of Mental Health or the Department of Public Health's Bureau of Health Care Safety and Quality, or those providers who are part of a facility or program operated by an agency of the Commonwealth (See PART THREE: DEPARTMENT OF MENTAL HEALTH LICENCEES, BUREAU OF HEALTH CARE SAFETY AND QUALITY LICENSEES, AND**

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**AGENCIES OF THE COMMONWEALTH).**

164.007: Applications ~~Required~~ Requirements for Licensure or Approval

**No person or entity may operate a separate identifiable substance use disorder treatment program or hold themselves out or advertise as operating as substance use disorder treatment program ~~person, entity, or program operating a separate, identifiable substance use disorder treatment program shall advertise or hold itself out as a substance use disorder treatment program, or shall provide or require substance use disorder treatment as part of its program requirements,~~ without a License or Approval from the Department.**

**Whoever knowingly operates such a program ~~or services~~ without obtaining a License or Approval may be subject to penalties up to a fine of \$500.00 for the first offense and up to \$1,000.00 for each subsequent offense or by imprisonment for not more than two years or both.**

**(A) Applications for licensure or approval shall be made in a form prescribed by the Department and include all supporting documents required by 105 CMR 164.000.**

**(B) An application for an original License or Approval shall not be approved until an applicant has been deemed suitable by the Department.**

**(C) An application for an original License or Approval shall include a sworn statement of the names and addresses of any person with an ownership or control interest in the facility or in the real property upon which the facility is located. For the purposes of 105 CMR 164.000, “person with an ownership or control interest” shall mean a person who:**

- (1) has a direct or indirect ownership interest of 5% or more in the facility or the organization that holds the license;**
- (2) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the facility or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5% of the total property and assets of the facility or organization that holds the license;**
- (3) is an officer or director of a corporate licensee;**
- (4) is a partner of a licensee organized as a partnership; or**
- (5) is the Trustee of a Trust.**

~~a license, approval, substance abuse treatment license for a Department of Mental Health~~

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~~licensed facility [hereinafter reference to license shall include substance abuse treatment license for a Department of Mental Health licensed facility where referenced in 105-CMR 164.012(D)(3)], or for renewal of a license or approval shall be filed on forms provided by the Department and accompanied by all supporting documents required by 105-CMR 164.000.~~

~~(B) No entity, except a general hospital or clinic licensed by the Department, or a department, agency or institution of the federal government or of the Commonwealth, or any subdivision of those listed above, shall operate a substance abuse treatment program without a substance abuse treatment license from the Department.~~

~~(C) No entity or program shall advertise or hold itself out as a substance abuse treatment program, or shall provide or require substance abuse treatment as part of its program requirements, without a license or approval from the Department, except as provided for in 105-CMR 164.012(D).~~

~~(D) Services established and provided by a department, agency, or institution of the Commonwealth shall file an application for approval for the establishment or provision of the service. Such services shall meet all requirements established for licensure under 105-CMR 164.000.~~

~~(E) Hospitals or clinics described in 105-CMR 164.012(D) shall apply for required licenses and approvals and must also meet those requirements established for licensure or approval under 105-CMR 164.012(D).~~

~~(F) A corporate entity, other than a hospital or clinic licensed under M.G.L. c. 111, § 51, or an opioid treatment program licensed under M.G.L. c. 111E, doing business in the Commonwealth, which has more than 300 patients receiving treatment for opioid dependence in the form of opioid agonist therapy provided by DATA-waived physicians or other qualified health care professionals who are associated with the entity by contract, fee for service, or other arrangement other than as members of the practice, shall be licensed by the Department as provided for in 105-CMR 164.012(I).~~

#### 164.008: Application Submission

(A) **Applications for licensure or approval shall be made in a format prescribed by the Department,** ~~Applicants for an initial or renewal license or approval shall submit an application to the Department on an approved form obtained from the Department, in a manner prescribed by the Department,~~ together with **the required fee and** any other documents and

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materials **required by 105 CMR 164.000 or** that the Department deems appropriate.

~~(B) All applications must be on Department forms, completed in full, and sworn to before a notary.~~

**(B)** **A non-refundable fee**~~Fees~~ shall accompany each application and shall be as follows:

- (1) ~~F~~for each license application, excluding satellite offices and medication units, \$300;
- (2) ~~F~~for each satellite office or medication unit, ~~an additional~~ \$75.00.
- (3) **Licensed Providers** seeking to add a service, satellite office or medication unit to an existing license shall submit documentation as required by the Department and an application fee of \$75 for each service, satellite office or medication unit.

~~Application fees are not refundable.~~—No fee shall be required when the applicant is the Commonwealth.

**(C) Applicants for renewal must submit to the Department completed forms and fees required by the Department at least 60 calendar days prior to the expiration of the current License or Approval. An application for renewal, if timely filed with the required fee, shall have the effect of a License or Approval from the date of License or Approval expiration until such time as the Department takes action on the application. If not timely filed, such an application will not have such effect and the License or Approval shall lapse.**

~~164.009: Access for Individuals with Disabilities~~

~~Applicants for license or approval shall demonstrate compliance with the Americans with Disabilities Act and § 504 of the Rehabilitation Act by completing the Department's ADA/504 self-evaluation checklist prior to submitting an application for licensure. The self-evaluation is subject to inspection as part of the licensing process.~~

164.00910: Evaluation of Application and Suitability of Applicant or **Licensed or Approved Provider**~~Licensee~~

(A) Upon receipt of a complete application ~~or reapplication for licensure or approval~~ the Department shall evaluate the suitability of the applicant or **Licensed or Approved Provider**~~licensee~~ including but not limited to the following factors. A negative determination with respect to any one of the factors constitutes an adequate ground for deeming an applicant or **Licensed or Approved Provider**~~licensee~~ unsuitable to establish or maintain a substance ~~abuse~~**use disorder** treatment program and upon which the Department may deny an initial or

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renewal application for a **L**icense or **A**pproval.

- (1) Past performance as a provider of substance ~~abuse~~**use disorder** treatment services, based upon documentation of applicant's or **Licensed or Approved Provider's**~~licensee's~~:
  - (a) history of compliance with 105 CMR 164.000;
  - (b) history of providing substance ~~abuse~~**use disorder** treatment services or other health care services, including provision of services in other states;
  - (c) ability to provide substance ~~abuse~~**use disorder** treatment services;
  - (d) history of response to correction orders issued under 105 CMR 164.016;
  - (e) history of failure to provide services to any individual when licensed or approved to provide such services; and
  - (f) history of ~~elient~~**patient or resident** abuse, mistreatment or neglect in any licensed health care program or facility.
- (2) Whether the applicant's or **Licensed or Approved Provider's**~~licensee's~~ financial resources are sufficient to provide substance ~~abuse~~**use disorder** treatment services for which the applicant seeks a license.
- (3) Whether the **Licensed or Approved Provider**~~licensee~~ or applicant is in compliance with all laws of the Commonwealth **including but not limited to laws** relating to taxes and child support and whether the applicant has workers compensation and professional and commercial insurance coverage.
- (4) The record of compliance for health care facilities in the Commonwealth or other jurisdictions, including any limitation on, suspension or revocation of, or refusal to grant or renew a health care license or certification for Medicaid or Medicare to the applicant or **Licensed or Approved Provider**~~licensee~~.
- (5) The adequacy of the applicant's or **Licensed or Approved Provider's**~~licensee's~~ legal capacity to operate, as demonstrated by such documents as articles of incorporation and corporate by-laws.
- (6) Any attempt to obtain a **L**icense or **A**pproval by fraud, misrepresentation, or the submission of false information.
- (7) **Whether a new applicant can demonstrate the** capacity to meet the requirements for licensing or approval as a substance ~~abuse~~**use disorder** treatment program.
- (8) **Whether the applicant is able to provide services to residents of the Commonwealth with public health insurance on a non-discriminatory basis and able to report the facility's payer mix to the Department on a quarterly basis.**
- (9) **Whether the applicant can demonstrate need for the services in accordance with 105 CMR 164.011(A).**
- (108) Such other information as the Department may require.

~~If the Department is unable to make a finding of suitability due to the existence of any of the factors~~

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~~listed in 105 CMR 164.010(A)(1) through (8), the applicant or licensee shall have the burden of persuasion to prove the applicant's or licensee's suitability.~~

(B) **The application shall also include an attestation from the applicant confirming that any substance use disorder treatment program subject to licensure or approval under 105 CMR 164.000 operated by said applicant will:**

- (1) **Provide services on a non-discriminatory basis to residents of the Commonwealth with public health insurance and report the substance use disorder treatment program's payer mix to the Department in a format prescribed by the Department on a quarterly basis, as required by M.G.L. c. 111E, § 7; and**
- (2) **Provide medications for treatment of addiction, including all FDA-approved medications for addiction medication-assisted treatment, directly or through a QSOA;**
- (3) **Provide overdose prevention education as part of evidence-based practices; and**
- (4) **Provide data and other information as requested by the Department pursuant to 105 CMR 164.022.** ~~If the Department is unable to make a finding of suitability due to the existence of any of the factors listed in 105 CMR 164.010(A)(1) through (8), the applicant or licensee shall have the burden of persuasion to prove the applicant's or licensee's suitability.~~

#### 164.010~~1~~: Inspections

(A) The Department or its agents may visit at any time without prior notice and inspect the facility, its staff, activities, and records to determine compliance with 105 CMR 164.000 and applicable state and federal laws. ~~Such visits shall be conducted:~~

- ~~(1) prior to the granting or renewing of a license or approval;~~
- ~~(2) for the purpose of on-going monitoring and evaluating the licensee, and for the purpose of assuring compliance with 105 CMR 164.000; and~~
- ~~(3) during investigation of a complaint.~~

(B) Applicants and **Licensed or Approved Providers**~~licensees~~ shall provide Department inspectors with access to:

- (1) **T**he entire physical plant, including those portions open to ~~clients~~**patients or residents** and staff and those open only to staff;
- (2) **All information including but not limited to:** records, and documentation related to the provision of substance ~~abuse~~**use disorder** treatment services, and to the operation of the program ~~or agency~~, including personnel records and documents relating to the licensed legal entity. All such records and documentation shall be in English, legible, and current

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to within five business days of the most recent provision of service.

(C) Refusal to allow entry to Department inspectors shall constitute grounds to seek a warrant in district or superior court to authorize entry.

~~(D) Refusal to allow entry to the Department inspectors shall constitute adequate and independent grounds for denial, suspension, revocation, and/or refusal to grant or renew a license or approval.~~

### 164.0112: Issuance of Licenses and Approvals

(A) **In accordance with M.G.L. c. 111E, § 7, t**~~he~~ Department shall not approve an application for an **original**~~initial or renewal~~ License ~~or approval~~ unless **the applicant can demonstrate is** need for the **substance use disorder treatment program**~~service~~. **based upon the following factors:**

- (1) **The health needs of drug dependent persons and persons with alcoholism** **use disorder**, as defined in M.G.L. c. 111B, § 3, in the Commonwealth, including underserved populations and persons with co-occurring mental health conditions and substance use disorder; and
- (2) **The demonstrated ability and history of a prospective Licensed or Approved Provider to meet the needs of such persons.**

**(B) In making this determination, the Department shall take into consideration the following factors:**

- (1) Geographic access to the continuum of care.**
- (2) Access to a balanced continuum of care in terms of proportion of each service type.**
- (3) Program size is conducive to the health, safety, and well-being of the client population being served.**
- (4) Health disparities are addressed through access to services for underserved populations and persons with co-occurring mental health conditions and substance use disorder and the demonstrated ability and history to meet the needs of such populations.**

**(C) Providers who contract with the Department shall be deemed to have satisfied the requirements of 164.011 (A) through (B).**

**(D) The Department must** ~~and it~~ determines the applicant's **suitability** to establish or maintain the service in accordance with 105 CMR 164.009**10 prior to issuing a License or Approval.**

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**(EB)** Upon satisfactory submission of an application and completion of an inspection(s), the Department may grant a license, approval, or renewal for a term of six months or two years. **Every License and Approval shall state the name and address of the program if either differs from that of the Licensed or Approved Provider or approved entity; the period of Licensure or Approval; the specific service(s) that the program is Licensed or Approved to deliver; number of beds Licensed or Approved; and the name and address of any satellite location(s).**

**(F) Provisional Licenses and Approvals.**

**(1) When the Department finds that an applicant for an initial or renewal License or Approval has not complied with all applicable regulations, but is in substantial compliance and has submitted, within 90 days of notice of noncompliance from the Department, an acceptable plan for bringing the facility into full compliance with specific dates included, the Department may issue a Provisional License or Approval, provided that:**

- (a) The applicant demonstrates to the Department's satisfaction a good faith intent to meet all the requirements;**
- (b) The Department finds that the service offered protects or will protect the health, safety, and well-being of the facility's patients or residents; and**
- (c) The Department finds that the applicant evidences the potential for full compliance within a reasonable period of time, not to exceed six months.**

**(2) A Provisional License or Approval is valid for a period not to exceed six months and may be renewed once for no more than six months.**

~~(C) No one shall operate any substance abuse treatment program without a current license, approval or substance abuse treatment license for a Department of Mental Health licensed facility as required under 105 CMR 164.000. Whoever knowingly operates such a program or services without obtaining a license, approval, or substance abuse treatment license for a Department of Mental Health licensed facility may be subject to penalties up to a fine of \$500.00 for the first offense and up to \$1,000.00 for each subsequent offense or by imprisonment for not more than two years or both.~~

~~(D) Licensing requirements for substance abuse treatment programs in hospitals and clinics.~~

~~(1) No free standing substance abuse treatment facility shall operate unless it:~~

- ~~(a) meets the requirements of 105 CMR 164.000 and is licensed by the Department under M.G.L. c. 111B, § 6 and M.G.L. c. 111E, § 7; and~~
- ~~(b) meets all applicable regulatory requirements for medical care standards established by 105 CMR 130.000: *Hospital Licensure.*~~



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~~(2) No general hospital licensed by the Department of Public Health under M.G.L. c. 111, § 51, shall provide, hold itself out as providing or advertise that it provides a separate, identifiable inpatient or outpatient substance abuse treatment program unless it:~~

~~(a) meets all applicable requirements under 105 CMR 130.000: *Hospital Licensure*; and~~

~~(b) meets all applicable requirements for substance abuse treatment under 105 CMR 164.000 as set forth below and is approved to provide substance abuse treatment by the Department.~~

~~105 CMR 164.001~~

~~105 CMR 164.002~~

~~105 CMR 164.006~~

~~105 CMR 164.007~~

~~105 CMR 164.008(A), (B)~~

~~105 CMR 164.010(A)(1), (3), (6), (7), (8); (B)~~

~~105 CMR 164.011~~

~~105 CMR 164.012(A), (B), (C), (D)(2), (E), (F), (G), (H)~~

~~105 CMR 164.013~~

~~105 CMR 164.014~~

~~105 CMR 164.015~~

~~105 CMR 164.016~~

~~105 CMR 164.017~~

~~105 CMR 164.018~~

~~105 CMR 164.019~~

~~105 CMR 164.020~~

~~105 CMR 164.021~~

~~105 CMR 164.023~~

~~105 CMR 164.031~~

~~105 CMR 164.034~~

~~105 CMR 164.040(A)(20)~~

~~105 CMR 164.044(B)(2)(b), (d), (e), (f); (D); (F)~~

~~105 CMR 164.047(A), (B) (2)~~

~~105 CMR 164.048(B) (1), (D)~~

~~105 CMR 164.070(C), (G), (H), (I)~~

~~105 CMR 164.072~~

~~105 CMR 164.073(A)~~

~~105 CMR 164.074(A), (B), (D), (I), (J)~~

~~105 CMR 164.075A(3)(h)~~

~~105 CMR 164.076~~

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~~105-CMR-164.079(B)(16)  
105-CMR-164.082(A), (B), (C)  
105-CMR-164.083(B)(5)  
105-CMR-164.084  
105-CMR-164.132  
105-CMR-164.133(A)(1)(a)1., 2.a.; (A)(2); (B)(1)(a), (b), (d); (B)(2), (3); (C); (D)  
105-CMR-164.133(C) The program specified in 105-CMR-164.012 (D)(2)(b) is  
required to comply with 105-CMR-164.300 provisions—identified below:  
105-CMR-164.134(A); (B)(5)  
105-CMR-164.211 through 105-CMR-164.234  
105-CMR-164.302(A)(2), (A)(3)(b) and (c), (A)(4) (a), (e), (h); (D)(1); (E)(1),  
(2), (3)  
105-CMR-164.303(A)(2); (B)(1), (2), (4)  
105-CMR-164.304(B)(4); (G)  
105-CMR-164.305  
105-CMR-164.311  
105-CMR-164.312(B)~~

~~(e)—except that any outpatient SAMHSA-accredited opioid treatment program must meet the full requirements of 105-CMR-164.000.  
(3)—No free-standing mental health facility licensed by the Department of Mental Health under M.G.L. c. 19, § 19, shall provide, hold itself out as providing or advertise that it provides a separate, identifiable inpatient substance abuse treatment program unless it:  
(a)—has a current and valid Department of Mental Health license; and  
(b)—meets all applicable requirements for substance abuse treatment—under 105-CMR-164.000 as set forth below, and the Department grants it a “substance abuser treatment license for a Department of Mental Health licensed facility”.~~

~~105-CMR-164.001  
105-CMR-164.002  
105-CMR-164.006  
105-CMR-164.007  
105-CMR-164.008  
105-CMR-164.010(A)(1), (3), (6), (7), (8); (B)  
105-CMR-164.011  
105-CMR-164.012(A), (B), (C), (D)(3) (4), (E), (F), (G), (H)  
105-CMR-164.013  
105-CMR-164.014  
105-CMR-164.015~~

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~~105-CMR-164.016  
105-CMR-164.017  
105-CMR-164.018  
105-CMR-164.019  
105-CMR-164.020  
105-CMR-164.021  
105-CMR-164.023  
105-CMR-164.031  
105-CMR-164.034  
105-CMR-164.040(A)(20)  
105-CMR-164.044(B)(2)(b), (d), (e), (f); (D); (F)  
105-CMR-164.047(A), (B)(2)  
105-CMR-164.048(D)  
105-CMR-164.070(G), (H), (I)  
105-CMR-164.072(A), (B), (C), (D), (E), (F), (H)  
105-CMR-164.073(A)  
105-CMR-164.074(A), (B), (D), (I), (J)  
105-CMR-164.079(B)(16)  
105-CMR-164.082(A) and (B)  
105-CMR-164.083(B)(5)  
105-CMR-164.084  
105-CMR-164.132  
105-CMR-164.133(A)(1)(b)1., 2.a.; (A)(2); (B)(1)(a), (b), (d); (B)(2), (3); (C); (D)  
105-CMR-164.133(C) The program specified in 164.012 (D)(3)(b) is required to  
comply with 105-CMR-164.300 provisions identified below.  
105-CMR-164.134(A); (B)(5)  
105-CMR-164.302(A)(2), (A)(3)(b) and (c), (A)(4)(a), (e), (h); (D)(1); (E)(1), (2),  
  
105-CMR-164.303(A)(2); (B)(1), (2), (4)  
105-CMR-164.304(B)(4); (G)  
105-CMR-164.305  
105-CMR-164.311  
105-CMR-164.312(B)~~

(3)

~~(4) No free-standing mental health facility licensed by the Department of Mental Health as an inpatient psychiatric facility or inpatient psychiatric unit of a general hospital licensed by the Department of Mental Health pursuant to M.G.L. c. 19, § 19, shall provide any inpatient medically monitored detoxification or opioid treatment unless it:~~

~~(a) develops and follows inpatient medically monitored detoxification or opioid~~

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~~treatment protocols. Such protocols shall be submitted to the Bureau for approval as part of the Department of Mental Health licensure process; and  
(b) refrains from providing, advertising or holding itself out as providing a separate identifiable substance abuse treatment program.  
(5) A clinic licensed by the Department under 105 CMR 140.000: *Licensure of Clinics* that provides treatment for substance abuse disorders, as defined in 105 CMR 140.020: *Specific Service*(7) must meet all applicable regulatory requirements for substance abuse use disorder treatment services established by 105 CMR 164.000.~~

(GE) No License or Approval may be transferred or assigned to any other **provider service, program, agency, entity** or location.

#### **164.012: Posting of a License or Approval**

**Each Licensed or Approved Provider shall post the current License or Approval issued by the Department in a conspicuous public place at each service location.**

#### **164.013:(F) Transfer of Ownership**

~~(1) Suitability. At least 90 calendar days in advance of any transfer of ownership, any applicant who intends to acquire a substance abuse treatment program shall submit a Notice of Intent to the Department on a form supplied by it. The Department shall notify each applicant in writing of the date on which the form is deemed completed. Within 90 **calendar** days of such date, the Department shall complete its suitability review for licensure pursuant to the standards of 105 CMR 164.010. With the consent of the applicant, the Department may extend the 90 day suitability determination period for a maximum of 30 days.~~

(A2) Circumvention. A transfer of ownership shall not be recognized and the new owner shall not be considered suitable for licensure when the **Ttransfer of Ownership** is proposed or made to circumvent the effect and purpose of 105 CMR 164.000. The Department shall consider the following factors in determining whether a **Ttransfer of Ownership** has been proposed or made to circumvent 105 CMR 164.000:

- (1a) ~~T~~the transferor's record of compliance with Department licensure laws and regulations;
- (2b) ~~T~~the transferor's current licensure status;
- (3e) ~~T~~the transferor's familial, business or financial relation to the transferee; **and**
- (4d) ~~T~~the terms of the transfer.

**(B) Suitability. At least 90 calendar days in advance of any transfer of ownership, any applicant who intends to acquire a substance use disorder treatment program shall submit a Notice of Intent to the Department on a form supplied by it. The Department**

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**shall notify each applicant in writing of the date on which the form is deemed completed. Within 90 calendar days of such date, the Department shall complete its suitability review for licensure pursuant to the standards of 105 CMR 164.009. With the consent of the applicant, the Department may extend the 90 day suitability determination period for a maximum of 30 calendar days**

~~(C3)~~ Application for Licensure. **Upon a finding by the Department of suitability in accordance with 105 CMR 164.013(B), an applicant for licensure or approval**~~A person applying for a license or approval~~ as a result of any **T**transfer of **O**ownership, ~~after a finding by the Department of suitability pursuant to 105 CMR 164.012(F)(1)~~ shall file an application for licensure within **two business days**~~48 hours~~ of the **T**transfer of **O**ownership unless an extension of the **two business day**~~48 hours~~ period is granted by the **Commissioner**~~Department~~.

(14) A **L**icense or **A**pproval application filed as a result of a **T**transfer of **O**ownership, if timely filed ~~as required by 105 CMR 164.012(F)(3)~~, shall have the effect of a license or ~~a~~**A**pproval from the date of transfer until such time as the Department takes action on the application. If not timely filed, an application will not have such effect and the **L**icense or **A**pproval shall lapse.

~~(25)~~ Any notice of hearing, order, or decision which the Department or Commissioner issues to a facility prior to a transfer of ownership shall be effective against the former owner prior to transfer and, where appropriate, the new owner following the transfer unless the notice, order, or decision is modified or dismissed by the Department or the Commissioner.

#### ~~164.014:(G)~~ Change of Location

(A) A **L**icensed or **A**pproved **P**rovider may not move the delivery of any services licensed pursuant to 105 CMR 164.000 to another location without receiving express prior approval by the Department for each proposed site.

(B) An application~~nt~~ **submitted by a Licensed or Approved Provider** for a change in location **must be filed with the Department at least 90 calendar days in advance in a manner prescribed by the Department and** shall be subject to all requirements of initial licensure. ~~Licensees shall request prior written authorization of the Department for each site proposed for the delivery of services and for any change in location of an existing service.~~

#### 164.015: Change of Program Name

(A) A **L**icensed or **A**pproved **P**rovider may not change the name of any program licensed pursuant to 105 CMR 164.000 without receiving express prior approval by the Department.

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**(B) An application submitted by a Licensed or Approved Provider for a change in name must be filed with the Department at least 90 calendar days in advance in a manner prescribed by the Department and shall comply with all applicable provisions of 105 CMR 164.000.**~~An applicant for a change in name shall be required only to notify the Department pursuant to 105 CMR 164.035(A) and to submit all relevant or requested documents, provided that there is no change in ownership, location or control of the facility.~~

~~(I) A corporate entity required to be licensed under 105 CMR 164.007(F), shall not provide, hold itself out as providing, or advertise that it provides substance use disorder treatment for opioid dependence in the form of opioid agonist therapy, or office based opioid treatment, unless it is licensed by the Department pursuant to 105 CMR 130.000: *Hospital Licensure*, 140.00: *Licensure of Clinics*, or 164.000, and complies with the following sections:~~

- ~~105 CMR 164.001~~
- ~~105 CMR 164.002~~
- ~~105 CMR 164.003~~
- ~~105 CMR 164.004~~
- ~~105 CMR 164.005~~
- ~~105 CMR 164.006~~
- ~~105 CMR 164.007(F)~~
- ~~105 CMR 164.008~~
- ~~105 CMR 164.009~~
- ~~105 CMR 164.010~~
- ~~105 CMR 164.011~~
- ~~105 CMR 164.012(I)~~
- ~~105 CMR 164.013~~
- ~~105 CMR 164.014~~
- ~~105 CMR 164.015~~
- ~~105 CMR 164.016~~
- ~~105 CMR 164.017~~
- ~~105 CMR 164.018~~
- ~~105 CMR 164.019~~
- ~~105 CMR 164.020~~
- ~~105 CMR 164.021~~
- ~~105 CMR 164.032(D)(1)~~
- ~~105 CMR 164.033~~
- ~~105 CMR 164.034~~
- ~~105 CMR 164.035~~

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~~105-CMR-164.039-~~  
~~105-CMR-164.040(A)(3), (4), (5), (7), (10), (12), (13), (14), (15), (16), (17) and (18)~~  
~~105-CMR-164.048(A), (D)(1) and (2)~~  
~~105-CMR-164.049-~~  
~~105-CMR-164.050-~~  
~~105-CMR-164.051-~~  
~~105-CMR-164.052-~~  
~~105-CMR-164.053-~~  
~~105-CMR-164.055~~  
~~105-CMR-164.056-~~  
~~105-CMR-164.057-~~  
~~105-CMR-164.059(A) and (B)~~  
~~105-CMR-164.060-~~  
~~105-CMR-164.062-~~  
~~105-CMR-164.072(B) and (F)~~  
~~105-CMR-164.074(A), (F), (G) and (J)~~  
~~105-CMR-164.075(A), (B) and (C)~~  
~~105-CMR-164.079-~~  
~~105-CMR-164.080(A) and (B)~~  
~~105-CMR-164.081(A)(1)(2), (4), (5), (6), (7), (8), (B)(1), (C)~~  
~~105-CMR-164.083(A)~~  
~~105-CMR-164.084-~~  
~~105-CMR-164.085-~~  
~~105-CMR-164.086(A)-~~  
~~105-CMR-164.087~~  
~~105-CMR-164.300-~~  
~~105-CMR-164.302(A)(2),(3)(b), (c) and (d), (4) (a), (c), (d), (e), (f) and (h), (B), (C), (E)(1), (2), (3), (4), (5), (8) and (9);~~  
~~105-CMR-164.304(B)(1), (3) and (4), (D) (2) and (3), (G)~~  
~~105-CMR-164.308(A)(2),(D), (E)~~

#### ~~164.013:—Renewal of License~~

~~(A)—Applicants seeking renewal of a license or approval shall meet all requirements for licensure or approval specified in 105-CMR-164.000, except as provided for in 105-CMR-164.012(D)(2)(b) and (3)(b).~~

~~(B)—Applicants for renewal must submit to the Department completed forms and fees required~~

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~~by the Department at least 60 days prior to the expiration of the current license or approval.~~

~~(1) If the complete renewal application is timely filed with the Department, the license or approval shall not expire until the Department makes a determination on the renewal application.~~

~~(2) If an application is not submitted timely, the service may not continue to operate after the expiration of its license or approval without the written permission of the Department.~~

#### ~~164.014: Provisional Licenses~~

~~(A) The Department may issue a provisional license or approval in response to a new application for an applicant not previously licensed.~~

~~(B) When the Department finds that an applicant for renewal of licensure has not complied with all applicable regulations, but is in substantial compliance and has submitted an acceptable plan of correction for bringing the facility into full compliance, the Department may issue a provisional license, provided that:~~

~~(1) The applicant demonstrates to the Department's satisfaction a good faith intent to meet all the requirements;~~

~~(2) The Department finds that the service offered protects the health and safety of the facility's clients; and~~

~~(3) The Department finds that the applicant evidences the potential for full compliance within a reasonable period of time, not to exceed six months.~~

~~(C) A provisional license or approval is valid for a period not to exceed six months and may be renewed once for no more than six months. The Department may issue a provisional license or approval only when an applicant submits a written plan for full compliance. This written plan shall include specific target dates for achieving full compliance.~~

#### ~~164.015: Posting of License~~

~~Each licensee shall post the current license or approval issued by the Department in a conspicuous public place at each service location.~~

#### 164.016: Correction Orders

~~After every inspection in which any violation of 105 CMR 164.000 is observed, t~~The Department shall prepare a written deficiency correction order **for each violation of 105 CMR**



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**164.000, M.G.L. c. 111E and M.G.L. c. 111B and send the deficiency correction order to the Licensed or Approved Provider of record.**  ~~citing every violation observed, a copy of which shall be sent to the licensee or~~ The deficiency correction order shall include a statement of the deficiencies found, the period within which the deficiency must be corrected, **which shall not exceed 60 calendar days, except as provided for in 105 CMR 164.017(C),** and the provision(s) of law and/or regulation relied upon.

#### 164.017: Plan of Correction

(A) The **Licensed or Approved Provider** ~~licensee~~ shall submit ~~to the Department a~~ **written plan of correction to address each deficiency within 14 calendar days, unless otherwise specified by the Department and, as provided in 105 CMR 164.017(B), shall remedy or correct each deficiency cited within 60 calendar days of receipt of the deficiency correction order. The Department may modify the plan of correction by providing notice to the Licensed or Approved Provider. The Licensed or Approved Provider may submit a written request for administrative reconsideration of the modified plan of correction, or any portion thereof, within seven calendar days of receipt of notice. for** ~~correction of each violation cited in a deficiency correction order within a time period specified by the Department in the correction order.~~

(B) The plan of correction shall set forth, with respect to each deficiency, the specific corrective step(s) to be taken, a timetable for each step, and the date by which full compliance will be achieved. The timetable and the compliance dates shall be consistent with achievement of compliance in the most expeditious manner possible. The plan of correction shall be signed by either the ~~applicant or~~ **Licensed or Approved Provider** or his/ or her designee.

(C) **Where, in the opinion of the Department, the deficiency is not capable of correction within 60 calendar days, the Licensed or Approved provider shall submit a written plan for correction of the deficiency in a reasonable manner within 14 calendar days of such determination by the Department. The plan of correction shall comply with 105 CMR 164.017(B). The Department may modify the plan of correction by providing notice to the Licensed or Approved Provider. The Licensed or Approved Provider may submit a written request for administrative reconsideration of the modified plan of correction, or any portion thereof, within seven calendar days of receipt of notice. Unless the Department states in the deficiency correction order that more urgent corrective action is necessary, based on the seriousness of the deficiency, the licensee shall be given a maximum 30 days from receipt of the correction order to remove the deficiency. The Department may specify a**

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~~different date by which the correction(s) shall be completed, in the event that the licensee requests additional time and the Department determines that it is necessary.~~

~~(D) The Department shall review the plan of correction and will notify the licensee of either the acceptance or rejection of the plan. An unacceptable plan must be amended and resubmitted within ten business days of the date of notice of rejection.~~

**Fines.** If a Licensed or Approved Provider fails to remedy or correct a cited deficiency by the date specified in the deficiency correction order or fails to remedy or correct a cited deficiency by the date specified in a plan of correction as accepted or modified by the Department, the Department may:

- (1) Suspend, limit, restrict or revoke the Provider's License or Approval;
- (2) Impose a civil fine upon the Licensed or Approved Provider not to exceed \$1,000 per deficiency for each day the deficiency continues to exist beyond the date prescribed for correction;
- (3) Pursue any other sanction as the Department may impose administratively upon the Licensed or Approved Provider; or
- (4) Impose any combination of the penalties set forth in 105 CMR 164.017(~~DE~~)(1)-(3), inclusive.

**(E) Administrative Reconsideration of Civil Fines.**

(1) **Request for Administrative Review.** The Licensed or Approved Provider may submit a written request for administrative reconsideration within seven calendar days of receipt of notice of the fine on forms approved by the Department. The request for review must fully state and support the reasons why a waiver or reduction of a fine is warranted, including specific reference to all relevant factors under 105 CMR 164.000 and any and all supporting documentation.

(2) The Department shall conduct an administrative review, based solely on the evidence presented within the written request and Department records, and shall issue a written decision. This decision shall constitute a final agency decision in an adjudicatory proceeding subject to judicial review pursuant to M.G.L. c. 30A, § 14.

(3) The failure to file an appeal requesting administrative review within seven calendar days of receipt of the notice constitutes a waiver of the right to request reconsideration and all fines set forth in the notice shall be imposed. The payment of a fine constitutes a waiver of the right to appeal.

~~(E) Failure to submit an acceptable and timely plan of correction or failure to timely correct in accordance with the plan are grounds for an enforcement action including suspension or revocation of a license.~~

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164.018: ~~Grounds for Suspension of License~~ **Administrative Penalties**

**Summary Suspension.** ~~The Department~~ ~~The Commissioner~~ may summarily suspend a **L**icense or **A**pproval **prior to a hearing** if: ~~the continued operation of the program or service poses an immediate threat to the health or safety of its clients.~~

- (1) In the opinion of the Department, the violation of rules, regulation, deficiency correction orders, or plans of correction jeopardizes the health, safety, and well-being of patients or the public or seriously limits the capacity of a facility to provide adequate care; or**
- (2) Where the violation of such rules, regulation, deficiency correction orders, or plans of correction is the second or subsequent such violation occurring during a period of 12 months.**

**The suspension shall remain in effect until the Department rescinds or amends such requirements or if the Department's decision is otherwise modified on appeal.** ~~The licensee may not operate during the period of suspension of its license, after notification of the suspension.~~

164.019: Grounds for Denial, Refusal to Renew, Restriction, Limitation, or Revocation of License **or Approval**

**In addition to 105 CMR 164.017(E) and 105 CMR 164.018, e**~~E~~ach of the following, in and of itself, shall constitute full and adequate grounds to deny, revoke, limit, restrict, or refuse renewal of a **L**icense or **A**pproval:

~~(A) Failure to satisfy the Department as to any of the grounds for determining suitability of the application under 105 CMR 164.010.~~

**(A**~~B~~) Failure to meet the applicable requirements for licensure **or approval** as specified in 105 CMR 164.000 *et seq.*

**(B**~~C~~) Failure to meet the requirements of applicable federal or state law or regulations.

~~(D) Failure to comply with the laws of the Commonwealth related to taxes, child support, and workers' compensation, or failure to maintain professional and commercial insurance coverage.~~

**(C**~~E~~) Violating**en of** any applicable requirement of 105 CMR 164.000.

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~~(DF)~~ Failure to give proper care to ~~clients~~**patients or residents**.

~~(G)~~ Failure to submit an acceptable plan of correction pursuant to 105-CMR-164.017.

~~(H)~~ Failure to remedy or correct a cited violation.

~~(EI)~~ Denying~~ial~~**ing** entry to agents of the Department or attempting to impede the work of a duly authorized representative of the Department.

~~(FJ)~~ Knowingly making an omission of material information or providing false or misleading statements orally or in writing to the Department.

~~(GK)~~ ~~The applicant or licensee operated~~ **Operating** the facility without a required ~~L~~**icense** or ~~A~~**pproval** or after the expiration of a ~~L~~**icense** or ~~A~~**pproval** ~~whereif~~ the applicant or **Licensed or Approved Provider**~~licensee~~ has not timely submitted an application for renewal.

~~(HL)~~ There is a reasonable basis for the Department to conclude that there is a discrepancy between the representations by a facility as to the treatment services to be afforded patients and the treatment services actually rendered or to be rendered.

~~(IM)~~ Conviction of an applicant or **Licensed or Approved Provider**,~~licensee~~ or a person with **ownership or control** ~~significant financial or management~~ interest in the **program**,~~service~~ of Medicare or Medicaid fraud or other criminal offense related to ~~the operating on of~~ the **program**~~service~~.

~~(JN)~~ Conviction of an applicant or **Licensed or Approved Provider**,~~licensee~~ or a person with **ownership or control interest**~~significant financial or management interest~~ in the program, of a violent crime against a person, which indicates that operation of the **program**~~service~~ may endanger the public health or safety.

~~(O)~~ Other grounds: Nothing herein shall limit the Department's adoption of policies and grounds for denial, refusal to renew, or revocation through adjudication, as well as through rule making.

#### 164.020: Hearings

~~(A)~~ Denial of an Initial Application for Licensure or Approval:

~~(1)~~ If the Department ~~denies~~**refuses to renew, suspends, restricts, limits, or revokes an** ~~initial application for~~ licensure or approval ~~pursuant to 105-CMR-164.020(A)(1)~~, the

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Department shall notify the applicant in writing of the following:

- (a) the intended action;
  - (b) the reason(s) and ground(s) for the action; and
  - (c) the **aggrieved provider's applicant's or licensee's** right to file a written request for an adjudicatory hearing in accordance with M.G.L. c. 30A and the Standard Adjudicatory Rules and Practice and Procedure, 801 CMR 1.01 *et seq.*
- (B2)** The **aggrieved provider applicant** may request a hearing on the Department's decision. A written request for a hearing shall be submitted within 14 **business calendar** days of receipt of the notice. Upon receipt of an **aggrieved provider's applicant** request for a hearing, the Department shall provide an opportunity for a hearing **in accordance with M.G.L. c. 30A and 801 CMR 1.01 *et seq.***~~as described in 105 CMR 164.020(C) if:~~

- ~~(a) the Department determines that sufficient material facts exist;~~
  - ~~(b) the applicant has sufficiently specified those material factual matters in dispute.~~
  - ~~(3) When an application is denied based on facts over which there is no material dispute, the applicant shall be notified in writing of the reasons for denial, and shall not be entitled to an adjudicatory hearing but may seek judicial review under M.G.L. c. 30A, § 14.~~
- ~~(B) Suspension of a License or Approval.~~
- ~~(1) Upon suspension of a license or approval, or any part thereof, the Commissioner shall give the licensee notice thereof, stating the reason(s) and grounds for the suspension. The suspension shall take effect immediately upon issuance of the notice.~~
  - ~~(2) Upon written request made within 14 days of receipt of the written notice, the licensee shall be promptly afforded a hearing pursuant to 801 CMR 1.00.~~
  - ~~(3) The hearing officer shall determine whether the Department has proved by a preponderance of the evidence that there existed immediately prior to, or at the time of suspension, an immediate threat to the health and safety of the clients or staff.~~
- ~~(C) Restriction, Limitation, Revocation, or Refusal to Renew a License or Approval.~~
- ~~(1) If the Department determines that a license or approval should be restricted, revoked, or refused renewal, it shall provide written notice to the applicant or licensee of:~~
    - ~~(a) the intended action;~~
    - ~~(b) the reason(s) and ground(s) for the action; and~~
    - ~~(e) the applicant's or licensee's right to file a written request for an adjudicatory hearing in accordance with M.G.L. c. 30A and the Standard Adjudicatory Rules and Practice and Procedure, 801 CMR 1.01 *et seq.* The written request must be submitted within 14 business days of receipt of the Department's written notice.~~
  - ~~(2) Upon receipt of Notice of Claim for an Adjudicatory Proceeding made within 14 days of receipt of the Department's written notice, the Department shall initiate a hearing~~

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~~pursuant to 801 CMR 1.01 et seq.~~

~~(3) The hearing officer shall determine whether the Department has proved by a preponderance of evidence that the license or approval should be denied, restricted, limited, revoked, or refused renewal based upon relevant facts as they existed at or prior to the time that the Department initiated the action.~~

~~(4) If the hearing officer finds any single ground for denial, restriction, limitation, revocation, suspension, or refusal to renew a license, the hearing officer shall render a recommended decision affirming the decision of the Department.~~

#### 164.021: Commissioner and Judicial Review

(A) The Commissioner shall review the recommended decision of the hearing officer in any adjudicatory proceeding conducted pursuant to 801 CMR 1.01 *et seq.* The decision of the Commissioner shall constitute a final agency decision in an adjudicatory proceeding, and is subject to judicial review pursuant to M.G.L. c. 30A, § 14.

(B) An **aggrieved provider**~~licensee~~ or applicant that fails to exercise the right to an adjudicatory proceeding pursuant to 105 CMR 164.020 waives both the right to administrative review by the Commissioner and the right to judicial review pursuant to M.G.L. c. 30A, § 14.

#### 164.022: ~~Providing~~ **Information** of Information to the Department

(A) Each **Licensed or Approved Provider**~~licensee~~ shall timely submit management information data in a **manner prescribed**~~form required~~ by the Department including, but not limited to, admissions, discharges, **client/patient or resident** characteristics, services and outcomes, and staff patterns and characteristics. It shall also submit to the Department such data, statistics, schedules, or information as the Department may require for the purposes of licensing and/or monitoring and evaluating a service as well as data required to meet federal reporting requirements including, but not limited to, outcome data.

(B) Each **Licensed or Approved Provider**~~licensee~~ is responsible for requesting **client/patient or resident** authorizations, ~~if deemed necessary~~, to ensure the timely submission of data to the Department.

(C) All information submitted pursuant to the requirements of 105 CMR 164.000 or otherwise required by the Department shall be kept current by each **Licensed or Approved Provider**~~licensee~~.

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~~(D) A licensee who fails to furnish such data, statistics, schedules or information as the Department requires, or who files fraudulent information, shall be punished by a fine pursuant to M.G.L. c. 111B, § 6B or M.G.L. c. 111E, § 7, and shall be subject to revocation of its license or approval under 105 CMR 164.019.~~

#### 164.023: Waivers

~~(A) A service, program or facility may request a waiver of one or more of the requirements imposed by 105 CMR 164.000, by submitting a written request for such a waiver which supports the reason(s) for the request.~~

**(AB)** The Department may, in its discretion, waive the applicability of one or more of the requirements of 105 CMR 164.000 **as requested by a Licensed or Approved Provider**, upon a written finding that:

- (1) compliance would cause undue hardship to the **provider facility**; **as documented by the Licensed or Approved Provider licensee shall document such hardship** in a manner defined by the Department;
- (2) the **provider facility** is in substantial compliance with the spirit of the requirement and has instituted compensating features that are acceptable to the Department;
- (3) the **provider's facility's** non-compliance does not jeopardize the health, ~~or~~ safety, **or well-being** of its **clients patients or residents** and does not limit the **provider's facility's** capacity to provide the service; and
- (4) the **provider facility** provides to the Department written documentation supporting its request for a waiver.

(C) The Department may, in its discretion, rescind or impose a time limit on any waiver it grants.

#### ~~Licensee Administration and Organization~~

#### 164.030: Governance

(A) The **Licensed or Approved Provider licensee** shall have a governing body **which shall include members representative of the communities served. The Licensed or Approved Provider shall maintain updated articles of organization and by-laws, partnership, agreement or trust instrument, as appropriate. The documents shall specify the organizational structure of the governing body, and the methods of selecting its members.** ~~that is accountable for and has authority over the policies and activities of the service and which~~



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~~includes persons with expertise in management, finances and substance abuse treatment.~~—In addition, the **Licensed or Approved Provider shall maintain updated lists of the names and addresses of the members of the governing body as well as minutes of all meetings of the governing body and its members.** ~~shall include persons in recovery from a substance use disorder and representatives of the community served.~~—

~~(1) Records of the governing body shall specify the number of its members who are expert in each category listed above and who are in recovery from a substance use disorder.—Such records need not identify these members by name.—~~

~~(2) If the governing body is unable to recruit and retain members who are in recovery from a substance use disorder, it shall—~~

~~(a) document efforts made to recruit and retain such members;~~

~~(b) establish a local advisory board of persons in recovery, and obtain at least annually from this board a review of provider agency services and programs;~~

~~(c) review the comments of the advisory board as described in 105 CMR 164.030(A)(2)(b); and—~~

~~(d) document efforts under 105 CMR 164.030(A)(2)(b) and (c).~~

**(B3)** If the **Licensed or Approved Provider's** ~~agency's~~ governing body is located outside of Massachusetts, the governing body shall establish an advisory board in Massachusetts comprised of Massachusetts residents **representative of** ~~from~~ the community served ~~and shall include at least one person in recovery from a substance use disorder.~~

~~(B) The duties and responsibilities of the governing body shall include:~~

~~(1) appointment of an executive director;~~

~~(2) establishment of an employment contract with an executive director;~~

~~(3) orientation for board members;~~

~~(4) annual conflict of interest disclosures by board members;~~

~~(5) oversight of programs, goals, budgets, operational reviews and licensure status;~~

~~(6) establishment of staggered term limits;~~

~~(7) definition of decision-making process;~~

~~(8) definition of scope of responsibilities for board and executive director;~~

~~(9) establishment of standing committees, at least one of which shall be on audit and finance;~~

~~(10) maintaining records documenting actions taken in accordance with 105 CMR 164.030(B)(1) through (9), and records of:~~

~~(a) minutes and records of meetings;~~

~~(b) reports to the governing body by the executive director;~~

~~(c) instructions and guidance provided to the executive director by the governing~~



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body;

~~(d) reviews by the governing body of the executive director's performance, which shall be conducted at least annually; and~~

~~(e) the governing body's review and approval of the licensee's audit and annual operating budget.~~

~~(C) The licensee shall submit the following information to the Department:~~

~~(1) the names, addresses and phone numbers of all owners, officers, directors, and financial investors whether they are individuals, general and/or limited partnerships, corporate bodies, or subdivisions of other bodies, and anyone else that meets the definition of licensee; the licensee shall notify the Department of any changes to this information at the same time the licensee notifies the Massachusetts Secretary of State; and~~

~~(2) ownership or financial interest in the providerservice, program or agency held by current employees, including the nature of such interest and the financial benefits received by the employee. The disclosure shall also state if no benefits are received.~~

~~(C)~~ The **Licensed or Approved Provider**~~Licensee~~ shall maintain, and make available to any employee, ~~or client~~**patient, or resident** an organizational chart and written policy that describe the organizational structure including lines of authority, responsibility, communication, and staff assignment.

~~(E) The licensee shall appoint 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 his/her absence a professional staff person shall be designated to act in his/her place. The licensee shall provide the designee with contact information for the administration in the event of an emergency.~~

~~(F) Each licensee shall establish a system of business management and staffing to ensure that the facility maintains complete and accurate audits, accounts, books, and records, including required financial, personnel, and client records.~~

~~(G) All records required by 105 CMR 164.030(A) through (F) shall be made available for review during inspection visits conducted in accordance with 105 CMR 164.011: Inspections.~~

## 164.031: Accreditation

**Licensed or Approved Providers**~~Licensees~~ who are subject to accreditation by any state, federal or national organization shall obtain and maintain their accreditation and shall provide

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documentation of the accreditation to Department.

#### 164.032: Finances

~~(A) The applicant or licensee shall demonstrate financial capability to operate the facility for the licensing period. The licensee shall annually, on or before the 15th day of the fifth month after the end of its fiscal year, document a complete audit, including a management letter. This report shall be provided to the Department in a manner specified by the Department.~~

**(AB) All Licensed or Approved Providers**~~The licensee~~ shall keep and maintain an accurate record of the finances of the facility in accordance with state requirements and its by-laws **which demonstrates the Licensed or Approved Provider's financial capacity to operate the facility for the licensing period. Such records shall include**

~~(C) The licensee shall keep on file an annual operating budget with documentation of approval by its governing body. The budget shall categorize revenues by source of funds and expenses by service components and shall include a variance report.~~

**(B) All Licensed or Approved Providers**~~The licensee~~ shall establish written policies and procedures for all fiscal operations, including fee arrangements with **clientspatients or residents, provided that the Licensed or Approved Provider shall provide services to patients or residents with public health insurance on a non-discriminatory basis.** In the event of **clientpatient or resident** non-payment, prior to moving to discharge the **clientpatient or resident**, the **providerlicensee** shall:

- (1) make reasonable efforts to secure payment from a third-party payment source; and
- (2) offer a reasonable payment plan which takes into account the **client'spatient's or resident's** income and resources.

#### 164.033: Insurance

~~(A) Each Licensed or Approved Provider~~**licensee** shall **maintain evidence of**~~have~~ general and professional liability insurance, **as well as workers' compensation insurance coverage required by M.G.L. c. 152, § 25C,** covering all service delivery and administrative sites.

~~(B) Each licensee shall have acceptable evidence of compliance with the workers' compensation insurance coverage required by M.G. L. c. 152, § 25C for all service delivery and administrative sites.~~

#### 164.034: Qualified Service Organization Agreements

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**Each Licensed or Approved Provider must establish written agreements with any qualified service organization providing services, programs, agencies, or facilities to the Licensed or Approved Provider.**~~When qualified service organizations provide services, programs, agencies or facilities to the licensee, the licensee shall establish written agreements with these organizations.~~ The qualified service organization agreements (**QSOAs**) shall:

- (A) be signed by both parties;
- (B) be renewed at **a minimum of**~~least~~ every ~~two~~**five** years;
- (C) require the qualified service organization to agree to be bound by requirements of 42 CFR Part 2~~-governing the confidentiality of information regarding clients receiving substance abuse services;~~
- (D) specify the services, programs, agencies or facilities to be provided; and
- (E) ~~if~~**when** the qualified service organization provides services to the **Licensed or Approved Provider's**~~licensee's~~ **clients**~~patients or residents~~, specify the method of referral and review of treatment plans.

#### 164.035: Required Notifications to the Department

~~(A) Change of Name, Ownership, or Location: at least 90 calendar days prior to a change in location, name, ownership or control of the facility, the licensee shall notify the Department in writing of the proposed change, and shall comply with applicable provisions of 105 CMR 164.012(F) through (H).~~

**(AB) Legal Proceedings:** The **Licensed or Approved Provider**~~licensee~~ shall report ~~in writing~~ to the Department **in a manner prescribed by the Department** any civil action or criminal charge that is **initiated**~~brought~~ against the **Licensed or Approved Provider**~~licensee~~ or any person employed **or contracted** by the **Licensed or Approved Provider**~~licensee~~ that relates to the delivery of the service or may affect the continued operation of the facility. The report shall be **provided**~~given to the Department as soon as the licensee is aware of the action~~ **and** no later than **one calendar day after**~~24 hours of~~ the initiation of any legal action ~~or within 24 hours of service of notice upon the licensee or its agent, whichever occurs first.~~

**(BE) Closure:** When a **Licensed or Approved Provider**~~licensee~~ plans to cease operation

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~~said Provider~~**the licensee** shall **notify the Department, patients, and residents pursuant to:**  
(1) ~~notify the Department in writing at least 90 calendar days prior to cessation of operations and closure. Such notification shall specify the date of closure and shall include the licensee's plan for closure as required by 105 CMR 164.087. Voluntary closure shall include foreclosure or bankruptcy proceedings.~~  
(2) ~~In the case of involuntary closure not due to an action of the Department, notify the Department as soon as the licensee is aware of the pending closure and prior to cessation of operations and closure.~~

**(CD) Interruption or Suspension of Service:** If a **Licensed or Approved Provider**~~licensee~~ determines that the health, safety or well-being of ~~clients~~**patients or residents** is in imminent danger as a result of conditions existing within the ~~service~~, program ~~or facility~~, the **Licensed or Approved Provider**~~licensee~~ shall notify the Department immediately upon becoming aware of the danger to ~~clients~~**patients or residents and comply with 105 CMR 164.086.** ~~The Department shall consult with the licensee regarding the need to interrupt or suspend services as provided for in 105 CMR 164.086.~~

**(DE) Change of Program or Service Provision:** A **Licensed or Approved Provider**~~licensee~~ shall notify the Department **in a manner prescribed by the Department** ~~in writing~~ at least 30 **calendar** days before any change in program or service provision. The Department shall determine whether such change requires re-licensure.

**(EF) Change of Administrator, Executive or Program Director:** A **Licensed or Approved Provider**~~licensee~~ shall notify the Department at least **14 calendar days**~~two weeks~~ before a planned change of Administrator, Executive or Program Director. In the event of an unplanned departure of a director, the **Licensed or Approved Provider**~~licensee~~ shall notify the Department **upon the next**~~within two~~ business days of the change of director **in a manner prescribed by the Department.**

**(FG) Death, Serious Incident, Accident or Fire:**  
(1) The **Licensed or Approved Provider**~~licensee~~ shall notify the Department, **in a manner prescribed by the Department, immediately upon any of the following occurring at the program:** ~~in writing within one business day of~~  
(a) learning of the death of any person currently admitted to the program, regardless of where the death occurs;  
~~Where appropriate, the licensee shall notify the decedent's family or next of kin.~~  
(b) full or partial evacuation of the facility for any reason;  
(c) fire;

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- (d) **suicide;**
  - (e) **criminal acts alleged to have been committed by patients, residents, contractors, or staff members;**
  - (f) **pending or actual strike action by its employees, and contingency plans for operation of the program;**
  - (g) **alleged abuse or neglect, or physical or sexual assault, or prohibited interaction which occurs between or among patients and/or residents currently or previously treated by the program, or which occurs between or among such patients or residents and current or former staff regardless of location, including any incident which is reported to another agency or law enforcement;**
  - (h) **alleged abuse or neglect at the program which includes the following:**
    - (i) **any reports of child abuse or neglect made under M.G.L. c. 119, § 51A;**
    - (ii) **any reports of elder abuse or neglect made under M.G.L. c. 19A, § 15; and**
    - (iii) **any reports of abuse of a disabled person made under M.G.L. c. 19C;**
  - (i) **any condition at the program which poses a threat to the health, safety, or well-being of patients, residents, or staff;**
  - (j) **confirmed cases among staff or patients and residents of communicable diseases which are reportable under 105 CMR 300.000: Reportable Diseases; or**
  - (k) **elopements of patients committed under M.G.L. c.123 § 35;**
  - (l) **elopements of adolescent patients; or**
  - (m) **any other serious incident or accident as specified in guidelines of the Department.**
- (2) **The program shall report to the Department any other serious incident occurring on premises covered by the License or Approval that seriously affects the health, safety, or well-being of a patient(s) or that causes serious physical injury to a patient(s) within seven **calendar** days of the date of occurrence of the event.**~~The licensee shall orally notify the Department immediately, and in writing within one business day of any serious injury which occurs under program auspices, regardless of location.~~
- ~~(3) The licensee shall orally notify the Department immediately, and in writing within one business day of any fire or other event resulting in damage to the program.~~

~~(H) Safety and Health Conditions: The licensee shall orally notify the Department immediately, and in writing within one business day, of the following:~~

- ~~(1) any alleged abuse or neglect, or physical or sexual assault, which occurs between or among clients or residents at the program, or which occurs between or among clients or residents and staff regardless of location, including any incident which is reported to another agency or law enforcement.~~
- ~~(2) any condition at the program which poses a threat to the health or safety of clients, residents, or staff, for example, conditions which limit access, unsanitary conditions, fire hazards, loss of essential services such as heat, hot water and electricity, regardless of whether the conditions cause an interruption of service. The licensee shall consult with~~

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~~the Department to determine whether the condition requires an interruption or suspension of service, as provided for in 105 CMR 164.086.~~

~~(3) confirmed cases among staff or clients or residents of communicable diseases which are reportable under 105 CMR 300.000: Reportable Diseases.~~

~~(I) Reports of Abuse and Neglect:—When alleged abuse or neglect occurs at the program, the licensee shall immediately notify the Department of:~~

~~(1) any reports of child abuse or neglect made under M.G.L. c. 119, § 51A;—~~

~~(2) any reports of elder abuse or neglect made under M.G.L. c. 19A, § 15; and—~~

~~(3) any reports of abuse of a disabled person made under M.G.L. c. 19C.~~

~~The licensee shall document its evaluation of whether any such incident should be reported to any other agency, including professional licensing bodies or law enforcement.~~

#### 164.036: Marketing of Services

A **Licensed or Approved Provider**licensee may **not engage in** ~~advertise for clients by means that are in the public interest.~~ Advertising that is not in the public interest includes advertising which:

(1) is false, deceptive or misleading;

(2) has the effect of intimidating or exerting undue pressure;

(3) guarantees a cure; and/or

(4) makes claims of professional superiority which a **Licensed or Approved Provider**licensee cannot substantiate.

#### ~~164.037: Goals and Objectives~~

~~Each licensee shall adopt and maintain a current written statement of purpose identifying service goals, objectives, and philosophy. The licensee shall review this statement annually and modify it as necessary, reflecting changes in the characteristics of the clients served, changes within the community where the service is located, or recommended changes as a result of a facility evaluation. This statement shall also be maintained in the client policy manual as outlined in 105 CMR 164.081: *Client Policy Manual*.~~

#### 164.038: Evaluation

The **Licensed or Approved Provider**licensee shall implement an evaluation plan that enables it to measure progress toward the achievement of its established goals and objectives. The evaluation plan shall be prepared annually by the **Licensed or Approved**

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**Provider**~~licensee~~ and reviewed with the governing body. The plan shall address methods for reviewing appropriateness of ~~e~~**lientpatient or resident** care, utilization of service components, methods for achieving compliance with the federal and state disability laws, and other data and information necessary for analyzing and improving the efficiency and effectiveness of program services. The **Licensed or Approved Provider**~~licensee~~ shall designate the individual(s) responsible for completing the evaluation plan, and shall document the application of the evaluation findings to its efforts to improve program services.

#### 164.039: Non-discrimination and Accommodation

**(A) No Licensed or Approved Provider shall discriminate in the provision of service against any person on the basis of race, color, ethnicity, religious creed, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, ancestry or status as a veteran.**

**(B) No Licensed or Approved Provider shall discriminate in the provision of service against any Medicaid recipient.**

**(C) Program space, including satellites and medication units, used for patients or residents shall be accessible to individuals with disabilities and shall comply with all federal, state and local requirements for accessibility.**~~The licensee shall ensure that all aspects of agency and program operation comply with requirements of the Americans with Disabilities Act and with Section 504 of the Rehabilitation Act of 1973, and with Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, by establishing policies and procedures providing that:~~

~~(A) No qualified person with a disability shall, on the basis of such disability, be excluded from participation in, be denied equal benefit of, or otherwise be subjected to discrimination under any program, service, activity or employment opportunity.~~

~~(B) Programs and services are accessible to individuals with disabilities, including accommodation to ensure that communication with persons with disabilities is as effective as it is for other program participants.~~

~~(C) If the licensee is a faith-based organization, the licensee shall not require clients to participate in religious practices.~~

#### 164.040: Written Policies



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(A) Each **Licensed or Approved Provider**~~licensee~~ shall have written policies and procedures consistent with and implemented in accordance with the requirements established in 105 CMR 164.000, Department administrative guidelines, accepted standards of care for substance ~~abuse~~**use disorder** treatment services and applicable laws. All policies required under 105 CMR 164.000 shall be in writing, and available to staff, ~~clients~~**patients, residents** and Department inspectors, and shall at a minimum address **the following areas**:

- (1) organizational structure including lines of authority, responsibility, communication, personnel practices, **supervisory mechanisms for staff**, and staff assignment;
- (2) statement of goals and objectives of the program;
- (3) types of services offered;
- (4) fiscal management including establishment and collection of fees;
- (5) **criteria for admission, treatment, termination and discharge planning, including** involuntary termination, aftercare, post-discharge and follow-up, **including for patients or residents who leave the program without notice**;
- (6) program rules;
- (7) **prohibition of alcohol and drugs, other than those properly prescribed or ordered by a patient's physician, are prohibited on the premises.**
- (8) confidentiality **in accordance with 105 CMR 164.084**;
- (9) security of and access to ~~client~~**patient and resident** records, and ~~client~~**patient and resident** information;
- (9) personnel **policies**, including: ~~policy governing sexual harassment~~;
  - (a) **the criteria and procedures for hiring, assigning, promoting, and suspending or dismissing a staff member**;
  - (b) **the procedure for handling staff complaints and grievances**;
  - (c) **prohibition of sexual harassment and procedures for handling and investigating sexual harassment complaints**;
  - (d) **prohibited interactions between staff and patients or residents, and between patients or residents**;
  - (e) **provisions for vacations, holidays, paternity and maternity leave, educational leave, sick leave, other leaves of absence, and fringe benefits**;
  - (f) **staff member accident and safety procedures**;
  - (g) **employee assistance plan**;
  - (h) **restrictions on the use of tobacco products and vaping smoking**;
  - (i) **requirements of 42 CFR Part 2 (federal confidentiality regulations) and 45 CFR Parts 160, 162 and 164 (Health Insurance Portability and Accountability Act, HIPAA), where applicable**;
  - (j) **annual tuberculosis screening, and testing as indicated by the results of the screening; and**
  - (k) **provision of employee assistance, which shall include the following provided**



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**directly or through QSOAs:**

- (i) **Confidential assessment and referral for services related to personal or professional difficulties which affect the employee's ability to perform assigned duties, including substance use disorders, gambling or other addictive behaviors, and domestic violence.**
  - (ii) **Response for employees who experience injury or stress related to workplace incidents.**
  - (iii) **Information about tobacco treatment programs, and encouragement of staff to utilize resources.**
- (10) ~~non-discrimination and accommodation, including~~ development and implementation of ~~policies~~**accommodations needed** to ensure equitable access to services **on a non-discriminatory basis in accordance with state and federal law**~~without regard for disability, race, gender, gender identity, creed, ethnic origin, sexual orientation, religion, age, or ability to speak English, except as provided for in 105 CMR 164.070(B);~~
- (11) when providing ~~inpatient~~ **24-hour diversionary services** and residential services: care of ~~client~~**patient and resident** possessions, safe storage, administration and disposal of medication, handling of ~~client~~**patient and resident** mail, visits and communication;
- (12) transfer or referral of a ~~client~~**patient or resident** to another program or for additional services not provided ~~directly~~ **by the Licensed or Approved Provider directly or through a QSOA**~~licensee~~;
- (13) ensuring patient safety, including adequate patient and resident oversight and periodic patient and resident safety checks;**
- (14)~~3~~ behavior management;
- (15)~~4~~ grievances;
- (16)~~5~~ staff response to ~~client~~**patient and resident** threats to harm self or others;
- (17)~~6~~ submission of mandated reports of child abuse or neglect under M.G.L. c. 119, § 51A, elder abuse under M.G.L. c. 19A, § 15, and abuse of a disabled person under M.G.L. c. 19C, § 4 and maintenance of records of any such reports made by staff;
- (18)~~7~~ **staff responses and reporting requirements to and reports of death, serious accident or fire in accordance with 105 CMR 164.035;**~~injury, fire and alleged assault, and responses to and reports of safety and health conditions at the program;~~
- (19) **procedures for conducting internal investigations for any alleged or suspected serious incident at or under circumstances connected with the program involving the health, safety, or well-being of the patients or residents.**
- (19)~~8~~~~20~~ all-hazard and emergency planning and procedures;
- (21)~~19~~ employee assistance;
- (22)~~0~~ orientation and supervision of staff from contract or temporary agencies; **and**
- (23)~~1~~ for **Licensed or Approved Providers**~~licensees~~ providing opioid treatment services, severe weather.;

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- (24) **controlling access to records and to information pertaining to HIV/AIDS testing pursuant to M.G.L. c. 111, §70F;**
- (25) **care and treatment protocols developed in accordance with all applicable federal regulation;**
- (26) **clinical supervision of direct care staff by appropriately licensed staff**~~members~~ **qualified to deliver supervision;**
- (27) **storing, prescribing, and administering medications including methadone and buprenorphine take home medication; and**
- (28) **monitoring safe sleep conditions in client rooms as well as conducting periodic safety checks with parents and children overnight and during any napping times.**

(B) Standards for the content of required policies may be set by administrative requirements issued from time to time by the Department.

**(C) Each Licensed or Approved Provider shall ensure all policies and procedures are complied with.**

#### 164.041: Personnel

(A) 105 CMR 164.041 through 164.046 apply to all staff, including volunteers, **contractors**, and interns.

(B) **The Licensed or Approved Provider shall, as part of its orientation, inform and train all staff members, in writing, of confidentiality requirements in accordance with 105 CMR 164.084. Evidence of this notification and training shall be included in personnel records.**

(C) The **Licensed or Approved Provider**~~licensee~~ shall comply with **all state and requirements of** federal **anti-discrimination laws including** Equal Employment Opportunity Laws and ~~with~~ M.G.L. c. 151B, §§ **3A and 4**~~prohibiting discrimination in employment and M.G.L. c. 151B, § 3A governing employers' policies regarding sexual harassment.~~

~~(D)~~ **(E)** A **Licensed or Approved Provider**~~licensee~~ who serves a community in which a majority of the population do not speak English as a first language shall make and document efforts to employ staff in direct service positions who speak the language(s) of the community served.

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~~(D) The licensee shall ensure that all employees are screened annually for Tuberculosis (TB).~~

(E) The **Licensed or Approved Provider** licensee shall comply with the hiring restrictions established by the Executive Office of Health and Human Services under 101 CMR 15.00: *Criminal Offender Record Checks*.

(F) A **Licensed or Approved Provider** licensee serving individuals under 18 years of age, or serving families with children under 18 years of age, shall require volunteers, students, employees, and employment candidates being considered for hire to sign a consent form allowing the Department of Children and Families to release information about the volunteer, student, employee, or employment candidate-, including whether their name appears on the Registry of Alleged Perpetrators, to the **Licensed or Approved Provider** licensee.

#### ~~164.042: Personnel Policies~~

~~(A) Each licensee shall describe in writing the facility's current personnel policies and practices and shall make them available to all staff members.~~

~~(B) Such personnel policies shall include a description of:~~

- ~~(1) the criteria and procedures for hiring, assigning, promoting, and suspending or dismissing a staff member;~~
- ~~(2) the procedure for handling staff complaints and grievances;~~
- ~~(3) prohibition of sexual harassment and procedures for handling sexual harassment complaints;~~
- ~~(4) prohibited interactions between staff and clients/patients or residents;~~
- ~~(5) provisions for vacations, holidays, paternity and maternity leave, educational leave, sick leave, other leaves of absence, and fringe benefits;~~
- ~~(6) staff member accident and safety procedures;~~
- ~~(7) employee assistance plan;~~
- ~~(8) restrictions on the use of tobacco products and smoking; and~~
- ~~(9) requirements of 42 CFR Part 2 (federal confidentiality regulations) and 45 CFR Parts 160, 162 and 164 (Health Insurance Portability and Accountability Act, HIPAA), where applicable.~~

#### 164.043: Job Description and Evaluations

(A) The **Licensed or Approved Provider** licensee shall make available job descriptions for all positions, which shall include current salary ranges. Job descriptions shall specify

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responsibilities, supervision received, supervision provided to others, degree of authority to execute job responsibilities, and qualifications.

(B) The **Licensed or Approved Provider**~~licensee~~ shall evaluate the job performance of all staff members. Each evaluation shall be completed at least annually, and a copy shall be placed in the employee's personnel record.

(C) The **Licensed or Approved Provider**~~licensee~~ shall include the following job descriptions, which may be incorporated into descriptions for other positions:

(1) Access Coordinator: responsible for development and implementation of the **Licensed or Approved Provider's**~~licensee's~~ evaluation, plan and annual review of the **Licensed or Approved Provider's**~~licensee's~~ performance in ensuring equitable access to services as required by 105 CMR 164.040(A)(10).

(2) HIV/AIDS Coordinator: responsible for overseeing confidential HIV risk assessment and access to counseling and testing; staff, ~~and client~~**patient, and resident** HIV/AIDS and hepatitis education; and Department requirements for admission, service planning and discharge of HIV positive ~~clients~~**patients or residents**;

(3) Tobacco Education Coordinator: responsible for assisting staff in implementing BSAS guidelines for integrating~~on-of~~ tobacco assessment, education and treatment into program services.

#### 164.044: Training and Supervision

(A) The **Licensed or Approved Provider**~~licensee~~ shall provide ongoing staff training and supervision to all staff, including clinical staff, qualified health care professionals, relief staff, interns, volunteers, **contractors** and others, **in accordance with 105 CMR 164.044(B)**. The **Licensed or Approved Provider**~~licensee~~ shall have a written plan for supervision **sufficient to meet the needs of staff, patients and residents** which shall specify the frequency and goals of supervision for all staff, and which shall provide that all direct care staff **requiring clinical supervision** receive clinical supervision **from appropriately licensed staff qualified to deliver supervision**, and that supervision is documented. ~~At a minimum, the licensee shall establish the following supervision requirements:~~

~~(1) Staff who provide clinical services and staff who are engaged in direct care of clients shall receive a minimum of one hour of individual or group supervision every other week from a staff person of greater experience and training.~~

~~(2) Staff who are engaged in direct care of clients and who are not full-time employees of the program shall receive supervision in proportion to the number of hours worked.~~

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(B) The **Licensed or Approved Provider**~~licensee~~ shall have a written plan for ~~the professional growth and development~~ **ongoing in-service training** of all personnel. The plan shall include the following:

(1) orientation and ongoing supervision of employees regarding policies and procedures of the ~~agency~~**program**, including **at a minimum** program operations; state and federal confidentiality laws; professional ethics, **including staff-patient and staff-resident boundaries and boundaries for relationships between and among patients and residents**; behavioral management; record keeping; internal incident reporting and investigation; and the reporting of abuse and neglect of children, the elderly and disabled persons; and

(2) over the course of a year, monthly scheduled in-service training sessions **in accordance with Department guidance** on, at a minimum:

(a) ~~agency's~~ or program's All Hazards Emergency Response Plan;

(b) HIV/AIDS, sexually transmitted ~~diseases~~**infections** (ST**D**I)s and Viral Hepatitis;

(c) universal health precautions and infection control;

(d) substance use disorders including tobacco and nicotine addiction, clinical assessment and diagnosis; treatment planning; relapse prevention and aftercare planning; **overdose risk assessment and prevention**;

(e) co-occurring disorders, including mental health disorders, gambling and other addictive behaviors, and mechanisms for ensuring coordination of care related to all co-occurring disorders, **including risk assessments and creation of safety plans**;

(f) other topics specific to the requirements of the **service type**~~level of care~~ and/or the population served;

(g) effects of substance use disorders on the family and related topics such as the role of the family in treatment and recovery;

(h) cultural competency including culturally and linguistically appropriate services (CLAS) or standards; ~~and~~

(i) the **benefits and** risks~~and benefits~~ of all **clinically appropriate** medication **for addiction** ~~assisted~~ treatment options, as well as the risks and benefits of not receiving treatment;

**(j) abuse and neglect reporting requirements; and**

**(k) professional ethics, including staff-patient and staff-resident boundaries and boundaries for relationships between and among patients and residents.**

(C) The **Licensed or Approved Provider**~~licensee~~ shall provide specific training, **as specified by the Department**, for the Access, HIV/AIDS and Tobacco Education Coordinators.

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~~(D) The licensee shall utilize a training model for HIV/AIDS that develops staff skills to provide direct client education in either an individual or group setting, and which encompasses related illnesses such as Hepatitis and sexually transmitted diseases. Such a model shall include at least:~~

- ~~(1) the etiology and transmission of HIV infection, Viral Hepatitis, STDs and associated risk behaviors;~~
- ~~(2) symptomatology and clinical progression of HIV infection and AIDS;~~
- ~~(3) prevention of transmission, or risk reduction for HIV, Viral Hepatitis and STDs;~~
- ~~(4) the purpose, uses, and meaning of available testing and test results;~~
- ~~(5) confidentiality requirements; and~~
- ~~(6) the interaction between alcohol and other drug use and its effect on the immune system and the progression of HIV/AIDS.~~

~~(E) Program Directors, Clinical Directors or staff designated as Tobacco Education Coordinators shall complete the tobacco treatment basic skills training as specified by the Department.~~

~~(D~~ **F**) The **Licensed or Approved Provider** ~~licensee~~ shall maintain a record of all in-service training sessions provided, including topic, date, duration and attendance.

#### ~~164.045: Employee Assistance~~

~~The licensee shall have a written policy and procedure for assisting employees, which shall include the following provided directly or through qualified service organization agreements:~~

~~(A) Confidential assessment and referral for services related to personal or professional difficulties which affect the employee's ability to perform assigned duties, including substance use disorders, gambling or other addictive behaviors, and domestic violence.~~

~~(B) Response for employees who experience injury or stress related to workplace incidents.~~

~~(C) Information about tobacco treatment programs, and encouragement of staff to utilize resources.~~

#### 164.046: Personnel Records

(A) The **Licensed or Approved Provider** ~~licensee~~ shall maintain a personnel record for each employee. **which includes at a minimum evidence of any required license or registration**

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**number; documentation of any specialty certification, education, and job experience; and**

~~(B) Such records shall be kept confidentially and at a minimum include:~~

- ~~(1) a copy of the employee's application for employment or resume;~~
- ~~(2) documentation of the employee's current certification, license, or registration, where applicable laws and/or regulations require certification, licensure, or registration;~~
- ~~(3) evidence of training received, as specified in 105 CMR 164.044(B).;~~
- ~~(4) if trained in cardiopulmonary resuscitation (CPR), documentation of current certification;~~
- ~~(5) documentation of an annual TB screening, including recommendations and follow-up;~~
- ~~(6) annual performance evaluations; and~~
- ~~(7) documentation of employee training regarding confidentiality requirements of 42 CFR Part 2 and, if required, 45 CFR Parts 160 and 164 (HIPAA).~~

~~(C) Results of Criminal Offender Records Checks shall be maintained in separate files.~~

~~(D) A licensee shall maintain information received from the Department of Children and Families pursuant to 105 CMR 164.041(F) about a volunteer, student, employee, or employment candidate in a separate file.~~

164.047: Volunteers, Student Interns and Contract Agency Staff

(A) Volunteers and student interns may be used only as an adjunct to regular paid staff and not as a substitute for ~~a paid work force~~ **the staffing requirements of 105 CMR 164.000**. Student interns and volunteers providing individual and/or group counseling shall be screened, oriented, trained, and supervised in a manner consistent with 105 CMR 164.041(E) and 164.044.

(B) When a **Licensed or Approved Provider** ~~licensee~~ uses staff who are employed by a contract or temporary agency, the **Licensed or Approved Provider** ~~licensee~~ shall ensure the following:

- (1) the **Licensed or Approved Provider** ~~licensee~~ has established a qualified service organization agreement with the contract or temporary agency which specifies that the contract or temporary agency has complied with hiring restrictions established by the Executive Office of Health and Human Services under 101 CMR 15.00: *Criminal Offender Record Checks*.
- (2) the **Licensed or Approved Provider** ~~licensee~~ has established a written policy and



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procedure to ensure such staff receive orientation and supervision, and to document such orientation and supervision.

#### 164.048: Staffing Pattern

(A) The **Licensed or Approved Provider**~~licensee~~ 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:

(1) **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 his or her absence a professional staff person shall be designated to act in his/her place. The Licensed or Approved Provider shall provide the designee with contact information for the administration in the event of an emergency.**

~~(B2) The licensee shall establish a~~ **A** multidisciplinary team that includes professionals **sufficient to meet the needs of each patient or resident served** with recognized expertise in a variety of areas of substance ~~abuse~~ **abuseuse disorder** treatment. The team may include **the Licensed or Approved Provider's**~~licensee's~~ staff as well as other treatment professionals through ~~QSOAs~~ **Qualified Service Organization Agreements, as necessary to care for patients and residents served.** The team may include, **but is not limited to,** physicians, psychiatrists, psychologists, acupuncturists, **advanced practice registered** nurses~~-practitioners~~, physician assistants, registered nurses, licensed practical nurses, **licensed** social workers, psychiatric nurses, substance ~~abuse~~ **abuseuse disorder** counselors with master's or bachelor's degrees in a related field and certified or licensed substance ~~abuse~~ **abuseuse disorder** counselors, **licensed mental health counselors, case managers, care coordinators, recovery coaches, and peers.**

~~(a1)~~ **(a1)** The multidisciplinary team shall review **initial** assessments, treatment plans and other ~~client~~ **patient- and resident-**specific issues to ensure quality of services and to provide education and training to staff.

~~(b2)~~ **(b2)** The **Licensed or Approved Provider**~~licensee~~ shall ensure that the multidisciplinary team is incorporated into the staffing plan.

(C) In addition, the **Licensed or Approved Provider**~~licensee~~ shall ensure that on each shift specific staff members are designated to:

- (1) Initiate an emergency response as described in 105 CMR 164.062; and
- (2) Perform cardio-pulmonary resuscitation.

(D) The **Licensed or Approved Provider**~~licensee~~ 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) ~~provision of~~ required services **are provided;**



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- (2) safety of ~~clients~~**patients, residents** and staff; **and**
- (3) ~~operation of~~ 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). **The Licensed or Approved Providers must make every reasonable effort to provide sufficient staff in order to guarantee admissions up to their licensed capacity. ~~may not deny admission to any person based upon inadequate staffing.~~**

#### 164.049: Physical Plant: Building Design

(A) The design, construction, and ~~maintenance~~**furnishings** of the building shall comply with all federal and state laws and local ordinances pursuant to 105 CMR 164.050, **including but not limited to 780 CMR and 521 CMR.**

(B) **The Licensed or Approved Provider must ensure that any locking system on any door in the facility can be opened by a master key or specialized tool in the event of an emergency.**

(C) All sites where services are delivered shall ~~comply~~**be fully accessible to individuals with disabilities in accordance** with the ~~Americans with Disabilities Act~~**Department's Access for Individuals with Disability Policy.**

~~(D)~~ Each site shall have sufficient and appropriate space for storage of ~~client~~**patient and resident** records **which shall be maintained in compliance with 105 CMR 164.083.** ~~Confidential client records shall be kept at the licensed premises under lock and key and secured so that only authorized agency staff has access to them. Closed client resident records may be stored off-site under lock and key and secured so that only authorized personnel have access to them.~~

#### 164.050: Required **Certificates and** Inspections

~~(A)~~ The **Licensed or Approved Provider**~~licensee~~ shall **maintain valid certificates from the applicable**~~identify the local, town, city~~ or state authority or authorities **including but not limited to**~~responsible for conducting~~ building, fire and sanitary code inspections **certificates; in accordance with M.G.L. c. 143: Inspection and Regulation of Buildings, etc., and M.G.L. c. 148: Fire Prevention.** Such certificates shall be made available to Department inspectors upon request. **Further, all documentation in connection with any inspections shall be maintained on-site and provided to the Department upon request**~~Such~~

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~~determinations shall be in writing, including written statements of exemptions.~~

~~(B) The licensee shall ensure that all required inspections identified under 105 CMR 164.050(A) are current, and documented in writing.~~

~~(C) Documentation required under 105 CMR 164.050(A) and (B) shall be made available to the Department's inspector.~~

#### ~~164.051: Heating~~

~~(A) Each building shall be equipped with a heating system that is sufficient to maintain a minimum temperature of 68°F throughout the building during cold weather. Portable heaters are prohibited.~~

~~(B) The heating system shall comply with the rules and regulations as outlined by the Department of Public Safety (522 CMR: Board of Boiler Rules, and 527 CMR: Board of Fire Prevention Regulations) under M.G.L. c. 148.~~

~~(3) Plumbing and heating shall be adequate to maintain a comfortable and healthy environment for clients. Hot water supplied to fixtures accessible to clients shall be regulated to ensure a minimum temperature of 110°F and a maximum temperature of 130°F.~~

#### ~~164.052: Lighting~~

~~Adequate electric lighting, maintained in good repair, shall be provided at the recommended levels of the Illumination Engineering Society throughout the building and in exterior areas. All electrical installations shall be in accordance with 527 CMR: Board of Fire Prevention Regulations, 527 CMR 12.00: 2014 Massachusetts Electrical Code, and all local regulations.~~

#### 164.053: Building Maintenance

(A) All **Licensed or Approved Providers**~~licensees~~ shall provide sufficient maintenance and housekeeping personnel to ~~e~~insure that the building is in good repair and in a safe, clean, and sanitary condition and free from accumulation of refuse. Residential rehabilitation programs may require residents to maintain sleeping quarters in clean and safe condition and to perform light housekeeping tasks. Residential rehabilitation programs shall not require residents to serve as substitutes for maintenance and housekeeping personnel.

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(B) Each building shall have adequate space for storage of equipment and bulk office supplies and all storage areas, attics, and cellars shall be kept safe and free from accumulations of refuse. Combustibles, whose storage is permissible under relevant state and local regulations, shall be kept in metal cabinets.

(C) All ~~doorways, corridors, and stairwells shall be well-lighted and maintained so as to provide free and unobstructed egress from all parts of the building:~~

~~(1) an emergency source of lighting shall be available in all corridors and stairways that lead to the principal means of egress;~~

~~(2) all stairways shall be equipped with handrails; and~~

~~(3) areas around the buildings, sidewalks, and patios shall be kept clear of debris, ice and snow.~~

#### 164.054: General Areas

(A) Each building shall have sufficient and separate space for reception and office areas, including:

- (1) reception and waiting areas;
- (2) administrative and staff offices; and
- (3) storage of **client/patient and resident** records.

(B) Program service areas shall be designated and furnished in a manner consistent with their use and so as to safeguard **client/patient and resident** confidentiality, dignity and privacy.

(C) Toxic substances, including **but not limited to medications, alcohol-based products,** cleaning supplies and paints, shall be kept in locked storage areas.

**(D) Alcohol and drugs, other than those properly prescribed or ordered or patient's physician, are prohibited on the premises.**

#### 164.055: Tobacco-free Environment

(A) Tobacco **and e-cigarette** use is prohibited throughout the entire facility with no exceptions, ~~including all indoor space, offices, hallways, waiting rooms, restrooms, elevators, meeting rooms, and community areas,~~ subject to M.G.L. c. 270, § 22 for acute care residential substance **abuseuse disorder** treatment centers. The prohibition shall include **agencyprogram**-owned and/or leased vehicles, and personal vehicles when used to transport

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~~clients~~**patients or residents**. Such prohibition shall apply to everyone, including employees, ~~clients~~**patients, residents**, consumers, contractors, and visitors.

(B) The **Licensed or Approved Provider**~~licensee~~ may establish restricted exterior smoking **and vaping** areas away from main entrances to the building. The **Licensed or Approved Provider**~~licensee~~ shall establish separate exterior smoking **and vaping** areas, or separate smoking **and vaping** times, for ~~clients~~**patients or residents** and staff.

#### 164.056: Restrooms

(A) Restrooms shall be conveniently located and accessible throughout the building, and shall be designed to:

- (1) permit opening a locked door from the outside in an emergency;
- (2) ensure privacy through the use of partitions and doors; and
- (3) provide adequate ventilation through windows and/or by exhaust fans.

(B) Restrooms shall be cleaned frequently and maintained in good repair and in a sanitary manner.

(C) Restrooms shall have sufficient supplies, including soap, paper towels, and toilet paper, at all times.

(D) **Licensed or Approved Providers**~~Licensees~~ shall provide an adequate number of restroom facilities which are adapted for use by and accessible to individuals with disabilities or wheelchairs.

(E) Restrooms shall be equipped with flashing lights to signal fire or other alarms for hearing impaired persons.

#### 164.057: Communication Systems

**Licensed or Approved Providers**~~Licensees~~ shall establish and maintain telephone and electronic equipment necessary to ensure efficient communication for staff, ~~and~~ ~~clients~~**patients, and residents**. Telephone systems shall include Telecommunication Device for the Deaf (TDD)/Teletypewriter (TTY) equipment, **Videophone (VP) systems**, relay systems or other technology approved by the Department. **Licensed and Approved Providers shall ensure that all staff who may be responsible for receiving incoming communications are trained in the use of relay systems at a minimum, and other**

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**technologies as applicable.**

164.058: First Aid

The **Licensed or Approved Provider**~~licensee~~ shall ensure ~~a~~ first aid kits **meeting the American National Standards Institute Z308.1-2015 requirements are available including, at a minimum, one Class B Kit and one or more Class A Kits**~~is available at a central, easily accessible location that is clearly marked, and includes: phone number for poison control center, adhesive tape, antiseptic ointment, band aids, blanket, cold pack, disposable gloves, gauze pads and roller gauze, hand cleaner, plastic bags, seissors and tweezers, small flashlight and extra batteries, and triangular bandage.~~

164.059: Child Safety

If children are permitted on the premises for any reason, the **Licensed or Approved Provider**~~licensee~~ shall ensure that children on site are supervised at all times by an adult, and that the premises are safe for children.

(A) Safety provisions shall include:

- (1) floors and walls free from dangerous protruding objects;
- (2) intact banisters and balusters;
- (3) tall or top-heavy furniture bolted to the floor or wall;
- (4) electrical cords secured to baseboard or floor;
- (5) toys in children's play areas sanitized daily with written cleaning procedures posted;
- (6) in facilities with kitchens, children under six shall not be permitted in kitchen areas, and kitchen cabinets and refrigerators shall be equipped with child-proof locking mechanisms;
- (7) protective covers on radiators;
- (8) If children under six years of age are present, provisions shall also include:
  - (a) covers larger than 1x4 inches installed on all electrical outlets;
  - (b) diaper changing areas with a safety strap and adequate supplies for cleaning the surface with a disinfectant after each use;
  - (c) safety bars on windows above the first floor, and on any other hazardous window accessible to children; and
  - (d) gates placed across top and bottom of stairways.

(B) If the **Licensed or Approved Provider**~~licensee~~ provides a separate area for children and restricts children's access to other parts of the premises, provisions under 105 CMR

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164.059(A) shall apply to the separate children's areas only.

(C) Licensees providing residential ~~care for children under six years of age shall ensure that the premises are free of lead paint.~~ **services for children, or allowing overnight visitation, shall ensure the parent is or will be educated on safe sleep procedures. The program shall ensure no children under the age of 2 be allowed to co-sleep with their parent.**

~~164.060: Fire Protection~~

~~The licensee shall provide adequate fire protection equipment and devices appropriate to the needs of the particular building. During the periodic inspection required under 105 CMR 164.050, the licensee shall consult with the local fire department regarding the selection of protection equipment, such as fire alarms, fire extinguishers, smoke detectors and child protective window devices. The licensee shall provide the devices recommended in the inspection report in a timely manner.~~

164.061: Internal Incident Investigation and Reporting

**Unless otherwise approved by the Department, all internal investigation reports shall be completed within 5 business days from the date of the incident or from the date the Licensed or Approved Provider knew or should have known about the incident. All internal investigation reports shall include a root cause analysis of the incident.**

The **Licensed or Approved Provider**~~licensee~~ shall **maintain and store in a central and readily accessible location all internal incident reports and investigatory documentation, for review by the Department upon request. Such records shall include a log and documentation related to all incidents that effect, or could potentially effect, the health and safety of patients or cause physical injury**~~develop and follow written procedures for conducting internal investigations including, but not limited to, responses to any alleged or suspected incident of physical or sexual assault, abuse or neglect, which occurs at or under circumstances connected with the program. The licensee shall orally inform the Department immediately, and in writing the next business day, of any allegation or incident at or under circumstances connected with the program involving the health or safety of clients. The licensee shall ensure that staff are trained in and understand child abuse and neglect reporting requirements. Such training shall be documented in personnel folders.~~

164.062: All Hazard and Emergency Planning and Procedures

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(A) The **Licensed or Approved Provider**~~licensee~~ shall establish a written plan for response to emergencies, **which must include:**

(1) Said plan shall be formulated on an all-hazards approach: provide for response to internal, local, community, state, regional or national emergencies, regardless of cause (natural or man-made).

**(2) The plan shall include a mechanism for review of all services furnished by the Licensed or Approved Provider, and how those services will be affected by and changed to address the emergency to which they would potentially respond.**

(3) The plan shall document the **Licensed or Approved Provider's**~~licensee's~~ communications with community emergency management and response agencies.

(4) The plan shall include at a minimum the provisions described in 105 CMR 164.062(~~BA~~)(1) through (~~87~~).

(~~AB~~) Specification of roles and responsibilities of program ~~or agency~~ staff in the event of an emergency, including the sequence of authority in the event executive leadership is unavailable. The chain of command shall describe duties related to emergencies, including:

(1) internal communication and notification of the emergency, **including notice to all staff, patients, residents, and the Department;**

(2) instructions related to use of alarm systems and signals;

(3) instructions for evacuation of the building;

(4) notification of and liaison to local emergency management and response agencies;

(5) where evacuation of the locality is necessary, overseeing evacuation of ~~clients~~**patients or residents** and staff to designated evacuation/relocation sites;

**(6) where evacuation of the facility is not appropriate, shelter-in-place procedures and plans to implement any procedures that are responsive to an extended state of emergency;**

~~(76)~~ ensuring security of program records; and

~~(87)~~ controlling access to the facility.

**(~~BC~~) Facility offices and waiting areas must display the names and telephone number of individuals, such as physicians, hospitals, emergency medical technicians, who should be contacted in case of emergency or utilize 911 or similar local emergency resources. A mechanism to address patient medical or psychiatric emergencies occurring outside of program hours of operation must be provided, including the establishment of an emergency contact system to obtain dosage levels and other pertinent patient information on a 24-hour, 7-days-a-week basis, as appropriate under confidentiality regulations.**

(~~CD~~) Establishment of an emergency communication system specifying responsibility for:

(1) notifying~~ication-of~~ staff;

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- (2) notifying ~~ication of~~ **patients and residents** ~~lients~~; and
- (3) notifying ~~ication of~~ the Department.

(~~EE~~) Identification of local and state emergency management and response agencies, including location, phone numbers and emergency contact information.

(~~FD~~) Relocation of Staff and **Patients and Residents** ~~Clients~~ in the Event of an Evacuation. Such plan shall identify the local evacuation sites and procedures, and shall specify provisions for evacuation of individuals whose mobility is impaired and/or who require adaptive equipment. The **Licensed or Approved Provider** ~~licensee~~ shall determine, and document, any restrictions that may apply to evacuation sites.

(~~GE~~) Maintenance of Essential Services. **Licensed or Approved Providers** ~~Licensees~~ who store and/or dispense medications shall include provisions for safe storage of medication as well as for continuity of service to **patients and residents** ~~lients~~. **Licensed or 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 the applicable emergency.**

(~~HF~~) Provision for Continuity of Care for Existing **Residents** ~~Clients~~ and Patients. **Licensed or Approved Providers** ~~Licensees~~ may develop cooperative plans with other substance abuse treatment programs in the community to provide for continuity of care.

(~~IG~~) Safe Storage and Retrieval of Program Records. This plan shall include provision for regular backup and separate fireproof storage of electronic records.

(~~JH~~) Preparation ~~and training~~ of staff, ~~and~~ **patients, and residents** ~~lients~~ through periodic training, ~~including~~ drills, and review **and active updating** of procedures. **Training and drills must be responsive to a reasonable variety of emergencies.**

(~~KI~~) **Licensed or Approved Provider's** ~~Licensee's~~ response to community need for substance ~~abuse~~ **use disorder** treatment service as a result of the emergency. Said response may be established in coordination with other substance ~~abuse~~ **use disorder** treatment services, programs or facilities in the **Licensed or Approved Provider's** ~~licensee's~~ community.

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~~Substance Abuse Treatment Program Requirements: All Licensees~~



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(A) Admission and Eligibility Criteria:

(1) The **Licensed or Approved Provider**~~licensee~~ shall establish written admission eligibility criteria and procedures, **provided such criteria and procedures do not impose any restrictions that act as a barrier to treatment access including, but not limited to, discrimination against patients and residents with public health insurance.**

(2) Such criteria and procedures shall describe the **Licensed or Approved Provider's**~~licensee's~~ method of determining, for each **prospective patient or resident**~~applicant~~, whether the **Licensed or Approved Provider's**~~licensee's~~ **services**~~level of care~~ and program are suitable for the **prospective patient or resident**~~applicant~~.

(3) Such eligibility criteria shall not establish a category of automatic exclusion that is defined by a history of criminal conviction **or type of primary substance used, mental health diagnosis, or prescribed medication including FDA-approved medications for the treatment of addiction.**

(4) The **Licensed or Approved Provider**~~licensee~~ shall make the criteria and procedures available to prospective ~~clients~~**patients or residents** upon the ~~clients~~**patient's or resident's** application for admission.

(5) Admission eligibility criteria shall be posted in a conspicuous, public area.

(B) The **Licensed or Approved Provider**~~licensee~~ shall **comply with all applicable state and federal anti-discrimination laws such that the Provider**~~apply any restrictions, priorities or special admission criteria~~ equally ~~evaluate~~**te** all potential admissions regardless of the source of payment, and may not deny admission on the basis of disability, race, **color, ethnicity,**~~gender, gender identity, religious~~ creed, ~~national~~**ethnic** origin, **sex,** sexual orientation, **gender identity,**~~religion,~~ age, **disability, genetic information, ancestry, or status as a veteran or ability to speak English,** except that **Licensed or Approved Providers**~~licensees~~ providing a service designed for a specific population, e.g., women or adolescents, may limit admissions to members of that population. ~~The licensee shall comply with applicable state and federal anti-discrimination laws. The licensee shall make all individuals applying for admission and clients aware of these restrictions, priorities or special admission criteria at the time of application.~~

(C) Where consistent with the ~~level of care and~~ program of services, admission eligibility criteria shall specifically address priority populations defined by the Department, **including but not limited to Medicaid patients or residents.**

(D) The **Licensed or Approved Provider**~~licensee~~ shall ~~establish in writing a formal admissions procedure for potential new admissions and for re-admissions, including~~ gathering

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and recording all pertinent information needed to evaluate eligibility and service need, and to complete the Department's information system form(s). ~~Such admissions procedure shall include:~~

~~(1) Information about the range of treatment options, including medication assisted treatment, the risks and benefits of medication assisted treatment, and risks and benefits of not receiving treatment; and~~

~~(2) Information about family support services including family or group therapy or social or educational services for family members.~~

(E) **Licensed and Approved Providers shall directly connect** individuals who do not meet eligibility requirements or who are inappropriate for the **Licensed or Approved Provider's** ~~licensee's services~~ **level of care shall be referred** to ~~the~~ appropriate **level of care** ~~service, person, agency or court~~. The **Licensed or Approved Provider** ~~licensee~~ shall collaborate, as appropriate, with care managers, case managers, health plans, and any others necessary to obtain an appropriate placement for the patient. Additionally, the **Licensed or Approved provider must** maintain a log of applications denied, reasons for denial and **direct** referrals made, and shall make this documentation available to the Department for inspection.

(F) Upon admission into treatment, or as soon as the ~~client~~ **patient or resident** is medically cleared, the **Licensed or Approved Provider** ~~licensee~~ shall obtain and make a part of the ~~client~~ **patient or resident** record:

(1) a consent to treatment form signed by the ~~client~~ **patient or resident**;

(2) name and contact information of a person to contact on ~~client's~~ **patient's or resident's** behalf in an emergency, including ~~client's~~ **patient's or resident's** consent to such contact. Refusal to provide an emergency contact shall be documented in the ~~client's~~ **patient's or resident's** record;

(3) name of ~~client's~~ **patient's or resident's** health insurance carrier; and

(4) documentation of information provided to the ~~client~~ **patient or resident** in accordance with 105 CMR 164.070(D), including ~~client's~~ **patient's or resident's** signed receipt of such information; and

**(5) Documentation of patient or resident consent to provide treatment information to the patient or resident's primary care provider or release information to the receiving provider prior to or upon patient transfer. In the event the patient or resident refuses such consent, the Licensed or Approved Provider shall document such refusal in the patient's or resident's record.**

(G) The **Licensed or Approved Provider** ~~licensee~~ may not deny admission to an individual

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solely because the individual uses medication prescribed by a ~~physician~~**practitioner** outside the **Licensed or Approved Provider's**~~licensee's~~ service or facility, **including any FDA-approved medication for addiction ~~medication-assisted~~ treatment and any FDA-approved medications used to treat mental health conditions.**

**(1) Programs may not require a designated amount of medication for admission.**

**(a) Programs must accept prospective patients or residents who arrive with medication(s) remaining on current prescription(s), and facilitate the ability to refill such prescription(s).**

**(b) Programs cannot deny admission to prospective patients or residents who lack current prescription refills and must work with such patients or residents to coordinate medication refills.**

**(c) Programs cannot deny admission based upon the types of medication a patient or resident is prescribed.**

**(2) Programs may not deny admission to or exclude prospective patients or residents who lack an official state identification card.**

**(H) Licensed or Approved Providers**~~Licensees~~ may deny admission to individuals who refuse to provide information necessary to complete an assessment and treatment plan, **provided the Licensed or Approved Provider shall maintain a log of applications denied, reasons for denial and referrals made, and shall make this documentation available to the Department for inspection.**

**(I) The Licensed or Approved Provider**~~licensee~~ may not deny re-admission to any person solely because that person

**(1) withdrew from treatment against clinical advice on a prior occasion;**

**(2) relapsed from earlier treatment; or**

**(3) filed a grievance regarding an action or decision of the Licensed or Approved Provider**~~licensee~~.

**(J) The Licensed or Approved Provider shall not admit patients or residents in excess of the number of beds approved by the Department and listed on the License or Certificate of Approval document.**

#### 164.071: Orientation

The **Licensed or Approved Provider**~~licensee~~ shall provide each new or returning ~~client~~**patient or resident** with an orientation that will familiarize him or her with the ~~client's~~**patient's and resident's** rights, and with rules, procedures, activities, policies, and

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philosophy of the program, including program requirements for participation, disciplinary action, termination, and grievance procedures. Written orientation materials shall be included in the *Client/Patient and Resident Policy Manual*, as required by 105 CMR 164.081. Written documentation of this orientation shall appear in the clinical records.

#### 164.072: Assessment

(A) The **Licensed or Approved Provider**~~licensee~~ shall complete an ~~initial~~ assessment for each ~~client~~**patient and resident** that includes the following elements, as well as elements prescribed for each ~~service type~~**level of care** in 105 CMR 164.000:~~Part Two:~~

(1A) Appropriateness of **Licensed or Approved Provider's**~~licensee's service type~~**level of care** in relation to ~~client's~~**patient's or resident's** treatment needs.

(2B) A history of the use of alcohol, tobacco and other drugs, including age of onset, duration, patterns and consequences of use; history of overdose, including witnessing an overdose; use of alcohol, tobacco and other drugs by family members; and types of and responses to previous treatment.

(3C) An assessment of the ~~client's~~**patient's or resident's** psychological, social, health, economic, educational/vocational status; ~~criminal history; current legal problems;~~ co-occurring **mental health and/or physical health conditions**~~disorders~~; trauma history; and history of compulsive behaviors such as gambling. The assessment must be completed before a comprehensive **treatment** ~~service~~ plan is developed for the patient.

(4D) An assessment of the ~~client's~~**patient's or resident's** HIV risk status.

(5E) An assessment of the ~~client's~~**patient's or resident's** TB risk status.

(6) **An assessment of the patient's or resident's cultural and linguistic needs.**

(B) **Patient or resident treatment may begin prior to completing the assessment upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe; provided that a Qualified Healthcare Professional must see such a patient or resident prior to initiating an FDA-approved medication for treatment of addiction.**

(C) When the ~~initial~~ assessments indicates a need for further evaluation, the program shall

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conduct ~~or make referral arrangements for~~ necessary testing, physical examination and/or consultation by qualified professionals, **or make appropriate referrals for such testing, physical examination and/or consultation by qualified professionals provided the program continues to provide treatment to the patient or resident in the interim.**

(DG) The ~~initial~~ assessment shall be **reviewed and signed**~~conducted~~ by a Senior Clinician, Clinician, ~~Physician, Nurse Practitioner~~ or ~~Physician Assistant~~**Practitioner**. If conducted by a Clinician, it must be approved in writing by a Senior Clinician **or Practitioner**.

(H) The ~~initial~~ assessment shall conclude with:

- (1) a diagnosis of the status and nature of the ~~client's~~**patient's or resident's** substance use disorder, using standardized definitions established by the American Psychiatric Association, or a mental or behavioral disorder due to use of psychoactive substances, as defined by the World Health Organization; **and**
- (2) **an offer to the patient or resident to initiate medication for treatment of addiction, including any FDA-approved medications for the treatment of addiction.**

#### 164.073: Individual Treatment Plan

For each ~~client~~**patient and resident** admitted, the **Licensed or Approved Provider**~~licensee~~ shall complete an individual treatment plan based on the ~~client's~~**patient's or resident's** treatment, medical, psychiatric and social histories, which includes the following elements, as well as elements prescribed for each ~~service type~~**level of care** in 105 CMR 164.000: ~~Part Two~~.

(A) The treatment plan, and all subsequent updates, shall include documentation of at a minimum the following information:

- (1) A statement of the ~~client's~~**patient's or resident's** strengths, needs, abilities and preferences in relation to his or her substance ~~abuse~~**use disorder** treatment, described in behavioral terms;
- (2) Evidence of the ~~client's~~**patient's or resident's** involvement in formulation of the treatment plan, in the form of the ~~client's~~**patient's or resident's** signature attesting agreement to the plan;
- (3) Service to be provided;
- (4) Service goals, described in **measurable**, behavioral terms, with time lines;
- (5) Clearly defined staff, ~~and client~~**patient, and resident** responsibilities and assignments for implementing the plan;
- (6) Description of discharge plans and aftercare service needs;

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- (7) Aftercare goals;
- (8) The date the plan was developed and revised;
- (9) Signatures of staff involved in the formulation or review of the plan;
- (10) Documentation of disability, if any, which requires a modification of policies, practices, or procedures and record of any modifications made; and
- (11) Plan for initiating **on**, coordinating **on**, ~~and managing~~ **of**, and referring to:
  - (a) concurrent additional substance use disorder treatment **that may require the use of medication**, such as medication **for addiction** ~~assisted~~ treatment when a **client/patient or resident** is enrolled in outpatient counseling or residential rehabilitation;
  - (b) treatment of co-occurring disorders; ~~and~~
  - (c) primary medical care; **and**
  - (d) **recovery supports and resources.**

Such plan shall identify providers of care and responsibilities of each, specifying method(s) for coordination and communication, and method(s) for ensuring that sharing of information is consistent with the requirements of 105 CMR 164.084. **With patient consent, treatment plans may be submitted from the discharging provider to the admitting provider during the referral process.**

(B) The **Licensed or Approved Provider** ~~licensee~~ shall ensure that individual treatment plans are reviewed with the **client/patient or resident** and amended as necessary. **As treatment progresses, further assessment and diagnostic information must be gathered and documented so as to inform longitudinal treatment planning.** ~~When treatment continues for three months or more, treatment plans shall be reviewed at least once every three months.~~ The **client/patient or resident** and staff reviewing the plan shall sign it, and it shall be incorporated into the ~~client's~~ **patient's or resident's** record. If there has been no **client/patient or resident** contact over a three-month period, the **client/patient or resident** shall be discharged from care and the case closed.

(C) **All treatment p**Plans shall be reviewed and signed by the Senior Clinician ~~developed or revised by a Counselor shall be reviewed and signed by his or her supervisor.~~

#### 164.074: Minimum Treatment Service Requirements

The **Licensed or Approved Provider** ~~licensee~~ shall provide directly or through ~~QSOA~~ **Qualified Service Organization Agreements (QSOA)** with Qualified Service Organizations, ~~as specified in 105 CMR 164.074(A) through (N) (K),~~ the following services;:

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~~as well as services prescribed for each service typelevel of care in 105 CMR 164.000: Part Two.~~

(A) Medications for treatment of addiction, including all FDA-approved medications for addiction medication-assisted treatment, which may be provided through a QSOA;

(B) Overdose prevention education as part of evidence-based practices;

(C) Substance ~~abuse~~ **use disorder** therapies, ~~counseling and education which conform to accepted standards of care must be provided directly by the Licensed or Approved Providerlicensee;~~

(D) Counseling and education as clinically indicated which conform to accepted standards of care, uses evidence-based practices, and monitors **progress and outcomes**;

~~(EB)~~ HIV education and counseling ~~must be provided directly by the Licensed or Approved Providerlicensee or through a QSOA;~~

~~(FC)~~ TB screening, education and treatment ~~must be provided directly by the Licensed or Approved Providerlicensee or through a QSOA;~~

~~(GD)~~ Tobacco education and counseling ~~must be provided directly by the Licensed or Approved Providerlicensee;~~

~~(HE)~~ Case management including:

(1) **directly connecting patients and residents to appropriate providers**~~referrals~~ based on continuum of care and ~~client~~**patient and resident** educational, vocational, financial, legal and housing ~~needs must be provided directly by the Licensed or Approved Providerlicensee, and~~

(2) **updating the patient or resident's primary care provider on treatment and progress, such as by providing the patient's or resident's record to the primary care provider upon the patient's or resident's documented authorization in accordance with 105 CMR 164.070(F)(5);**

~~(IF)~~ Mental health services, including **screening, crisis intervention, and psychopharmacological services**, for individuals with co-occurring disorders ~~must be provided directly by the Licensed or Approved Providerlicensee or through a QSOA;~~

~~(JG)~~ Health services, including **primary care, oral health, and family planning services**



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requested by the ~~client~~**patient or resident** ~~must be provided directly by the Licensed or Approved Provider~~**licensee or through a QSOA**;

~~(KH)~~ Services for individuals with compulsive behaviors such as compulsive gambling ~~must be provided directly by the Licensed or Approved Provider~~**licensee or through a QSOA**;

~~(LI)~~ Relapse prevention and recovery maintenance counseling and education ~~must be provided directly by the Licensed or Approved Provider~~**licensee** and shall:

- (1) include monitoring of the ~~client's~~**patient's or resident's** behavior;
- (2) address risks specific to the ~~client~~**patient or resident**, including, where applicable, risk of overdose; and
- (3) include services intended to maintain the ~~client~~**patient or resident** in treatment and support recovery;

~~(MJ)~~ Planning for ~~client's~~**patient's or resident's** completion of treatment ~~provided by the Licensed or Approved Provider~~**licensee**, and identification of transitional, discharge and aftercare supports the ~~client~~**patient or resident** may require ~~must be provided directly by the Licensed or Approved Provider~~**licensee**; and

~~(NK)~~ Family support services, including family therapy, or social or education services.

#### 164.075: Termination and Discharge

(A) The **Licensed or Approved Provider**~~licensee~~ shall establish written termination and discharge policies and procedures and shall make these available to prospective ~~clients~~**patients or residents** at the time of admission. These shall include:

- (1) Written criteria defining:
  - (a) Successful completion of treatment;
  - (b) Voluntary termination prior to program completion, except in the case of an individual committed to treatment under M.G.L. c. 123, § 35;
  - (c) Involuntary termination, including:
    1. emergency termination when the program director or ~~Practitioner~~**physician** reasonably determines that the ~~client's~~**patient's or resident's** continued ~~and~~**presence** in the program presents an immediate and substantial threat of physical harm to other ~~clients~~**patients or residents**, program personnel, or property; and
    2. non-emergency termination, including notice to the ~~client~~**patient or resident** of the reasons for termination and the right to grieve the decision as required by 105



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CMR 164.080 prior to termination; and

- (d) Procedures for determining, in consultation with the ~~client~~**patient or resident**, referrals needed to ensure a continuum of care, reduction of risk of relapse, and reduction of risks to ~~client's~~**patient's or resident's** well-being, **provided the patient or resident is directly connected to such services prior to or within a reasonable time following discharge. Such referrals may include, but are not limited to**~~including referrals to:~~
1. certified alcohol and drug-free housing;
  2. additional substance use disorder treatment;
  3. treatment of co-occurring disorders;
  4. continued care coordination and management with the ~~client's~~**patient's or resident's** medical and psychiatric care providers;
  5. community based overdose prevention programs;
  6. employment resource; ~~and~~
  7. community and social supports, including family support services; ~~and~~
  8. **providers of medication for addiction assisted treatment.**
- (2) Procedures for planning the discharge in consultation with the ~~client~~**patient or resident** when one of the following conditions is met **and discharge will not create an immediate safety risk for the patient:**
- (a) ~~Patient or resident~~**Client** has received optimum benefit from treatment and further progress requires either the ~~client's~~**patient's or resident's** return to the community or the ~~client's~~**patient's or resident's** referral to another type of treatment program;
  - (b) ~~Client~~**Patient or resident** is ready to transition to different ~~service type~~**level of care**, which may be more or less intensive than the current program;
  - (c) ~~Client~~**Patient or resident** voluntarily requests discharge from treatment, in which case procedures shall include review of risks and benefits of terminating treatment; or
  - (d) ~~Client~~**Patient or resident** is involuntarily terminated on a non-emergency basis.
- (3) A written discharge summary including:
- (a) Description of services provided, **patient's or resident's response to such services, and progress in attaining treatment plan goals;**
  - (b) ~~Client's~~**Patient's or resident's** substance use at discharge, including risk of overdose and recommendations for follow-up services;
  - (c) ~~Client's~~**Patient's or resident's** current vocational, educational and financial status;
  - ~~(d) Current legal problems;~~
  - ~~(d)~~ Reason for termination;
  - ~~(e)~~ **Direct r**~~R~~eferrals provided;

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- (fg) Supports and services available to the **client/patient or resident** after discharge, provided by the **Licensed or Approved Provider**~~licensee~~ or by others;
  - (gh) Documentation of efforts made by the **Licensed or Approved Provider**~~licensee~~ to prevent discharge of a **client/patient or resident** to a shelter for the homeless;
  - (hi) Documentation of ~~client's~~**patient's or resident's** participation in discharge planning, or of ~~client's~~**patient's or resident's** refusal to participate; and
  - (ij) An aftercare and follow-up plan including method for contacting **client/patient or resident** if the **client/patient or resident** consents to contact.
- (B) The **Licensed or Approved Provider**~~licensee~~ shall establish procedures for discharge if a **client/patient or resident** leaves the program against clinical advice or is involuntarily discharged from the program including, but not limited to, an appeal process for an involuntary discharge. The **Licensed or Approved Provider**~~licensee~~ shall refer the **client/patient or resident** to another facility/program for treatment if necessary or appropriate.
- (C) **Licensed or Approved Providers**~~Licensees~~ may discharge **clients/patients or residents** who refuse to provide information required for necessary coordination of treatment **or in an emergency situation where the patient's or resident's continuation in the program presents an immediate and substantial threat of physical harm to other patients or residents, program personnel or property; provided the Licensed or Approved Provider shall maintain a log of involuntary discharges, reasons for involuntary discharge and referrals made, and shall make this documentation available to the Department for inspection.**
- (D) **Licensed or Approved Providers**~~Licensees~~ providing Opioid Treatment Services shall establish additional termination and discharge procedures as specified in 105 CMR 164.311~~309~~.
- (E) **Licensed or Approved Providers**~~Licensees~~ providing residential services, whether acute or rehabilitation, shall not develop a discharge plan which provides for discharge of a **client/patient or resident** or patient to a shelter for the homeless.

#### 164.076: Aftercare

The **Licensed or Approved Provider**~~licensee~~ shall establish written policies and procedures for provision of aftercare for **clients/patients or residents** who are discharged, which shall include provisions for **client/patient and resident** participation in developing the aftercare plan, ~~and~~ a method for contacting the **client/patient or resident, and ensuring the**

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**patient's or resident's ability to continue any prescribed medications.** Aftercare services shall include:

- (A) **Directly connecting the patient or resident to an appropriate provider**~~Referrals~~ to ensure a continuum of care for the ~~client~~**patient or resident**, including arrangements for further substance ~~abuse~~**use disorder** treatment and post-discharge counseling and other supportive services;
- (B) **Providing i**nformation concerning available community-based service agencies and programs, which shall include a description of services, addresses, phone numbers and the names of contact persons;
- (C) Referrals, the aftercare plan and information provided to the ~~client~~**patient or resident** shall be documented in the ~~client's~~**patient's or resident's** record; and
- (D) If a ~~client~~**patient or resident** refuses~~d~~ aftercare services, the **Licensed or Approved Provider**~~licensee~~ shall **document** ~~ensure that~~ the refusal ~~is documented~~ in the ~~client's~~**patient's or resident's** record.

#### 164.077: Post-discharge Follow-up

The **Licensed or Approved Provider**~~licensee~~ shall establish written policies and procedures for follow-up ~~client~~**patient and resident** contact. Such policies shall describe circumstances under which a ~~client~~**patient or resident** may be contacted after discharge and shall require that ~~client's~~**patient's or resident's** permission for such contact be documented in the ~~client's~~**patient's or resident's** record.

#### 164.078: Behavior Management

The **Licensed or Approved Provider**~~licensee~~ shall establish and maintain written policies and procedures for managing disruptive behavior; including, **but not limited to**, aggression, harm or threats of harm to self or others, destruction of property; and refusal to comply with program policies. The policies~~y~~ and procedures shall be posted and shall ~~include~~:

- (A) Descri~~ption of~~ the safeguards for the emotional, physical and psychological well-being of the population served;
- (B) **Describe the**~~A description of~~ measures used to promote appropriate behavior; ~~and~~

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(C) ~~Define~~**Definition** and ~~explanation of the~~ behavior management procedures used in the facility including, where applicable:

- (1) level/point systems of privileges, including procedures for the ~~client's~~**patient's or resident's** progress in the program;
- (2) the type and range of restrictions a staff member can authorize for misbehavior of residents; and
- (3) behavioral interventions to be used in response to angry or aggressive ~~clients~~**patients or residents**, including de-escalation techniques.

(C) ~~Prohibition~~**use** of physical restraints in any form, except in the case of an individual committed to treatment under M.G.L. c. 123, § 35; ~~and~~

(D) **Include** ~~c~~Criteria for the transfer or discharge of any ~~client~~**patient or resident** whose aggressive behavior presents a danger or threat of danger to the resident or to other ~~clients~~**patients, residents** or staff;

(E) **Describe**~~A description of~~ the **Licensed or Approved Provider's**~~licensee's~~ grievance process; and

(F) **Describe**~~A description of~~ the process for filing complaints with the Department.

164.079: ~~Clients'~~**Patients' and Residents'** Rights

(A) The **Licensed or Approved Provider**~~licensee~~ shall safeguard the legal and civil rights of each ~~client~~**patient and resident** at all times during treatment and **throughout the** discharge ~~process~~~~from treatment~~. Each **Licensed or Approved Provider**~~licensee~~ shall adopt and maintain an updated set of rules, which set forth the responsibilities and the rights of ~~clients~~**patients and residents** regarding treatment and discharge.

(B) The **Licensed or Approved Provider**~~licensee~~ shall guarantee the ~~client~~**patient or resident**, at a minimum, the following rights:

- (1) freedom from physical and psychological abuse;
- (2) freedom from strip searches and body cavity searches;
- (3) control over his or her bodily appearance, provided, however, on program premises, the **Licensed or Approved Provider**~~licensee~~ may prohibit attire and personal decoration which interfere with treatment;
- (4) access to his or her ~~client~~**patient or resident** record in the presence of the

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administrator or designee unless there is a determination that access to parts of the record could cause harm to the ~~client~~**patient or resident**;

(5) the right to challenge information in his or her **patient or resident**~~client~~ record by inserting a statement of clarification or letter of correction signed by both the clinician and the ~~client~~**patient or resident**;

(6) the right to obtain a copy of the ~~client's~~**patient's or resident's** records as specified in 105 CMR 164.083;

(7) the right to have the confidentiality of his or her records secured as required by 105 CMR 164.084;

(8) the right to terminate treatment at any time, except in the case of an individual committed to treatment under M.G.L. c. 123, § 35;

(9) freedom from coercion;

(10) treatment **provided on a non-discriminatory basis**~~without regard to race, ethnicity, creed, national origin, religion, sex, sexual orientation, gender identity, ability to speak English, age, or disability~~;

(11) treatment in a manner sensitive to individual needs and which promotes dignity and self-respect;

(12) full disclosure regarding fee charged and, in residential rehabilitation programs, any ~~client~~**patient or resident** benefits to be contributed;

(13) the right to grieve actions or decisions of the **Licensed or Approved Provider**~~licensee~~ regarding the ~~client's~~**patient's or resident's** treatment;

(14) freedom to practice his or her religious faith;

(15) the right to request referral to a facility which provides treatment in a manner to which the ~~client~~**patient or resident** has no religious objection;

(16) drug screens conducted in a manner which preserves the ~~client's~~**patient's or resident's** dignity and, when the drug screen is by urine sample, accommodates any medically confirmed inability to give urine by providing for an alternate effective means of screening such as oral swab; and

(17) the right to contact the Department.

(C) The **Licensed or Approved Provider**~~licensee~~ shall provide for translations of rights, rules and manuals for ~~clients~~**patients and residents** who do not read English.

#### 164.080: Grievances

The **Licensed or Approved Provider**~~licensee~~ shall establish written policy and procedures for the resolution of ~~clients'~~**patients' or residents'** disagreement(s) or dispute(s) arising in relation to treatment or program requirements~~and shall ensure that clients are provided with a~~

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~~copy of the procedures.~~ The policy and procedures shall specify:

- (A) **Clients' Patients' and residents'** right to grieve actions and/or decisions of the **Licensed or Approved Provider** ~~licensee~~ regarding the ~~client's~~ **patient's or resident's** treatment;
- (B) Steps to be taken to resolve the matter; and
- (C) Provisions for a hearing on the matter presided over by an impartial grievance officer who may be any staff or other person(s) not directly involved in the facts of the incident giving rise to the action grieved or in the decision to commence the action; provided that the persons involved in either the facts of the incident or in the decision to commence the proceedings shall not have authority over the hearing officer(s). Grievance officers shall be selected based upon their expertise in issues being grieved (*e.g.*, medical officer/medical grievance, administrative officer/administrative grievance). **All hearings may be conducted by telephone or using an audio-visual, real-time, two-way interactive communication system.**

164.081: ~~Client~~ **Patient and Resident** Policy Manual

- (A) Each **Licensed or Approved Provider** ~~licensee~~ shall adopt and maintain a current policy manual for ~~clients~~ **patients and residents** containing clear and concise statements regarding:
  - (1) Program description including:
    - (a) goals and objectives,
    - (b) type of services provided including aftercare and follow-up;
    - (c) qualifications for service delivery staff;
    - (d) restrictive criteria for receipt of specific services, if any;
    - (e) scheduling restrictions; and
    - (f) overall hours of program operation;
  - (2) Orientation materials provided to ~~clients~~ **patients and residents** at admission, including information about treatment options, such as medication **for addiction assisted** treatment, and about family support services, ~~as required in 105 CMR 164.070(D)(1) and (2);~~
  - (3) Admission requirements and intake procedures, including a list of the minimum information that is collected at the intake session; ~~;~~
  - (4) Fee policies including:
    - (a) method used to determine fee, including reduced fees for persons of low income; and
    - (b) whether or not the program accepts public or private third-party reimbursement or funding;

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- (5) Procedures regulating access to ~~e~~**lient****patient and resident** records;
- (6) Program rules, including:
  - (a) all **patient and resident** ~~obligations imposed on clients and sanctions~~**expectations and responsibilities, and processes for maintaining safety and accountability**~~corrective actions for their violation~~;
  - (b) restrictions on use of tobacco **and vaping** products;
  - (c) **prohibition of sexual harassment and procedures for addressing and investigating sexual harassment complaints**;
  - (d) **prohibited interactions between staff and patients or residents, and among patients or residents**;
  - (e) criteria for termination;
  - ~~(f)~~ procedures for involuntary terminations;
  - ~~(g)~~ grievance procedure for the resolution of any other ~~e~~**lient****patient or resident** related problem or dispute**; and**
  - (h) **visitation and communication policies that encourage and support family visits, mail, telephone calls, and other forms of communication with family, friends, or other persons provided that no such policy authorizes the Licensed or Approved Provider to hold mail or restrict the sending of mail or open patient or residents' mail; however, such policy may require patients or residents to open letters or packages in the presence of staff.**
- (7) Policies, practices, and procedures **to ensure compliance with the ADA**; ~~for the disabled; and~~
- (8) ~~C~~**lients'****Patients'** and residents' rights; and
- (9) **Contact information for the Department's Bureau of Substance Addiction Services complaint line.**

(B) The policy manual **and contact information for the Department's Bureau of Substance Addiction Services complaint line** shall be ~~made available to all clients and/or interested parties as follows~~:

- (1) placed visibly in a public area frequented by all ~~e~~**lients****patients or residents** or kept at a central location, with a notice of its availability conspicuously posted in a public area frequented by all ~~e~~**lients****patients or residents**; and
- (2) given to each new ~~e~~**lient****patient or resident** during the admission process or subsequently upon his or her request, and to any interested party upon request.

(C) Whenever the **Licensed or Approved Provider**~~licensee~~ makes a change in policy, it shall issue a written change to the policy manual; the change shall not take effect until placed in the manual and distributed as provided for in 105 CMR 164.081(B).



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(D) When furnishing a ~~client~~**patient or resident** with a copy of the policy manual or of any changes to the policy manual, the **Licensed or Approved Provider**~~licensee~~ shall secure a dated and signed receipt, which shall be placed in the ~~client~~**patient or resident** record.

(E) The **Licensed or Approved Provider**~~licensee~~ may charge for the cost of copying and assembling the policy manual for an interested party or for a second copy to a ~~client~~**patient or resident**.

#### 164.082: Special Populations

**Licensed and Approved Providers**~~Licenses~~ providing services to special populations listed below shall make additional provisions as specified:

(A) Pregnant Women: **Licensed and Approved Providers**~~Licenses~~ serving pregnant women shall:

- (1) establish in writing clinically appropriate medical protocols for pregnant women;
- (2) designate a hospital for emergency obstetrical and medical back-up; however, ~~clients~~**patients or residents** may elect to choose their own medical providers;
- (3) **coordinate care with obstetrical or other maternity care providers as appropriate;**
- (4) ~~either directly or through qualified service organization agreements~~ provide for appropriate parent **or legal guardian**-child services **directly or through a QSOA**; and
- (54) be available to serve women in all three trimesters of pregnancy.

(B) Adolescents and Transition Age Youth~~Persons Younger than 18 Years Old~~: **Licensed and Approved Providers**~~Licenses~~ serving **Adolescents and/or Transition Age Youth**~~persons younger than 18 years old age~~ shall:

- (1) ensure that assessments as required in 105 CMR 164.072 include an evaluation of:
  - (a) developmentally age-appropriate behaviors;
  - (b) cognitive functioning;
  - (c) physical maturation; ~~and~~
  - (d) **existing peer and family supports, peer group and family functioning;** ~~including education and social maturity.~~
  - (e) **experience of trauma;**
  - (f) **history of mental health diagnoses;**
  - (g) **availability of and access to recovery supports;**
  - (h) **social maturity; and**



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**(i) educational needs.**

- (2) determine the person's **custody**~~legal~~ status **if under the age of 18**;
- (3) ensure that staff providing services for children and adolescents have specific training in child and teen development, including a minimum of five college credit hours in courses related to the topic;
- (4) ensure that services for adolescents are supervised by a Senior Clinician with at least two years post-master's experience working with adolescents with substance use disorders;
- (5) **ensure available parent or care-giver support and education services**;
- (6) ensure that adolescents are served in programs which are separate from programs serving adult populations; and
- ~~(7)~~ prior to providing any services to persons younger than 18 years old, inform the Department of the nature and scope of any services provided to adults in the same facility as those intended for services for adolescents. The Department shall determine whether such proximity of adult services constitutes a risk to adolescents.

(C) Persons with Co-occurring Disorders: **Licensed and Approved Providers**~~Licensees~~ serving persons with co-occurring disorders shall:

- (1) establish policies and procedures for referrals for specialized **mental health care**~~psychiatric/psychological~~ care; and
- (2) **if the Licensed or Approved Provider is not also licensed or approved to provide mental health services**, establish **QSOAs**~~qualified Service Organization agreements~~ providing for mental health interventions and coordinated care.

(D) Elders: **Licensed and Approved Providers**~~Licensees~~ serving persons 60 years of age or older shall establish **QSOAs**~~qualified Service Organization agreements~~ with local organizations providing services for the elderly.

(E) Persons with Disabilities: **Licensed and Approved Providers**~~Licensees~~ serving persons with disabilities shall:

- (1) **establish policies and procedures that identify any specialized programming for persons with disabilities**
- (2) **establish policies and procedures for referrals as appropriate to specialized services for persons with disabilities; and**
- (3) **establish QSOAs with state and local organizations providing services and/or care coordination for persons with disabilities.**

~~document the client's/patient's or resident's current functioning, ability to perform activities of daily living, and ability to comprehend program policies and procedures.~~

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164.083: ~~Client~~**Patient and Resident** Records

(A) The **Licensed or Approved Provider**~~licensee~~ shall maintain separate records for each ~~client~~**patient and resident** in a secure and confidential manner **consistent with state and federal law, including 42 CFR Part 2**. Records shall be legible and up to date no later than five business days from the date of last ~~client~~**patient or resident** contact.

(B) The written individual ~~client~~**patient or resident** record shall include, but not be limited to, the following information:

- (1) name, unique ~~client~~**patient or resident** identifier, date of birth, sex, race/ethnicity, relationship status, and primary language, if other than English;
- (2) name and contact information of the referring agency, court or person;
- (3) presenting problem(s);
- (4) all necessary authorizations, ~~and~~consents, and updates;
- (5) ~~complete initial~~ **patient or resident** assessment as required by 105 CMR 164.072;
- (6) insurance coverage information;
- (7) **individual treatment**~~original service~~ plan and service plan reviews;
- (8) signed ~~client~~**patient or resident** confirmation of receipt of **agency program** policy manual, ~~and~~information regarding maintenance of client confidentiality, **and contact information for the Department's Bureau of Substance Addiction Services complaint line**;
- (9) signed and dated progress notes entered by ~~client's~~**patient's or resident's** counselor after every ~~client~~**patient and resident** contact or attempted contact;
- (10) documentation of STD, TB, Viral Hepatitis, HIV/AIDS risk assessment;
- (11) documentation of STD, TB, Viral Hepatitis, HIV/AIDS education;
- (12) record of any threat made by ~~client~~**patient or resident** to harm self or another, and the action taken by **Licensed or Approved Provider**~~licensee~~ in response to threat(s);
- (13) record of multidisciplinary team reviews concerning ~~client~~**patient or resident**, including plan for coordination with other substance use disorder treatment, mental health, and physical health care services;
- (14) discharge summary;
- (15) aftercare service plan;
- (16) record of attempts at **post-discharge** follow-up by letter, phone call, home visit or through contacts with aftercare providers;
- (17) records of any warnings, disciplinary actions, grievances ~~or~~and complaints, and actions taken by **Licensed or Approved Provider**~~licensee~~;
- (18) ~~client~~**patient and resident** fee information, including method by which fee was determined, and documentation of all fees paid by ~~client~~**patient or resident**; and

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(19) ~~confirmation of client's receipt of information about family support services as required by 105 CMR 164.070(D)(2)~~ **record of care coordination, including relevant releases of information.**

(C) Progress notes shall be current, legible, dated, and signed by the individual making the entry. Group counseling and educational-session progress notes may describe the session in general, but the ~~client's~~ **patient's or resident's** record must also include in each progress note specific comments on the ~~client's~~ **patient's or resident's** participation and progress in the group.

(D) All ~~client~~ **patient or resident** cases reviewed by a Clinician and Counselor shall receive a quarterly record review by his or her supervisor. Evidence of this review shall be documented in the clinical record.

(E) All ~~client~~ **patient and resident** records shall be marked confidential and kept in a secure, locked location, accessible only to authorized staff. Electronic records shall be secured through firewall and password protection and shall be accessible only to authorized staff.

(F) Except as otherwise provided in 105 CMR 164.000 or by applicable state or federal law, access to ~~client~~ **patient and resident** records shall be limited to the ~~client~~ **patient or resident** or his or her designee pursuant to ~~client's~~ **patient's or resident's** written authorization, and to those staff members authorized by the administrator. The **Licensed or Approved Provider** ~~licensee~~ shall have a written procedure regulating and controlling access to ~~client~~ **patient and resident** records by staff members whose responsibilities require access.

(G) Upon a ~~client's~~ **patient's or resident's** request, the **Licensed or Approved Provider** ~~licensee~~ shall provide, in a timely manner, to the ~~client~~ **patient or resident**, another **Licensed or Approved Provider** ~~licensee~~ or other specifically authorized person:

- (1) The opportunity to inspect the ~~client's~~ **patient's or resident's** records;
- (2) A copy of such record, except in circumstances described in 243 CMR 2.07(13)(e): ~~Psychiatric Records~~ governing licensed physicians engaged in the practice of psychiatry; **and**
- (3) A copy of any previously completed report required for third party reimbursement.

(H) The Department shall have access to ~~client~~ **patient and resident** records for the purposes of reviews required under 105 CMR 164.000. The **Licensed or Approved Provider** ~~licensee~~ shall obtain any signed consent from its ~~clients~~ **patients or residents** that it deems necessary to provide such access.

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#### 164.084: Confidentiality

~~Client~~**Patient- and resident**-specific information shall be privileged and confidential and shall be made available only in conformity with all applicable state and federal laws and regulations regarding the confidentiality of ~~client~~**patient and resident** records, including but not limited to, 42 CFR Part 2, and 45 CFR Parts 160 and 164 (HIPAA Privacy and Security Rules) if applicable.

~~(A) The licensee shall, as part of its orientation, inform and train all staff members, in writing, of these confidentiality requirements. Evidence of this notification and training shall be included in personnel records.~~

~~(B) The licensee shall, as part of its client orientation, inform all clients in writing of these confidentiality requirements. Evidence of the provision of this information shall be included in the client's record.~~

~~(C) The licensee shall have written policies and procedures controlling access to records and to information pertaining to HIV/AIDS and HIV/AIDS testing pursuant to M.G.L. c. 111, § 70F.~~

#### 164.085: Transfer and Storage of Service Records

(A) The **Licensed or Approved Provider**~~licensee~~ shall maintain ~~client~~**patient and resident** records in a secure place for **a minimum of** seven years from the date of ~~client's~~**patient's or resident's** termination of services unless required by law to do so for a longer period. Bureau-approved programs licensed under M.G.L. c. 111, § 51 as a hospital or clinic shall maintain ~~client~~**patient and resident** medical records for 20 years, as required by M.G.L. c. 111, § 70. The **Licensed or Approved Provider**~~licensee~~ shall ensure that clinical records accompany ~~clients~~**patients or residents** upon transfer. Transfer of records shall be made in accordance with federal and state confidentiality law and regulations. A signed consent from each ~~client~~**patient and resident** must be obtained prior to the transfer of such records.

(B) When closing a program, service or facility, the **Licensed or Approved Provider**~~licensee~~ shall ensure that all records not transferred to a new facility with the ~~client~~**patient or resident** be securely stored for the remainder of the seven year period mandated for each record. For all current ~~clients~~**patients and residents** of the **Licensed or Approved Provider**~~licensee~~ at the time of closure, the **Licensed or Approved Provider**~~licensee~~ shall also make every effort

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to provide a copy of the record to the ~~elient~~**patient or resident** at the time of closure, if the record is not transferred with the ~~elient~~**patient or resident** to a new treatment program. Public notice shall be given regarding the date of service termination and the site at which such records shall be securely stored. The **Licensed or Approved Provider**~~licensee~~ shall prepay the full cost of such storage and shall contract to ensure that the records are appropriately maintained for the entire period and that the records are destroyed at the end of the period in a manner that protects their confidential nature.

#### 164.086: Interruption or Suspension of Service

~~(A) If a licensee notifies the Department pursuant to 105 CMR 164.035(D) or (H) that the health, safety or well-being of clients is in imminent danger as a result of conditions existing within the service, program or facility, the licensee shall consult with the Department to determine whether there is a need to interrupt or suspend a service or program.—~~

~~(B)~~ If the Department determines there is a need to interrupt or suspend a service or program **because the health, safety, or well-being of patients or residents is in imminent danger as a result of conditions existing within the service, program, or facility**~~as provided for in 105 CMR 164.018: Grounds for Suspension of a License~~, the **Licensed or Approved Provider**~~licensee~~ shall:

- (1) notify ~~elients~~**patients and residents** of the interruption or suspension;
- (2) provide for continuity of care for ~~elients~~**patients and residents** during the period of interruption or suspension; and,
- (3) provide for the secure storage or safe transfer of ~~elient~~**patient or resident** records, with ~~elient~~**patient or resident** authorization.

~~(B)~~ Within five **calendar** days of the interruption or suspension of services or program, the **Licensed or Approved Provider**~~licensee~~ shall notify the Department in writing of its plans **to resume**~~for resumption of~~ service, or for transfer of services to another program or facility.

#### 164.087: Closure

(A) **Except as provided by 105 CMR 164.087(D), t**~~The~~ **Licensed or Approved Provider**~~licensee~~ shall notify **the Department, each elient**~~patient~~ **and resident, each staff member of the program, and each labor organization that represents the facility's workforce at the time of notice,** orally and in writing **of the impending termination** at least ~~90~~**30** **calendar** days prior to the termination of service or program that the service or program will close, and document the notification in each ~~elient's~~**patient's or resident's** record.

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Notification shall specify the date of closure. ~~If fewer than 30 days remain prior to an involuntary closure, licensee shall cooperate with the Department to ensure appropriate notice.~~

(B) The **Licensed or Approved Provider**~~licensee~~ shall develop a written referral plan in collaboration with each ~~client~~**patient and resident** that includes a plan for continuing the ~~client's~~**patient's or resident's** substance ~~abuse~~**use disorder** treatment, including **directly connecting patients and residents to an appropriate provider** ~~referrals~~ for continued treatment, ~~if appropriate~~. If insufficient time remains to ensure an appropriate referral plan with respect to an involuntary closure, the **Licensed or Approved Provider**~~licensee~~ shall cooperate with the Department and the ~~client~~**patient or resident** to ensure an appropriate referral, if required.

(C) **The Commissioner may waive the 90-day time frame for initial notification of 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.**

(D) The Department may, ~~in exceptional circumstances~~, grant permission for the temporary closure of the service or program **provided that:** ~~for a period no longer than 30 days when the Department finds that clients will not be affected adversely by the temporary closure~~

- (1) **the Licensed or Approved Provider has submitted a plan for continued substance use disorder treatment for all patients and residents during the temporary closure;**
- and
- (2) **the Licensed or Approved Provider may only close after approval from the Department.**

## PART TWO: **REQUIREMENTS FOR SERVICE PROVISION**~~LEVELS OF CARE~~

### 164.099: SPECIAL PROJECTS

(A) **The Department will consider proposals for Special Projects for the innovative delivery of substance use disorder services. No such proposal shall be implemented without prior written approval of the Department. Special projects may be time limited and may be subject to conditions by the Department.**

(B) **Special projects shall include an organized system of substance use disorder treatment services delivered in a model that meets the immediate need(s) for a special population that is determined to be underserved by existing licensed substance use disorder treatment**

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models.

(C) Services provided by special projects shall not pose a threat to patient health and safety, and shall be delivered in an evidence-based, trauma-informed manner while demonstrating positive outcomes for patients.

(D) Any proposal for a special project approval from the Department must meet the definition of Substance Use Disorder Treatment and Substance Use Disorder Treatment Program under 105 CMR 164.005.

(E) An application for a special project approval must be submitted in a manner prescribed by the Department. The application shall:

- (1) Demonstrate the need for the service.
- (2) Describe the innovative delivery of the service and how it will satisfy the current need.
- (3) Meet all applicable requirements in 105 CMR 164.000 Part One.
- (4) Include one or more treatment service components within 105 CMR 164.000 Part Two.
- (5) Demonstrate that the innovative service delivery model is evidence-based and consistent with medical efficacy.
- (6) Comply with all applicable state and federal requirements.

164.100: ~~ACUTE~~ 24-HOUR DIVERSIONARY SERVICES

164.101: Scope

**24-Hour Diversionary Acute Services** encompass levels of care to persons who are intoxicated or incapacitated by their use of alcohol and/or other drugs medically manage withdrawal symptoms of patients on a 24-hour diversionary service basis, and include 24-hour diversionary service forms of Acute Treatment Services (ATS) and Clinical Stabilization Services (CSS). ~~The primary purposes of acute services are management and treatment of withdrawal from alcohol and/or other drugs.~~ Acute Treatment Services include encouragement of the patient's continued participation in treatment after discharge, and conclude by directly connecting the patient to appropriate ~~with a referral for other~~ recovery and rehabilitation services. In addition to all provisions of 105 CMR 164.000: *Part One*, the provisions of 105 CMR 164.103 through 105 CMR 164.110 apply to all Licensed or Approved Providers providing 24-Hour Diversionary Services. A Licensed or Approved Provider that meets the requirements for a determined service type under 105 CMR



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**164.100 through 105 CMR 164.153 may also deliver services to lower acuity patients, provided that the Licensed or Approved Provider meets all applicable staffing and service requirements for each additional service type.**

~~164.111: ACUPUNCTURE~~

~~164.112: Scope~~

~~Provisions of 105 CMR 164.113 through 164.115 apply to acupuncture substance abuse detoxification services. The licensee shall also comply with all provisions of 105 CMR 164.000: Part One.~~

~~164.113: Provision of Services~~

~~(A) Admission: Prior to admission, the licensee shall determine that acupuncture services are appropriate based on:~~

~~(1) existence of a substance use disorder or a mental or behavioral disorder attributable to psychoactive substance use; and~~

~~(2) absence of current or potential withdrawal symptoms which constitute a risk to the patient's health and well being and which require medical attention or medical monitoring.~~

~~(B) Assessment: In addition to the assessment required by 105 CMR 164.072, the licensee shall conduct a screening to determine that acupuncture is not contraindicated. The screening shall include, at a minimum:~~

~~(1) client's history of seizures, delirium tremens or other life-threatening withdrawal symptoms, which constitute a risk to the client's health or well being;~~

~~(2) neurological evidence of an appropriate level of consciousness; and~~

~~(3) vital signs.~~

~~(C) Treatment: The licensee shall provide:~~

~~(1) intensive acupuncture administration of six treatments per week for detoxification purposes, followed by less intensive treatment of two to three times per week for relapse prevention;~~

~~(2) a primary counselor to provide case management and motivational counseling that focus on engaging the client to remain in acupuncture treatment;~~

~~(3) supportive counseling during the relapse prevention phase to motivate the client to utilize ongoing substance abuse outpatient treatment and self help groups. Supportive~~



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~~counseling sessions shall include HIV risk assessment and AIDS education; and  
(4) outreach services to attract underserved target populations, maintain client census, and develop linkages with community agencies.~~

#### 164.114: Staffing Pattern

~~The licensee shall establish a staffing pattern in sufficient numbers and positions necessary for the level of care provided.— Staffing pattern shall include the following positions:~~

~~(A) An acupuncturist on site during the hours of operation.~~

~~(B) Consultation to staff available from a fully qualified clinician, and a physician, psychiatrist, nurse practitioner, physician assistant, registered nurse or licensed practical nurse either on site or through an affiliation agreement.— If services are to be available through a Qualified Service Organization (QSO) Agreement, the QSO agreement shall be reaffirmed every two years.—~~

~~(C) Supervision: In addition to supervision requirements set forth in 105 CMR 164.044 Training and Supervision, the licensees shall ensure that supervision of nursing staff is overseen by a registered nurse.~~

#### 164.115: Hours of Operation

~~The licensee shall provide service a minimum of six days per week, 52 weeks per year. Daytime hours shall include morning services and ensure maximum accessibility to clients without an appointment.— Hours shall include at least seven hours per week that shall be at time other than the regular 9:00 A.M. to 5:00 P.M., Monday through Friday schedule.~~

#### 164.121: OUTPATIENT DETOXIFICATION

##### 164.122: Scope

~~Provisions of 105 CMR 164.123 through 164.125 apply to outpatient substance abuse detoxification treatment services.— The licensee shall also comply with all provisions of 105 CMR 164.000: *Part One*.~~

##### 164.123: Provision of Service

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~~(A) Admission:~~

~~Prior to admitting a client into outpatient detoxification treatment, the licensee shall conduct obtain and shall make a part of the client record a medical evaluation by a licensed physician, psychiatrist, registered nurse, nurse practitioner, physician assistant or licensed practical nurse, which confirms that the client requires outpatient detoxification services based on:~~

- ~~(1) an assessment of the current and potential withdrawal symptoms of the client;~~
- ~~(2) the client's need for a structured program with frequent contact in order to engage in treatment; and,~~
- ~~(3) an assessment as to whether the community in which the client resides poses a threat to the client's abstinence.~~

~~(B) Physical Examination: The licensee shall ensure that a thorough physical examination, which conforms to principles established by the American Society of Addiction Medicine, is completed for all patients within 24 hours of admission.~~

~~(1) The physical examination shall include:~~

- ~~(a) an assessment of the patient's substance use disorder;~~
- ~~(b) tests for the presence of opiates, alcohol, benzodiazepines, cocaine and other drugs of abuse as indicated by the patient's current substance use;~~
- ~~(c) a brief mental status exam;~~
- ~~(d) an assessment of infectious diseases, including TB, Viral Hepatitis, and sexually transmitted diseases (STDs); pulmonary, liver, and cardiac abnormalities; dermatological and neurological sequelae of addiction; and possible concurrent surgical problems. When indicated, laboratory tests for these conditions shall be ordered.~~

~~The licensee shall ensure that laboratory tests are completed by licensed facilities that comply with all applicable federal and state licensure and certification requirements.~~

~~(2) The licensee shall ensure that the patient's current prescription medications are assessed in relation to interactions with medication prescribed in the course of treatment. Prior to prescribing, dispensing or administering an approved opioid agonist medication, the licensee shall ensure that the approved medication is not contraindicated by the patient's current prescribed medications or health status.~~

~~(3) For women of child-bearing age, the licensee shall include a pregnancy test in the physical examination.~~

~~(4) If the examination is conducted by a qualified health care professional who is not a physician, the results of the examination and any recommendations arising from the examination shall be reviewed by the nursing supervisor prior to implementation.~~

~~(5) All medical orders shall be signed by the medical director.~~

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~~(6) When re-admitting a patient who had been admitted within the previous three months, the timing, frequency and interval of a complete physical examination shall be subject to physician discretion, provided that no more than three months elapses between physical examinations.~~

~~(C) Treatment:~~

~~(1) The licensee shall provide detoxification services after determining through physical examination that such services are required.~~

~~(2) Upon receiving medical clearance to participate in treatment services, the licensee shall provide each client with at least nine hours of service programming each week.~~

~~(3) Treatment shall include services specified in 105 CMR 164.074: *Minimum Treatment Service Requirements*, and shall be provided either directly or through Qualified Service Organization agreements.~~

~~164.124: Staffing Pattern~~

~~(A) The licensee shall designate a physician as Medical Director who shall be responsible for administering all medical services performed by the program. The Medical Director shall have, at a minimum, six months' clinical experience with alcohol and other drug dependent persons or 40 hours of documented continuing education credit in treating addicted persons within the first 12 months of employment. The Medical Director shall be responsible for:~~

~~(1) Ensuring that each patient receives a complete physical examination including a medical history;~~

~~(2) Ensuring that appropriate laboratory studies have been performed; and,~~

~~(3) Signing all medical orders.~~

~~(B) The licensee shall establish a staffing pattern in sufficient numbers and positions necessary for the level of care provided. Staffing pattern shall include the following positions:~~

~~(1) Senior Clinician among direct service staff, who shall be responsible for the clinical/ educational operation of the substance abuse service;~~

~~(2) Licensed psychiatrist or licensed psychologist on staff or available through Qualified Service Organization Agreements;~~

~~(3) Registered nurse, nurse practitioner, or physician assistant on staff and on site during hours of operation of the service; —~~

~~(4) Licensed practical nurse, case aides and case management staff;~~

~~(5) If serving pregnant women, an obstetrician/gynecologist available on staff or through a Qualified Service Organization Agreement; and~~

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~~(6) Sufficient staff to ensure coverage on all shifts.~~

~~(C) Supervision: In addition to supervision requirements set forth in 105 CMR 164.044 Training and Supervision, the licensee shall ensure that supervision of nursing staff is overseen by a registered nurse.~~

~~(D) The licensee shall ensure that a qualified physician is available during all hours when service is provided, either on site or through a Qualified Service Organization Agreement, to provide consultation to staff. If services are to be available through an agreement, this agreement shall be reaffirmed every two years.~~

#### ~~164.125: Hours of Operation~~

~~The program shall be open to provide admission to outpatient services as well as to provide treatment seven days per week and four hours per day, at a minimum.~~

#### 164.103: Physical Plant

(A) **Building Design**: Each program shall provide adequate space to accommodate the number of patients served, including sufficient and separate space for the following, which may not be used as bedrooms for patients or staff:

- (1) Individual and group counseling sessions;
- (2) A living room or common area;
- (3) A visiting area;
- (4) A kitchen area and a dining area; **and**
- (5) Recreation and/or exercise area.

(B) **Compliance with Building Standards**: The Licensed or Approved Provider shall comply with the standards specified in 780 CMR, and those standards in 105 CMR 410.000 regarding heating, electricity, lighting, plumbing and sanitary facilities.

(C) **Bathrooms and Personal Hygiene**: The Licensed or Approved Provider shall ensure that:

- (1) Female and male patients have separate toilet and bathroom facilities;
- (2) Rooms containing a toilet or shower shall be separate and allow for privacy.
- (3) All showers and tubs are equipped with a non-slip surface or mat; and
- (4) All toilets have seats.

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**(D) Sleeping Rooms: The Licensed or Approved Provider shall ensure that:**

- (1) All sleeping rooms are conveniently located near toilet and bathing facilities.**
- (2) Female and male residents have separate sleeping quarters.**
- (3) Sleeping rooms are designed to promote comfort and provide adequate space and privacy, and meet the following requirements:**
  - (a) accommodate no more than six persons per sleeping area;**
  - (b) a separate bed for each patient; and**
  - (c) may not be an unfinished attic, stairway, hall or room commonly used for other purposes.**
- (4) The sleeping area has the following basic equipment and supplies:**
  - (a) a twin-size bed with a fire-retardant twin-size mattress in good condition and waterproof mattress cover. Each mattress shall be cleaned or replaced when soiled or when not in good condition. Each mattress pad shall be cleaned when soiled and at least every three months, and replaced when not in good condition. Cots may not be used;**
  - (b) adequate drawer and closet space;**
  - (c) an adequate supply of bed linens, blankets, pillows, washcloths and towels, which are in good condition. Linens, blankets, washcloths and towels shall be laundered before each new admission, or once a week, whichever occurs sooner;**
  - (d) a toothbrush, toothpaste and basic hygiene supplies.**

**164.104: Meals and Food Handling**

**(A) Inspections: The Licensed or Approved Provider shall ensure that food storage and preparation areas meet the standards defined in 105 CMR 590.000: *Minimum Standards for Food Establishments*, and that the food service is inspected and receives a food service permit by the local board of health, where applicable.**

**(B) Purchased Food Services: A Licensed or Approved Provider shall purchase only from a licensed food service establishment. A Licensed or Approved Provider that purchases from a food service shall obtain from the food service provider documentation of all required inspections, licenses, and conformance with sanitary standards. Such documentation shall include copies of a current license and the most recent inspection report.**

**(C) Meals: The Licensed or Approved Provider shall provide a nourishing well-balanced diet to all patients, and shall provide the following:**

- (1) Dining areas that are clean, well-lighted, ventilated and appropriately furnished;**

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- (2) A dining room large enough so all patients may eat at an appropriate hour, but not necessarily simultaneously;
- (3) Three meals each day;
- (4) Food and beverages for snacks;
- (5) Menus for each week planned prior to the start of the week, dated and maintained for three months; and
- (6) Means to provide for patients with special dietary needs, including food allergies.

#### 164.105: Safe Storage and Administration of Medications

(A) Licensed and Approved Providers providing medically managed or medically monitored withdrawal treatment services shall comply with all federal and state laws and regulations relating to the procurement, storage, dispensing, administration, recording and disposal of medications and shall comply with the following:

- (1) Written Policy and Procedure: The Licensed or Approved Provider shall establish a written policy and procedure governing the storage and administration of patients' prescription medications.
- (2) Storage: All medications shall be maintained in a locked, secure cabinet, accessible only to designated staff positions. The titles of designated positions shall be posted on the cabinet. The Licensed or Approved Provider shall ensure that patients do not have direct access to the medication cabinet.
- (3) Approval of Medication: The Licensed or Approved Provider shall take possession of a patient's prescription and over-the-counter medication upon admission. The Medical Director or their delegated qualified healthcare professional shall assess such medication(s) in light of the medical examination and medical services to be provided to determine whether the patient should continue to take these medications and based upon this determination shall implement a process for adjusting the medication regimen.
- (4) Medications brought by patients to the program shall be stored in a locked, secure cabinet separate from the facility's supply, except that patients shall retain medications required to treat acute episodes, such as asthma attacks or allergic reactions.
  - (a) If injectable drugs are used, Licensed and Approved Provider shall provide containers for safe storage, and proper disposal of sharps.
  - (b) Medications requiring refrigeration shall be kept in a refrigerator in the same area where other medications are stored. Medications shall not be stored in kitchen refrigerators.

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- (c) The Licensed or Approved Provider shall also establish a record of medications which remain in the possession of patients for treatment of acute episodes.
- (5) Prescription medication presented by a patient shall bear a pharmacy label, which shows the date of filling, the pharmacy name and address, the filling pharmacist's initials, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner, the name of the prescribed medication, directions for use and cautionary statements, if any, contained in such prescription or required by law, and if tablets or capsules, the number in the container. All over-the-counter medications shall be kept in the original containers containing the original label, which shall include the directions for use.
- (6) Upon admission the Licensed or Approved Provider shall document in writing the number of tablets or capsules, or the approximate amount of liquid in each prescribed medication brought by the patient. The Licensed or Approved Provider shall ensure that a similar count is conducted for all Schedule II through Schedule V medications by two staff persons at the beginning of each shift.
- (7) The Licensed or Approved Provider shall maintain documentation of all medications stored and disposed of.
- (8) Self-administration of Medications: Medications shall be self-administered by the patient, unless the Licensed or Approved Provider employs qualified health care professionals authorized to administer medications. Patients must be able to administer their own medications and, unless the Licensed or Approved Provider employs qualified health care professionals for this purpose, staff shall not administer medication to any patient. However, staff shall observe the patient ingesting the prescribed dose. Medications may not be provided to any patient if other patients are in the storage or office area. Licensed and Approved Providers shall make provision to provide a supply of medications to patients who plan to be absent from the facility when they would normally take a medication. The Licensed or Approved Provider shall maintain documentation of all administrations of medication, which shall include:
- (a) Name of patient to whom medication was provided;
  - (b) Name of staff person observing the patient take the medication, or providing needed supply;
  - (c) Date and time medication was provided; and
  - (d) Patient initials confirming that the medication was provided and taken.
- (9) Disposing of Medications: Programs shall comply with all federal and state laws and regulations relating to the procurement, storage, dispensing, administration, recording and disposal of medications.

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(10) **Improper Use**: The Licensed or Approved Provider shall establish a policy regarding improper use of medication which:

- (a) may impose corrective actions on patients who do not take medications in accordance with prescribed dose and frequency; and
- (b) shall impose corrective actions on patients who illegally obtain and use prescription medications.

#### **164.106: Patient Personal Effects and Affairs**

(A) **Written Policy and Procedure**: The Licensed or Approved Provider shall establish a written policy and procedure governing care of patient personal belongings and support of patient personal affairs.

(B) **Safekeeping**: The Licensed or Approved Provider may allow patients to bring monies and valuables into the program, if the licensee provides for the secure, locked storage of the personal property.

(C) **Right to Confiscate**: All patients shall be notified that by accepting admission they authorize the Licensed or Approved Provider to:

- (1) confiscate and dispose of any alcohol or drugs (other than those properly provided by prescription) or paraphernalia for the use of illegal drugs found in the possession of the patient;
- (2) confiscate any weapons or other articles found in the possession of the patient, which may constitute a threat to the life, health, safety, or well-being of the patient, the staff or public, and to turn over any guns to the police.

The Licensed or Approved Provider shall establish a record of any items confiscated or turned over to the police.

(D) The Licensed or Approved Provider shall establish written procedures governing patients' use of telephones, ~~paggers~~, cell phones or other communication devices, and sending and receiving mail. The Licensed or Approved Provider may not hold mail or restrict the sending of mail. The Licensed or Approved Provider may not open residents' mail, but may require that residents open letters or packages in the presence of staff. ~~Alcohol, drugs or weapons shall be confiscated by the program.~~

#### **164.107: Required Agreements**

Licensed and Approved Providers providing medically monitored or medically



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**managed withdrawal services shall have QSOAs for the provision of the following services as needed:**

- (A) Psychiatric consultative, diagnostic and evaluative services;**
- (B) Acute 24-hour diversionary service medical or psychiatric hospitalization;**
- (C) Emergency medical and psychiatric services; and**
- (D) Any specialized services a program provides through special arrangement, purchase or contract.**

#### **164.108: Death of a Patient**

**The Licensed or Approved Provider shall develop procedures to be followed in the event of the death of a patient. These procedures shall conform with laws governing the report of death to local authorities and the requirements of 164.035(F), and shall include the following:**

- (A) Local emergency services (911) shall be notified immediately.**
- (B) The Licensed or Approved Provider shall comply with all laws concerning declaration of death and moving the deceased.**
- (C) The Licensed or Approved Provider shall make reasonable efforts to notify the deceased's emergency contact. A written record of these efforts shall be included in the patient's record.**

#### **164.110: Hours of Operation**

**The Licensed or Approved Provider shall provide admission and services 24 hours a day, seven days per week.**

#### **164.131: 24-Hour Diversionary Medically Managed Withdrawal Management Services**

#### **164.132: Scope**

Provisions of 105 CMR 164.133 through **105 CMR 164.134~~2~~** apply to ~~acute-care~~

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~~inpatient~~**24-hour diversionary substance—abuse detoxification**~~withdrawal management~~**treatment** services (ASAM Level 3.7 and 4.0). The Licensed or Approved Provider~~licensee~~ shall also comply with all provisions of **105 CMR 164.000: Part One of these regulations, 105 CMR 164.103 through 105 CMR 164.110, and, for any Licensed or Approved Provider who is also a federally-certified Opioid Treatment Provider, the provisions of 105 CMR 164.300 through 105 CMR 164.317.** Licensed or Approved Providers approved to provide these services may also provide a less intensive service provided that the Provider has the required programming and required staff.

164.133: Provision of Services

(A) Admission:

(1) ~~Determination of Level of Care:~~ The Licensed or Approved Provider shall determine the appropriate type of 24-hour diversionary service based upon the following:

(a) ~~Medically Managed Intensive 24-Hour Diversionary Withdrawal Management Inpatient Detoxification~~**Services (ASAM Level 4):**

1. ~~Level of Care: Medically managed Intensive inpatient detoxification 24-hour diversionary withdrawal management~~ services are provided ~~in a hospital setting and include daily medical management and primary nursing interventions to patients who -~~

2. ~~Admission Criteria: At the time of admission, the licensee shall determine that the patient requires~~ this **service type**~~level of care~~ because:

- a. current and potential withdrawal symptoms are severe, constitute a risk to the patient's health and well-being and require frequent medical attention; and
- b. the patient's incapacity results from a substance use disorder or a mental or behavioral disorder due to psychoactive substance use.

(b) ~~Medically Monitored 24-Hour Diversionary Inpatient Detoxification~~**Withdrawal Management** Services (ASAM Level 3.7):

1. ~~Level of Care: Medically monitored inpatient detoxification services are provided in a medical setting and include 24-hour, seven-day per week nursing and medical supervision.~~

2. ~~Admission Criteria: At the time of admission, the Licensed or Approved Provider~~**licensee shall determine that the 24-hour diversionary withdrawal management services are provided to patients who** requires this **service type**~~level of care~~ because:

- a. the patient's current or potential withdrawal symptoms constitute a risk to the patient's health and well-being and require medical monitoring; and

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b. the patient's incapacity results from a substance use disorder or a mental or behavioral disorder due to psychoactive substance use.

~~(e) Clinically Managed Detoxification:—~~

~~1. Level of Care: Clinically managed detoxification services are provided in a non-medical setting and include 24-hour per day supervision, observation and support, including at least four hours of nursing services each day, seven days each week.—~~

~~2. Admission Criteria: At the time of admission, the licensee shall determine that the patient requires this level of care because:~~

~~a. the patient's current and potential withdrawal symptoms are not severe; and~~

~~b. the patient's incapacity results from a substance use disorder or a mental or behavioral disorder due to psychoactive substance use.~~

(2) Initial Physical Assessment: Immediately upon admission a brief physical assessment of the patient shall be made by a qualified health care professional.

(B) Assessments. Pursuant to 105 CMR 164.072(B), the Licensed or Approved Provider may initiate patient treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a Qualified Healthcare Professional must see such a patient or resident prior to initiating an FDA-approved medication for treatment of addiction.

In addition to the ~~initial~~ assessment required by 105 CMR 164.5072, the Licensed or Approved Provider ~~licensee~~ shall ensure **an initial medical** ~~a thorough physical~~ examination, which conforms to principles established by the American Society of Addiction Medicine, is completed for all patients within 24 hours of admission.

(1) The physical examination shall include:

~~(a) an assessment of the patient's substance use disorder;~~

~~(ab) tests for the presence of opiates~~**opioids**, alcohol, benzodiazepines, cocaine ~~and other drugs of abuse as indicated by the patient's current substance use;~~ **all FDA-approved medications for addiction medication-assisted treatment, and any other drugs the Licensed or Approved Provider determines are clinically indicated or as approved by the Commissioner and listed in Department guidance;**

~~(be)~~ a brief mental status exam; and

~~(cd) an assessment of infectious diseases, including TB, Viral Hepatitis and sexually transmitted diseases (STDs);~~ pulmonary, liver, and cardiac abnormalities;

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dermatological and neurological sequelae of addiction; **possible infectious serologies if indicated;**~~and~~ possible concurrent surgical problems; **and any other relevant laboratory studies as clinically indicated.** ~~When indicated, laboratory tests for these conditions shall be ordered.~~

**These laboratory tests are not required to be completed prior to the initiation of medication for addiction** ~~assisted~~ **treatment.** Any relevant laboratory findings shall be documented and reviewed with the ~~patient~~~~and~~ Medical Director **and findings reviewed with the patient.** Evidence of direct referrals to address findings shall be properly documented. The **Licensed or Approved Provider**~~licensee~~ shall ensure ~~that~~ laboratory tests are completed by licensed facilities that comply with all applicable federal and state licensure and certification requirements.

(2) The license **Licensed or Approved Provider**~~licensee~~ shall also ensure ~~that~~ the patient's current prescription medications are assessed in relation to interactions with medication prescribed in the course of treatment, **including but not limited to a review of MassPAT.** Prior to prescribing, dispensing or administering an approved opioid agonist medication the **Licensed or Approved Provider**~~licensee~~ shall ensure ~~that~~ the approved medication is not contraindicated by the patient's current prescribed medications or health status.

(3) For women of child-bearing age, the **Licensed or Approved Provider**~~licensee~~ shall include a pregnancy test in the physical examination.

(4) If the examination is conducted by a qualified health care professional who is not a physician, the results of the examination and any recommendations arising from the examination shall be reviewed by the Medical Director **or their delegated qualified healthcare professional** ~~another physician~~ prior to implementation.

(5) All medical orders shall be signed by the Medical Director **or their delegated qualified healthcare professional** ~~another physician~~.

(6) When re-admitting a patient who had been admitted within the previous three months, the timing, frequency and interval of a complete physical examination shall be subject to **Practitioner**~~physician~~ discretion, providing that no more than three months elapse between physical examinations.

(7) If, within 30 **calendar** days of admission to ~~inpatient~~ **24-hour diversionary detoxification/withdrawal management** treatment, a patient is transferred to a different level of ~~detoxification/withdrawal management~~ care, the **Licensed or Approved Provider**~~licensee~~ to whom the patient is transferred shall, with the patient's consent, request:

- (a) results of the physical examination described in 105 CMR 164.133(B)(1), and
- (b) for women of child-bearing age, results of the pregnancy and related tests described in 105 CMR 164.133(B)(3).

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(C) **Diversion Control:** The Licensed or Approved Provider shall maintain a diversion control plan using measures to reduce the possibility of diversion of controlled substances that are FDA-approved for the treatment of opioid dependency. ~~Additional Medical Services for Opioid Treatment: Where a full or partial opioid agonist or antagonist medication is dispensed, the licensee shall comply with requirements of 105 CMR 164.300: Opioid Treatment except the licensee need not comply with the requirements of 105 CMR 164.309: Involuntary Termination from an Opioid Treatment Program, 105 CMR 164.310: Bureau Review of Program Decisions to Terminate, 105 CMR 164.315: Hours of Operation and 105 CMR 164.316: Severe Weather Accommodations, and any other requirements which may be specified by the Department.~~

(D) Treatment Services:

- (1) The Licensed or Approved Provider ~~licensee~~ shall provide ~~detoxification~~ **managed withdrawal treatment** services as determined by the physical examination.
- (2) Once the patient receives medical clearance to participate, the Licensed or Approved Provider ~~licensee~~ shall provide the patient with at least four hours of service programming each day. The programming shall include services specified in 105 CMR 164.074: *Minimum Treatment Service Requirements*, and may be provided directly or through **QSOAs** ~~Qualified Service Organization Agreements~~.
- (3) The Licensed or Approved Provider ~~licensee~~ shall provide at least one multidisciplinary team review for each patient stay.

(E) Termination and Discharge: In addition to the termination and discharge requirements delineated in 164.075: *Termination and Discharge*, the Licensed or Approved Provider's ~~licensee's~~ written procedures shall include the following provisions and shall incorporate these provisions into the policies as described in 105 CMR 164.040: *Written Policies* and 105 CMR 164.081: ~~Client~~ **Patient and Resident Policy Manual**:

- (1) Criteria for medical discharge;
- (2) Procedures for emergency and involuntary terminations in accordance with the following:
  - (a) In an emergency situation, where the patient's continuation in the program presents an immediate and substantial threat of physical harm to other patients, program personnel or property or where the continued treatment of a patient presents a serious medical risk to the patient as determined by the Medical Director or the nurse-in-charge, the Licensed or Approved Provider ~~licensee~~ may suspend a patient immediately and without provision for further ~~detoxification~~ **withdrawal management or Referral**. The patient shall be afforded the right to an appeal as described in the

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program policies and as required by 105 CMR 164.080: *Grievances*.

(b) In a non-emergency situation, wherein the patient's continuation does not present the immediate and substantial threat or serious medical risk described in 105 CMR 164.133(E)(2)(a), the **Licensed or Approved Provider**~~licensee~~ may not terminate the patient without first affording the patient the procedural rights defined in 105 CMR 164.079: ~~*Client*~~***Patients' and Residents' Rights*** and 164.080: *Grievances*.

#### 164.134: Staffing Pattern

(A) The **Licensed or Approved Provider**~~licensee~~ shall designate a ~~physician as~~ Medical Director who shall be responsible for administering all medical services performed by the program. The Medical Director shall **have documented** ~~have completed a minimum of six months<sup>2</sup>~~ clinical experience with **opioid-dependent**, alcohol, and other drug-dependent persons or 40 hours of documented continuing education credit in ~~treating addicted persons~~ **addiction medicine and medications for treatment of addiction, including all FDA-approved medications for treatment of opioid use disorder**~~within the first 12 months of employment~~. The Medical Director shall be responsible for:

- (1) Ensuring that each patient receives a medical evaluation, including a medical history; **and**
- (2) Ensuring that appropriate laboratory studies have been performed; and
- (3) **Establishing an individualized signs of life check protocol for each patient to be documented in the medical record.**~~Signing all medical orders.~~

(B) **In addition to the staffing requirements of 105 CMR 164.048, t**~~he~~ **Licensed or Approved Provider**~~licensee~~ shall establish a staffing pattern in sufficient numbers and positions necessary for the ~~service type~~**level of care** provided. **Any program which serves persons who identify as male or female must have at least one direct care staff person on-site who identifies as female and one direct care staff person who identifies as male on each overnight shift.** Staffing pattern shall include the following positions:

- (1) A full-time equivalent Senior Clinician among direct service staff who shall be responsible for the clinical/educational operation of the substance ~~abuse~~**use disorder** service;
- (2) Licensed psychiatrist or licensed psychologist on staff or available through **QSOAs**~~Qualified Service Organization Agreements~~;
- (3) Registered nurse, **advanced practice registered** nurse~~practitioner~~, or physician assistant;
- (4) Licensed practical nurse, case aides and case management staff;
- (5) If serving pregnant women, an obstetrician/gynecologist available on staff or through

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a ~~QSOA~~ **Qualified Service Organization Agreement**;

(6) Food personnel trained in safe and sanitary food handling and preparation, as specified in 105 CMR 590.000: *Minimum Sanitation Standards for Food Establishments*, 590.003: *Management and Personnel*. Food service permits, where required, shall be current and available for review by Department personnel; and

(7) Sufficient staff ~~to ensure~~ coverage on all shifts **to ensure patient needs are met. Such staffing shall include the following staffing minimums, which shall be adjusted upward in order to address patient acuity and programmatic need:**

(a) Licensed nursing staff shall be on-site for a minimum of eight hours per shift, provided that each day and evening shift includes at least one registered nurse seven days per week;

(b) The Provider must provide a minimum one recovery specialist for all shifts, seven days per week; and

(c) The Provider must provide at least two case managers providing services over a 12-hour time period, seven days per week.

(8) Any Provider who treats patients **under 18 years of age** ~~or younger~~ must have a Case Manager on staff and provide sufficient staff coverage on all shifts to ensure patient needs are met. Such staffing shall include the following staffing minimums, which shall be adjusted upward in order to address patient acuity and programmatic need:

(a) A minimum of one full-time registered nurse responsible for supervision of all nursing staff, or a Licensed Practical Nurse (LPN) or other **Qualified Health Care Professional provider defined under 164.005 who possesses the skills and supervision experience as determined by 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 or her supervision;**

(b) A minimum of one full-time recovery specialist for all shifts;

(c) Case manager staffing such that there is a minimum of eight hours of case management services provided at least five days per week;

(d) Counselors on-site for a minimum of 12 hours per day, seven days per week; and

(e) One full-time Clinical Director that meets the definition of a Senior Clinician on-site a minimum of five days per week to provide supervision and oversight of the provision of clinical services.

(C) **Clinical Supervision**: In addition to supervision requirements set forth in 105 CMR 164.044: ~~Training and Supervision~~, the **Licensed or Approved Provider** ~~licensee~~ shall



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ensure that supervision of nursing staff is overseen by a **Practitioner**, ~~or a registered nurse, or a Licensed Practical Nurse (LPN) or other Qualified Health Care Professional provider defined under 164.005 who possesses the skills and supervision experience as determined by 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 or her supervision.~~

(D) The **Licensed or Approved Provider**~~licensee~~ shall ensure ~~that~~ a qualified **Practitioner**~~physician~~ is available 24 hours per day, seven days per week, ~~either on site or,~~ through a **QSOA**~~Qualified Service Organization Agreement~~, **or by the use of telemedicine as appropriate and in the discretion of the Practitioner**, to provide consultation to staff. If services are to be available through an agreement, this agreement shall be reaffirmed **at minimum** every ~~two~~ **five** years.

#### ~~164.135: Hours of Operation~~

~~The licensee shall provide admission and detoxification services 24 hours a day, seven days per week.~~

#### ~~164.136: Licensure~~

~~A licensee providing medically managed inpatient detoxification services shall be licensed according to the standards described in 105 CMR 164.012(D).~~

#### ~~164.137: Physical Plant~~

~~(A) **Building Design:** Each program shall provide adequate space to accommodate the number of patients served, including sufficient and separate space for the following, which may not be used as bedrooms for patients or staff:~~

- ~~(1) Individual and group counseling sessions;~~
- ~~(2) A living room or common area;~~
- ~~(3) A visiting area;~~
- ~~(4) A kitchen area and a dining area;~~
- ~~(5) Recreation and/or exercise area.~~

~~(B) **Compliance with Building Standards:** The licensee shall ensure that:~~

- ~~(1) The facility complies with standards specified in 105 CMR 410.000: Standards of Fitness for Human Habitation, regarding heating, electricity, lighting, plumbing and~~



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~~sanitary facilities; and—~~

~~(2) The heating system conforms to requirements defined by the Department of Public Safety (520 CMR, 522 CMR, and 527 CMR) under M.G.L. c. 148.~~

~~(C) Bathrooms and Personal Hygiene: The licensee shall ensure that:~~

~~(1) Female and male patients have separate toilet and bathroom facilities;~~

~~(2) All rooms containing toilets, bathtubs and/or showers are equipped with a door, and have ventilation to the outside through a window or extractor vent;~~

~~(3) No room containing a toilet or shower is so located as to require passing through to go from one area of the premises to another;—~~

~~(4) There is at least one toilet for every eight women (1:8) and one toilet for every ten10 men (1:10), and one washbasin and one shower or tub for every ten10 individuals (1:10);~~

~~(5) Washbasins are located in the same room as or in close proximity to toilets; a kitchen sink may not be substituted for a washbasin;~~

~~(6) All showers and tubs are equipped with a non-slip surface or mat;—~~

~~(7) All toilets have seats;~~

~~(8) Sanitary hand washing requirements and procedures are posted in restrooms, and the licensee familiarizes staff and patients with these procedures;~~

~~(9) Restrooms are maintained in good repair and sanitary manner, cleaned daily, and supplied with sufficient soap, paper towels and toilet paper at all times.~~

~~(D) Sleeping Rooms: The licensee shall ensure that:~~

~~(1) All sleeping rooms are conveniently located near toilet and bathing facilities. Accessible facilities shall conform to the Americans with Disabilities Act regulations.~~

~~(2) Female and male residents have separate sleeping quarters.~~

~~(3) Sleeping rooms are designed to promote comfort and provide adequate space and privacy, and meet the following requirements:~~

~~(a) no sleeping room shall be less than 70 square feet;~~

~~(b) rooms accommodating more than one person shall have a minimum of 50 square feet per person;~~

~~(b) accommodate no more than six persons per sleeping area;~~

~~(c) have windows or skylights providing natural light and ventilation in compliance with 105 CMR 410.250 and 105 CMR 410.280;—~~

~~(d) a separate bed for each patient;—~~

~~(e) may not be an unfinished attic, stairway, hall or room commonly used for other purposes.~~

~~(4) The sleeping area has the following basic equipment and supplies:—~~

~~(a) a twin size bed with a twin size mattress and waterproof mattress cover.—Cots~~

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- ~~may not be used;~~
- ~~(b) adequate drawer and closet space;~~
- ~~(c) an adequate supply of bed linens, blankets, pillows, washcloths and towels, which are in good condition. Linens, blankets, washcloths and towels shall be laundered before each new admission, or once a week, whichever occurs sooner;~~
- ~~(d) a toothbrush, toothpaste and basic hygiene supplies.~~

#### ~~164.138: Meals and Food Handling~~

~~(A) Inspections: The licensee shall ensure that food storage and preparation areas meet the standards defined in 105 CMR 590.000: *Minimum Standards for Food Establishments*, and that the food service is inspected and receives a food service permit by the local board of health, where applicable.~~

~~(B) Purchased Food Services: A licensee shall purchase only from a licensed food service establishment. A licensee that purchases from a food service shall obtain from the food service provider documentation of all required inspections, licenses, and conformance with sanitary standards. Such documentation shall include copies of a current license and the most recent inspection report.~~

~~(C) Meals: The licensee shall provide a nourishing well-balanced diet to all patients, and shall provide the following:~~

- ~~(1) Dining areas that are clean, well lighted, ventilated and appropriately furnished.~~
- ~~(2) A dining room large enough so that all patients may eat at an appropriate hour, but not necessarily simultaneously.~~
- ~~(3) Three meals each day.~~
- ~~(4) Food and beverages for snacks.~~
- ~~(5) Menus for each week planned prior to the start of the week, dated and maintained for three months.~~
- ~~(6) Means to provide for patients with special dietary needs, including food allergies.~~

#### ~~164.139: Safe Storage and Administration of Medications~~

~~(A) Licensees providing medically managed or medically monitored detoxification services shall ensure that management, storage and administration of medication comply with requirements established by accreditation standards and by the United States Drug Enforcement Agency and Food and Drug Administration.~~

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~~(B) Licensees providing clinically managed detoxification services shall comply with the following:~~

~~(1) Written Policy and Procedure: The licensee shall establish a written policy and procedure governing the storage and administration of patients' prescription medications.~~

~~(2) Storage: All medications shall be maintained in a locked, secure cabinet, accessible only to designated staff positions. The titles of designated positions shall be posted on the cabinet. The licensee shall ensure that patients do not have direct access to the medication cabinet.~~

~~(3) Approval of Medication: The licensee shall take possession of a patient's prescription and over the counter medication upon admission. The medical director shall assess such medication(s) in light of the medical examination and medical services to be provided to determine whether the patient should continue to take these medications.~~

~~(4) Medications brought by patients to the program shall be stored in a locked, secure cabinet that is separate from the facility's supply, except that patients shall retain medications required to treat acute episodes, such as asthma attacks or allergic reactions.~~

~~(a) If injectable drugs are used, licensees shall provide containers for safe storage, and proper disposal of sharps.~~

~~(b) Medications requiring refrigeration shall be kept in a refrigerator in the same area where other medications are stored. Medications shall not be stored in kitchen refrigerators.~~

~~(c) The licensee shall also establish a record of medications which remain in the possession of patients for treatment of acute episodes.~~

~~(5) Prescription medication presented by a patient shall bear a pharmacy label, which shows the date of filling, the pharmacy name and address, the filling pharmacist's initials, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner, the name of the prescribed medication, directions for use and cautionary statements, if any, contained in such prescription or required by law, and if tablets or capsules, the number in the container. All over the counter medications shall be kept in the original containers containing the original label, which shall include the directions for use.~~

~~(6) Upon admission the licensee shall document in writing the number of tablets or capsules, or the approximate amount of liquid in each prescribed medication brought by the patient. The licensee shall ensure that a similar count is conducted by two staff persons at the beginning of each shift.~~

~~(7) The licensee shall maintain documentation of all medications stored and disposed of.~~

~~(8) Self-administration of Medications: Medications shall be self-administered by the patient, unless the licensee employs qualified health care professionals authorized to administer medications. Patients must be able to administer their own medications and,~~

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~~unless the licensee employs qualified health care professionals for this purpose, staff shall not administer medication to any patient. — However, staff shall observe the patient ingesting the prescribed dose. — Medications may not be provided to any patient if other patients are in the storage or office area. — Licensees shall make provision to provide a supply of medications to patients who plan to be absent from the facility when they would normally take a medication. — The licensee shall maintain documentation of all administrations of medication, which shall include:—~~

- ~~(a) Name of patient to whom medication was provided;~~
  - ~~(b) Name of staff person observing the patient take the medication, or providing needed supply;~~
  - ~~(c) Date and time medication was provided; and~~
  - ~~(d) Patient initials confirming that the medication was provided and taken.~~
- ~~(9) Disposing of Medications:— The licensee shall not permit expired medications, medications left behind by patients, or unused medications to accumulate in the storage area. — The licensee shall establish policy and procedure for return of patient’s medication upon discharge and for safe disposal of medications.~~
- ~~(10) Improper Use:— The licensee shall establish a policy regarding improper use of medication which:—~~
- ~~(a) may impose sanctions on patients who do not take medications in accordance with prescribed dose and frequency; and~~
  - ~~(b) shall impose sanctions on patients who illegally obtain and use prescription medications.~~

#### ~~164.140:— Patient Personal Effects and Affairs—~~

~~(A) Written Policy and Procedure:— The licensee shall establish a written policy and procedure governing care of patient personal belongings and support of patient personal affairs.~~

~~(B) Safekeeping:— The licensee may allow patients to bring monies and valuables into the program, if the licensee provides for the secure, locked storage of the personal property.—~~

~~(C) Right to Confiscate:— All patients shall be notified that by accepting admission they authorize the licensee to:~~

- ~~(1) confiscate and dispose of any alcohol or drugs (other than those properly provided by prescription) or paraphernalia for the use of illegal drugs found in the possession of the patient;—~~
- ~~(2) confiscate any weapons or other articles found in the possession of the patient, which may constitute a threat to the life, health or safety of the patient, the staff or public, and to~~

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~~turn over any guns to the police.~~

~~The licensee shall establish a record of any items confiscated or turned over to the police.~~

~~(D) The licensee shall establish written procedures governing patients' use of telephones, pagers, cell phones or other communication devices, and sending and receiving mail. The licensee may not hold mail or restrict the sending of mail. The licensee may not open residents' mail, but may require that residents open letters or packages in the presence of staff. Alcohol, drugs or weapons shall be confiscated by the program.~~

#### ~~164.141: Back-up and Transfer Agreements~~

~~Licensees providing medically monitored or clinically managed detoxification services shall have Qualified Service Organization Agreements for the provision of the following services as needed:~~

~~(A) Psychiatric consultative, diagnostic and evaluative services;~~

~~(B) Acute inpatient medical or psychiatric hospitalization;~~

~~(C) Emergency medical and psychiatric services;~~

~~(D) Any specialized services that a program provides through special arrangement, purchase or contract.~~

#### ~~164.142: Death of a Patient~~

~~The licensee shall develop procedures to be followed in the event of the death of a patient. These procedures shall conform with laws governing the report of death to local authorities, and shall include the following:~~

~~(A) Local emergency services (911) shall be notified immediately.~~

~~(B) The licensee shall comply with all laws concerning declaration of death and moving the deceased.~~

~~(C) The licensee shall make reasonable efforts to notify the deceased's emergency contact. A written record of these efforts shall be included in the patient's record.~~

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## 164.150: Clinical Stabilization Services

### 164.151: Scope

Clinical Stabilization Services (ASAM Level 3.5) are provided in a nonmedical setting and include 24 hour per day supervision, observation and support. Provisions of 105 CMR 164.152 through 105 CMR 164.153 apply to Clinical Stabilization Services. The Licensed or Approved Provider shall also comply with all provisions of 105 CMR 164.00: Part One, 105 CMR 164.103 through 105 CMR 164.110 and, for any Licensed or Approved Provider who is also a federally-certified Opioid Treatment Provider, the provisions of 105 CMR 164.300 through 105 CMR 164.317.

### 164.152: Provision of Services

(A) At the time of admission, the Licensed or Approved Provider shall determine that the patient requires this service type because:

- (1) the patient's current and potential withdrawal symptoms are not severe; and
- (2) the patient's incapacity results from a substance use disorder or dual diagnosis .

(B) Assessment: Pursuant to 105 CMR 164.072(B), the Licensed or Approved Provider may initiate patient treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided a Qualified Healthcare Professional must see such a patient prior to initiating an FDA-approved medication for treatment of addiction.

(C) Initial Medical Examination: In addition to the assessment required by 105 CMR 164.072, the Licensed or Approved Provider shall ensure each patient has an initial medical examination, which conforms to principles established by the American Society of Addiction Medicine and is completed for all patients within 24 hours of admission. The Medical Director can defer as clinically indicated any of the requirements below if a patient is directly ~~admitted from a program providing Acute Treatment Services; provided the reason for deferring any such requirement is properly documented~~ referred from a practitioner who has completed an examination, or components of an examination, which fulfill the requirements of §164.152(C)(1)(a) through (c).

- (1) The examination shall include:

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- (a) tests for the presence of opioids including, but not be limited to, buprenorphine, methadone, and fentanyl; alcohol; benzodiazepines; cocaine; and any other drugs the Licensed or Approved Provider determines are clinically indicated or as approved by the Commissioner and listed in Department guidance;
  - (b) a brief mental status exam; and
  - (c) an assessment of pulmonary, liver, and cardiac abnormalities; dermatological and neurological sequelae of addiction; possible infectious serologies if indicated; and possible concurrent surgical problems. These laboratory tests are not required to be completed prior to the initiation of medication for addiction ~~assisted~~ treatment. Any relevant laboratory findings shall be documented and reviewed with the patient and Medical Director. Evidence of direct referrals to address findings shall be properly documented. The Licensed or Approved Provider shall ensure laboratory tests are completed by licensed facilities that comply with all applicable federal and state licensure and certification requirements.
- (2) The Licensed or Approved Provider shall also ensure the patient's current prescription medications are assessed in relation to interactions with medication prescribed in the course of treatment, including but not limited to a review of MassPAT. When appropriate, prior to prescribing, dispensing or administering an approved opioid agonist medication the Licensed or Approved Provider shall ensure the approved medication is not contraindicated by the patient's current prescribed medications or health status.
- (3) For women of child-bearing age, the Licensed or Approved Provider shall include a pregnancy test in the physical examination. ~~The Medical Director can defer as clinically indicated any of the requirements below if a patient is directly admitted from program providing Acute Treatment Services.~~
- (4) If the examination is conducted by a qualified health care professional who is not a physician, the results of the examination and any recommendations arising from the examination shall be reviewed by the Medical Director **or their delegated qualified healthcare professional** prior to implementation.
- (5) All medical orders shall be signed by the Medical Director **or their delegated qualified healthcare professional**.
- (6) When re-admitting a patient who had been admitted within the previous three months, the timing, frequency and interval of a complete physical examination shall be subject to physician discretion, providing that no more than three months elapse between physical examinations.

(D) Treatment Services

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(1) Once the patient receives medical clearance to participate, the Licensed or Approved Provider shall provide the patient with at least four hours of service programming each day. The programming shall include services specified in 105 CMR 164.074, and may be provided directly or through QSOAs.

(2) The Licensed or Approved Provider shall provide at least one multidisciplinary team review for each patient stay.

(E) Termination and Discharge: In addition to the termination and discharge requirements delineated in 164.075, the Licensed or Approved Provider's written procedures shall include the following provisions and shall incorporate these provisions into the policies as described in 105 CMR 164.040 and 105 CMR 164.081:

(1) Criteria for medical discharge;

(2) Procedures for emergency and involuntary terminations in accordance with the following:

(a) In an emergency situation, where the patient's continuation in the program presents an immediate and substantial threat of physical harm to other patients, program personnel or property or where the continued treatment of a patient presents a serious medical risk to the patient as determined by the Medical Director or the nurse-in-charge, the Licensed or Approved Provider may suspend a patient immediately and without provision for further ~~detoxification~~ **withdrawal management** or Referral. The patient shall be afforded the right to an appeal as described in the program policies and as required by 105 CMR 164.080.

(b) In a non-emergency situation, wherein the patient's continuation does not present the immediate and substantial threat or serious medical risk described in 105 CMR 164.133(E)(2)(a), the Licensed or Approved Provider may not terminate the patient without first affording the patient the procedural rights defined in 105 CMR 164.079 and 164.080.

### 164.153: Staffing Pattern

(A) The Licensed or Approved Provider shall designate a physician as Medical Director who shall be responsible for administering all medical services performed by the program. The Medical Director shall have ~~completed a minimum of six months'~~ **documented** clinical experience or 40 hours of documented continuing education credit in addiction medicine **and medications for treatment of addiction, including all FDA-approved medications for treatment of opioid use disorder within the first 12 months of employment.** The Medical Director or designee shall be responsible for:

(1) Ensuring each patient receives a medical evaluation, including a medical history;

(2) Ensuring appropriate laboratory studies have been performed; and

(3) Establishing an individualized signs of life check protocol for each patient to be documented in the medical record.



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**(B) The Licensed or Approved Provider shall establish a staffing pattern in sufficient numbers and positions necessary for the service type provided. Staffing pattern shall include the following positions:**

(1) A full-time equivalent Senior Clinician among direct service staff who shall be responsible for the clinical/educational operation of the substance ~~abuse-use~~ **disorder** service;

(2) Licensed psychiatrist or licensed psychologist on staff or available through QSOAs;

(3) Registered nurse, nurse practitioner, licensed practical nurse or physician assistant;

(4) At least one full time counselor, recovery specialist and case management/care coordinator staff;

(5) If serving pregnant women, an obstetrician/gynecologist available on staff or through a QSOA;

(6) Food personnel trained in safe and sanitary food handling and preparation, as specified in 105 CMR 590.000: Minimum Sanitation Standards for Food Establishments, 590.003: Management and Personnel. Food service permits, where required, shall be current and available for review by Department personnel; and

(7) Sufficient staff coverage on all shifts to ensure patient needs are met. Such staffing shall include the following staffing minimums, which shall be adjusted upward to address patient acuity and programmatic need:

(a) Licensed nursing staff shall be on-site for a minimum of four hours per day, seven days per week.

(b) The Provider must provide, at minimum, one recovery specialist on all shifts.

(c) The Provider must provide, at minimum, the full-time equivalent of 2.5 counselors to be present at the program over a twelve hour span, seven days per week.

(d) The Provider must provide, at minimum, the full-time equivalent of one care coordinator to be present at the program five days per week.

(e) Any provider with a program serving persons who identify as male or female must ensure at least one direct care staff person on-site who identifies as female, and one direct care staff person who identifies as male.

**(D) The Licensed or Approved Provider shall ensure a qualified physician is available 24 hours per day, seven days per week, ~~either on site, or through a QSOA, or by the use of telemedicine as appropriate and in the discretion of the Practitioner,~~ to provide consultation to staff. If services are to be available through an agreement, this agreement shall be reaffirmed at a minimum every five years.**

## 164.200: OUTPATIENT SERVICES

Outpatient Services encompass **provision of services**~~levels of care~~ to patients ~~persons not~~

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~~at risk of suffering withdrawal symptoms, and~~ who can participate in organized ambulatory services including **withdrawal symptom management**, intensive day treatment services, counseling, ~~and~~ educational services for driving under the influence first offenders, **and office-based opioid treatment**. **Programs may provide services through telemedicine as appropriate and based on federal guidance.**

#### 164.201: Scope

Provisions of 105 CMR 164.202~~11~~ through 164.205~~34~~ apply to outpatient substance ~~abuse~~ **use disorder** treatment services **provided by Programs** ~~Licensees providing any outpatient treatment services, including First Offender Driver Alcohol Education, Operating Under the Influence Second and Multiple Offender Aftercare Treatment Services and Day Treatment must also comply with provisions of 105 CMR 164.222 and 164.225, as evidenced by a license to provide Outpatient Counseling services.~~ The **Licensed or Approved Provider**~~licensee~~ shall also comply with all provisions of 105 CMR 164.000: *Part One*. A **Licensed or Approved Provider** that meets the requirements for a determined service type under 105 CMR 164.200 through 105 CMR 164.280 may also deliver other outpatient service types, provided that the Licensed or Approved Provider meets all applicable staffing and service requirements for each additional service type.

#### 164.202: Provision of Services

(A) **Admission**: At the time of admission, the Licensed or Approved Provider shall determine whether outpatient counseling services are appropriate based on:

- (1) the existence of a substance use disorder or a mental or behavioral disorder due to psychoactive substance use;
- (2) ability to engage and remain in treatment; and
- (3) availability of community support for recovery.

(B) **Assessment**: Pursuant to 105 CMR 164.072(B), the Licensed or Approved Provider may initiate patient treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a Qualified Healthcare Professional must see such a patient prior to initiating an FDA-approved medication for treatment of addiction.

(C) **Treatment**: The Licensed or Approved Provider shall provide individual, group, couple and family therapies. The Licensed or Approved Provider shall provide

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**individual and group therapies directly, and shall provide couple and family therapies directly or through QSOAs.**

**(D) Staffing Pattern: The Licensed or Approved Provider shall establish a staffing pattern in sufficient numbers and positions necessary for the service type provided. Staffing pattern shall include the following positions:**

- (1) A full-time equivalent Senior Clinician among other clinical and direct service staff who shall be responsible for the clinical/educational operation of the substance use disorder service;**
- (2) Licensed psychiatrist or licensed psychologist, licensed mental health counselor, or licensed social worker on staff or available through a QSOA;**
- (3) Additional direct service clinical staff, as needed, to ensure service is provided through a multidisciplinary team as required by 105 CMR 164.048(A)(2);**
- (4) Staffing in sufficient numbers to provide coverage on all shifts; and**
- (5) A Senior Clinician or Clinician to provide group education sessions where the Licensed or Approved Provider provide Driver Alcohol or Controlled Substance Education Services.**

#### **164.205: Hours of Operation**

**The program shall be open to provide services 40 hours per week. At least seven hours shall be at a time other than between 9:00 A.M. to 5:00 P.M. Monday through Friday. Satellite office shall be open to patients at least 20 hours a week and offer more than 40 staff hours a week of substance use disorder treatment services to patients.**

#### **164.206: Outpatient Withdrawal Treatment Services**

**Provisions of 105 CMR 164.206 through 105 CMR 164.209 apply to outpatient substance use disorder withdrawal management treatment services. The Licensed or Approved Provider shall also comply with all provisions of 105 CMR 164.000: *Part One*, 105 CMR 164.201 through 105 CMR 164.205, and, for any Licensed or Approved Provider who is also a federally-certified Opioid Treatment Provider, the provisions of 105 CMR 164.300 through 105 CMR 164.317.**

#### **164.207: Provision of Service**

**(A) Admission: Pursuant to 105 CMR 164.072(B), the Licensed or Approved Provider may initiate patient treatment prior to completion of the assessment required by 105**

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**CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a Qualified Healthcare Professional must see such a patient prior to initiating an FDA-approved medication for treatment of addiction.**

**(B) In addition to the assessment required by 105 CMR 164.072, the Licensed or Approved Provider shall make as part of the patient record a medical evaluation by a Practitioner, psychiatrist, registered nurse, or licensed practical nurse, which confirms that the patient requires outpatient withdrawal management services based on:**

- (1) an assessment of the current and potential withdrawal symptoms of the patient;**
- (2) the patient's need for a structured program with frequent contact in order to engage in treatment; and,**
- (3) an assessment as to whether the community in which the patient resides poses a threat to the patient's abstinence.**

**(C) Medical Examination: In addition to the assessment requirements of 105 CMR 164.072, the Licensed or Approved Provider shall ensure an initial medical examination, which conforms to principles established by the American Society of Addiction Medicine, is completed for all patients within 24 hours of admission.**

- (1) The physical examination shall include:**
  - (a) tests for the presence of opioids including, but not be limited to, buprenorphine, methadone, and fentanyl; alcohol; benzodiazepines; cocaine; and any other drugs the Licensed or Approved Provider determines are clinically indicated or as approved by the Commissioner and listed in Department guidance;**
  - (c) a brief mental status exam;**
  - (d) an assessment of pulmonary, liver, and cardiac abnormalities; possible infectious serologies if indicated; dermatological and neurological sequelae of addiction; possible concurrent surgical problems; and any other relevant laboratory studies as clinically indicated. When indicated, laboratory tests for these conditions shall be ordered.**

**These laboratory tests are not required to be completed prior to the initiation of medication for addiction ~~assisted~~ treatment. Any relevant laboratory findings shall be documented and reviewed with the patient and Medical Director. Evidence of direct referrals to address findings shall be properly documented. The Licensed or Approved Provider shall ensure laboratory tests are completed by licensed facilities that comply with all applicable federal and state licensure and certification requirements.**

- (2) The Licensed or Approved Provider shall ensure the patient's current prescription**

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medications are assessed in relation to interactions with medication prescribed in the course of treatment. Prior to prescribing, dispensing or administering an approved opioid agonist medication, the Licensed or Approved Provider shall ensure the approved medication is not contraindicated by the patient's current prescribed medications or health status.

(3) For women of child-bearing age, the Licensed or Approved Provider shall include a pregnancy test in the physical examination.

(4) If the examination is conducted by a qualified health care professional who is not a physician, the results of the examination and any recommendations arising from the examination shall be reviewed by the nursing supervisor prior to implementation.

(5) All medical orders shall be signed by the Medical Director **or their designated practitioner pursuant to their scope of practice.**

(6) When re-admitting a patient who had been admitted within the previous three months, the timing, frequency and interval of a complete physical examination shall be subject to Practitioner discretion, provided that no more than three months elapses between physical examinations.

**(D) Treatment:**

(1) The Licensed or Approved Provider shall provide withdrawal management services after determining through physical examination such services are required.

(2) Upon receiving medical clearance to participate in treatment services, the Licensed or Approved Provider shall provide each patient with at least nine hours of service programming each week.

(3) Treatment shall include services specified in 105 CMR 164.074: *Minimum Treatment Service Requirements*, and shall be provided either directly or through QSOAs. Services must also include:

(a) a primary counselor to provide case management and motivational counseling that focus on engaging the patient to remain in withdrawal management services.

(b) supportive counseling during the relapse prevention phase to motivate the patient to utilize ongoing substance use disorder outpatient treatment and self-help groups.

**(E) Diversion Control:** The Licensed or Approved Provider shall maintain a diversion control plan using measures to reduce the possibility of diversion of controlled substances that are FDA-approved for the treatment of opioid dependency, which shall include:

(1) For patients who test positive for any FDA approved medications treatment of opioid use disorder at admission, procedures for determining whether patients are enrolled in an opioid treatment program or are prescribed any medications for

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**treatment of opioid use disorder, and documentation of actions taken in patient records;**

**(2) Assignment of specific responsibility to the Medical Director and administrator for carrying out the diversion control measures and functions described in the plan; and**

**(3) Initial review of the patient's prescription history through the MassPAT.**

### 164.208: Staffing Pattern

**(A) The Licensed or Approved Provider shall designate a Medical Director who shall be responsible for administering all medical services performed by the program. The Medical Director shall have documented clinical experience with opioid-dependent, alcohol and other drug-dependent persons and medications used for treatment of addiction, including all FDA-approved medications for treatment of opioid use disorder. The Medical Director shall be responsible for:**

**(1) Ensuring each patient receives a complete physical examination including a medical history;**

**(2) Ensuring appropriate laboratory studies have been performed; and,**

**(3) Establishing an individualized signs of life check protocol for each patient to be documented in the medical record.**

**(B) The Licensed or Approved Provider shall establish a staffing pattern in sufficient numbers and positions necessary for the service type provided. Staffing pattern shall include the following positions:**

**(1) Senior Clinician among direct service staff, who shall be responsible for the clinical/ educational operation of the substance use disorder service;**

**(2) Licensed psychiatrist or licensed psychologist on staff or available through QSOAs;**

**(3) Registered nurse, advanced practice registered nurse, or physician assistant on staff and on site during hours of operation of the service;**

**(4) Licensed practical nurse, case aides and case management staff;**

**(5) If serving pregnant women, an obstetrician/gynecologist available on staff or through a QSOA; and**

**(6) Sufficient staff coverage on all shifts to ensure patient needs are met.**

**(C) Supervision: In addition to supervision requirements set forth in 105 CMR 164.044 Training and Supervision, the Licensed or Approved Provider shall ensure supervision of nursing staff is overseen by **either** a registered nurse, **or** a **Licensed****

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**Practical Nurse (LPN) or other Qualified Health Care Professional provider defined under 164.005 who possesses the skills and supervision experience as determined by 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 or her supervision.**

**(D) The Licensed or Approved Provider shall ensure a qualified Practitioner is available during all hours when service is provided, either on site or through a QSOA, to provide consultation to staff. If services are to be available through an agreement, this agreement shall be reaffirmed every five years.**

#### 164.209: Hours of Operation

The program shall be open to provide admission to outpatient services as well as to provide treatment seven days per week and four hours per day, at a minimum.

#### 164.211: First Offender Driver Alcohol or Controlled Substance Education~~FIRST OFFENDER DRIVER ALCOHOL EDUCATION~~

Provisions of 105 CMR 164.211 through 105 CMR 164.215 apply to first offender driver alcohol or controlled substance education services. The Licensed or Approved Provider shall also comply with all provisions of 105 CMR 164.000: *Part One*, 105 CMR 164.201 through 105 CMR 164.205.

#### 164.212: Provision of Services

(A) Admission and Referral:

(1) Referral: The **Licensed or Approved Provider**~~licensee~~ shall admit ~~clients~~**patients** referred by a Massachusetts court, or, for ~~clients~~**patients** under the age of 21, by the Registrar of Motor Vehicles, as provided for by M.G.L. c. 90, § 24P.

(2) ~~Level of Care:~~ Individuals admitted for first offender driver alcohol **or controlled substances** education services are not required to have a substance use disorder diagnosis.

(B) Assessment:

~~(1) The licensee shall ensure that the assessment required by 105 CMR 164.072 is completed during the first meeting with the client.~~

~~(2)~~ When admitting a **client**~~patient~~ under the age of 21, the **Licensed or Approved Provider**~~licensee~~ shall also assess the ~~client~~**patient's** developmental status, including



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social, emotional and cognitive functioning, to determine whether the ~~client~~**patient** is able to participate in programming designed for adults.

~~(3) All assessments shall use a standardized addiction assessment instrument approved by the Department.~~

(C) Treatment: The **Licensed or Approved Provider**~~licensee~~ shall provide treatment service to each ~~client~~**patient** in accordance with protocols established by the Department. Services shall include:

(1) Group education sessions which address:

- (a) consequences of ~~client's~~**patient's** substance use;
- (b) dangers of drinking and/or using drugs and driving;
- (c) modifying substance use habits; and
- (d) impact of driving under the influence on others, including victims.

(2) When the assessment of a ~~client~~**patient** under 21 years of age establishes that the ~~client~~**patient** is not developmentally able to participate in programming for adults, the **Licensed or Approved Provider**~~licensee~~ shall provide alternative programming addressing concerns pertinent to youth. Alternative programming shall be submitted to the Department for approval at the time of application for a license or renewal. The Department shall provide its determination approving or denying the alternative programming in writing.

(3) Special programming, either directly, through ~~QSOAs~~**qualified service organization agreement** or by referral to other programs to accommodate:

- (a) ~~clients~~**patients** who do not speak English;
- (b) ~~clients'~~**patients'** employment, military, school and/or child care schedules; and,
- (c) ~~clients~~**patients** suffering from mental health disorders, which limit their ability to participate in the **Licensed or Approved Provider's**~~licensee's~~ group programming.

(4) Referral to community-based self help group meetings.

(D) Individual Treatment Plan: The treatment plan required by 105 CMR 164.073: ~~Individual Treatment Plan~~ shall be reviewed at mid-point in the group educational programming.

(E) Termination and Discharge:

(1) Involuntary Termination: the **Licensed or Approved Provider**~~licensee~~ shall include in its termination policy a provision for immediately notifying the referring body of the termination of any ~~client~~**patient** for failure to comply with program rules, intoxication and/or disruptive behavior.

(2) Upon completion of the treatment program, the **Licensed or Approved**



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**Provider**~~licensee~~ shall conduct an exit interview, and shall make referrals available to the ~~client~~**patient** to ensure a continuum of care. If the ~~client~~**patient** refuses referrals, the refusal shall be documented in the ~~client~~**patient** record.

**(3) In an emergency situation, where the patient's continuation in the program presents an immediate and substantial threat of physical harm to other patients, program personnel or property or where the continued treatment of a patient presents a serious medical risk to the patient as determined by the Program Director or Senior Clinician, the Licensed or Approved Provider may discharge the patient without providing a Referral.**

#### ~~164.214: Fees~~

~~The Department and the Division of Health Care Finance and Policy (Division) shall coordinate their respective fee and rate setting responsibilities. Pursuant to 114.3 CMR 46.00: Rate for Certain Substance Abuse Programs, the Division shall establish rates for service for all government purchased driver alcohol education and treatment services. The Department shall adopt the rates for services established by the Division as the schedule of fees required by M.G.L. c. 90, § 24D.~~

#### 164.215: Hours of Operation

**In addition to the requirements of 105 CMR 164.205, t**~~The~~ **Licensed or Approved Provider**~~licensee~~ shall be open as necessary to provide the required services on a schedule that ensures ~~client~~**patient** access to day and evening programs, including at least one group available in the evening or on weekends.

#### ~~164.221: OUTPATIENT COUNSELING~~

#### ~~164.222: Provision of Services~~

~~(A) Admission: At the time of admission, the licensee shall determine that outpatient counseling services are appropriate based on:~~

- ~~(1) the existence of a substance use disorder or a mental or behavioral disorder due to psychoactive substance use;~~
- ~~(2) absence of withdrawal symptoms;~~
- ~~(3) ability to engage and remain in treatment; and~~
- ~~(4) availability of community support for recovery.~~

~~This determination shall be made during the first visit.~~

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~~(B) Assessment:—The licensee shall ensure that the assessment required by 105 CMR 164.072 is completed during the first visit.~~

~~(C) Treatment:—The licensee shall provide individual, group, couple and family therapies. The licensee shall provide individual and group therapies directly, and shall provide couple and family therapies directly or through qualified service organization agreements.~~

~~(D) Staffing Pattern:—The licensee shall establish a staffing pattern in sufficient numbers and positions necessary for the level of care provided. Staffing pattern shall include the following positions:~~

- ~~(1) A full-time equivalent Senior Clinician among direct service staff who shall be responsible for the clinical/educational operation of the substance abuseuse disorder service;~~
- ~~(2) Licensed psychiatrist or licensed psychologist on staff or available through a Qualified Service Organization Agreement;~~
- ~~(3) Additional direct service clinical staff, as needed, to ensure service is provided through a multidisciplinary team as required by 105 CMR 164.048(B);~~
- ~~(4) Staffing in sufficient numbers to provide coverage on all shifts; and~~
- ~~(5) A Senior Clinician or Clinician to provide group education sessions where the licensee providers Driver Alcohol Education Services.~~

**164.223: Second Offender Alcohol or Controlled Substance Aftercare Treatment**~~Admission of Operating Under the Influence Second and Multiple Offenders for Aftercare Treatment Services~~

**Provisions of 105 CMR 164.223 through 105 CMR 164.224 apply to second offender alcohol or controlled substance aftercare treatment services. The Licensed or Approved Provider shall also comply with all provisions of 105 CMR 164.000: *Part One*, 105 CMR 164.201 through 105 CMR 164.205.**

**164.224: Provision of Services**

~~When admitting individuals who have been convicted of more than one charge of operating a motor vehicle under the influence, the licensee shall comply with all requirements set forth in 105 CMR 164.222 through 164.225.~~

(A) Individuals may be admitted for aftercare services following completion of a 14-day residential driving under the influence program or while awaiting placement in such a program.

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(B) Counseling services shall emphasize consequences of alcohol and/or drug use while driving.

(C) The **Licensed or Approved Provider**~~licensee~~ shall provide regular reports of the ~~client's~~**patient's** status to the referring court or other referring agency. The **Licensed or Approved Provider**~~licensee~~ shall provide to the referring court or agency a complete evaluation of the ~~client's~~**patient's** compliance with the service plan 30 **calendar** days prior to the end of one complete year of outpatient treatment. One year of outpatient treatment must follow adjudication. All such reports shall comply with 105 CMR 164.084: *Confidentiality*.

(D) The **Licensed or Approved Provider**~~licensee~~ shall ~~ensure~~**conduct** alcohol and drug screening **is conducted** on a random basis.~~164.225: Hours of Operation~~

~~The program shall be open to provide services 40 hours per week. At least seven hours shall be at a time other than between 9:00 A.M. to 5:00 P.M. Monday through Friday. Satellite office shall be open to clients at least 20 hours a week and offer more than 40 staff hours a week of substance abuse disorder treatment services to clients.~~

#### 164.231: **Day Treatment**~~DAY TREATMENT~~

**Provisions of 105 CMR 164.231 through 105 CMR 164.234 apply to day treatment services. The Licensed or Approved Provider shall also comply with all provisions of 105 CMR 164.000: Part One, 105 CMR 164.201 through 105 CMR 164.205, and, for any Licensed or Approved Provider who is also a federally-certified Opioid Treatment Provider, the provisions of 105 CMR 164.300 through 105 CMR 164.317.**

#### 164.232: Provision of Services

(A) Admission: At the time of admission, the **Licensed or Approved Provider**~~licensee~~ shall determine that day treatment services are appropriate for the ~~client~~**patient** based on:

- (1) the ~~client's~~**patient's** substance use disorder;
- (2) absence of withdrawal risk; and
- (3) presence of substantial relapse risk and need for a structured program in order to engage and remain in treatment. This determination shall be made during the first visit.

~~(B) Assessment: The licensee shall ensure that the assessment required by 105 CMR 164.072 shall be completed during the first visit.~~

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(~~B~~) Treatment: The **Licensed or Approved Provider**~~licensee~~ shall provide each ~~client~~**patient** with:

- (1) **3.5 hours per day three to seven days per week based upon patient needs**~~3½ hours of services each day, five days per week.~~ Such service program shall meet the requirements of 105 CMR 164.074 and also include counseling, psychoeducational groups, and family counseling; and
- (2) Case management services ~~including referrals to other services and supports~~ to ensure a continuum of care for the ~~client~~**patient**, encouragement of ~~client~~**patient** use of self-help groups or other sources of community support for recovery, and aftercare service planning; **provided the Licensed or Approved Provider directly connects the patient to such services.**

#### 164.234: Hours of Operation

In addition to the requirements of 105 CMR 164.205, the **Licensed or Approved Provider shall ensure d**~~Day treatment services programs shall be open to provide services are~~ **provided at** a minimum of **3.5 hours per day three to seven days per week based upon patient needs** ~~five days per week, at least 3½ hours per day.~~

#### 164.240: Acupuncture Withdrawal Management Treatment Services~~ACUPUNCTURE~~

Provisions of 105 CMR 164.241 through 164.245 apply to acupuncture withdrawal management services. The **Licensed or Approved Provider shall also comply with all provisions of 105 CMR 164.000: Part One and 105 CMR 164.201 through 105 CMR 164.205, and, for any Licensed or Approved Provider who is also a federally-certified Opioid Treatment Provider, the provisions of 105 CMR 164.300 through 105 CMR 164.317.**

#### 164.241: Provision of Services

(A) **Assessment:** Pursuant to 105 CMR 164.072(B), the **Licensed or Approved Provider may initiate patient treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a Qualified Healthcare Professional must see such a patient prior to initiating an FDA-approved medication for treatment of addiction. In addition to the assessment required by 105 CMR 164.072 and prior to admission, the Licensed or Approved Provider shall conduct a screening to determine**

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**acupuncture is not contraindicated. The screening shall include, at a minimum:**

- (1) patient's history of seizures, delirium tremens or other life-threatening withdrawal symptoms, which constitute a risk to the patient's health or well-being;**
- (2) neurological evidence of an appropriate level of consciousness; and**
- (3) vital signs.**

**(B) Admission: Upon conclusion of the assessment required by 105 CMR 164.072, the Licensed or Approved Provider shall only admit those patients with a substance use disorder who are not in a current or potential state of withdrawal that constitutes a risk to the patient's health and well-being, which requires medical attention or medical monitoring beyond the scope of the Licensed or Approved Provider's services.**

**(C) Treatment: The Licensed or Approved Provider shall provide intensive acupuncture administration of six treatments per week for withdrawal purposes, followed by less intensive treatment of two to three times per week for relapse prevention.**

#### **164.243: Staffing Pattern**

**In addition to the staffing requirements of 105 CMR 164.048, the Licensed or Approved Provider shall provide an adequate number of qualified personnel to fulfill the services objectives and patient needs. At a minimum, such staffing shall include:**

**(A) An acupuncturist on site during the hours of operation.**

**(B) Consultation to staff available from a fully qualified clinician, and a Practitioner, psychiatrist, registered nurse or licensed practical nurse either on-site or through an affiliation agreement. If services are to be available through a QSOA, the QSOS shall be reaffirmed every two years.**

**(C) Supervision: In addition to supervision requirements set forth in 105 CMR 164.044, the Licensed or Approved Providers shall ensure supervision of nursing staff is overseen by either a registered nurse, or a Licensed Practical Nurse (LPN) or other Qualified Health Care Professional provider defined under 164.005 who possesses the skills and supervision experience as determined by 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 or her supervision.**

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#### 164.245: Hours of Operation

The Licensed or Approved Provider shall provide services a minimum of six days per week, 52 weeks per year. Daytime hours shall include morning services and ensure maximum accessibility to patients without an appointment. Hours shall include at least seven hours per week that shall be at time other than the regular 9:00 A.M. to 5:00 P.M., Monday through Friday schedule.

#### 164.250: Office-Based Opioid Treatment

Provisions of 105 CMR 164.250 through 164.260 in addition to provisions of 105 CMR 164.000: *Part One* and 105 CMR 164.201 through 105 CMR 164.205, apply to all licensed or approved for Office-Based Opioid Treatment. ~~For any Licensed or Approved Office-Based Opioid Treatment Provider who is also a federally certified Opioid Treatment Provider, the provisions of 105 CMR 164.300 through 105 CMR 164.317 also apply.~~

#### 164.251: Provision of Services

##### (A) Admission:

(1) Evidence of Physiologic Opioid Dependence: The Licensed or Approved Provider shall obtain evidence of a diagnosis of opioid use disorder through reliable methods such as physical examination, laboratory tests and substance use history.

(2) Prior to initiating treatment, the Licensed or Approved Provider shall:

(a) complete an assessment of patient's current prescription medications prior to prescribing, dispensing or administering an FDA-approved medication for opioid dependence to ensure the approved medication is not contraindicated by the patient's current prescribed medications or health status;

(b) for women of child bearing age, complete a pregnancy test before dispensing or administering or prescribing an FDA-approved medication for opioid dependence; and

(c) review the patient's prescription history through the-MassPAT.

(3) Consent to Treatment: The Licensed or Approved Provider shall ensure the patient voluntarily chooses treatment. The information listed below shall be provided to the patient and recorded on a consent form, which shall be signed by the patient, and a copy shall be provided to the patient. The information shall also be provided orally:

(a) the nature of FDA-approved medication used in opioid treatment, including benefits and risks, and the benefits and risks of not receiving treatment;

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- (b) approximate length of each type of treatment;
  - (c) a clear statement of the goals of each type of treatment, and the tasks necessary to reach those goals;
  - (d) need for the patient to inform the Licensed or Approved Provider of current medical conditions and medications the patient is currently taking;
  - (e) acknowledgement the patient may withdraw voluntarily from treatment and discontinue use of medications;
  - (f) for women of child-bearing age, acknowledgement of the benefits and risks of treatment during pregnancy, and importance of informing the Licensed or Approved Provider if she is or becomes pregnant.
- (4) Consent to Treatment by Minors: Minors between the ages of 12 through 17 may consent to treatment without the consent of the parent or guardian upon a finding of two or more physicians that the minor is drug dependent.

(B) Assessment: Pursuant to 105 CMR 164.072(B), the Licensed or Approved Provider may initiate patient treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a Qualified Healthcare Professional must see such a patient prior to initiating an FDA-approved medication for treatment of addiction.

(C) Initial Medical Examination: In addition to the assessment required by 105 CMR 164.072, the Licensed or Approved Provider shall ensure each patient has an initial medical examination by a physician, or by a qualified health-care professional under the supervision of a program physician prior to administration of the first dose of medication. Licensed or approved providers may utilize a medical examination conducted within the last 12 months provided there are no medical issues or changes that require examination per the clinical discretion of the facility provider and review of such a medical examination is documented in the patient's record. The examination shall include:

- (1) a brief mental status exam;
- (2) tests for the presence of opioids including, but not be limited to, buprenorphine, methadone, and fentanyl; alcohol; benzodiazepines; cocaine; and any other drugs the Licensed or Approved Provider determines are clinically indicated or as approved by the Commissioner and listed in Department guidance;
- (3) an assessment of pulmonary, liver, and cardiac abnormalities; dermatological and neurological sequelae of addiction; possible infectious serologies if indicated; possible concurrent surgical problems as clinically indicated; and any other relevant

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laboratory studies as clinically indicated. The assessment shall include the following laboratory tests, results of which must be returned no later than 14 calendar days after admission.

These laboratory tests are not required to be completed prior to the initiation of medication for addiction ~~assisted~~ treatment. Any relevant laboratory findings shall be documented and reviewed with the patient and Medical Director. Evidence of direct referrals to address findings shall be properly documented. The Licensed or Approved Provider shall ensure such laboratory tests are completed by licensed facilities, which comply with all applicable federal and state laboratory licensure and certification requirements.

**(D) Documentation:** In addition to the requirements of 105 CMR 164.083, a Practitioner shall:

- (1) ensure evidence of current physiological dependence is entered in the patient record;
- (2) ensure a medical evaluation, including a medical history, is recorded;
- (3) ensure appropriate laboratory results are documented;
- (4) ensure a list of prescription medication, prescribed dosage(s) of all medications, the plan for changing prescribed medications if necessary, including the planned rate of withdrawal management, when applicable, are documented in the record;
- (5) sign or countersign all medical orders;
- (6) document program verifications made in accordance with 105 CMR 164.305(B)(3)(a); and
- (7) document status of initial and periodic MassPAT-review.

**(E)** Upon Department approval, a Licensed or Approved opioid treatment provider may provide interim maintenance in accordance with federal requirements.

#### 164.255: Additional Service Requirements for Opioid Maintenance

**(B) Drug Screening:** The Licensed or Approved Provider shall provide for the following:

- (1) An initial drug-screening completed for each prospective patient as required by 105 CMR 164.305(D)(2).
- (2) Results of drug screening are to be used as a clinical tool and not as the sole factor in the diagnosis and treatment of the patient and for monitoring the patient's drug-use patterns before and during treatment. The Licensed or Approved Provider's



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**Medical Director shall ensure drug screen results are not used to force a patient out of treatment, but are used as an aid in making treatment decisions.**

**(3) Drug screening may be done by one of the following: blood, oral swab, urine testing, or other method as defined by the Department.**

**(D) Pregnant Women.**

**(1) The Licensed or Approved Provider shall ensure each pregnant woman is fully informed concerning the possible benefits and risks of opioid treatment to herself and to the fetus. The Licensed or Approved Provider shall document provision of this information in the patient's record.**

**(2) The Licensed or Approved Provider shall establish a QSOA for pre-natal, obstetrical and gynecological services, unless licensee provides these services directly.**

**(G) Medically Supervised Withdrawal Rate: The rate of medically supervised withdrawal shall be determined by a practitioner employed or contracted by the Licensed or Approved Provider, to be appropriate to the patient's medical and psychiatric conditions and the dosage level at which the patient was being medicated before the decision was made to terminate. In determining the appropriate course of dosage reduction, the Medical Director shall review the patient's record, and consider the patient's physical and mental health status, and with consent of the patient, may take into account the opinions of the patient's other practitioners and medical providers.**

**164.260: Diversion Control**

**The Licensed or Approved Provider shall maintain a diversion control plan using measures to reduce the possibility of diversion of controlled substances that are FDA-approved for the treatment of opioid dependency, which shall include:**

**(A) Random callbacks;**

**(B) For patients who test positive for any FDA approved medications for treatment of opioid use disorder at admission, procedures for determining whether patients are enrolled in an opioid treatment program or are prescribed any medications for treatment of opioid use disorder, and documentation of actions taken in patient records;**

**(C) Random drug screening; and**

**(D) Initial and periodic review of patient's prescription history through the MassPAT.**

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## 164.280: Mental Health Services

To provide Mental Health Services, as that term is defined in 105 CMR 164.005, a Licensed or Approved Provider must meet the applicable Mental Health Service programmatic and staffing requirements set forth in 105 CMR 140.000: *Licensure of Clinics*. The Licensed or Approved Provider shall also comply with all provisions of 105 CMR 164.000: *Part One*, 105 CMR 164.201 through 105 CMR 164.205, and, for any Licensed or Approved Provider who is also a federally-certified Opioid Treatment Provider, the provisions of 105 CMR 164.300 through 105 CMR 164.317.

## 164.300: OPIOID TREATMENT PROGRAMS

Opioid treatment **programs are** SAMHSA-certified organized, ~~ambulatory~~, addiction treatment for opioid addicted persons, providing FDA-approved medications and counseling and other services needed to assist the ~~client~~**patient** in achieving stability. Opioid treatment includes ~~both interim maintenance~~, maintenance, and ~~detoxification~~**medically supervised withdrawal**.

### 164.301: Scope

Provisions of 105 CMR 164.302 through 164.317, in addition to provisions of 105 CMR 164.000: *Part One*, apply to all opioid treatment with the exception of entities subject to licensure under 105 CMR 164.250~~012~~(~~†~~).

### 164.302: Authority to Operate an Opioid Treatment Program

(A) Compliance with Other Laws, Rules, Regulations and Standards: In addition to 105 CMR 164.000, the Licensed or Approved Provider shall comply with the following:

- (1) M.G.L. c. 94C governing controlled substances and 105 CMR 700.00 governing controlled substance registration;
- (2) 21 CFR Parts 1300 to 1399 of the U.S. Department of Justice, Drug Enforcement Administration (DEA) regulations requiring registration under the Controlled Substances Act.

(B) Current Certification: The Licensed or Approved Provider shall have a current valid certificate from the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, in compliance with 42 CFR Part

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(C) **Accreditation**: The Licensed or Approved Provider shall be accredited by an accrediting organization approved by the Substance Abuse and Mental Health Service Administration. If the Licensed or Approved Provider has operated an opioid treatment program for less than one year, the Licensed or Approved Provider shall obtain accreditation by the end of the first year of operation.

(D) **State Opioid Treatment Authority Approval**: No one may operate an opioid treatment program in the Commonwealth of Massachusetts without Department and State Opioid Treatment Authority Approval, except for opioid treatment programs operated by the Veterans Administration or programs directly operated by the federal government. Persons who hold a current Department-issued License or Approval and State Opioid Treatment Authority Approval to operate an opioid treatment program may not open a new or relocated facility, or transfer ownership, without applying for and receiving a new License or Approval and State Opioid Treatment Authority Approval.

(1) Upon receipt of the Request for State Opioid Treatment Authority to Operate an Opioid Treatment Program, the Department shall review and make a determination as to whether the applicant has met all state and federal standards and the interests of public health would be served by the establishment of the opioid treatment program. Should the Department determine the applicant meets all such requirements, the Department will approve the Request and shall forward the State Opioid Treatment Authority Approval to the SAMHSA.

(2) Upon State Authority Approval, the Department shall issue a Provisional License valid for six months and shall sign and forward it to the SAMHSA.

(3) The Department may review the program's operations during the provisional licensing period. Following the provisional period, the Department shall make a recommendation regarding the issuance of a two-year license.

(4) If the Department determines that the applicant has not met the requirements of state and federal regulations and/or the interests of public health are not served by the establishment of the opioid treatment program at the proposed site, the Department shall deny State Authority Approval of the application in writing, citing specific reasons for denial, and forward its denial to the SAMHSA. If denied, the applicant may request an adjudicatory hearing, pursuant to M.G.L. c. 30A and 801 CMR 1.01(7).

(5) The State Authority may make a request to SAMHSA to revoke SAMHSA approval of a opioid treatment program for cause.

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**(E) Deemed Status:**

**(1) License Renewal Based on Accreditation:** In considering an application for renewal of a license to operate an opioid treatment program pursuant to 105 CMR 164.008, the Department may in its complete discretion accept accreditation as evidence of compliance with one or more requirements of 105 CMR 164.000, and grant deemed status to the Licensed or Approved Provider, provided that:

- (a) The Licensed or Approved Provider's accreditation is not provisional;**
- (b) The Licensed or Approved Provider meets all requirements of 105 CMR 164.000;**
- (c) The Licensed or Approved Provider submits documentation to the Department as follows:**
  - 1. the accreditation letter;**
  - 2. the accrediting body's explanation of its survey findings; and**
  - 3. the Licensed or Approved Provider's response to the accrediting body's explanation, submitted to the Department at the same time it is submitted to the accrediting body.**
- (d) The Licensed or Approved Provider provides written consent to permit the Department to observe the accrediting body's summation conference(s); and**
- (e) The Licensed or Approved Provider agrees in writing to release to the Department any other accreditation information requested.**

Licensed or Approved Providers requesting renewal based on accreditation shall submit this request on an approved form obtained from the Department, in a manner prescribed by the Department.

**(2) Department's Decision:** The Department's decision to deny a request for deemed status is not subject to review or hearing pursuant to 105 CMR 164.020. If the Department denies the request for deemed status, the Licensed or Approved Provider shall provide full evidence of compliance by submitting an application for renewal as required by 105 CMR 164.008.

**(3) Required Notifications:** Licensed or Approved Providers granted deemed status shall, during the term of the license:

- (a) provide the Department with the following documentation within 10 business calendar days of receipt of such documentation by the Licensed or Approved Provider:**
  - 1. accreditation renewal letter(s);**
  - 2. accrediting body's explanation(s) of survey findings related to accreditation renewal; the Licensed or Approved Provider shall submit its response(s) to the accrediting body's explanation(s) to the Department at the same time it is submitted to the accrediting body; and**

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**3. notice(s) of any changes to the Licensed or Approved Provider's accreditation status.**

**(b) notify the Department immediately upon loss of accreditation.**

**(4) Department's Authority: In granting deemed status, the Department retains all authority described in 105 CMR 164.000, including authority to evaluate applications; to conduct inspections; and to suspend, deny, refuse to renew, restrict, limit or revoke a license.**

**(5) Additional Grounds for Suspension, Denial, Refusal to Renew, Restriction, Limitation or Revocation of License: In addition to the grounds for such action specified in 105 CMR 164.018 and 105 CMR 164.019, the Department may suspend, deny, refuse to renew, restrict, limit or revoke any license granted by deemed status if:**

**(a) the Licensed or Approved Provider loses its accreditation status;**

**(b) the Licensed or Approved Provider fails to comply with one or more conditions of accreditation; or**

**(c) the Licensed or Approved Provider's accreditation is made provisional.**

### **164.303: Inspections**

**In addition to inspections specified in 105 CMR 164.010: Inspections and 105 CMR 164.302 the Licensed or Approved Provider shall permit the following inspections:**

**(A) The Licensed or Approved Provider shall allow inspections by duly authorized employees of the State Authority, Drug Enforcement Agency, and SAMHSA at any time.**

**(B) A hospital or Department of Mental Health licensed facility subject to 105 CMR 164.500 shall permit the State Authority and Drug Enforcement Agency to inspect supplies of opioid drugs for opioid addiction treatment which are located at the hospital or facility at any time and to evaluate how the drug(s) are being used. In addition, records on receipt, storage, and distribution of opioid medication are subject to inspection.**

### **164.304: Required Notifications**

**Licensed and Approved Providers shall notify the Department of the following:**

**(A) Change in Program Sponsor or Medical Director. The opioid treatment program must provide written notice to the State Authority of a replacement of a program sponsor**

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**or Medical Director within two weeks of any replacement of these personnel.**

**(B) Closure or Cessation of Operation. The opioid treatment program must provide written notice to the State Authority 90 calendar days in advance of discontinuing a program in which medication is administered or dispensed. In addition to requirements of 105 CMR 164.035(B) and 105 CMR 164.087: Closure, the Licensed or Approved Provider shall include in its notice its plan for storage, transfer or disposal of its supply of opioids. Such plan shall be subject to approval by the Department.**

164.3052: Provision of Services – ~~All~~ Opioid Treatment **Programs**

**(A) Central Registry System**

- (1) All Opioid Treatment Programs shall participate in the Central Registry System to expedite the admission process by verification of medication and dose, prevent a patient’s simultaneous enrollment in more than one Opioid Treatment Program, facilitate disaster response and allow access to treatment during emergencies throughout the State, and ensure accurate dispensing of medication in accordance with state and federal laws and regulations.**
- (2) The Program Director and at least two (2) other employees designated by the Program Director shall have access to the Central Registry System and be properly trained in the Central Registry System.**
- (3) Each Opioid Treatment Program must:**
  - (a) Upon admission, inform all patients of the Opioid Treatment Program’s participation in the Central Registry System;**
  - (b) Prior to initiating a Central Registry System inquiry, obtain the patient’s written consent;**
  - (c) Include information about the Central Registry System in the Client Handbook and as part of patient orientations;**
  - (d) Ensure evidence of the written consent and orientation is included in the patient’s medical record;**
  - (e) Initiate a clearance inquiry to the Central Registry System by submitting all information required by the State Opioid Treatment Authority prior to admitting a patient to the Opioid Treatment Program;**
  - (f) Verify with the Central Registry System that the prospective patient is not presently enrolled in another Opioid Treatment Program, and document this verification in the patient’s record;**
  - (g) Report any other information required by the Department; and**
  - (h) Report all admissions, transfers, and discharges, and any other required**

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**information as soon as possible but not more than 72 hours later into to the Central Registry System.**

- (4) No person who is reported by the Central Registry System to be participating in another Opioid Treatment Program shall be admitted to an Opioid Treatment Program. In the event a dual enrollment is found by either Opioid Treatment Program in which the patient is participating, the patient shall be discharged from one Opioid Treatment Program in order to continue enrollment at another Opioid Treatment Program.**
- (5) The Opioid Treatment Program shall notify the State Opioid Treatment Authority within 24 hours of any patient who is found by an Opioid Treatment Program to be simultaneously enrolled in another Opioid Treatment Program.**
- (6) Information made available by the Central Registry System to Opioid Treatment Programs as approved by the State Opioid Treatment Authority shall also be treated as confidential in accordance with all state and federal regulations including but not limited to 42 CFR Part 2.**
- (7) Opioid Treatment Programs shall not disclose any information to a treating provider that is a non-member of the Central Registry System regardless of whether there is a treating provider relationship, unless there is a patient specific authorized consent which complies with 42 CFR Part 2.**
- (8) The Opioid Treatment Program shall develop policies and procedures for:
  - (a) Orienting patients and staff to the Central Registry System; and**
  - (b) Training for staff to ensure compliance with 105 CMR 164.305(A). Evidence of this training shall be documented in staff's personnel files.****
- (9) All Hazard and Emergency Planning and Procedures plan:
  - (a) Opioid Treatment Programs shall include use of the Central Registry System to ensure patient access to care, accuracy and efficiency in dosing services during an emergency by ensuring medication dosing information can be shared between licensed and/or certified Opioid Treatment Programs and the State Opioid Treatment Authority and/or their delegate.****

**(B) Admission:**

- (1) ~~Level of Care:~~ Prior to admitting a ~~elient~~patient into treatment, the **Licensed or****



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**Approved Provider**~~licensee~~ shall determine that the ~~elient~~**patient** has a current physiologic dependence on opioids of at least a 12-month duration. If the exact term of physiologic dependence cannot be determined, the Medical Director, or designee, may admit the ~~elient~~**patient** to treatment if there is sufficient evidence to reasonably conclude that there was physiologic dependence one year prior to admission. The 12-month duration may be waived if the ~~elient~~**patient**:

- (a) is pregnant;
  - (b) is seeking opioid ~~detoxification~~ **withdrawal** services;
  - (c) has been released from a penal institution within the previous six months; or
  - (d) has been discharged from opioid treatment within the previous two years.
- (2) Evidence of Physiologic Opioid Dependence: The **Licensed or Approved Provider**~~licensee~~ shall obtain evidence of **a diagnosis of opioid use disorder**~~physiologic dependence on opioids~~ through reliable methods such as physical examination, laboratory tests and substance use history.

- (3) Prior to initiating treatment, the **Licensed or Approved Provider**~~licensee~~ shall:
- (a) verify that the ~~elient~~**patient** with a positive drug screen for methadone is not enrolled in an opioid treatment program;
  - (b) complete an assessment of patient's current prescription medications prior to prescribing, dispensing or administering an FDA-approved medication for opioid dependence to ensure that the approved medication is not contraindicated by the patient's current prescribed medications or health status;
  - (c) for women of child bearing age, complete a pregnancy test before dispensing or administering or prescribing an FDA-approved medication for opioid dependence; and
  - (d) review the ~~elient's~~**patient's** prescription history through the **MassPAT**~~Prescription Monitoring Program~~.

- (4) Consent to Treatment: The **Licensed or Approved Provider**~~licensee~~ shall ensure that the ~~elient~~**patient** voluntarily chooses treatment. The information listed below shall be provided to the client and recorded on a consent form, which shall be signed by the ~~elient~~**patient**, and a copy shall be provided to the ~~elient~~**patient**. If the ~~patient~~**elient** is younger than 18 years old, the consent form shall be signed by the ~~patient~~**elient** and the ~~patient's~~**elient's** parent or **legal** guardian. The information shall also be provided orally:
- (a) the nature of FDA-approved medication used in opioid treatment, including benefits and risks, and the benefits and risks of not receiving treatment;
  - (b) the distinction between ~~detoxification~~ **withdrawal** and maintenance and the availability of short-term ~~detoxification~~ **withdrawal** treatment for a period not less than



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- 30 **calendar** days nor more than 180 **calendar** days;
- (c) approximate length of each type of treatment;
- (d) a clear statement of the goals of each type of treatment, and the tasks necessary to reach those goals;
- (e) need for the ~~client~~**patient** to inform the **Licensed or Approved Provider**~~licensee~~ of current medical conditions and medications the ~~client~~**patient** is currently taking;
- (f) acknowledgement that the ~~client~~**patient** may withdraw voluntarily from treatment and discontinue use of medications;
- (g) the options available to both the ~~client~~**patient** and the program as a result of either a voluntary or involuntary termination, including medically supervised withdrawal; and
- (h) for women of child-bearing age, acknowledgement of the benefits and risks of treatment during pregnancy, and importance of informing the **Licensed or Approved Provider**~~licensee~~ if she is or becomes pregnant.

~~(CB)~~ **Assessment:** Pursuant to 105 CMR 164.072(B), the **Licensed or Approved Provider** may initiate patient treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a Qualified Healthcare Professional must see such a patient prior to initiating an FDA-approved medication for treatment of addiction.~~The licensee shall ensure that the assessment required by 105 CMR 164.072 shall be completed on the first visit.~~

~~(DC)~~ **Initial Medical**~~Physical~~ Examination: In addition to the assessment required by 105 CMR 164.072, ~~t~~the **Licensed or Approved Provider**~~licensee~~ shall ensure that each ~~patient~~~~client~~ has an **initial medical**~~a-physical~~ examination by a **Practitioner**~~physician~~, or by a qualified health-care professional under the supervision of a program physician prior to administration of the first dose of medication. The examination shall include:

- ~~(1) an assessment of the patient's substance use disorder;~~
- (12) a brief mental status exam;
- (23) tests for the presence of **opiates****opioids** including, but not be limited to, **buprenorphine, methadone, and fentanyl**; alcohol; benzodiazepines; cocaine~~and other drugs of abuse as indicated by the patient's current substance use~~; and any other **drugs** the **Licensed or Approved Provider** determines are clinically indicated or as approved by the Commissioner and listed in Department guidance;
- (4) an assessment of ~~the possibility of: infectious diseases, including HIV, TB, Viral Hepatitis and sexually transmitted diseases~~; pulmonary, liver, and cardiac abnormalities;

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dermatological and neurological sequelae of addiction; **possible infectious serologies if indicated; and** possible concurrent surgical problems; **and any other relevant laboratory studies as clinically indicated.** **The full medical examination including the results of serology and other tests** ~~The assessment shall include the following laboratory tests, results of which~~ must be returned no later than 14 **calendar** days after admission.:

- ~~(a) tests to determine liver function;~~
- ~~(b) tests to screen for anemia, coronary risk factors; and~~
- ~~(c) complete blood count and differential blood tests.~~

**These laboratory tests are not required to be completed prior to the initiation of medication for addiction assisted treatment.** Any relevant laboratory findings shall be documented and reviewed with the ~~patient and~~ **Medical Director and findings reviewed with the patient.** Evidence of direct referrals to address findings shall be properly documented. The **Licensed or Approved Provider**~~licensee~~ shall ensure that such laboratory tests are completed by licensed facilities which comply with all applicable federal and state laboratory licensure and certification requirements.

~~(E)~~ **(E)** Treatment Plan: In addition to the requirements of 105 CMR 164.073, the treatment plan shall include the following information:

- (1) Dosage: The Medical Director shall ensure **all dosing**~~that the initial dose~~ of an opioid agonist treatment medication is ordered **in accordance with federal requirements**~~by a program physician and does not exceed the federal dosage guidelines for the specified opioid~~; and
- (2) Services: The **Licensed or Approved Provider**~~licensee~~ shall provide services as specified in 105 CMR 164.074.

~~(F)~~ **(F)** Documentation: In addition to the requirements of 105 CMR 164.083, the Medical Director, or other authorized health care professional, shall:

- (1) ensure that evidence of current physiological dependence is entered in the ~~client~~**patient** record;
- (2) ensure that a medical evaluation, including a medical history, is recorded;
- (3) ensure that appropriate laboratory results are documented;
- (4) ensure that a list of prescription medication, prescribed dosage(s) of all medications, the plan for changing prescribed medications if necessary, including the planned rate of ~~detoxification~~**withdrawal**, when applicable, are documented in the record;
- (5) sign or countersign all medical orders;
- (6) review and countersign treatment plans at least annually;
- (7) ensure that the reasons for any changes in dosage and changes in the permitted number of take-home doses are documented;

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- (8) document program verifications made in accordance with 105 CMR 164.3052(BA)(3)(a); and
- (9) document status of initial and periodic **MassPAT**~~Prescription Monitoring Program~~ review.

~~(F) Identification: The licensee shall have a photographic or biometric identification system for identifying clients when dispensing opioid agonist treatment medications.~~

**(G) Upon Department approval, a Licensed or Approved opioid treatment provider may provide interim maintenance in accordance with federal requirements.**

164.3063: Additional **Opioid Treatment Provider** ~~Service~~ Requirements: ~~for Opioid Detoxification~~ **Medically Supervised Withdrawal**

(A) Admission: **In accordance with federal requirements:**

~~(1) When~~The licensee shall apply the following additional criteria in admitting ~~clients to opioid detoxification services,~~

~~(1) Prior to admitting~~ an individual for opioid ~~detoxification~~**medically supervised withdrawal management**, the **Licensed or Approved Provider**~~licensee~~ shall obtain and include in the ~~client's~~**patient's** record a medical evaluation by a ~~licensed physician, Practitioner or~~ psychiatrist, ~~nurse practitioner or physician assistant~~ which confirms the appropriateness of outpatient ~~detoxification~~**medically supervised withdrawal management** for the ~~client~~**patient**.

(2) **A program physician shall conduct an assessment to determine the appropriate form of treatment. Should such physician determine treatment other than opioid medically supervised withdrawal is necessary, the physician shall directly connect the patient with a provider for such treatment.**

(3) **A program physician may determine p**Persons younger than 18 years old may be admitted upon determination **such individual is** ~~by the medical director to be~~ currently physiologically dependent upon opioids as defined in 105 CMR 164.3052(AB)(2).

~~(43) Clients~~**Patients** with two or more unsuccessful episodes of supervised withdrawal within ~~athe previous~~ 12 months **period** may not be admitted to opioid ~~detoxification~~**medically supervised withdrawal management** treatment. ~~The medical director shall conduct an assessment to determine an appropriate referral to another form of treatment.~~

(54) A waiting period of at least one week is required between ~~detoxification~~**withdrawal** attempts. An authorized staff physician shall document in the ~~client~~**patient** record that the ~~client~~**patient** continues to be or is again physiologically dependent on an opioid drug.

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(B) Treatment: The **Licensed or Approved Provider**~~licensee~~ shall ensure the following provisions are met:

- (1) **A program physician**~~The medical director~~ shall determine for each **client**~~patient~~ the rate at which the opioid drug is to be decreased;
- (2) At least one drug screening shall be performed upon admission to opioid ~~detoxification~~**medically supervised withdrawal treatment**. If the ~~detoxification~~**withdrawal management** period exceeds 30 **calendar** days, the **Licensed or Approved Provider**~~licensee~~ shall obtain at least one drug screen per month for the duration of ~~detoxification~~**medically supervised withdrawal treatment**;
- (3) Treatment plans shall be reviewed with the **client**~~patient~~ **periodically and as needed to determine the appropriate accommodation of treatment and services**~~monthly~~;
- (4) The **Licensed or Approved Provider**~~licensee~~ shall dispense opioid agonist treatment medications to the **client**~~patient~~ daily at the facility under the direct supervision of a physician or other qualified medical person; and
- (5) The **Licensed or Approved Provider**~~licensee~~ shall not provide take-home medication for ~~detoxification~~**withdrawal management**.

#### 164.3074: Additional Service Requirements for Opioid Maintenance

(A) Admission of Persons Under 18 Years of Age: **Licensed and Approved Providers**~~Licensees~~ may not admit a person under 18 years of age to opioid maintenance treatment unless that person has two documented unsuccessful attempts at short-term ~~detoxification~~**withdrawal** or drug-free treatment within ~~the previous a~~ **12 months period**, or is pregnant.

(B) Drug Screening: The **Licensed or Approved Provider**~~licensee~~ shall provide for the following:

- (1) An initial drug-screening completed for each prospective **client**~~patient~~ as required by 105 CMR 164.3052~~(DE)~~**(23)**.
- (2) **An opioid treatment provider must conduct** ~~At least 15~~ additional random drug screens **according to federal requirements. Such drug screens shall, at a minimum, test for opioids including, but not be limited to, buprenorphine, methadone, and fentanyl; cocaine; and benzodiazepines; alcohol; and any other drugs the Licensed or Approved Provider determines are clinically indicated or as approved by the Commissioner and listed in Department guidance.** ~~for each client during each year in treatment. For clients who are prescribed, administered, or dispensed partial or full agonist, the 15 random drug screens must include testing for the presence for these specific medications. In addition, the Commissioner, as necessary to protect the health and safety~~

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~~of individuals in Opioid Treatment Programs, may authorize the addition of a drug to the testing regimen, state-wide or in a particular region of the state, based on changes in identified drug use. Such requirements shall not exceed a period of 12 months without amendment to 105 CMR 164.000. Licensees may provide 24-hour notice when urine testing is used. For all other testing methods, no prior notice shall be given.~~ The **Licensed or Approved Provider**~~licensee~~ shall document measures taken to prevent adulteration of samples and to ensure a chain of custody.

(3) Results of drug screening are to be used as a clinical tool and not as the sole factor in the diagnosis and treatment of the ~~client~~**patient** and for monitoring the ~~client's~~**patient's** drug-use patterns before and during treatment. The **Licensed or Approved Provider's**~~licensee's~~ Medical Director shall ensure that drug screen results are not used to force a ~~client~~**patient** out of treatment, but are used as an aid in making treatment decisions.

(4) Drug screening may be done by one of the following: blood, oral swab, urine testing, or other method as defined by the Department.

(C) Administration of Opioid Maintenance: The **Licensed or Approved Provider**~~licensee~~ shall provide for the following

(1) All ~~clients~~**patients** who begin opioid maintenance treatment shall present themselves daily for medication so ~~that~~ the **Licensed or Approved Provider**~~licensee~~ may observe the ~~client~~**patient** ingesting the prescribed dosage of opioid agonist medication on a daily basis.

(2) The **Medical Director**~~licensee~~ may reduce the number of times ~~clients~~**patients** must present themselves for observed ingestion of medication by providing take-home doses. In determining whether to provide take-home doses **to a patient**, the **Medical Director**~~licensee~~ shall **ensure all decisions comply with federal take-home criteria and schedule, including but not limited to 42 CFR Part 8.12(h)(4)(i)(1-5).**~~consider collectively assess the client's status based on the following criteria for such patient:~~

~~(a) absence of recent abuse~~**misuse** of drugs, including alcohol;

~~(b) regularity of program participation;~~

~~(c) absence of serious behavioral problems at the program;~~

~~(d) absence of recent criminal activity;~~

~~(d) stability of client's~~**patient's** home environment and social relationships;

~~(e) length of time the client~~**patient** has participated in comprehensive maintenance treatment;

~~(f) assurance that the take-home medication is safely stored within the client's~~**patient's** home;

~~(g) whether the benefit derived by the client~~**patient** from decreasing program contact outweighs the potential risks of diversion.

The results of such assessment shall be documented in the ~~client's~~**patient's** record.

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(3) The **Licensed or Approved Provider**~~licensee~~ shall adhere to ~~the~~ **federal limits for providing take home doses of any opioid agonist or partial agonist, including that any patient in opioid maintenance treatment may receive a single take-home dose for a day the program is closed, such as on Sundays and state and federal holidays.**~~following limits in providing take home doses:~~

~~(a) During the first two months of treatment no take-home doses shall be permitted;~~

~~(b) Beginning in the third month of treatment, the licensee may provide one take-home dose per week.~~

~~(c) During the fourth through sixth months of treatment, the licensee may provide up to two take-home doses per week.~~

~~(d) During the seventh through ninth months of treatment, the licensee may provide up to three take-home doses per week.~~

~~(e) Beginning in the tenth month of treatment, the licensee may provide up to six take-home doses per week.~~

~~(f) Following completion of 18 months of treatment, the licensee may provide up to 13 take-home doses every two weeks.~~

(4) The **Licensed or Approved Provider**~~licensee~~ may not exceed **federally established take-home**~~the above~~ limits without written permission from the Department. Requests for such permission shall be submitted to the Department in writing in a form required by the State Opioid Treatment Authority and, where required, by the federal government.

(5) Take-home doses shall be dispensed to ~~clients~~**patients** in locked containers. **Licensed and Approved Providers**~~Licensees~~ may require ~~clients~~**patients** to provide their own locked container.

(6) **The Licensed or Approved Provider**~~Licensees~~ shall instruct ~~clients~~**patients** receiving **a take-home dose or** take-home doses, ~~including clients receiving a single take-home dose due to severe weather,~~ of the dangers of ingesting methadone to children, pets, and others for whom methadone is not prescribed, and of the dangers of ingesting more than the prescribed dose. Such instruction shall include information on safe storage of methadone in the home. The **Licensed or Approved Provider**~~licensee~~ shall document that this instruction has been provided.

(7) Take-home ~~status~~**privileges** may be revoked or suspended if the ~~client~~**patient** does not maintain the behavior which supported approval of take-home privileges. Suspension or revocation of take-home privileges are not subject to appeal to the Department.

**(8) The Licensed or Approved Provider shall support patients on opioid maintenance treatment when they are admitted to to a 24-hour settings or during a time of clinical need in obtaining take-home doses in accordance with all state and federal requirements.**



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(D) Pregnant Women.

(1) Pregnant women, regardless of age, who have had a documented opioid dependency in the past and who may be in direct jeopardy of returning to opioid dependency may be placed on a maintenance regimen. For such ~~clients~~**patients**, evidence of current physiological dependence on opioid drugs is not needed if an authorized staff physician certifies the pregnancy and, using reasonable clinical judgment, finds such treatment to be medically justified in accordance with best medical practices considering the health of the woman and impact on the pregnancy. Evidence of all findings shall be recorded in the ~~client~~**patient** record.

(2) The **Licensed or Approved Provider**~~licensee~~ shall ensure that each pregnant woman is fully informed concerning the possible benefits and risks of opioid treatment to herself and to the fetus. The **Licensed or Approved Provider**~~licensee~~ shall document provision of this information in the ~~client's~~**patient's** record.

(3) The **Licensed or Approved Provider**~~licensee~~ shall establish a **QSOA**~~qualified service organization agreement~~ for pre-natal, obstetrical and gynecological services, unless **Licensed or Approved Provider**~~licensee~~ provides these services directly.

(E) Blind Dosage Reduction: ~~Clients~~**Patients** who are undergoing medically supervised withdrawal as a planned goal in a maintenance program may request a blind dosage reduction, *i.e.* a gradual decrease of dosage without prior notice to the ~~client~~**patient** of the decrease. Such blind dosage reduction shall be undertaken only with written consent of the ~~client~~**patient** and **Licensed or Approved Provider**~~licensee~~. Such consents shall be renewed only by mutual agreement on a regular basis.

(F) Voluntary Termination: Upon request of a ~~client~~**patient**, or when deemed medically advisable and with the ~~client's~~**patient's** consent, the **Licensed or Approved Provider**~~licensee~~ shall initiate the following services:

- (1) Discuss with the ~~client~~**patient** the benefits and risks of medically supervised withdrawal, including possibility of relapse;
- (2) Provide relapse prevention services;
- (3) Provide medically supervised withdrawal services directly or by referral; and
- (4) Make referrals as necessary to ensure a continuum of care for the ~~client~~**patient**, including continued counseling and other services, including risk reduction and outreach, as long as necessary to assure stability.

(G) Medically Supervised Withdrawal Rate: The rate of medically supervised withdrawal shall be determined by ~~the~~ **program physician** ~~licensee's medical director~~ to be appropriate to the ~~client's~~**patient's** medical and psychiatric conditions and the dosage level at which the

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~~client~~**patient** was being medicated before the decision was made to terminate. In determining the appropriate course of dosage reduction, the ~~Medical Director~~ **physician** shall review the ~~client's~~**patient's** record, and consider the ~~client's~~**patient's** physical and mental health status, and with consent of the ~~client~~**patient**, may take into account the opinions of the ~~client's~~**patient's** other ~~physicians~~**practitioners** and medical providers.

(H) Annual ~~Medical~~**Physical** Exam: The ~~Licensed or Approved Provider~~**licensee** shall ensure that each ~~client~~**patient** has a ~~medical~~**physical** examination by a ~~Practitioner~~**physician**, or by a qualified health-care professional, under the supervision of a program physician once each year. The examination shall include:

~~(1) an assessment of the patient's substance use disorder;~~

~~(1)~~ a brief mental status exam;

**(2) tests for the presence of opioids, cocaine, benzodiazepines, alcohol, all FDA-approved medications for addiction medication-assisted treatment, and any other drugs the Licensed or Approved Provider determines are clinically indicated or as approved by the Commissioner and listed in Department guidance.**

~~(3) an assessment of the possibility of: infectious diseases, including HIV, TB, Viral Hepatitis and sexually transmitted diseases;~~ pulmonary, liver, and cardiac abnormalities; dermatological and neurological sequelae of addiction; **possible infectious serologies if indicated; and possible concurrent surgical problems; and any other relevant laboratory studies as clinically indicated.** The assessment shall include laboratory tests as needed. The ~~Licensed or Approved Provider~~**licensee** shall ensure that **any necessary** laboratory tests are completed by licensed facilities which comply with all applicable federal and state laboratory licensure and certification requirements. **Any relevant laboratory findings shall be documented and reviewed with the patient and physician and findings reviewed with the patient.** Evidence of direct referrals to address findings must be properly documented.

**(4) Licensed or approved providers may utilize a medical examination conducted within the last 12 months provided there are no medical issues or changes that require examination per the clinical discretion of the facility provider and review of such a medical examination is documented in the patient's record.**

#### ~~164.305: Report of Adverse Reactions~~

~~Within 14 days of any adverse physical or psychological reaction to an opioid agonist medication, the licensee shall report this reaction to the Food and Drug Administration (FDA) in the form and manner required by the FDA.~~



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164.3086: Referral to Medication Unit

In referring ~~clients~~**patients** to a medication unit, the **Licensed or Approved Provider**~~licensee~~ shall ensure that:

- (A) Medication unit is staffed and equipped to assess ~~clients'~~**patients'** dosage levels;
- (B) ~~Clients~~**Patients** continue to receive **all OTP required services** ~~medical and rehabilitative services~~ as described in their treatment plans.

164.3097: Drug Screening Policy and Procedure

The **Licensed or Approved Provider**~~licensee~~ shall provide for testing and analysis for drugs of ~~abuse~~**misuse**, and shall establish written policies and procedures for guarding against adulteration of such tests.

164.3108: Diversion Control

The **Licensed or Approved Provider**~~licensee~~ shall maintain a diversion control plan using measures to reduce the possibility of diversion of controlled substances that are FDA-approved for the treatment of opioid dependency, which shall include:

- (A) Random callbacks;
- (B) For ~~clients~~**patients** who test positive for **any FDA approved medications for treatment**~~methadone~~ **of opioid use disorder** at admission, procedures for determining whether ~~clients~~**patients** are enrolled in an opioid treatment program **or are prescribed any medications for treatment of opioid use disorder**, and documentation of actions taken in ~~client~~**patient** records;
- (C) ~~Assigning~~**ment-of** specific responsibility to the Medical Director and administrator for carrying out the diversion control measures and functions described in the plan;
- (D) Random drug screening; and
- (E) Initial and periodic review of ~~client's~~**patient's** prescription history through the **MassPAT**~~Prescription Monitoring Program~~.

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164.31109: Involuntary Termination from an Opioid Treatment Program

(A) Emergency Terminations: the **Licensed or Approved Provider**licensee may terminate a **client**patient immediately prior to a hearing and without provision for medically supervised withdrawal **or Referral**, under the conditions listed below:

(1) when the program director reasonably determines ~~that~~—the **client's**patient's continuance in the program presents an immediate and substantial threat of physical harm to other **clients**patients, program personnel or property; or

(2) where the program's Medical Director reasonably determines ~~that~~ continued treatment of a **client**patient presents a serious documented medical risk; and

**(3) the Licensed or Approved Provider shall document the reason for not providing a Referral in the patient record;**

~~(4)~~ the **Licensed or Approved Provider**licensee immediately notifies the **client**patient of the decision and the reasons for the decision to immediately terminate the **client**patient;

~~(5)~~ the **Licensed or Approved Provider**licensee schedules a hearing, to be held on the next business day, on the decision to terminate and provides notice of the hearing to the **client**patient as described in 105 CMR 164.31109(B)(1)(a)1. and 3. and (C);

~~(6)~~ the hearing is conducted in accordance with procedures specified in 105 CMR 164.309311(D) providing that the decision required by 105 CMR 164.311309(D)(7) shall be made within one business day; **and**

~~(7)~~ the **client**patient is notified of findings of the hearing within one business day of the hearing.;

~~(7) the licensee provides referrals to ensure a continuum of care for the client, including continued counseling and other services, including risk reduction and outreach.~~

**Licensed and Approved Providers**licensee are not required to provide medically supervised withdrawal services to **clients**patients who are discharged on an emergency, involuntary basis.

(B) Non-emergency Termination: In a non-emergency situation, the **Licensed or Approved Provider**licensee must afford the **client**patient the following procedural rights:

(1) Prior to initiating medically supervised withdrawal, the **Licensed or Approved Provider**licensee shall:

(a) Provide the **client**patient with prompt written notice which shall contain:

1. a statement of the reasons for the proposed termination, *e.g.* violations of a specific rule or rules, non-compliance with treatment contract, *etc.*, and the particulars of the infraction including the date, time, and place;

2. notification that the **client**patient has the right, within two business days from

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the first business day following receipt of written notice, to submit a written request for a hearing as to the proposed termination;

3. a copy of the **Licensed or Approved Provider's**~~licensee's~~ hearing procedures.

- (b) Arrange with the ~~client~~**patient** or ~~client's~~**patient's** advocate for a mutually convenient date and time for a hearing within ~~ten~~**10** business days of receipt of the notice. Additional time to secure appropriate representation may be granted to the ~~client~~**patient** under exceptional circumstances.
- (2) Afford the ~~client~~**patient** the opportunity of medically supervised withdrawal. If the ~~client~~**patient** chooses medically supervised withdrawal, the **Licensed or Approved Provider**~~licensee~~ shall provide medically supervised withdrawal, or make arrangements for appropriate medically supervised withdrawal in another opioid treatment program. The rate of dosage reduction shall be determined by the **Licensed or Approved Provider's**~~licensee's~~ Medical Director in accordance with the ~~client's~~**patient's** medical condition and the dosage level at which the ~~client~~**patient** was medicated before the decision was made to terminate or suspend. In determining an appropriate course of withdrawal, the Medical Director shall review the record, consider the ~~client's~~**patient's** physical and mental health status, and, upon request of the ~~client~~**patient**, may take into account the opinions of the ~~client's~~**patient's** other ~~physicians~~**practitioners** and medical providers.
- (3) If a ~~client~~**patient** is terminated for non-payment of fees, medically supervised withdrawal may begin immediately upon providing written notice of termination, and continue concurrent with ~~client's~~**patient's** appeal, if any.

(C) Documentation of Receipt of Notice: The **Licensed or Approved Provider**~~licensee~~ shall document provision of notice to the ~~client~~**patient** by obtaining the signature of the staff person providing notice and by obtaining a signed, dated receipt from the ~~client~~**patient**. If the ~~client~~**patient** refuses to sign a receipt, the **Licensed or Approved Provider**~~licensee~~ shall document that refusal on its record of notice.

(D) Hearing Procedures: The **Licensed or Approved Provider**~~licensee~~ shall ensure that hearings are conducted in accordance with the following procedures:

- (1) The hearing shall be presided over by an impartial hearing officer, who may be any staff or other person(s) not directly involved in the facts of the incident giving rise to the disciplinary proceedings or in the decision to commence the proceedings; provided that the persons involved in either the facts of the incident or in the decision to commence the proceedings shall not have authority over the hearing officer(s);
- (2) The ~~client~~**patient** may be represented at the hearing by any responsible adult of the ~~client's~~**patient's** choosing, including legal counsel;

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(3) The hearing shall be conducted in accordance with previously established written rules, which need not be the rules of evidence used in judicial proceedings, but which are designed to ensure a fair and impartial proceeding. The program shall prove by a preponderance of the evidence that the ~~client~~**patient** did commit the alleged violation;

(4) The ~~client~~**patient** shall be entitled, upon request, to examine any documentary evidence in the possession of the **Licensed or Approved Provider**~~licensee~~ that pertains to the subject matter of the hearing;

(5) The ~~client~~**patient** shall be entitled to call his or her own witnesses and to question any adverse witnesses;

(6) The **Licensed or Approved Provider**~~licensee~~ shall make an audio recording of the hearing. The ~~client~~**patient** may also make an audio recording of the hearing at the ~~client's~~**patient's** expense;

**(7) Hearings may be conducted by telephone, or using an audio-visual, real-time, two-way interactive communication system, provided that contemporaneous notes are taken of the hearing, and all other required documentation for the appeal hearing process is in place and documented;**

(78) The hearing officer shall make the decision within seven ~~business~~**calendar** days after the hearing and will base the decision solely upon the information presented at the hearing. The decision shall be based upon the **Licensed or Approved Provider's**~~licensee's~~ policy and procedures in effect and posted at the time of the violation; and

(89) The hearing officer shall issue the decision in writing, and shall provide the ~~client~~**patient** (and ~~client's~~**patient's** representative, if requested) with a copy thereof. The decision shall include an explanation of the reasons for the decision, and instructions explaining how to file an appeal of an adverse decision to the Bureau. The instructions shall inform the ~~client~~**patient** that the ~~client's~~**patient's** written request for an appeal constitutes the ~~client's~~**patient's** consent to release information to the Bureau.

#### 164.3120: Bureau Review of Program Decisions to Terminate

(A) The **Licensed or Approved Provider**~~licensee~~ shall afford the ~~client~~**patient** the right to appeal ~~the determination to the Bureau an adverse decision~~ of the hearing officer. The ~~client~~**patient** must request this appeal in writing to the Bureau within three ~~business~~**calendar** days following the receipt of the adverse decision. **The scope of the appeal shall be limited to the Bureau's review of whether the Licensed or Approved Provider adhered to the policies and procedures in compliance with 105 CMR 164.075 and 105 CMR 164.311(D).** The ~~client's~~**patient's** written appeal shall contain the ~~basis client's argument in support~~ of the appeal. The Bureau will either affirm or reverse the hearing officer's decision, or remand the decision to a new hearing officer for a new hearing. The decision of the Bureau will be made

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as follows:

- (1) In the case of an emergency termination, the Bureau shall decide within one business day of receipt of the complete hearing record and written materials submitted by both parties;
- (2) In the case of a non-emergency termination, the Bureau shall decide within ~~ten~~**10** business days of the Bureau's receipt of the complete hearing record and written materials submitted by both parties.

A **Licensed or Approved Provider**~~licensee's~~ failure to submit the complete hearing record will result in a finding for the ~~client~~**patient**. The hearing officer shall deliver a written decision, outlining the reason(s) for the decision, to the ~~client~~**patient**, his or her advocate, and the program. The decision of the Bureau is final.

(B) In the case of a non-emergency termination, if the ~~client~~**patient** timely appeals the hearing decision, the **Licensed or Approved Provider**~~licensee~~ may not terminate the ~~client~~**patient**, or begin medically supervised withdrawal, without first receiving, and ensuring ~~that~~ the ~~client~~**patient** also receives, the Bureau's decision on appeal.

#### ~~164.311: Authority to Operate an Opioid Treatment Program~~

~~(A) Compliance with Other Laws, Rules, Regulations and Standards: In addition to 105 CMR 164.000, the licensee shall comply with the following:~~

- ~~(1) M.G.L. c. 94C governing controlled substances and 105 CMR 700.00: *Implementation of M.G.L. c. 94C* governing controlled substance registration;~~
- ~~(2) 21 CFR Parts 1300 to 1399 of the U.S. Department of Justice, Drug Enforcement Administration (DEA) regulations requiring registration under the Controlled Substances Act.~~

~~(B) Current Certification: The licensee shall have a current valid certificate from the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, in compliance with 42 CFR Part 8.~~

~~(C) Accreditation: The licensee shall be accredited by an accrediting organization approved by the Substance Abuse and Mental Health Service Administration. If the licensee has operated an opioid treatment program for less than one year, the licensee shall obtain accreditation by the end of the first year of operation.~~

~~(D) State Authority Approval: No person, agency or entity may operate an opioid treatment program in the Commonwealth of Massachusetts without State Authority Approval, except for~~

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~~opioid treatment programs operated by the Veterans Administration or programs directly operated by the federal government. Persons who hold a current license and State Authority Approval to operate an opioid treatment program may not open a new or relocated facility, or transfer ownership, without applying for and receiving a new license and State Authority Approval.~~

~~(1) Application for State Authority Approval: Applicants for State Authority Approval shall submit a completed "Request for State Authority Approval to Operate an Opioid Treatment Program" in conjunction with an application for licensure pursuant to 105-CMR-164.000: *Part One*. Copies of the Request for State Authority Approval shall be submitted to the United States Substance Abuse and Mental Health Services Administration (SAMHSA) and the United States Drug Enforcement Administration. In addition to information and inspections required for licensure, the application shall specify:~~

~~(a) the number of active clients to be served at the site(s); and~~

~~(b) security protocols.~~

~~(2) Approval Process:~~

~~(a) If the Department determines that the applicant has met all state and federal standards and that the interests of public health would be served by the establishment of the opioid treatment program, the Department shall forward State Authority Approval to the SAMHSA.~~

~~(b) Upon State Authority Approval, the Department shall issue a provisional license valid for six months and shall sign and forward it to the SAMHSA.~~

~~(c) The Department may review the program's operations during the provisional licensing period. Following the provisional period, the Department shall make a recommendation regarding the issuance of a two-year license.~~

~~(d) If the Department determines that the applicant has not met the requirements of state and federal regulations and/or that the interests of public health are not served by the establishment of the opioid treatment program at the proposed site, the Department shall deny State Authority Approval of the application in writing, citing specific reasons for denial, and forward its denial to the SAMHSA. If denied, the applicant may request an adjudicatory hearing, pursuant to M.G.L. c. 30A and 801-CMR 1.01(7).~~

~~(e) The State Authority may make a request to SAMHSA to revoke SAMHSA approval of a opioid treatment program for cause.~~

~~(E) Deemed Status:~~

~~(1) License Renewal Based on Accreditation: In considering an application for renewal of a license to operate an opioid treatment program pursuant to 105-CMR-164.008 and 164.013, the Department may in its complete discretion accept accreditation as evidence of compliance with one or more requirements of 105-CMR-164.000, and grant deemed~~

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~~status to the licensee, provided that:~~

- ~~(a) The licensee's accreditation is not provisional;~~
- ~~(b) The licensee meets all requirements of 105 CMR 164.000;~~
- ~~(c) The licensee submits documentation to the Department as follows:
  - ~~1. the accreditation letter;~~
  - ~~2. the accrediting body's explanation of its survey findings; and~~
  - ~~3. the licensee's response to the accrediting body's explanation, submitted to the Department at the same time it is submitted to the accrediting body.~~~~
- ~~(d) The licensee provides written consent to permit the Department to observe the accrediting body's summation conference(s); and~~
- ~~(e) The licensee agrees in writing to release to the Department any other accreditation information requested.~~

~~Licensees requesting renewal based on accreditation shall submit this request on an approved form obtained from the Department, in a manner prescribed by the Department.~~

~~(2) Department's Decision: The Department's decision to deny a request for deemed status is not subject to review or hearing pursuant to 105 CMR 164.020. If the Department denies the request for deemed status, the licensee shall provide full evidence of compliance by submitting an application for renewal as required by 105 CMR 164.008 and 164.013.~~

~~(3) Required Notifications: Licensees granted deemed status shall, during the term of the license:~~

- ~~(a) provide the Department with the following within ten business days of receipt by licensee:
  - ~~1. accreditation renewal letter(s);~~
  - ~~2. accrediting body's explanation(s) of survey findings related to accreditation renewal; the licensee shall submit its response(s) to the accrediting body's explanation(s) to the Department at the same time it is submitted to the accrediting body; and~~
  - ~~3. notice(s) of any changes to the licensee's accreditation status.~~~~
- ~~(b) notify the Department immediately upon loss of accreditation.~~

~~(4) Department's Authority: In granting deemed status, the Department retains all authority described in 105 CMR 164.000, including authority to evaluate applications; to conduct inspections; and to suspend, deny, refuse to renew, restrict, limit or revoke a license.~~

~~(5) Additional Grounds for Suspension, Denial, Refusal to Renew, Restriction, Limitation or Revocation of License: In addition to the grounds for such action specified in 105 CMR 164.018: *Grounds for Suspension of License* and 105 CMR 164.019: *Grounds for Denial, Refusal to Renew, Restriction, Limitation or Revocation of License*, the Department may~~



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~~suspend, deny, refuse to renew, restrict, limit or revoke any license granted by deemed status if:~~

- ~~(a) the licensee loses its accreditation status;~~
- ~~(b) the licensee fails to comply with one or more conditions of accreditation; or~~
- ~~(c) the licensee's accreditation is made provisional.~~

#### 164.312: Inspections

~~In addition to inspections specified in 105 CMR 164.011: *Inspections* and 105 CMR 164.310: *Authority to Operate an Opioid Treatment Program*, the licensee shall permit the following inspections:~~

~~(A) The licensee shall allow inspections by duly authorized employees of the State Authority, Drug Enforcement Agency, and SAMHSA at any time.~~

~~(B) A hospital or Department of Mental Health licensed facility subject to 105 CMR 164.012 shall permit the State Authority and Drug Enforcement Agency to inspect supplies of opioid drugs for opioid addiction treatment which are located at the hospital or facility at any time and to evaluate how the drug(s) are being used. In addition, records on receipt, storage, and distribution of opioid medication are subject to inspection.~~

#### 164.313: Required Notifications

~~Licensees shall notify the Department of the following:~~

~~(A) Change in Program Sponsor or Medical Director. The opioid treatment program must provide written notice to the State Authority of a replacement of a program sponsor or Medical Director within two weeks of any replacement of these personnel.~~

~~(B) Closure or Cessation of Operation. The opioid treatment program must provide written notice to the State Authority 90 days in advance of discontinuing a program in which medication is administered or dispensed. In addition to requirements of 105 CMR 164.035(C) and 105 CMR 164.087: *Closure*, the licensee shall include in its notice its plan for storage, transfer or disposal of its supply of opioids. Such plan shall be subject to approval by the Department.~~

#### 164.314: Staffing Pattern

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(A) **In accordance with federal regulations, t**~~The~~ **Licensed or Approved Provider**~~licensee~~ shall designate ~~as m~~**Medical** ~~d~~**Director** ~~a physician~~ who shall be responsible for administering all medical services provided by the program, **and for ensuring the program complies with all applicable federal, state, and local laws and regulations.** The Medical Director shall **be a physician with documented**~~have six months'~~ clinical experience with **opioid-dependent,** alcohol, and other drug-dependent persons or 40 hours of documented continuing education in treating addicted persons **and medications for treatment of addiction, including all FDA-approved medications for treatment of opioid use disorder**~~within the first 12 months of employment.~~ The Medical Director shall **ensure there are policies and procedures in place**~~be responsible~~ for:

- (1) Ensuring that a medical evaluation, including a medical history is taken for each ~~client~~**patient; and**
- (2) Ensuring that appropriate laboratory studies are completed and recorded in ~~client~~**patient** records; ~~and-~~
- ~~(3) Signing all medical orders.~~

(B) **In addition to the staffing requirements of 105 CMR 164.048, t**~~The~~ **Licensed or Approved Provider**~~licensee~~ shall establish a staffing pattern in sufficient numbers and positions necessary for the **service type**~~level of care~~ provided. **Such** staffing pattern shall include the following positions:

- (1) Senior Clinician among direct service staff who shall be responsible for the clinical/educational operation of the substance **use disorder**~~abuse~~ service;
- (2) Licensed psychiatrist or licensed psychologist on staff or available through a ~~QSOA~~~~qualified Service Organization Agreement;~~
- (3) **Practitioner, r**~~Registered nurse, nurse practitioner, physician assistant~~ or licensed practical nurse on staff and on site during hours when medication is dispensed;
- (4) If serving pregnant women, an obstetrician/gynecologist available on staff or through a ~~QSOA~~~~qualified Service Organization Agreement;~~
- (5) Sufficient staff, **including counseling staff, for** ~~to ensure~~ coverage on all shifts **to ensure patient needs are met.**

(C) Supervision: In addition to supervision requirements set forth in 105 CMR 164.044: ~~Training and Supervision,~~ the **Licensed or Approved Provider**~~licensee~~ shall ensure ~~that~~ supervision of nursing staff is overseen by a **practitioner, a** ~~or~~ registered nurse, **or a Licensed Practical Nurse (LPN) or other Qualified Health Care Professional provider defined under 164.005 who possesses the skills and supervision experience as determined by 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**

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**nursing staff under his or her supervision.**

#### 164.315: Hours of Operation

The program shall be open to provide treatment and to administer medications **at least six** ~~seven~~ days per week, year round; **provided nothing shall limit the Licensed or Approved Provider's ability to dispense medication for take-home use in accordance with federal requirements including on days the program is closed, such as on Sundays and state and federal holidays.** Consideration should be given to **any identified barriers to receiving and remaining in treatment, including but not limited to, patient transportation, childcare,** ~~the employment, homemaking, and educational needs of the clients.~~ Services **must be** provided **during hours that meet the needs of the overwhelming majority of patients, including hours outside of the traditional 9:00 A.M. to 5:00 P.M., Monday through Friday work schedule** ~~on at least five of the seven days shall be on the basis of an eight-hour day, provided that a minimum of two of the eight hours are scheduled other than 9:00 A.M. to 5:00 P.M. Medication dispensing during the remaining two days must be scheduled for a period of at least two hours.~~

#### 164.316: Severe Weather Policy

(A) The **Licensed or Approved Provider** ~~licensee~~ shall **comply with federal regulations** ~~establish written policy and procedures~~ for ensuring continued dispensing of medications in the event of severe weather conditions such as hurricanes or blizzards, **and shall document such compliance in each patient's record.** ~~The policy shall be approved by both the Executive Director and Medical Director, and shall include the following:~~

- ~~(1) Method for notifying clients of the licensee's plan for ensuring continued availability of medications;~~
- ~~(2) Provision of no more than one additional take-home dose to clients who are already receiving take-home doses;~~
- ~~(3) Provision of no more than one take-home dose to clients not currently receiving take-home doses;~~
- ~~(4) Method for ensuring clients who receive take-home doses in accordance with 105 CMR 164.316(A)(3) are capable of taking medication according to prescribed instructions;~~
- ~~(5) Provisions for ensuring continuity for clients who are receiving doses at home;~~
- ~~(6) Criteria for applying provisions listed in 105 CMR 164.304(C)(2) regarding take-home doses; and~~
- ~~(7) Provisions for applying safeguards described in 105 CMR 164.304(C)(6).~~

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~~(B) Licensees shall document compliance with the requirements of 105 CMR 164.316(A)(1) through (7) in client records.~~

~~(B) Clients~~ **Patients** not currently receiving take-home doses who receive one dose in accordance with this section are not required to provide a locked container.

~~(D) Licensees shall document compliance with 42 CFR Part 8: Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction.~~

#### 164.317: Required **Agreements** ~~Affiliations~~

**Licensed and Approved Providers providing medically monitored or clinically managed ~~withdrawal detoxification~~ services shall have QSOAs for the provision of the following services as needed:**

- (A) Psychiatric consultative, diagnostic and evaluative services;**
- (B) Acute 24-hour diversionary services medical or psychiatric hospitalization;**
- (C) Emergency medical and psychiatric services;**
- (D) Any specialized services a program provides through special arrangement, purchase or contract.**

~~The licensee shall establish and maintain Qualified Service Organization Agreements with facilities licensed to provide emergency inpatient medical and psychiatric services.~~

#### 164.400: RESIDENTIAL REHABILITATION

Residential rehabilitation services are organized substance ~~abuse~~ **abuse disorder** treatment and education services featuring a planned program of care in a 24-hour residential setting. **For purposes of this section this shall not include facilities providing services to individuals committed pursuant to Chapter 123 Section 35.** Services are provided in permanent facilities where ~~clients~~ **residents** reside on a temporary basis. They are staffed 24 hours a day. Residential rehabilitation services are provided to ~~clients~~ **residents** who require safe and stable living environments in order to develop their recovery skills. Types of residential rehabilitation services are those designed for: adult individuals, adults with their families, adolescents, and driving under the influence second offenders.

#### 164.401: Scope

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Provisions of 105 CMR 164.402 through 164.409 apply to all residential rehabilitation substance ~~abuse~~**use disorder** treatment services. **Licensed or Approved Providers**~~Licensees~~ shall also comply with all provisions of 105 CMR 164.000: *Part One*.

#### 164.402: Hours of Operation

Residential rehabilitation services shall operate 24 hours a day, seven days a week, 365 days a year.

#### ~~164.403: Prohibition of Alcohol or Drugs~~

~~Licensees shall ensure that alcohol and drugs, other than those properly prescribed by a resident's physician, are prohibited on the premises.~~

#### 164.404: Physical Plant

(A) Inspections: The **Licensed or Approved Provider**~~licensee~~ shall post in public areas certificates confirming that all local inspections required for operation of the facility are up to date.

(B) Conformance with 780 CMR:~~Compliance with Building Standards~~: The **Licensed or Approved Provider**~~licensee~~ shall **comply with the** ~~ensure that~~:

~~(1) The facility complies with~~ standards specified in **780 CMR, and those standards in** 105 CMR 410.000:~~Standards of Fitness for Human Habitation~~ regarding heating, electricity, lighting, plumbing and sanitary facilities;~~and~~

~~(2) The heating system conforms with requirements defined by the Department of Public Safety (520 CMR, 522 CMR, and 527 CMR) under M.G.L. c. 148.~~

(C) Location: The **Licensed or Approved Provider**~~licensee~~ shall ensure that residential rehabilitation facilities meet the following requirements:

(1) The **Licensed or Approved Provider**~~licensee~~ shall not post signs or notices that would identify the building as a residential rehabilitation facility, except that programs located in large campuses or health care complexes may post signs to provide direction.

~~(2) If the residential facility is located in another facility such as a hospital or nursing home, the area to be used for the residential facility shall be clearly differentiated.~~ A **Licensed or Approved Provider**~~licensee~~ proposing to locate a residential facility ~~in a portion of a larger~~**within a** health care facility shall seek a determination from the

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~~Bureau~~**Division** of Health Care **Safety and** Quality that the ~~location of the~~ residential recovery program in that facility does not jeopardize the status of that facility for purposes of state licensure or federal Medicare or Medicaid certification.

(D) Common Areas: **Licensed or Approved Providers**~~licensees~~ shall design and furnish residential facilities in a manner consistent with their use and which provides a homelike setting including:

- (1) space for group counseling area that ~~ensures~~ privacy and that is large enough to accommodate the number of adult residents in the facility;
- (2) space for residents to use for recreation, reading and quiet time;
- (3) laundry facilities;
- (4) closets, cabinets, or other closed spaces for storage of residents' belongings;
- (5) nightlights in corridors and bathrooms; and
- (6) in programs where children reside, a separate indoor play area for children, which includes closets or cabinets for storage of play material and an outdoor play area.

None of the areas listed in 105 CMR 164.404(D)(1) through ~~(4) and (6)~~ may be used as bedrooms.

(E) Bathrooms and Personal Hygiene: The **Licensed or Approved Provider**~~licensee~~ shall ensure that:

- (1) **Facilities shall be in compliance with 248 CMR 10.00;**
- (2) Female and male residents have separate toilet and bathroom facilities;
- ~~(3) All rooms containing toilets, bathtubs and/or showers are equipped with a door, and have ventilation to the outside through a window or extractor vent;~~
- ~~(4) Rooms containing a toilet or shower shall be separate and allow for privacy. No room containing a toilet or shower is so located as to require passing through to go from one area of the premises to another;~~
- ~~(4) There is at least one toilet for every eight women (1:8) and one toilet for every ten men (1:10), and one washbasin and one shower or tub for each ten residents (1:10), excluding infants;~~
- (5) Washbasins are located in the same room as or in close proximity to toilets;
- (6) All showers and tubs are equipped with a non-slip surface or mat;
- (7) All toilets have seats;
- (8) Sanitary hand washing requirements and procedures are posted in restrooms and diapering areas, and **Licensed or Approved Provider**~~licensee~~ familiarizes staff and families with these procedures;
- (9) Staff and residents use disposable gloves during toileting and diaper changing of children, and dispose of soiled diapers and gloves in a container with a secure lid;

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(10) Restrooms are maintained in good repair and a sanitary manner, cleaned daily, and supplied with sufficient soap, paper towels and toilet paper at all times.

(F) Sleeping Rooms:

(1) All sleeping rooms shall be near toilet, lavatory, and bathing facilities.

(2) Female and male adult residents shall have separate sleeping quarters. **Licensed or Approved Providers**~~Licensees~~ may permit couples to share sleeping quarters if space permits.

(3) Sleeping areas shall be designed to promote comfort and provide adequate space and privacy for residents; and shall meet the ~~following~~ requirements **of 780 CMR, including but not limited to:**

~~(a) No sleeping room shall be less than 70 square feet;~~

~~(b) Rooms accommodating more than one person shall have a minimum of 50 square feet per person, except that 35 square feet shall be provided per child for children under six;~~

~~(c) No more than six persons and no more than one family per room;~~

~~(d) Rooms have direct windows or skylights providing natural light and ventilation in compliance with 105 CMR 410.250 and 410.280;~~

~~(a~~e) A separate bed for each resident;

~~(b~~f) A crib for each child age two or under;

~~(g) May not be an unfinished attic, stairway, hall or room commonly used for other purposes.~~

(4) The **Licensed or Approved Provider**~~licensee~~ shall ensure that pillows are not used in cribs;

(5) The **Licensed or Approved Provider**~~licensee~~ shall provide the following basic equipment and supplies:

(a) a twin-size bed with a twin mattress and waterproof mattress cover; cots may not be used;

(b) adequate drawer and closet space for storage of personal belongings;

(c) an adequate supply of bed linens, pillows, blankets, washcloths and towels in good condition. Linens, blankets, washcloths and towels shall be laundered at least once a week;

(f) a toothbrush, toothpaste and basic hygiene materials.

(6) Residents shall be permitted to decorate their sleeping areas with their personal possessions, such as pictures and posters consistent with the rules and philosophy of the program.



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(A) Food Storage: The **Licensed or Approved Provider**~~licensee~~ shall have a written plan for protecting food from contamination and spoilage during its storage, preparation, distribution and service. The plan shall provide for:

- (1) Procuring all food only from sources that ensure that the food is processed under regulated quality and sanitation controls;
- (2) Clearly labeling supplies;
- (3) Storing all non-food supplies in an area separate from that used for storing food supplies;
- (4) Storing perishable foods in refrigerators at 41° F or less;
- (5) Ensuring that any walk-in refrigerators or freezers can be opened from the inside even if closed; if the **Licensed or Approved Provider**~~licensee~~ padlocks walk-in refrigerators or freezers, the **Licensed or Approved Provider**~~licensee~~ shall establish a procedure requiring written documentation that no one is in the refrigerator or freezer prior to securing the lock.
- (6) Frozen foods remaining frozen.

(B) Food Handling: Persons, whether employees or residents, responsible for food preparation and service shall be free of signs and symptoms of infections, communicable diseases and open skin lesions. The **Licensed or Approved Provider**~~licensee~~ shall ensure that there are

- (1) Disposable gloves available and used in handling and preparing food;
- (2) Adequate hand washing and drying facilities located close to the food preparation area; and
- (3) All work surfaces, utensils, equipment and dishes are thoroughly cleaned and sanitized after each use.

(C) Kitchen Facilities: The **Licensed or Approved Provider**~~licensee~~ shall ensure that:

- (1) The kitchen is located in a suitable area of the facility and provides adequate work space for the sanitary preparation and serving of all meals.
- (2) Adequate sanitary storage space is provided for the proper storage of all foods, dishes, silverware and cooking equipment.
- (3) If any resident has a food allergy, information concerning the allergy and required responses in the event of an allergic reaction are conspicuously posted in the kitchen and dining areas with permission of the resident or, if a child, of the child's parents **or legal guardian**. **Licensed or Approved Providers**~~Licensees~~ shall document refusal to give permission in the resident's record.

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(D) Waste Disposal: The **Licensed or Approved Provider**~~licensee~~ shall provide for the sanitary disposal of all waste materials in watertight trash bins with tight fitting lids.

(E) Meals: The **Licensed or Approved Provider**~~licensee~~ shall **ensure sufficient food and beverages are stocked in order to** provide a nourishing well-balanced diet to all residents, and shall provide for the following:

- (1) Clean, well-lighted, and ventilated dining areas;
- (2) The dining room shall be large enough so that all residents may take their meals at customary times, but not necessarily simultaneously;
- (3) Three meals each day for residents;
- (4) Beverages and food for snacks;
- (5) Consideration of residents' suggestions for menu planning;
- (6) Menus dated and retained for three months;
- (7) Means to provide for residents with special dietary needs;
- (8) The **Licensed or Approved Provider**~~licensee~~ providing Residential Rehabilitation other than Transitional Support Services may assign program residents to prepare and serve meals as part of their household duties under the supervision of a staff member who has documented training in sanitary food handling and preparation. Residents of Transitional Support Service programs may not prepare or serve food; and
- (9) Where applicable, **Licensed or Approved Providers**~~licensees~~ shall ensure that food storage and preparation areas meet the standards defined in 105 CMR 590.000: ~~Minimum Standards for Food Establishments~~ and that the food service is inspected and receives a food service permit by the local board of health.

(F) Purchased Food Services: If the **Licensed or Approved Provider**~~licensee~~ purchases food and meal services, the **Licensed or Approved Provider**~~licensee~~ shall obtain copies of licenses and inspections which document that the food and meal service provider conforms to 105 CMR 590.000 **or 105 CMR 500.000, as applicable:** ~~Sanitary Code Chapter X—Minimum Standards for Food Establishments.~~

#### 164.406: Safe Storage and Administration of Medications

**Licensed and Approved Providers shall comply with all federal and state laws and regulations relating to the procurement, storage, dispensing, administration, recording and disposal of medications and shall comply with the following:**

(A) Written Policy and Procedure: The **Licensed or Approved Provider**~~licensee~~ shall establish a written policy and procedure governing the storage and administration of residents'

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prescription medications, ~~including the provisions of 105 CMR 164.406.~~

(B) **Storage: All medications shall be maintained in a locked, secure cabinet, accessible only to designated staff positions. The titles of designated positions shall be posted on the cabinet. The Licensed or Approved Provider shall ensure patients do not have direct access to the medication cabinet.**

(C) Medications brought by residents to the program shall be stored in a locked, secure cabinet that is separate from the facility's supply, except that residents shall retain medications required to treat acute episodes, such as asthma attacks or allergic reactions.

(1) If injectable drugs are used, **Licensed or Approved Providers**~~licensees~~ shall provide containers for safe storage and proper disposal of sharps.

(2) Medications requiring refrigeration shall be kept in a refrigerator in the same area where other medications are stored. Medications shall not be stored in kitchen refrigerators.

(3) The **Licensed or Approved Provider**~~licensee~~ shall also establish a record of medications which remain in the possession of residents for treatment of acute episodes.

~~(D)~~ Prescription medication presented by residents shall bear a pharmacy label, which shows the date of filling, the pharmacy name and address, the filling pharmacist's initials, the serial number of the prescription, the name of the resident, the name of the prescribing practitioner, the name of the prescribed medication, directions for use and cautionary statements, if any, contained in such prescription or required by law, and if tablets or capsules, the number in the container. All over-the-counter medications shall be kept in the original containers containing the original label, which shall include the directions for use.

~~(E)~~ The **Licensed or Approved Provider**~~licensee~~ shall maintain documentation of all medications stored and disposed of.

~~(F)~~ Upon admission the resident shall count, in the presence of staff, the number of tablets or capsules, or the approximate amount of liquid in each prescribed medication brought by the resident. The count shall be documented.

~~(G)~~ **Self-administration of Medications:** Medications shall be self-administered by the resident, unless the **Licensed or Approved Provider**~~licensee~~ employs qualified health care professionals authorized to administer medications. Adult residents must be able to administer their own medications, and, unless the **Licensed or Approved Provider**~~licensee~~ employs qualified health care professionals for this purpose, staff shall not administer

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medication to any resident or resident's child. Staff shall observe the resident ingesting the prescribed dose. For children under 18 residing with their parents **or legal guardian**, medication shall be administered by the child's resident parent **or legal guardian**. Medications may not be provided to any resident if other residents are in the storage or office area. The **Licensed or Approved Provider**~~licensee~~ may provide a supply of medications for any resident who will be absent from the program when he or she would normally take the medication. The **Licensed or Approved Provider**~~licensee~~ shall maintain documentation of all administrations of medication, which shall include:

- (1) Name of resident to whom medication was provided;
- (2) Name of staff person observing the resident take the medication, or providing the needed supply;
- (3) Date and time medication was provided; and
- (4) Resident initials confirming that the medication was provided and taken.

~~(HG)~~ Disposing of Medications: **Providers shall comply with all federal and state laws and regulations relating to the procurement, storage, dispensing, administration, recording and disposal of medications.**~~The licensee shall not permit expired medications, medications left behind by residents, or unused medications to accumulate in the storage area. The licensee shall establish policy and procedures for the return of the resident's medication upon discharge and for safe disposal of medications.~~

~~(IH)~~ Improper Use: The **Licensed or Approved Provider**~~licensee~~ shall establish a policy regarding improper use of medication. Such policies

- (1) may impose **corrective actions**~~sanctions~~ on residents who do not take medications in accordance with prescribed dose and frequency; and
- (2) shall impose **corrective actions**~~sanctions~~ on residents who illegally obtain and use prescription medications.

#### 164.407: Resident Personal Effects and Affairs

(A) Written Policy and Procedure: The **Licensed or Approved Provider**~~licensee~~ shall establish a written policy and procedure governing the care of resident personal belongings and support of resident personal affairs.

(B) Safekeeping: The **Licensed or Approved Provider**~~licensee~~ may allow residents to bring monies and valuables into the program, if the **Licensed or Approved Provider**~~licensee~~ provides for the secure, locked safekeeping of the personal property.

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(C) Right to Confiscate: All residents shall be notified that by accepting admission they authorize the **Licensed or Approved Provider**~~licensee~~ to:

- (1) confiscate and dispose of any alcohol or drugs (other than those properly provided by prescription) or paraphernalia for the use of illegal drugs found in the possession of the resident;
- (2) confiscate any weapons or other articles found in the possession of the resident, which may constitute a threat to the life, health, ~~or~~ safety, **or well-being** of the resident, the staff or public, and to turn over any guns to the police.

The **Licensed or Approved Provider**~~licensee~~ shall establish a record of any items confiscated or turned over to the police.

~~(D) The licensee shall establish written policy and procedures governing residents' use of telephones, pagers, cell phones or other communication devices, and sending and receiving mail. The licensee may not hold mail or restrict the sending of mail. The licensee may not open residents' mail, but may require that residents open letters or packages in the presence of staff. Alcohol, drugs or weapons shall be confiscated.~~

#### 164.408: **Required**~~Back-up and Transfer~~ Agreements

Each residential program shall have **QSOAs**~~Qualified Service Organization Agreements~~ for the provision of the following services as needed:

- (A) Psychiatric consultative, diagnostic and evaluative services;
- (B) Acute ~~inpatient~~ **24-hour diversionary service** medical or psychiatric hospitalization;
- (C) Emergency medical and psychiatric services;
- (D) Any specialized services that a program provides through special arrangement, purchase or contract.

#### 164.409: Death of a Resident

**In addition to the notification requirements of 105 CMR 164.035, t**~~he~~ **Licensed or Approved Provider**~~licensee~~ shall develop procedures to be followed in the event of the death of a resident. These procedures shall conform with laws governing the report of death to local authorities, and shall include the following:

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- (A) Local emergency services (911) shall be notified immediately.
- (B) The **Licensed or Approved Provider**~~licensee~~ shall comply with all laws concerning declaration of death and moving the deceased.
- (C) The **Licensed or Approved Provider**~~licensee~~ shall make reasonable efforts to notify the deceased's emergency contact. A written record of these efforts shall be included in the ~~client's~~**resident's** record.

164.420: **Residential Rehabilitation for Adults**~~RESIDENTIAL REHABILITATION FOR ADULTS~~

164.421: Scope

Provisions of 105 CMR 164.422 through 164.424 apply to residential rehabilitation substance ~~abuse~~**use disorder** treatment and education services for adults in the early stages of substance ~~abuse~~**use disorder** recovery, using the following models: Transitional Support Services, Social Model Recovery Homes, Recovery Homes, ~~and~~ Therapeutic Communities, **and Co-Occurring Enhanced**. **Licensed and Approved Providers**~~Licensees~~ shall also comply with all provisions of 105 CMR 164.400 through 164.409, and 105 CMR 164.000: *Part One*.

164.422: Provision of Services

- (A) ~~Admission:—Level of Care:~~ Prior to admission, the **Licensed or Approved Provider**~~licensee~~ shall verify ~~that~~ the ~~client~~**resident** is 18 years of age or older and that the residential rehabilitation services are appropriate for the ~~client~~**resident** based upon a determination ~~that~~ the ~~client~~**resident**:
- (1) has a substance use disorder or a mental or behavioral disorder due to psychoactive substance use and is not intoxicated and is not currently at risk of experiencing withdrawal;
  - (2) is mentally and physically stable and does not pose a risk to self or others;
  - (3) is open to recovery and can understand relapse;
  - (4) requires a 24-hour a day structured and supportive environment in order to maintain gains;
  - ~~(5) lives in a home, community or social environment that is unsupportive of recovery or constitutes a risk to maintenance of abstinence;~~
  - (56)** is capable of recognizing physical danger, including when such danger requires immediate egress from the residence, and is able to follow a prescribed procedure for egress, as demonstrated by completion of a self-preservation test.

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(B) Duration of Services: Length of stay may vary depending upon the needs of the ~~client~~**resident**.

(C) Assessment: The **Licensed or Approved Provider**~~licensee~~ shall ensure that the assessment required by 105 CMR 164.072 shall be completed within the first week of treatment. **Pursuant to 105 CMR 164.072(B), the Licensed or Approved Provider may initiate resident treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a Qualified Healthcare Professional must see such a resident prior to initiating an FDA-approved medication for treatment of addiction. Providers of Residential Rehabilitation for Adults are exempt from the requirement in 105 CMR 164.072(D) that the assessment be completed by a Senior Clinician or Clinician.**

(D) Treatment: The **Licensed or Approved Provider**~~licensee~~ shall provide treatment services as required by 105 CMR 164.074 Minimum Treatment Service Requirements, in accordance with program components specified in 105 CMR 164.423.

(E) Medical Services: **Notwithstanding the assessment required by 105 CMR 164.072,** ~~t~~**The Licensed or Approved Provider**~~licensee~~ shall refer the ~~client~~**resident** for a complete physical examination within 30 **calendar** days of admission unless medical reports document a comparable examination within 12 months prior to admission. Referrals shall be documented in the ~~client's~~**resident's** record.

(F) **Licensed or Approved Providers**~~Licensees~~ providing services to pregnant and postpartum ~~clients~~**residents** and their infants shall establish **QSOAs**~~Qualified—Service Organization—Agreements~~ with early intervention programs to provide developmental assessments and services to infants. **Licensed or Approved Providers**~~Licensees~~ shall also comply with requirements of 105 CMR 164.082(A) governing services to pregnant ~~clients~~**patients and residents**.

~~(G)—Exemptions:~~

~~(1) Residential rehabilitation programs for adults are exempt from the requirement in 105 CMR 164.072(G) that the initial assessment be completed by Senior Clinician or Clinician.~~

~~(2) Residential rehabilitation programs for adults are exempt from the requirements set forth in 105 CMR 164.048(B).~~



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~~(3) Social Model Recovery Homes are exempt from the provisions contained in 105 CMR 164.073: Individual Treatment Plan and 105 CMR 164.074: Minimum Treatment Requirements, to provide individual counseling.~~

#### 164.423: Program Components

(A) Residential rehabilitation programs for adults, regardless of program model, shall ~~provide:~~

- (1) **provide** daily clinical services to improve residents' ability to structure and organize the tasks of daily living and recovery, ~~such as personal responsibility, personal appearance and punctuality; and~~
- (2) advocacy and ombudsman services to support residents in obtaining needed resources and services and actively promote residents' interests; **and**
- (3) **directly connect the resident to substance use disorder treatment or community support services upon discharge.**

(B) Transitional Support Services: Residential rehabilitation programs based on a Transitional Support model shall provide:

- (1) **at a minimum**, four hours of nursing services available each day;
- (2) case management services;
- (3) **a dedicated staff member to provide** transportation services available at least 12 hours per day, seven days per week; **and**
- (4) health monitoring, education and crisis services; ~~and~~
- ~~(5) referral and follow-up for substance abuse treatment services upon discharge.~~

(C) Social Model Recovery Homes: Residential rehabilitation programs based on a Social Model shall provide:

- (1) individual ~~service~~**treatment** plans developed by residents with assistance from ~~staff, and, if resident chooses, from other residents or volunteers. The service plan shall be developed~~ within the first 30 **calendar** days of residence;
- (2) planned program activities to stabilize and maintain the stability of the resident's substance ~~abuse~~ dependence symptoms and to help the resident develop and apply recovery skills; and
- (3) case management and support to promote successful involvement in regular, productive daily activity, such as work or school, and, as indicated, successful reintegration into family and community living.

(D) Recovery Homes: Residential rehabilitation services based on a Recovery Home model

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shall provide:

- (1) planned daily clinical program activities to stabilize the resident's substance dependence symptoms and to help the resident develop and apply recovery skills;
- (2) counseling and clinical monitoring by qualified staff to promote successful involvement in regular, productive daily activity, such as work or school, and, as indicated, successful reintegration into ~~family and~~ community living;
- (3) a range of cognitive and motivational therapies on a group and individual basis; and
- (4) a daily schedule of services designed to develop and apply recovery skills.

(E) Therapeutic Communities: Residential rehabilitation services based on a Therapeutic Community model shall provide:

- (1) daily clinical services to promote the residents' ability to develop and practice pro-social behaviors;
- (2) planned daily clinical program activities to stabilize and maintain stabilization of the resident's substance dependence symptoms and to help the resident develop and apply recovery skills;
- (3) counseling and clinical monitoring by qualified staff to promote successful involvement in regular, productive daily activity, such as work or school, and, as indicated, successful reintegration into family and community living;
- (4) a range of cognitive and motivational therapies on a group and individual basis;
- (5) motivational enhancement and engagement strategies appropriate to the resident's stage of readiness to change;
- (6) planned community reinforcement designed to foster pro-social values and group living skills.

(F) Co-Occurring Enhanced Residential Services: Residential rehabilitation services based on a Co-Occurring Enhanced Services model shall be delivered by appropriately credential medical staff who are available to assess and treat co-occurring disorders and to monitor the patients' administration of medication in accordance with a physician's prescription, as well as provide:

- (1) staffing patterns that include appropriately credentialed mental health professionals, who are able to assess and treat co-occurring disorders with the capacity to involve addiction trained psychiatrists or in coordination with community physicians for review of treatment as needed;
- (2) planned daily clinical program activities constituting at least 5 hours a week of professionally directed treatment designed to stabilize and maintain the resident's substance dependence symptoms and to help the resident develop and apply recovery skills;
- (3) counseling and clinical monitoring by qualified staff to promote successful involvement in regular, productive daily activity, successful reintegration into

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**community living;**

**(4) a range of cognitive and motivational therapies on a group and individual basis, where the goals of such therapies pertain to both the substance use disorder and any mental health disorder;**

**(5) a daily schedule of self-help, health education, relapse and overdose prevention and recovery maintenance education as well individual and group services designed to develop and apply recovery skills;**

**(6) trauma-informed care, with an emphasis on individual choice and decision making, including trauma screening in all assessments and access to trauma specific services;**

**(7) specific medication education and management services; and**

**(8) Recovery Support services, referral, and engagement.**

**(G) Programs may provide services through telemedicine where appropriate and at the discretion of the program director, based on federal guidance.**

#### 164.424: Staffing Pattern

**Residential Rehabilitation programs for adults are exempt from the requirements set forth in 105 CMR 164.048(B).**~~The licensee shall establish a staffing pattern in sufficient numbers and positions necessary for the level of care provided.~~ Staffing pattern shall include the following positions:

~~(A) **Coverage:** At least one FTE direct care staff on each shift, seven days a week, 24 hours a day. No staff on any shifts shall be permitted to sleep during the shift.~~

~~(B) **Direct Care Staff:**~~ Job descriptions shall specify that direct care staff have knowledge of and ability to promote recovery. **Each program must, at a minimum, include the following direct care staff: clinical supervisor, nursing staff, counselor/case manager, and a recovery specialist or case aide.**

**(B) Coverage:** At minimum, the staffing pattern must include a full time Clinical Supervisor meeting the definition of a Senior Clinician present to provide oversight of clinical services and at least two FTE direct care staff present on each shift as outlined below, seven days per week, 24 hours per day, which shall be adjusted upward to address resident acuity and programmatic need. No staff on any shift shall be permitted to sleep during the shift. Any program which serves persons who identify as male or female must have at least one direct care staff person on-site who identifies as female, and one direct care staff person who identifies as male on each shift.

**(1) At minimum, there shall be at least one recovery specialist or case aide and at**

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**least one full-time counselor or case manager present on each day and evening shift.**

**(2) At minimum, there shall be at least two recovery specialists or case aides present for each overnight shift.**

**(3) Where the resident census exceeds 100 residents, the Licensed or Approved Provider shall ensure four direct care staff are present on all shifts.**

(C) **Licensed or Approved Providers**~~Licensees~~ providing Transitional Support Services shall ensure ~~that~~a registered nurse, **advanced practice registered** nurse~~practitioner~~, physician assistant, or licensed practical nurse is available on site at least four hours each day and shall ensure that supervision of nursing staff is overseen by **either** a registered nurse, **or a Licensed Practical Nurse (LPN) or other Qualified Health Care Professional provider defined under 164.005 who possesses the skills and supervision experience as determined by 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 or her supervision.**

(D) Administrative Staff: Each residential rehabilitation program shall have a full-time manager who is responsible for the administration and operation of the residential rehabilitation program. A full-time administrative staff, or designee on duty on the premises, shall be available to respond to emergencies at all times.

164.430: Residential Rehabilitation for Adults with their Families~~RESIDENTIAL REHABILITATION FOR ADULTS WITH THEIR FAMILIES~~

164.431: Scope

Provisions of 105 CMR 164.432 and 164.433 apply to residential rehabilitation substance ~~abuse~~**use disorder** treatment services for individuals with their families. The **Licensed or Approved Provider**~~licensee~~ shall also comply with all provisions of 105 CMR 164.400 through 164.409, and with provisions of 105 CMR 164.000: *Part One*.

164.432: Provision of Services

(A) ~~Level of Care:~~—At the time of admission, the **Licensed or Approved Provider**~~licensee~~ shall determine that Family Residential Substance ~~Abuse~~**Use Disorder** Treatment Services are appropriate based upon the following criteria:

- (1) The parent **or legal guardian**:
  - (a) is 18 years of age or older;

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- (b) has a substance use disorder or a mental or behavioral disorder due to psychoactive substance use and is not intoxicated and is not currently at risk of experiencing withdrawal symptoms requiring medical monitoring;
  - (c) is not currently experiencing acute symptoms of physical ~~or mental~~ illness **or mental health conditions**, and does not pose a risk to self or others;
  - (d) is open to recovery and can understand relapse;
  - (e) requires a 24-hour a day structured and supportive environment in order to maintain gains;
  - (f) has custody of at least one child or reunification with at least one child is planned within 30 **calendar** days of admission, or is pregnant; and
  - (g) is capable of recognizing physical danger, including when such danger requires immediate egress from the residence, and is able to follow a prescribed procedure for egress, as demonstrated by completion of a self-preservation test.
- (2) The **determination may consider whether the** family is homeless and is eligible for Emergency Assistance (EA) through the Department of Transitional Assistance (DTA) as determined by DTA Local Offices pursuant to the standards of 106 CMR 309.000; or the family has housing resources located in a community or social environment that is unsupportive of recovery or constitutes a risk to maintenance of abstinence.
- ~~(3) No intoxicated persons or persons with medical conditions requiring 24-hour-a-day nursing coverage shall be admitted.~~

(B) Assessment: ~~Within 30 days of admission, the licensee shall complete the following~~**The Licensed or Approved Provider may initiate patient treatment prior to completion of the assessment required by 105 CMR 164.072, provided sufficient information to initiate treatment for the presenting complaint or problem on that day of services is obtained and that the assessment is completed in a reasonable timeframe. The Licensed or Approved Provider shall complete the following in a reasonable timeframe:**

- (1) an assessment as required in 105 CMR 164.072 for each adult family member in the program;
- (2) assessments of the physical and mental health needs of all family members in the program;
- (3) evaluations, physical examinations, immunizations, and/or consultations by qualified professionals, as indicated by the assessments required under 105 CMR 164.432(B)(1) and (2).

(C) Treatment Plan: The **Licensed or Approved Provider**~~licensee~~ shall develop an Individual Treatment Plan as required by 105 CMR 164.073 for each family member residing in the program. In addition to substance use disorders, the treatment plan shall address mental

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health disorders, trauma, domestic violence, child welfare, parent **or legal guardian** -child relationships and family life.

(D) Substance ~~Abuse~~**Use Disorder** Treatment Services: In addition to the Minimum Treatment Services Requirements specified in 105 CMR 164.074, the **Licensed or Approved Provider**~~licensee~~ shall provide the following services for adults and adolescents:

- (1) Monthly case review or consultation meetings between the **Licensed or Approved Provider's**~~licensee's~~ staff and any Qualified Service Organizations providing services for a family under a **QSOA**~~Qualified Service Organization Agreement~~; and
- (2) 24 hour a day crisis intervention services;
- (3) Engage in the Plan of Safe Care (POSC) process with all pregnant residents, and work collaboratively with other involved providers provided appropriate releases of information are in place;**
- (4) Offer group and individual education and counseling specific to pregnancy and parenting for all pregnant, post-partum, and parenting residents whether or not they currently have custody; and**
- (5) Help pregnant and post-partum residents prepare for and navigate any Department of Children and Families (DCF) involvement, and assist them in the DCF process, including collaborating with DCF and other involved providers, with the resident's written consent and participation whenever feasible.**

(E) Mental Health Services: The **Licensed or Approved Provider**~~licensee~~ shall establish **QSOAs**~~Qualified Service Organization Agreements~~ with licensed Mental Health Providers in order to provide the following for adults and children:

- (1) A mental health assessment that includes a history of mental health concerns or disorders and treatment, psychosocial, family and medical history, and a psychopharmacological assessment; and
- (2) Individual and/or group counseling for mental health issues such as childhood or adult sexual abuse, depression, domestic violence and traumatic stress symptoms.

(F) Parenting and Life Skills Education: The **Licensed or Approved Provider**~~licensee~~ shall provide, either directly or through a **QSOA**~~Qualified Service Organization Agreement~~, the following adult services:

- (1) Weekly, on-site parenting education and parenting skill building; and
- (2) Counseling and clinical monitoring to promote successful involvement in regular, productive daily activity, such as work or school, and, as indicated, successful reintegration into family and community living.

(G) Transitional Assistance and Employment: The **Licensed or Approved**

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**Provider**~~licensee~~ shall provide advocacy services to assist the family in applying for transitional assistance through the DTA.

(H) Services for Children Residing in the Program: The **Licensed or Approved Provider**~~licensee~~ shall:

- (1) Obtain parent(s)' **or legal guardian(s)**' consent prior to referring a child for services or consulting with service providers:
  - (a) Refer children from birth to age three for a Developmental Assessment through an Early Intervention Program (EIP) certified by the Department;
  - (b) Consult with other service providers or institutions providing services to children, *e.g.*, courts, schools, Early Intervention Program, Department of Youth Services, Department of Social Services, *etc.*
  - (c) Ensure that children receive medical examinations in accordance with recommended schedules of pediatric care;
  - (d) Ensure that children's immunizations are up to date in accordance with the recommendations of the Department, unless the child's parent **or legal guardian** has stated in writing that vaccinations or immunizations conflict with his or her sincere religious beliefs or if the child's ~~physician~~**practitioner** has stated in writing that the vaccination or immunization is medically contraindicated;
- (2) Assist parent(s) **or legal guardian(s)** in obtaining child care services, including after school child care for school-age children;
- (3) Assist parents **or legal guardian** in ensuring school age children are registered in and attending school; and
- (4) Provide on-site services and activities for children who are not in community-based child care programs or in school. Such services shall be designed to promote the child's development and shall be available for children of all ages, including adolescents.

(I) Aftercare: In addition to requirements in 105 CMR 164.076 and 164.077, the **Licensed or Approved Provider**~~licensee~~ shall provide the following aftercare services:

- (1) Assistance to obtain housing, child-care, employment, continued health care and other social services that the family has received while in the program.
- (2) Follow-up services for up to 3 months following the family's discharge; and
- (3) **Directly connect the family**~~Referral~~ to another family residential program through policy established by the Department if the family is discharged before completion of treatment.



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(A) **In addition to the staffing requirements of 105 CMR 164.424 and 105 CMR 164.048, excluding 105 CMR 164.048(B),** ~~t~~**The Licensed or Approved Provider**~~licensee~~ shall establish a staffing pattern that, **at a minimum,** includes the following:

- (1) a Clinical **Supervisor**~~Director~~ who **also meets the definition of**~~is~~ a Senior Clinician;
- (2) a Family Therapist who **also meets the definition of**~~is~~ a Senior Clinician with experience working with families experiencing substance use disorders;
- (3) children's services staff **including, but not limited to, a Children's Services Coordinator and a Children's Services Assistant;**
- (4) counselors to serve as Recovery Specialists;
- (5) a minimum of one FTE staff member on site at all times;
- (6) no on-duty staff shall be permitted to sleep during their shift.

(B) The **Licensed or Approved Provider**~~licensee~~ shall establish policies requiring parents **or legal guardian** to ensure that children are supervised by an adult at all times.

(C) In addition to meeting staff training and supervision requirements contained in 105 CMR 164.044 Training and Supervision, the **Licensed or Approved Provider**~~licensee~~ shall ensure that all staff are trained to recognize child abuse and neglect and to report incidents of child abuse and neglect to the Department of **Children and Families**~~Social Service~~ under M.G.L. c. 119, § 51A.

164.440: **Residential Rehabilitation for Adolescents and Transition Age Youth**~~RESIDENTIAL REHABILITATION FOR ADOLESCENTS~~

164.441: Scope

Provisions of 105 CMR 164.442 through 164.444~~7~~ apply to residential rehabilitation substance ~~abuse~~**use disorder** treatment services for adolescents **and transition age youth**. The **Licensed or Approved Provider**~~licensee~~ shall also comply with all provisions of 105 CMR 164.400 through 164.409, and with 105 CMR 164.000: *Part One*.

164.442: Provision of Services

(A) Admission:~~Level of Care:~~ Prior to admission, the **Licensed or Approved Provider**~~licensee~~ shall determine that adolescent **and transition age youth** residential rehabilitation services are appropriate based upon the following criteria:

- (1) the ~~elient~~**resident** is **less than 26**~~between the ages of 13 and 17 years old~~, and:
  - (a) has a substance use disorder or a mental or behavioral disorder due to psychoactive

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- substance use and is not intoxicated and is not currently at risk of experiencing withdrawal symptoms;
- (b) is not currently experiencing acute symptoms of physical ~~or mental~~ illness **or mental health conditions**, and does not pose a risk to self or others;
  - (c) meets patient placement criteria defined by the American Society of Addiction Medicine for Clinically Managed Residential Treatment for adolescents;
  - (d) does not require intensive therapeutic intervention for **a serious mental health condition**~~illness~~ as a primary diagnosis or severe emotional disturbance and/or aggressive behavior; and
  - (e) does not require 24-hour a day nursing care.
- (2) ~~the client's parent(s) consents to treatment, or a court of competent jurisdiction has ruled that such consent is not required; and~~
- (3) ~~the client~~**residents 18 years or older** consents to treatment.
- (4) **residents between the ages of 12 through 17 consent to treatment by either:**
- (a) **the consent of the parent or legal guardian; or**
  - (b) **without the consent of a parent or legal guardian upon a finding of two or more physicians that the minor is drug dependent.**

(B) Developmentally Appropriate Services: The **Licensed or Approved Provider**~~licensee~~ shall ensure ~~that~~ treatment plans, facility programs and materials are tailored to adolescents **and transition age youth**. Program services shall address adolescent **and transition age youth** concerns, including education, community, juvenile justice, mental and physical health. **The licensee shall ensure treatment plans, facility programs and materials recognize this unique stage of brain development, physical, social and psychological growth, and the complexity of substance use and co-occurring mental health disorders during this developmental stage. Program services shall address concerns of substance use and misuse, and their negative consequences on school performance, socialization in the community, family interaction and overall physical and mental health.**

(C) Assessment: Pursuant to 105 CMR 164.072(B), the **Licensed or Approved Provider** may initiate resident treatment prior to completion of the assessment required by 105 CMR 164.072 upon obtaining sufficient information to initiate treatment for the acute problem at the time of presentation and that the assessment is subsequently completed in a reasonable timeframe, provided that a **Qualified Healthcare Professional** must see such a resident prior to initiating an **FDA-approved medication for treatment of addiction**. In addition ~~to the requirements of 105 CMR 164.072~~, the **Licensed or Approved Provider**~~licensee~~ shall assess the following:

- (1) the ~~client's~~**resident's** educational status and remedial educational needs; and

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(2) the ~~client's~~**resident's** mental health status to determine whether a co-occurring mental health disorder is present.

(D) Medical Examination: **Notwithstanding the assessment required by 105 CMR 164.072, a** medical and health history and physical examination shall be conducted **by the program or upon referral** within two weeks of admission, unless documentation of a physical examination, conducted within one year prior to admission, is provided. With ~~client's~~**resident's** consent, the medical examination shall include laboratory tests for sexually transmitted diseases and, for females, pregnancy. Refusal to consent to medical examinations shall be documented, and shall not be grounds for discharge.

(E) Treatment Plan: In addition to the requirements of 105 CMR 164.073, the **Licensed or Approved Provider**~~licensee~~ shall ensure that the treatment plan is reviewed at least every 30 **calendar** days, and includes:

- (1) a statement of the ~~client's~~**resident's** educational needs **and opportunities to attain them**;
- (2) educational services to be provided;
- (3) **projected**~~planned~~ length of stay;
- (4) **employment readiness and skill building**;
- (5) **family reconciliation or reunification, if appropriate; and**
- (6) **skills for identifying and building healthy relationships.**

(F) Family Involvement in Treatment: The **Licensed or Approved Provider**~~licensee~~ shall ensure that services, including family therapy, are offered to parents **or legal guardian** and family members. The **Licensed or Approved Provider**~~licensee~~ shall inform parents **or legal guardian** of program policies and procedures, including:

- (1) names and telephone numbers of staff whom parents **or legal guardian** may contact;
- (2) **resident manual provided pursuant to 105 CMR 164.081**~~program rules~~; and
- (3) criteria for discharge.

(G) Treatment Services:

- (1) In addition to the requirements of 105 CMR 164.074:~~Minimum Treatment Service Requirements~~, the **Licensed or Approved Provider**~~licensee~~ shall provide the following:
  - (a~~1~~) **individual and group psychotherapeutic counseling that addresses substance use and misuse, including safety and opioid overdose prevention**;
  - (b) educational services designed to assist the ~~client~~**resident** in maintaining or achieving participation in a developmentally appropriate school program;
  - (c~~2~~) mental health services to address co-occurring mental health disorders;

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- (~~d~~3) group programming for families of ~~clients~~**residents**;
  - (~~e~~4) recreational programming;
  - (~~f~~5) exposure to support and self-help groups for adolescents;
  - (~~g~~6) opportunities for ~~clients~~**residents** to participate in planning, organizing or managing non-clinical programming;
  - (~~h~~7) clinical, educational and support services designed specifically for females, separate from males, and for males, separate from females;
  - (~~i~~8) clinical; **and educational programming designed to address racial inequities and health disparities and meet the needs of**~~support services designed to incorporate and address issues related to~~ culturally and ethnically diverse ~~identity of~~ **clients**~~residents~~; and
  - (~~j~~9) **a dedicated staff member to support provision of** transportation services to ensure residents can obtain needed off-site services, such as medical, psychiatric and recreational services, and to support parent **or legal guardian** and family participation in program services and activities.
- (2) **In addition to the requirements of 105 CMR 164.442(G)(1), the Licensed or Approved Provider shall provide the following services for Transition Age Youth:**
- (a) **assist the resident maintain or obtain participation in a developmentally appropriate school or vocational program;**
  - (b) **support and self-help groups for young people;**
  - (c) **skills for independent living and functioning;**
  - (d) **vocational skills development; and**
  - (e) **assist the resident develop and strengthen peer, family and community recovery supports.**

(H) Length of Stay: If the ~~client's~~**resident's** length of stay exceeds 90 **calendar** days, the **Licensed or Approved Provider**~~licensee~~ shall document reasons for this extension in the ~~client's~~**resident's** record.

(I) Aftercare Services: The **Licensed or Approved Provider**~~licensee~~ shall ensure ~~that~~ the aftercare service plan provides for continued educational services, and continued family and social support services; including, **but not limited to**:

- (1) **directly connecting the resident to**~~referrals for~~ outpatient substance ~~abuse~~**use disorder** treatment services;
- (2) ~~identifying~~**ication of** self-help resources such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), Al-Anon, and Alateen;
- (~~3~~) ~~referrals for continued family therapy.~~

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~~164.443: Visits, Mail and Telephone~~

~~The licensee shall establish policies and procedures to encourage and support family visits, mail, telephone calls, and other forms of communication with family, friends, or other persons. Such policies shall be distributed to staff and residents, and to parents prior to admission, when possible, or within 72 hours after admission.~~

164.444: Staffing Pattern

In addition to the requirements of **105 CMR 164.424, 105 CMR 164.048 excluding 105 CMR 164.048(B), and 105 CMR 164.082(B)**, the **Licensed or Approved Provider**~~licensee~~ shall require that all staff are knowledgeable about adolescent development and adolescent substance ~~abuse~~**use disorder** as well as co-occurring mental disorders. The **Licensed or Approved Provider**~~licensee~~ shall establish a staffing pattern in sufficient numbers and positions necessary for the **service type**~~level of care~~ provided. **No on-duty staff shall be permitted to sleep during their shift.** Staffing pattern shall include the following positions, **which shall be adjusted upward to address patient acuity and programmatic need:**

- (A) a **Clinical Supervisor who meets the definition of a**~~full-time equivalent~~**Senior Clinician** responsible for reviewing and approving mental health assessments conducted by Clinicians;
- (B) **at least one full-time counselor or case manager**~~a Clinician~~;
- (C) at least **two**~~one FTE~~ **direct care staff or recovery specialists** on each shift;
- (D) ~~no on-duty staff shall be permitted to sleep during their shift.~~

164.450: **Residential Programs for Operating Under the Influence Second Offenders**~~RESIDENTIAL PROGRAMS FOR OPERATING UNDER THE INFLUENCE SECOND OFFENDERS~~

164.451: Scope

Provisions of 105 CMR 164.452 through 164.454~~3~~ apply to **Licensed or Approved Providers**~~licensees~~ providing residential programs for Operating Under the Influence Second Offenders. The **Licensed or Approved Provider**~~licensee~~ shall also comply with all provisions of 105 CMR 164.400 through 164.409, and with provisions of 105 CMR 164.000: *Part One*.

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164.452: Provision of Services

(A) Admission: The **Licensed or Approved Provider**~~licensee~~ shall admit ~~clients~~**residents** who are referred by a Massachusetts court pursuant to the provisions of M.G.L. c. 90, § 24.

(1) ~~Level of Care~~: At admission, the **Licensed or Approved Provider**~~licensee~~ shall determine that residential second offender services are appropriate based upon the court referral and the ~~client's~~**resident's** absence of withdrawal symptoms.

(2) Denial of Admission: The **Licensed or Approved Provider**~~licensee~~ shall not admit an intoxicated individual. In the event of denial of admission due to intoxication, the **Licensed or Approved Provider**~~licensee~~ shall notify the referring court of the denial within one business day. The **Licensed or Approved Provider**~~licensee~~ shall provide a copy of the written notice to the individual who was denied admission.

(3) Medical Assessment: Prior to admitting an individual, the **Licensed or Approved Provider**~~licensee~~ shall ensure that a medical evaluation is conducted by a qualified health care professional to establish whether the individual's health status is appropriate for the ~~service type~~**level of care** provided by the program. The medical report shall determine:

(a) whether the individual suffers from acute or chronic medical conditions requiring immediate medical care; and

(b) whether the individual has any physical limitation which would limit participation in any program component, such as physical exercise. If such a condition exists, the **Licensed or Approved Provider**~~licensee~~ shall make, and document, efforts to adapt the physical requirements of the program to meet the individual's physical abilities.

If, as a result of the individual's medical or physical condition, the **Licensed or Approved Provider**~~licensee~~ is unable to provide adequate care, the **Licensed or Approved Provider**~~licensee~~ shall notify the referring court.

(B) Program Structure: The **Licensed or Approved Provider**~~licensee~~ shall establish a program structure that includes:

(1) At least 14 consecutive **calendar** days of residential programming;

(2) Policy and procedures governing telephone, mail and visitation privileges;

(3) A daily schedule of resident activities and rules governing resident participation in these activities;

(4) Provisions for security that include:

(a) Measures to ensure that residents do not leave the facility without notifying a member of the administrative or counseling staff;

(b) A sign-in and sign-out system for all visitors, staff and residents; and,

(c) A census count to be taken once during each eight-hour shift.

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- (C) Services: The **Licensed or Approved Provider**~~licensee~~ shall provide the following:
- (1) Three individual counseling sessions for each resident during the 14-day stay, including an initial evaluation session, a termination session, and one intermediate session.
  - (2) Educational and motivational groups, as follows:
    - (a) Two 1.5 hour groups each day. Over any two week period, at least 14 of such groups shall be educational and at least ~~ten~~**10** shall be motivational.
    - (b) A written educational curriculum, approved by the Department, which:
      - a. addresses the physiological, psychological and social consequences of substance ~~abuse~~**use disorder**;
      - b. assists residents to identify their substance ~~abuse~~**use disorder** behavior, recovery methods and treatment options;
      - c. teaches techniques for changing problematic behavior resulting from or contributing to substance ~~abuse~~**use disorder**.
    - (c) Community or self-help group meetings shall not be substituted for required educational and motivational groups.
  - (3) A physical education program consisting of planned, regularly scheduled activities, monitored by a staff member who is certified in CPR.
- (D) Discharge: The **Licensed or Approved Provider**~~licensee~~ shall discharge residents upon completion of their sentence and shall refer residents who continue on probation for additional substance ~~abuse~~**use disorder** treatment. With the ~~client's~~**resident's** written consent, the **Licensed or Approved Provider**~~licensee~~ shall provide the outpatient provider with a summary of the ~~client's~~**resident's** completed assessment and diagnosis.
- (E) Aftercare: If a resident completes the probation period at the same time as the residential program, the **Licensed or Approved Provider**~~licensee~~ shall **directly connect the resident to an appropriate provider**~~provide referrals~~ to ensure a continuum of care for the resident, including **direct** referrals for further substance ~~abuse~~**use disorder** treatment, the provision of post discharge counseling and other supportive services.

#### 164.453: Notice to the Court

The **Licensed or Approved Provider**~~licensee~~ shall establish procedures for notifying court personnel when the program is operating at capacity and cannot accept additional referrals, and when it is available for additional referrals.

#### 164.454: Staffing Pattern



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**In addition to the staffing requirements of 105 CMR 164.424 and 105 CMR 164.048, excluding 105 CMR 164.048(B), ~~t~~The Licensed or Approved Provider**~~licensee~~ shall establish a staffing pattern with sufficient personnel to oversee daily activities and to ensure safe operation of the program, which shall include:

- (A) A Senior Clinician or Clinician to provide individual counseling, and group counseling/ education services.
- (B) Staff qualified by education or experience responsible for the structure and delivery of physical education and recreation activities.
- (C) Qualified health care personnel to conduct initial medical assessments. Health care staff may be employees of the **Licensed or Approved Provider**~~licensee~~, or may be employees of an entity with whom the **Licensed or Approved Provider**~~licensee~~ has a **QSOA**~~Qualified Service Organization Agreement~~ for provision of health care services.
- (D) No on-duty staff on any shifts shall be permitted to sleep during the shift.

### **PART THREE: DEPARTMENT OF MENTAL HEALTH LICENSEES, BUREAU OF HEALTH CARE SAFETY AND QUALITY LICENSEES, AND AGENCIES OF THE COMMONWEALTH**

#### **164.500: Licensure Requirements for Providers Licensed by the Department of Mental Health or the Bureau of Health Care Safety and Quality, or Operated by an Agency of the Commonwealth**

##### **164.505: Scope**

The provisions of 105 CMR 164.505~~7~~ through 105 CMR 164.587 shall apply to any ~~separate, identifiable~~ substance use disorder treatment program operated by a facility licensed by the Department of Mental Health or the Department of Public Health's Bureau of Health Care Safety and Quality, ~~or~~ operated by the Department of Mental Health, or Agencies of the Commonwealth. In addition to the standards contained within 105 CMR 164.505~~7~~ through 105 CMR 164.587, each Licensed or Approved Provider shall comply with the applicable level or levels of service provided pursuant to 105 CMR 164.100-164.400: *Part Two*. ~~provisions of 105 CMR 164.100, Part Two, applicable to the level or levels of service provided.~~

##### **164.507: Application Requirements for Licensure or Approval**

~~No person, entity, or program, including an office-based opioid treatment program, shall~~

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~~advertise or hold itself out as a~~ **A substance use disorder treatment program, or shall provide or require substance use disorder treatment as part of its program requirements, without must have a License or Approval from the Department, except as provided for in 105 CMR 164.011(D)).**

~~Whoever knowingly operates such a program or services without obtaining a License or Approval may be subject to penalties up to a fine of \$500.00 for the first offense and up to \$1,000.00 for each subsequent offense or by imprisonment for not more than two years or both.~~

**(A) Applications for licensure or approval shall be made in a form prescribed by the Department and include all supporting documents required by the applicable level or levels of service provided pursuant to 105 CMR 164.100-164.400: Part Two000.**

**(B) An application for an original license, or the transferee's application in the case of a transfer of ownership, shall not be approved until the applicant has been deemed suitable by the Department.**

**(C) Except for an Agency of the Commonwealth accepting civil commitments pursuant to M.G.L. c. 123 § 35, an application for a license or approval renewal, shall include a sworn statement of the names and addresses of any person with an ownership or control interest in the facility or in the real property upon which the facility is located. For the purposes of 105 CMR 164.507, "person with an ownership or control interest" shall mean a person who:**

- (1) has a direct or indirect ownership interest of 5% or more in the facility or the organization that holds the license;**
- (2) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the facility or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5% of the total property and assets of the facility or organization that holds the license;**
- (3) is an officer or director of a corporate licensee; or**
- (4) is a partner of a licensee organized as a partnership; or**
- (5) is the Trustee of a Trust.**

#### **164.508: Application Submission**

**(A) Applications for licensure or approval shall be made in a format prescribed by the Department, together with the required fee and any other documents and materials**

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**required by the applicable level or levels of service provided pursuant to 105 CMR 164.0100-164.400: *Part Two* or that the Department deems appropriate.**

**(B) Applicants for licensure or approval who choose to use a vendor to provide the identified substance use disorder treatment being applied for shall only use a vendor licensed or eligible for licensure under 105 CMR 164.000.**

**(C) Applicants for renewal must submit to the Department completed forms and fees required by the Department at least 60 calendar days prior to the expiration of the current License or Approval. An application for renewal, if timely filed with the required fee (as applicable pursuant to 105 CMR 164.008), shall have the effect of a License or Approval from the date of License or Approval expiration until such time as the Department takes action on the application. If a renewal application is not timely filed, such an application will not have such effect and the License or Approval shall lapse.**

#### **164.509: Evaluation of Application and Suitability of Applicant or Licensed or Approved Provider**

**(A) ~~Upon receipt of a complete application~~ The Department shall evaluate the suitability of the applicant or Licensed or Approved Provider including, but not limited to, the following factors. A negative determination with respect to any one of the factors constitutes an adequate ground for deeming an applicant or Licensed or Approved Provider unsuitable to establish or maintain a substance use disorder treatment program and upon which the Department may deny an initial or renewal application for a License or Approval.**

**(1) Past performance as a provider of substance use disorder treatment services, based upon documentation of applicant's or Licensed or Approved Provider's:**

**(a) history of compliance with applicable provision of 105 CMR 164.0100-164.500;**

**(b) history of providing substance use disorder treatment services or other health care services, including provision of services in other states;**

**(c) ability to provide substance use disorder treatment services;**

**(d) history of response to correction orders issued under 105 CMR 164.0516;**

**(e) history of failure to provide services to any individual when licensed or approved to provide such services; and**

**(f) history of patient or resident abuse, mistreatment or neglect in any licensed health care program or facility.**

**(2) Except for facilities accepting civil commitments pursuant to M.G.L. c. 123 § 35,**

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~~Whether the applicant is able to provide services to residents of the Commonwealth with public health insurance on a non-discriminatory basis and able to report the facility's payer mix to the Department on a quarterly basis.~~

(3) ~~Except for facilities accepting civil commitments pursuant to M.G.L. c. 123 § 35, Whether the applicant can demonstrate need for the services in accordance with 105 CMR 164.5011(A).~~

(4) ~~Such other information as the Department may require.~~

(B) ~~The application shall also include an attestation from the applicant confirming that any substance use disorder treatment program subject to licensure or approval under 105 CMR 164.000 operated by said applicant will:~~

(1) ~~Provide services on a non-discriminatory basis to residents of the Commonwealth with public health insurance and report the substance use disorder treatment program's payer mix to the Department in a format prescribed by the Department on a quarterly basis, as required by M.G.L. c. 111E, § 7. This section shall not apply to facilities accepting civil commitments pursuant to M.G.L. c. 123 § 35; and~~

(2) ~~Provide medications for treatment of addiction, including all FDA-approved medications for addiction medication-assisted treatment, directly or through a QSOA;~~

(3) ~~Provide overdose prevention education as part of evidence-based practices; and~~

(4) ~~Provide data and other information as requested by the Department pursuant to 105 CMR 164.5022.~~

### 164.510: Inspections

(A) ~~The Department or its agents may visit at any time without prior notice and inspect the facility, its staff, activities, and records to determine compliance with the applicable level or levels of service provided pursuant to 105 CMR 164.0100-164.500 and applicable state and federal laws.~~

(B) ~~Applicants and Licensed or Approved Providers shall provide Department inspectors with access to:~~

(1) ~~The entire physical plant, including those portions open to patients or residents and staff and those open only to staff;~~

(2) ~~All information including, but not limited to: records, and documentation related to the provision of substance use disorder treatment services, and to the operation of the program, including personnel records and documents relating to the licensed legal entity. All such records and documentation shall be in English, legible, and current to within five business days of the most recent provision of service.~~

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(C) Refusal to allow entry to Department inspectors shall constitute grounds to seek a warrant in district or superior court to authorize entry.

#### 164.511: Issuance of Licenses and Approvals

Upon the approval of the application for a License or Approval, the Department shall issue a License or Approval to the applicant. Every License and Approval shall state the name and address of the program if either differs from that of the Licensed or Approved Provider or approved entity; the period of Licensure or Approval; the specific service(s) the program is Licensed or Approved to deliver; and the name and address of any satellite location(s).

(A) In accordance with M.G.L. c. 111E, § 7, the Department shall not approve an application for an original license unless the applicant can demonstrate need for the substance use disorder treatment program based upon the following factors:

- (1) The health needs of drug dependent persons and persons with alcoholism use disorder, as defined in M.G.L. c. 111B, § 3, in the Commonwealth, including underserved populations and persons with co-occurring mental health conditions and substance use disorder; and
- (2) The demonstrated ability and history of a prospective Licensed or Approved Provider to meet the needs of such persons.

(B) The Department must determine the applicant suitable to establish or maintain the service in accordance with 105 CMR 164.009 prior to issuing a License or Approval. Any Agent of the Commonwealth shall be deemed to have satisfied the requirements.

(C) Upon satisfactory submission of an application and completion of an inspection(s), the Department may grant a license, approval, or renewal for a term of six months or two years.

#### (D) Provisional Licenses and Approvals.

- (1) When the Department finds an applicant for an initial or renewal License or Approval has not complied with all applicable regulations, but is in substantial compliance and has submitted, within 90 days of notice of noncompliance from the Department, an acceptable plan for bringing the facility into full compliance with specific dates included, the Department may issue a Provisional License or Approval, provided that:

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- (a) The applicant demonstrates to the Department's satisfaction a good faith intent to meet all the requirements;
  - (b) The Department finds the service offered protects or will protect the health, safety, and well-being of the facility's patients or residents; and
  - (c) The Department finds the applicant evidences the potential for full compliance within a reasonable period of time, not to exceed six months.
- (2) A Provisional License or Approval is valid for a period not to exceed six months and may be renewed once for no more than six months.

**164.512: Posting of a License or Approval**

Each Licensed or Approved Provider shall post the current License or Approval issued by the Department in a conspicuous public place at each service location.

**164.513: Transfer of Ownership**

(A) **Circumvention.** A transfer of ownership shall not be recognized and the new owner shall not be considered suitable for licensure when the Transfer of Ownership is proposed or made to circumvent the effect and purpose of 105 CMR 164.5000. The Department shall consider the following factors in determining whether a Transfer of Ownership has been proposed or made to circumvent 105 CMR 164.5000:

- (1) The transferor's record of compliance with Department licensure laws and regulations;
- (2) The transferor's current licensure status;
- (3) The transferor's familial, business or financial relation to the transferee; and
- (4) The terms of the transfer.

(B) **Suitability.** At least 90 calendar days in advance of any transfer of ownership, any applicant who intends to acquire a substance use disorder treatment program shall submit a Notice of Intent to the Department on a form supplied by it. The Department shall notify each applicant in writing of the date on which the form is deemed completed. Within 90 calendar days of such date, the Department shall complete its suitability review for licensure pursuant to the standards of 105 CMR 164.5009. With the consent of the applicant, the Department may extend the 90 day suitability determination period for a maximum of 30 calendar days

(C) **Application for Licensure.** Upon a finding by the Department of suitability in accordance with 105 CMR 164.5013(B), an applicant for licensure or approval as a result of any Transfer of Ownership shall file an application for licensure within two business days of the Transfer of Ownership unless an extension of the two business day period is granted by the Commissioner.

- (1) A License or Approval application filed as a result of a Transfer of

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**Ownership, if timely filed, shall have the effect of a License or Approval from the date of transfer until such time as the Department takes action on the application. If not timely filed, an application will not have such effect and the License or Approval shall lapse.**

**(2) Any notice of hearing, order, or decision, which the Department or Commissioner issues to a facility prior to a transfer of ownership, shall be effective against the former owner prior to transfer and, where appropriate, the new owner following the transfer unless the notice, order, or decision is modified or dismissed by the Department or the Commissioner.**

#### **164.514: Change of Location**

**(A) A Licensed or Approved Provider may not move the delivery of any services licensed pursuant to 105 CMR 164.511~~000~~ to another location without receiving express prior approval by the Department for each proposed site.**

**(B) An application submitted by a Licensed or Approved Provider for a change in location must be filed with the Department at least 90 calendar days in advance in a manner prescribed by the Department and shall be subject to all requirements of initial licensure.**

#### **164.515: Change of Program Name**

**(A) A Licensed or Approved Provider may not change the name of any program licensed pursuant to 105 CMR 164.000 without receiving express prior approval by the Department.**

**(B) An application submitted by a Licensed or Approved Provider for a change in name must be filed with the Department at least 90 calendar days in advance in a manner prescribed by the Department ~~and shall comply with all applicable provisions of 105 CMR 164.000.~~**

#### **164.516: Correction Orders**

**The Department shall prepare a written deficiency correction order for each violation of the applicable provisions of 105 CMR 164.010~~0~~-164.500, M.G.L. c. 111E and M.G.L. c. 111B and send the deficiency correction order to the Licensed or Approved Provider of record. The deficiency correction order shall include a statement of the deficiencies found, the period within which the deficiency must be corrected, which shall not exceed 60 calendar days, except as provided for in 105 CMR 164.0517(C), and the provision(s)**



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**of law and/or regulation relied upon.**

### **164.517: Plan of Correction**

**(A) The Licensed or Approved Provider shall submit a plan of correction to address each deficiency within 14 calendar days, unless otherwise specified by the Department and, as provided in 105 CMR 164.5017(B), shall remedy or correct each deficiency cited within 60 calendar days of receipt of the deficiency correction order.**

**(B) The plan of correction shall set forth, with respect to each deficiency, the specific corrective step(s) to be taken, a timetable for each step, and the date by which full compliance will be achieved. The timetable and the compliance dates shall be consistent with achievement of compliance in the most expeditious manner possible. The plan of correction shall be signed by either the Licensed or Approved Provider or his or her designee.**

**(C) Where, in the opinion of the Department, the deficiency is not capable of correction within 60 calendar days, the Licensed or Approved provider shall submit a written plan for correction of the deficiency in a reasonable manner within 14 calendar days of such determination by the Department. The plan of correction shall comply with 105 CMR 164.5017(B).**

**(D) The Department may modify the plan of correction by providing notice to the Licensed or Approved Provider. The Licensed or Approved Provider may submit a written request for administrative reconsideration of the modified plan of correction, or any portion thereof, within seven calendar days of receipt of notice.**

**(E) Fines. If a Licensed or Approved Provider fails to remedy or correct a cited deficiency by the date specified in the deficiency correction order or fails to remedy or correct a cited deficiency by the date specified in a plan of correction as accepted or modified by the Department, the Department may:**

- (1) Suspend, limit, restrict or revoke the Licensed or Approved Provider's License or Approval;**
- (2) Impose a civil fine upon the Licensed or Approved Provider not to exceed \$1,000 per deficiency for each day the deficiency continues to exist beyond the date prescribed for correction (except for Agencies of the Commonwealth);**
- (3) Pursue any other sanction as the Department may impose administratively upon the Licensed or Approved Provider; or**

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**(4) Impose any combination of the penalties set forth in 105 CMR 164.517(E)(1)-(3), inclusive.**

**(F) Administrative Reconsideration of civil fines**

**(1) Request for Administrative Review. The Licensed or Approved Provider may submit a written request for administrative reconsideration within seven calendar days of receipt of notice of the fine on forms approved by the Department. The request for review must fully state and support the reasons why a waiver or reduction of a fine is warranted, including specific reference to all relevant factors under the applicable level or levels of service provided pursuant to 105 CMR 164.0100-164.500 and any and all supporting documentation.**

**(2) The Department shall conduct an administrative review, based solely on the evidence presented within the written request and Department records, and shall issue a written decision. This decision shall constitute a final agency decision in an adjudicatory proceeding subject to judicial review pursuant to M.G.L. c. 30A, § 14.**

**(3) The failure to file an appeal requesting administrative review within seven calendar days of receipt of the notice constitutes a waiver of the right to request reconsideration and all fines set forth in the notice shall be imposed. The payment of a fine constitutes a waiver of the right to appeal.**

**164.518: Administrative Penalties**

**Summary Suspension. The Department may summarily suspend a License or Approval prior to a hearing if:**

- (1) In the opinion of the Department, the violation of rules, regulation, deficiency correction orders, or plans of correction jeopardizes the health, safety, or well-being of patients or the public or seriously limits the capacity of a facility to provide adequate care; or**
- (2) Where the violation of such rules, regulation, deficiency correction orders, or plans of correction is the second or subsequent such violation occurring during a period of 12 months.**

**The suspension shall remain in effect until the Department rescinds or amends such requirements or until such time as the Department takes final action on any related pending complaint and issues a final decision.**

**164.519: Grounds for Denial, Refusal to Renew, Restriction, Limitation, or Revocation of License or Approval**

**In addition to 105 CMR 164.5019(A) through (J), each of the following, separately,**

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**shall constitute full and adequate grounds to deny, revoke, limit, restrict, or refuse renewal of a License or Approval:**

**(A) Failure to meet the applicable requirements for licensure or approval as specified in the applicable level or levels of service provided pursuant to 105 CMR 164.1000-164.400: *Part Two-et-seq.***

**(B) Failure to meet the requirements of applicable federal or state law or regulations.**

**(C) Violating of any applicable requirement of 105 CMR 164.0100-164.500.**

**(D) Failure to give proper care to patients or residents.**

**(E) Denying entry to agents of the Department or attempt to impede the work of a duly authorized representative of the Department.**

**(F) Knowingly making an omission of material information or providing false or misleading statements orally or in writing to the Department.**

**(G) Operating the facility without a required License or Approval or after the expiration of a License or Approval if the applicant or Licensed or Approved Provider has not timely submitted an application for renewal.**

**(H) There is a reasonable basis for the Department to conclude there is a discrepancy between the facility's representations as to the treatment services to be afforded patients and the treatment services actually rendered or to be rendered.**

**(I) Conviction of an applicant or Licensed or Approved Provider or a person with ownership or control interest in the program of Medicare or Medicaid fraud or other criminal offense related to operating the program.**

**(J) Conviction of an applicant or Licensed or Approved Provider or a person with ownership or control interest in the program of a violent crime against a person, which indicates that operation of the program may endanger the public health or safety.**

**164.520: Hearings**

**(A) If the Department refuses to renew, suspends, restricts, limits, or revoke**

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**licensure or approval pursuant to 105 CMR 164.5019, the Department shall notify the applicant in writing of the following:**

- (a) the intended action;**
  - (b) the reason(s) and ground(s) for the action; and**
  - (c) the Licensed or Approved Provider's right to file a written request for an adjudicatory hearing in accordance with M.G.L. c. 30A and the Standard Adjudicatory Rules and Practice and Procedure, 801 CMR 1.01 *et seq.***
- (B) The Licensed or Approved Provider's may request a hearing on the Department's decision. A written request for a hearing shall be submitted within 14 calendar days of receipt of the notice. Upon receipt of a Licensed or Approved Provider's request for a hearing, the Department shall provide an opportunity for a hearing in accordance with M.G.L. c. 30A and 801 CMR 1.01 *et seq.***

#### **164.521: Commissioner and Judicial Review**

- (A) The Commissioner shall review the recommended decision of the hearing officer in any adjudicatory proceeding conducted pursuant to 801 CMR 1.01 *et seq.* The decision of the Commissioner shall constitute a final agency decision in an adjudicatory proceeding, and is subject to judicial review pursuant to M.G.L. c. 30A, § 14.**
- (B) A Licensed or Approved Provider or applicant that fails to exercise the right to an adjudicatory proceeding pursuant to 105 CMR 164.5020 waives both the right to administrative review by the Commissioner and the right to judicial review pursuant to M.G.L. c. 30A, § 14.**

#### **164.522: Providing Information to the Department**

- (A) Each Licensed or Approved Provider shall timely submit management information data in a manner prescribed by the Department including, but not limited to, admissions, discharges, patient or resident characteristics, services and outcomes, and staff patterns and characteristics. It shall also submit to the Department such data, statistics, schedules, or information as the Department may require for the purposes of licensing and/or monitoring and evaluating a service as well as data required to meet federal reporting requirements including, but not limited to, outcome data.**
- (B) Each Licensed or Approved Provider is responsible for requesting patient or resident authorizations-to ensure the timely submission of data to the Department.**

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**(C) All information submitted pursuant to the applicable requirements of 105 CMR 164.0100-164.500 or otherwise required by the Department shall be kept current by each Licensed or Approved Provider.**

#### **164.523: Waivers**

**(A) The Department may, in its discretion, waive the applicability of one or more of the requirements of 105 CMR 164.0100-164.500 as requested by a Licensed or Approved Provider, upon a written finding that:**

- (1) compliance would cause undue hardship to the provider, as documented by the Licensed or Approved Provider in a manner defined by the Department;**
- (2) the provider is in substantial compliance with the spirit of the requirement and has instituted compensating features that are acceptable to the Department;**
- (3) the provider's non-compliance does not jeopardize the health, safety, or well-being of its patients and does not limit the provider's capacity to provide the service; and**
- (4) the provider provides to the Department written documentation supporting its request for a waiver.**

**(C) The Department may, in its discretion, rescind or impose a time limit on any waiver it grants.**

#### **164.534: Qualified Service Organization Agreements**

**Each Licensed or Approved Provider must establish written agreements with any qualified service organization providing services, programs, agencies, or facilities to the Licensed or Approved Provider. The qualified service organization agreements (QSOAs) shall:**

- (A) be signed by both parties;**
- (B) be renewed at a minimum of every five years;**
- (C) require the qualified service organization to agree to be bound by requirements of 42 CFR Part 2;**
- (D) specify the services, programs, agencies or facilities to be provided; and**

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(E) if the qualified service organization provides services to the Licensed or Approved Provider's patients or residents, specify the method of referral and review of treatment plans.

#### 164.535: Required Notifications to the Department

(A) Legal Proceedings: The Licensed or Approved Provider shall report to the Department in a manner prescribed by the Department any civil action or criminal charge initiated against the Licensed or Approved Provider or any person employed or contracted by the Licensed or Approved Provider that relates to the delivery of the service or may affect the continued operation of the programfacility. The report shall be provided no later than one calendar day after the initiation of any legal action.

(B) Closure: When a Licensed or Approved Provider plans to cease operation said Provider shall notify the Department, patients, and residents pursuant to 105 CMR 164.587.

(D) Interruption or Suspension of Service: If a Licensed or Approved Provider determines the health, safety or well-being of patients or residents is in imminent danger as a result of conditions existing within the program, the Licensed or Approved Provider shall notify the Department immediately upon becoming aware of the danger to patients or residents and comply with 105 CMR 164.586.

(E) Change of Program or Service Provision: A Licensed or Approved Provider shall notify the Department in a manner prescribed by the Department at least 30 calendar days before any change in program or service provision. The Department shall determine whether such change requires re-licensure.

(F) Change of Administrator, Executive or Program Director: A Licensed or Approved Provider shall notify the Department at least 14 calendar days before a planned change of Administrator, Executive or Program Director. In the event of an unplanned departure of a director, the Licensed or Approved Provider shall notify the Department upon the next-business day of the change of director in a manner prescribed by the Department.

(G) Death, Serious Incident, Accident or Fire:

(1) The Licensed or Approved Provider shall notify the Department immediately

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**upon any of the following occurring at the program:**

- (a) learning of the death of any person currently admitted to the program, regardless of where the death occurs;**
  - (b) full or partial evacuation of the facility for any reason;**
  - (c) fire;**
  - (d) suicide;**
  - (e) criminal acts alleged to have been committed by patients, residents, contractors, or staff members;**
  - (f) pending or actual strike action by its employees, and contingency plans for operation of the program;**
  - (g) alleged abuse or neglect, or physical or sexual assault, or prohibited interaction which occurs between or among patients and/or residents currently or previously treated by the program, or which occurs between or among such patients or residents and current or former staff regardless of location, including any incident which is reported to another agency or law enforcement;**
  - (h) alleged abuse or neglect at the program which includes the following:**
    - (i) any reports of child abuse or neglect made under M.G.L. c. 119, § 51A;**
    - (ii) any reports of elder abuse or neglect made under M.G.L. c. 19A, § 15; and**
    - (iii) any reports of abuse of a disabled person made under M.G.L. c. 19C;**
  - (i) any condition at the program which poses a threat to the health, safety or well-being of patients, residents, or staff;**
  - (j) confirmed cases among staff or patients and residents of communicable diseases which are reportable under 105 CMR 300.000: Reportable Diseases; or**
  - (k) any other serious incident or accident as specified in guidelines of the Department.**
- (2) The program shall report to the Department any other serious incident occurring on premises covered by the License or Approval that seriously affects the health, safety, or well-being of a patient(s) or that causes serious physical injury to a patient(s) within seven days of the date of occurrence of the event.**

#### **164.536: Marketing of Services**

**A Licensed or Approved Provider may not engage in advertising which:**

- (1) is false, deceptive or misleading;**
- (2) has the effect of intimidating or exerting undue pressure;**
- (3) guarantees a cure; and/or**
- (4) makes claims of professional superiority which a Licensed or Approved Provider cannot substantiate.**

#### **164.539: Non-discrimination and Accommodation**



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(A) **No Licensed or Approved Provider shall discriminate in the provision of service against any person on the basis of race, color, ethnicity, religious creed, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, ancestry or status as a veteran.**

(B) **No Licensed or Approved Provider shall discriminate in the provision of service against any Medicaid recipient.**

(C) **Program space, including satellites and medication units, used for patients or residents shall be accessible to individuals with disabilities and shall comply with all federal, state and local requirements for accessibility.**

#### 164.540: Written Policies

(A) ~~Each~~**Licensed or Approved Providers that directly provide services shall have written policies and procedures consistent with and implemented in accordance with the applicable requirements established in 105 CMR 164.0100-164.500, Department administrative guidelines, accepted standards of care for substance use disorder treatment services and applicable laws. All policies required under 105 CMR 164.000 shall be in writing, and available to staff, patients, residents and Department inspectors, and shall at a minimum address the following areas:**

- (1) **program rules;**
- (2) **confidentiality in accordance with 105 CMR 164.5084;**
- (3) **security of and access to patient and resident records, and patient and resident information;**
- (4) **personnel policies, including:**
  - (a) **prohibition of sexual harassment and procedures for handling and investigating sexual harassment complaints;**
  - (b) **prohibited interactions between staff and patients or residents, and between or among patients and/or residents;**
  - (c) **requirements of 42 CFR Part 2 (federal confidentiality regulations) and 45 CFR Parts 160, 162 and 164 (Health Insurance Portability and Accountability Act, HIPAA), where applicable;**
- (5) **ensuring patient safety, including adequate patient and resident oversight and periodic patient and resident safety checks;**
- (6) **responses to and reports of death, accident, injury, fire and alleged assault, and responses to and reports of safety and health conditions at the program;**
- (7) **all-hazard and emergency planning and procedures;**
- (8) **orientation and supervision of staff from contract or temporary agencies; and**

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(9) **care and treatment protocols developed in accordance with all applicable federal regulations.**

(B) **Standards for the content of required policies may be set by administrative requirements issued from time to time by the Department.**

#### 164.544: Training and Supervision

**Licensed or Approved Providers that directly provide services shall:**

(A) ~~The Licensed or Approved Provider shall p~~**Provide ongoing staff training and supervision to all staff, including clinical staff, qualified health care professionals, relief staff, interns, volunteers, contractors and others, in accordance with 105 CMR 164.5044(B). The Licensed or Approved Provider shall have a written plan for supervision sufficient to meet the needs of staff, patients and residents. The written supervision plan shall specify the frequency and goals of supervision for all staff, and shall provide that all direct care staff requiring clinical supervision receive clinical supervision from appropriately licensed staff **qualified to deliver supervision**, and that supervision must be documented.**

(B) ~~The Licensed or Approved Provider shall h~~**Have a written plan for ongoing in-service training of all personnel. The plan shall include the following:**

(1) **orientation and ongoing supervision of employees regarding policies and procedures of the program including, at a minimum, program operations; state and federal confidentiality laws; professional ethics, including staff-patient and staff-resident boundaries; behavioral management; record keeping; internal incident reporting and investigation; and the reporting of abuse and neglect of children, the elderly and disabled persons; and**

(2) **over the course of a year, monthly scheduled in-service training sessions in accordance with Department guidance including, but not limited to, the following topics:**

- (a) **HIV/AIDS, sexually transmitted diseases (STDs) and Viral Hepatitis;**
- (b) **substance use disorders, clinical assessment and diagnosis; treatment planning; relapse prevention and aftercare planning; and overdose prevention and risk assessment;**
- (c) **co-occurring disorders, including mental health disorders, gambling and other addictive behaviors, and mechanisms for ensuring coordination of care related to all co-occurring disorders, including risk assessments and creation of safety plans;**
- (d) **other topics specific to the requirements of the service type and/or the**

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**population served;**

**(e) effects of substance use disorders on the family and related topics such as the role of the family in treatment and recovery;**

**(f) the benefits and risks of all clinically appropriate medication for addiction ~~assisted~~ treatment options, as well as the risks and benefits of not receiving treatment;**

**(g) abuse and neglect reporting requirements; and**

**(h) professional ethics, including staff-patient and staff-resident boundaries.**

**(C) The Licensed or Approved Provider shall maintain a record of all in-service training sessions provided, including topic, date, duration and attendance.**

#### **164.548: Staffing Pattern**

**Licensed or Approved Providers that directly provide services shall:**

**(A) ~~The Licensed or Approved Provider shall~~ Provide an adequate number of qualified personnel to fulfill the service objectives and needs of each patient based on acuity, patient assessments, treatment plans, and other relevant factors as determined by the Licensed or Approved Provider. At a minimum, such staffing shall include:**

**(1) 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 his or her absence a professional staff person shall be designated to act in his/her place. The Licensed or Approved Provider shall provide the designee with contact information for the administration in the event of an emergency.**

**(2) A multidisciplinary team that includes professionals sufficient to meet the needs of each patient or resident served with recognized expertise in a variety of areas of substance use disorder treatment. The team may include, as necessary to care for patients and residents served, Licensed or Approved Provider's staff as well as other treatment professionals through QSOAs. The team may include physicians, psychiatrists, psychologists, acupuncturists, advanced practice registered nurses, physician assistants, registered nurses, licensed practical nurses, social workers, psychiatric nurses, substance use disorder counselors with master's or bachelor's degrees in a related field and certified or licensed substance use disorder counselors.**

**(a) The multidisciplinary team shall review assessments, treatment plans and other patient and resident-specific issues to ensure quality of services and to provide education and training to staff.**

**(b) The Licensed or Approved Provider shall ensure the multidisciplinary team is incorporated into the staffing plan.**

**(B) ~~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,**

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**qualifications and shift coverage to ensure:**

- (1) required services are provided;**
- (2) safety of patients or residents and staff; and**
- (3) the program operates in accordance with 105 CMR 164.000.**

#### **164.570: Referrals and Admissions**

**Except for Agencies of the Commonwealth facilities accepting civil commitments pursuant to M.G.L. c. 123 § 35, the Licensed or Approved Provider must comply with the following:**

**(A) Admission and Eligibility Criteria:**

- (1) The Licensed or Approved Provider shall establish written admission eligibility criteria and procedures, provided such criteria and procedures do not impose any restrictions that would be reasonably conceived as a barrier to treatment access including discrimination against patients and residents with public health insurance.**
- (2) Such criteria and procedures shall describe the Licensed or Approved Provider's method of determining which service type and program are suitable for the prospective patient or resident.**
- (3) Such eligibility criteria shall not establish a category of automatic exclusion that is defined by a history of criminal conviction or type of primary substance used, or mental health diagnosis, or prescribed medication including FDA-approved medications for the treatment of addiction.**
- (4) The Licensed or Approved Provider shall make the criteria and procedures available to prospective patients or residents upon the patient's or resident's application for admission.**
- (5) Admission eligibility criteria shall be posted in a conspicuous public area.**

**(B) The Licensed or Approved Provider shall comply with all applicable state and federal anti-discrimination laws such that the Provider evaluates all potential admissions regardless of the source of payment, and may not deny admission on the basis of race, color, ethnicity, religious creed, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, ancestry or status as a veteran, except that Licensed or Approved Providers providing a service designed for a specific population, *e.g.*, civil commitments, women or adolescents, may limit admissions to members of that population.**

**(C) Where consistent with the program of services, admission eligibility criteria shall specifically address priority populations defined by the Department including, but not limited to, Medicaid patients or residents.**

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**(D) Licensed and Approved Providers shall directly connect individuals who do not meet eligibility requirements or who are inappropriate for the Licensed or Approved Provider's services to the appropriate level of care. The Licensed or Approved Provider shall collaborate, as appropriate, with care managers, case managers, health plans, and any others necessary to obtain an appropriate placement for the patient. Additionally, the Licensed or Approved provider must maintain a log of applications denied, reasons for denial and direct referrals made, and shall make this documentation available to the Department for inspection.**

**(E) The Licensed or Approved Provider may not deny admission to an individual solely because the individual uses medication prescribed by a practitioner outside the Licensed or Approved Provider's service or facility, including any FDA-approved medication for addiction ~~medication-assisted~~ treatment or medications used to treat mental health disorders.**

**(1) Programs may not require a designated amount of medication for admission.**

**(a) Programs must accept prospective patients or residents who arrive with medication(s) remaining on current prescription(s), and facilitate the ability to refill such prescription(s).**

**(b) Programs cannot deny admission to prospective patients or residents who lack current prescription refills and must work with such patients or residents to coordinate medication refills.**

**(c) Programs cannot deny admission based upon the types of medication a patient or resident is prescribed.**

**(2) Programs may not deny admission to or exclude prospective patients or residents who lack an official state identification card.**

**(F) Licensed or Approved Providers may deny admission to individuals who refuse to provide information necessary to complete an assessment and treatment plan, provided the Licensed or Approved Provider shall maintain a log of applications denied, reasons for denial and referrals made, and shall make this documentation available to the Department for inspection.**

**(G) The Licensed or Approved Provider may not deny re-admission to any person solely because that person**

**(1) withdrew from treatment against clinical advice on a prior occasion;**

**(2) relapsed from earlier treatment; or**

**(3) filed a grievance regarding an action or decision of the Licensed or Approved**

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**Provider.**

**164.572: Assessment**

**(A) ~~The Licensed or Approved Providers that directly provide services shall complete an assessment for each patient and resident that includes the following elements, as well as applicable elements prescribed for each applicable level or levels of service type in provided pursuant to 105 CMR 164.0100-164.400: Part Two:~~**

**(1) A history of the use of alcohol, tobacco and other drugs, including age of onset, duration, patterns and consequences of use; history of overdose, including witnessing an overdose; use of alcohol, tobacco and other drugs by family members; and types of and responses to previous treatment.**

**(2) An assessment of the patient's or resident's psychological, social, health, economic, educational/ vocational status; co-occurring mental health and/or physical health conditions; trauma history; and history of compulsive behaviors such as gambling. The assessment must be completed before a comprehensive service plan is developed for the patient.**

**(B) Patient or resident treatment may begin prior to completing the assessment, provided that sufficient information to initiate treatment for the presenting complaint or problem on that day of services is obtained and that the assessment is completed in a reasonable timeframe.**

**(C) When the assessments indicates a need for further evaluation, the program shall conduct necessary testing, physical examination and/or consultation by qualified professionals, or make appropriate referrals for such testing, physical examination and/or consultation by qualified professionals provided the program continues to provide treatment to the patient or resident in the interim.**

**(D) The assessment shall be reviewed and signed by a Senior Clinician, Clinician, or Practitioner. If conducted by a Clinician, it must be approved in writing by a Senior Clinician or Practitioner.**

**(H) The assessment shall conclude with:**

**(1) a diagnosis of the status and nature of the patient's or resident's substance use disorder, using standardized definitions established by the American Psychiatric**

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**Association, or a mental or behavioral disorder due to use of psychoactive substances, as defined by the World Health Organization; and**  
**(2) an offer to the patient or resident to initiate any FDA-approved medication for addiction ~~medication-assisted~~ treatment.**

### **164.573: Individual Treatment Plan**

~~For each patient and resident admitted, the~~ Licensed or Approved Providers that directly provide services shall complete an individual treatment plan based on the patient's or resident's treatment, medical, psychiatric and social histories, which includes the following elements, as well as applicable elements prescribed for each level or levels of service ~~type~~ ~~in~~ provided pursuant to 105 CMR 164.0100-164.400: *Part Two*.

**(A) The treatment plan and all subsequent updates shall, at a minimum, include documentation of the following information:**

- (1) A statement of the patient's or resident's strengths, needs, abilities and preferences in relation to his or her substance use disorder treatment, described in behavioral terms;**
- (2) Evidence of the patient's or resident's involvement in formulation of the treatment plan, in the form of the patient's or resident's signature attesting agreement to the plan;**
- (3) Service to be provided;**
- (4) Service goals, described in measurable, behavioral terms, with time lines;**
- (5) Description of discharge plans and aftercare service needs;**
- (6) Aftercare goals;**
- (7) Plan for initiating, coordinating, managing, and referring to:**
  - (a) concurrent additional substance use disorder treatment that may require the use of medication, such as medication for addiction ~~assisted~~ treatment when a patient or resident is enrolled in outpatient counseling or residential rehabilitation;**
  - (b) treatment of co-occurring disorders;**
  - (c) primary medical care; and**
  - (d) recovery supports and resources.**

**Such plan shall identify providers of care and responsibilities of each, specifying method(s) for coordination and communication, and method(s) for ensuring that sharing of information is consistent with the requirements of 105 CMR 164.50848. With patient consent, treatment plans may be submitted from the discharging**



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provider to the admitting provider during the referral process.

#### 164.574: Minimum Treatment Service Requirements

The Licensed or Approved Provider shall provide directly or through QSOA with Qualified Service Organizations, ~~as specified in 105 CMR 164.074(A) through (ND), the following services, as applicable well as services prescribed for each service type in 105 CMR 164.0100-164.400: Part Two.~~

- (A) Medications for treatment of addiction, including all FDA-approved medications for addiction ~~medication-assisted treatment, which may be provided through a QSOA;~~
- (B) Overdose prevention education as part of evidence-based practices;
- (C) Substance use disorder therapies, ~~which must be provided directly by the Licensed or Approved Provider;~~
- (D) Counseling and education as clinically indicated which conform to accepted standards of care, uses evidence-based practices, and monitors **progress and outcomes;**
- (E) HIV education and counseling;
- (F) TB screening, education and treatment;
- (G) Tobacco education and counseling, ~~which must be provided directly by the Licensed or Approved Provider;~~
- (H) Case management including:
  - (1) directly connecting patients and residents to appropriate providers based on continuum of care, and patient and resident educational, vocational, financial, legal and housing needs, ~~which must be provided directly by the Licensed or Approved Provider; and~~
  - (2) updating the patient or resident's primary care provider on treatment and progress, such as by providing the patient's or resident's record to the primary care provider upon the patient's or resident's documented authorization;
  - (3) documentation of patient or resident consent to provide treatment information to the patient or resident's primary care provider or release information to the receiving provider prior to or upon patient transfer. In the event the patient or resident refuses such consent, the Licensed or Approved Provider shall document such refusal in the

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**patient or resident's record.**

**(I) Mental health services, including screening, crisis intervention, and psychopharmacological services, for individuals with co-occurring disorders;**

**(J) Health services, including primary care, oral health, and family planning services requested by the patient or resident;**

**(K) Services for individuals with compulsive behaviors such as compulsive gambling; ~~and~~**

**(L) Relapse prevention and recovery maintenance counseling and education and shall:**  
**(1) include monitoring of the patient's or resident's behavior;**  
**(2) address risks specific to the patient or resident, including, where applicable, risk of overdose; and**  
**(3) include services intended to maintain the patient or resident in treatment and support recovery;**

**(M) Planning for patient's or resident's completion of treatment, and identification of transitional, discharge and aftercare supports the patient or resident may require; and**

**(N) Family support services, including family therapy, or social or education services.**

### **164.575: Termination and Discharge**

**(A) ~~The~~ Licensed or Approved Providers that directly provide services shall establish written termination and discharge policies and procedures and shall make these available to prospective patients or residents at the time of admission. These policies shall include:**

**(1) Written criteria defining:**

**(a) Successful completion of treatment;**

**(b) Voluntary termination prior to program completion, except in the case of an individual committed to treatment under M.G.L. c. 123, § 35;**

**(c) Involuntary termination, including:**

**1. emergency termination when the program director or Practitioner reasonably determines the patient's or resident's continued presence in the program presents an immediate and substantial threat of physical harm to other patients or residents, program personnel, or property; and**

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2. **non-emergency termination, including notice to the patient or resident of the reasons for termination and the right to grieve the decision as required by 105 CMR 164.080 prior to termination; and**
  - (d) **Procedures for determining, in consultation with the patient or resident, referrals needed to ensure a continuum of care, reduction of risk of relapse, and reduction of risks to patient's or resident's well-being, provided the patient or resident is directly connected to such services prior to or within a reasonable time following discharge. Such referrals may include, but are not limited to:**
    1. **certified alcohol and drug-free housing;**
    2. **additional substance use disorder treatment;**
    3. **treatment of co-occurring disorders;**
    4. **continued care coordination and management with the patient's or resident's medical and psychiatric care providers;**
    5. **community based overdose prevention programs;**
    6. **employment resource; and**
    7. **community and social supports, including family support services.**
  - (2) **Procedures for planning the discharge in consultation with the patient or resident when one of the following conditions are met and discharge will not create an immediate safety risk for the patient:**
    - (a) **Patient or resident has received optimum benefit from treatment and further progress requires either the patient's or resident's return to the community or the patient's or resident's referral to another type of treatment program;**
    - (b) **Patient or resident is ready to transition to different service type, which may be more or less intensive than the current program;**
    - (c) **Except in the case of an individual committed to treatment under M.G.L. c. 123, § 35, patient or resident voluntarily requests discharge from treatment, in which case procedures shall include review of risks and benefits of terminating treatment; or**
    - (d) **Patient or resident is involuntarily terminated on a non-emergency basis.**
  - (3) **A written discharge summary including:**
    - (a) **Description of services provided, patient's or resident's response to such services, and progress in attaining treatment plan goals;**
    - (b) **Patient's or resident's substance use at discharge, including risk of overdose and recommendations for follow-up services;**
    - (c) **Patient's or resident's current vocational, educational and financial status;**
    - (d) **Reason for termination;**
    - (e) **Direct referrals provided;**
    - (f) **Supports and services available to the patient or resident after discharge,**

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**provided by the Licensed or Approved Provider or by others;**

**(C) Licensed or Approved Providers that directly provide services may discharge patients or residents who refuse to provide information required for necessary coordination of treatment, provided the Licensed or Approved Provider shall maintain a log of involuntary discharges, reasons for involuntary discharge and referrals made, and shall make this documentation available to the Department for inspection.**

#### **164.576: Aftercare**

~~The~~ Licensed or Approved Providers that directly provide services shall establish written policies and procedures for provision of aftercare patients or residents who are discharged, which shall include provisions for patient and resident participation in developing the aftercare plan, a method for contacting the patient or resident, and ensuring the patient's or resident's ability to continue any prescribed medications. Aftercare services shall include:

**(A) Directly connecting the patient or resident to an appropriate provider to ensure a continuum of care for the patient or resident, including arrangements for further substance use disorder treatment and post-discharge counseling and other supportive services;**

**(B) Providing information concerning available community-based service agencies and programs, which shall include a description of services, addresses, phone numbers and the names of contact persons;**

**(C) Referrals, the aftercare plan and information provided to the patient or resident shall be documented in the patient's or resident's record; and**

**(D) If a patient or resident refuses aftercare services, the Licensed or Approved Provider shall document the refusal in the patient's or resident's record.**

#### **164.579: Patients' and Residents' Rights**

Licensed or Approved Providers that directly provide services shall:

**(A) ~~The Licensed or Approved Provider shall~~ Safeguard the legal and civil rights of each patient and resident at all times during treatment and throughout the discharge process. Each Licensed or Approved Provider shall adopt and maintain an updated set of rules, which set forth the responsibilities and the rights of patients and residents**

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**regarding treatment and discharge.**

**(B) ~~The Licensed or Approved Provider shall g~~Guarantee the patient or resident, at a minimum, the following rights:**

- (1) freedom from physical and psychological abuse;**
- (2) freedom from strip searches and body cavity searches;**
- (3) control over his or her bodily appearance, provided, however, on program premises, the Licensed or Approved Provider may prohibit attire and personal decoration which interfere with treatment;**
- (4) access to his or her patient or resident record in the presence of the administrator or designee unless there is a determination that access to parts of the record could cause harm to the patient or resident;**
- (5) the right to challenge information in his or her patient or resident record by inserting a statement of clarification or letter of correction signed by both the clinician and the patient or resident;**
- (6) the right to obtain a copy of the patient's or resident's records as specified in 105 CMR 164.083;**
- (7) the right to have the confidentiality of his or her records secured as required by 105 CMR 164.084;**
- (8) the right to terminate treatment at any time, except in the case of an individual committed to treatment under M.G.L. c. 123, § 35;**
- (9) freedom from coercion;**
- (10) treatment without regard to race, ethnicity, creed, national origin, religion, sex, sexual orientation, gender identity, ability to speak English, age, or disability;**
- (11) treatment in a manner sensitive to individual needs and which promotes dignity and self-respect;**
- (12) full disclosure regarding fee charged and, in residential rehabilitation programs, any patient or resident benefits to be contributed;**
- (13) the right to grieve actions or decisions of the Licensed or Approved Provider regarding the patient's or resident's treatment;**
- (14) freedom to practice his or her religious faith;**
- (15) the right to request referral to a facility which provides treatment in a manner to which the patient or resident has no religious objection;**
- (16) drug screens conducted in a manner which preserves the patient's or resident's dignity and, when the drug screen is by urine sample, accommodates any medically confirmed inability to give urine by providing for an alternate effective means of screening such as oral swab; and**
- (17) the right to contact the Department.**

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~~(C) The Licensed or Approved Provider shall p~~**Provide for translations of rights, rules and manuals for patients and residents who do not read English.**

#### 164.580: Grievances

Licensed or Approved Providers that directly provide services shall:

(A) Establish written policy and procedures for the resolution of patients' or residents' disagreement(s) or dispute(s) arising in relation to treatment or program requirements.

The policy and procedures shall specify:

- (1) Patients' and residents' right to grieve actions and/or decisions of the Licensed or Approved Provider regarding the patient or resident's treatment;
- (2) Steps to be taken to resolve the matter; and
- (3) Provisions for a hearing on the matter presided over by an impartial grievance officer who may be any staff or other person(s) not directly involved in the facts of the incident giving rise to the action grieved or in the decision to commence the action; provided that the persons involved in either the facts of the incident or in the decision to commence the proceedings shall not have authority over the hearing officer(s). Grievance officers shall be selected based upon their expertise in issues being grieved (e.g., medical officer/medical grievance, administrative officer/administrative grievance). All hearings may be conducted by telephone or using an audio-visual, real-time, two-way interactive communication system.

#### 164.582: Special Populations

Licensed and Approved Providers directly providing services to special populations listed below shall make additional provisions as specified:

(A) Pregnant Women: Licensed and Approved Providers serving pregnant women shall:

- (1) establish in writing clinically appropriate medical protocols for pregnant women;
- (2) designate a hospital for emergency obstetrical and medical back-up; however, patients or residents may elect to choose their own medical providers;
- (3) coordinate care with obstetrical or other maternity care providers as appropriate;
- (4) provide for appropriate parent or legal guardian-child services directly or through a QSOA; and

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**(5) be available to serve women in all three trimesters of pregnancy.**

**(B) Adolescents and Transition Age Youth: Licensed and Approved Providers serving Adolescents and/or Transition Age Youth shall:**

**(1) ensure assessments, as required in 105 CMR 164.072, include an evaluation of:**

- (a) developmentally age-appropriate behaviors;**
- (b) cognitive functioning;**
- (c) physical maturation;**
- (d) existing peer and family supports, peer group and family functioning;**
- (e) experience of trauma;**
- (f) history of mental health diagnoses;**
- (g) availability and access to recovery supports;**
- (h) social maturity; and**
- (i) educational needs.**

**(2) determine the person's custody status if under the age of 18;**

**(3) ensure the staff providing services for children and adolescents have specific training in child and teen development, including a minimum of five college credit hours in courses related to the topic;**

**(4) ensure services for adolescents are supervised by a Senior Clinician with at least two years post-master's experience working with adolescents with substance use disorders;**

**(5) ensure available parent or care-giver support and education services;**

**(6) ensure adolescents are served in programs which are separate from programs serving adult populations; and**

**(7) prior to providing any services to persons younger than 18 years old, inform the Department of the nature and scope of any services provided to adults in the same facility as those intended for services for adolescents. The Department shall determine whether such proximity of adult services constitutes a risk to adolescents.**

**(C) Persons with Co-occurring Disorders: Licensed and Approved Providers serving persons with co-occurring disorders shall:**

**(1) establish policies and procedures for referrals for specialized psychiatric/psychological care; and**

**(2) if the Licensed or Approved Provider is not also licensed or approved to provide mental health services, establish QSOAs providing for mental health interventions and coordinated care.**

**(D) Elders: Licensed and Approved Providers serving persons 60 years of age or older**



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shall establish QSOAs with local organizations providing services for the elderly.

(E) **Persons with Disabilities**: Licensed and Approved Providers serving persons with disabilities shall document the patient's or resident's current functioning, ability to perform activities of daily living, and ability to comprehend program policies and procedures.

#### **164.583: Patient and Resident Records**

The Licensed or Approved Provider shall maintain separate records for each patient and resident in a secure and confidential manner consistent with state and federal law, including 42 CFR Part 2. Records shall be legible and up to date no later than five business days from the date of last patient or resident contact, and shall include a record of patient care coordination, including relevant releases of information.

#### **164.584: Confidentiality**

Patient- and resident-specific information shall be privileged and confidential and shall be made available only in conformity with all applicable state and federal laws and regulations regarding the confidentiality of patient and resident records including, but not limited to, 42 CFR Part 2, and 45 CFR Parts 160 and 164 (HIPAA Privacy and Security Rules) if applicable.

#### **164.586: Interruption or Suspension of Service**

(A) If the Department determines there is a need to interrupt or suspend a service or program because the health, safety, or well-being of patients or residents is in imminent danger as a result of conditions existing within the service, program, or facility, the Licensed or Approved Provider shall:

- (1) notify patients and residents of the interruption or suspension;
- (2) provide for continuity of care for patients and residents during the period of interruption or suspension; and,
- (3) provide for the secure storage or safe transfer of patient or resident records, with patient or resident authorization.

(B) Within five calendar days of the interruption or suspension of services or program, the Licensed or Approved Provider shall notify the Department in writing of its plans to resume service, or for transfer of services to another program or facility.

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### 164.587: Closure

(A) Except as provided by 105 CMR 164.087(D), the Licensed or Approved Provider shall ensure that ~~notify~~ the Department, each patient and resident, each staff member of the program, and each labor organization that represents the facility's workforce is notified at the time of notice orally and in writing at least 90 calendar days prior to the termination of ~~service or the~~ program that the ~~service or~~ program will close, and document the notification in each patient's or resident's record. Notification shall specify the date of closure.

(B) ~~The~~ Licensed or Approved Providers that directly provide services shall develop a written referral plan in collaboration with each patient and resident that includes a plan for continuing the patient's or resident's substance use disorder treatment, including directly connecting patients and residents to an appropriate provider for continued treatment. If insufficient time remains to ensure an appropriate referral plan with respect to an involuntary closure, the Licensed or Approved Provider shall cooperate with the Department and the patient or resident to ensure an appropriate referral, if required.

(C) The Commissioner may waive the 90-day time frame for initial notification of closure in circumstances where the Commissioner has determined that such a waiver is necessary to protect the health, safety, and well-being of the patients and residents served by the program.

(D) The Department may grant permission for the temporary closure of the ~~service or~~ program provided that:

- (1) the Licensed or Approved Provider has submitted a plan for continued substance use disorder treatment for all patients and residents during the temporary closure; and
- (2) the Licensed or Approved Provider may only close after approval from the Department.

### 164.600: Approval Requirements for Substance Use Disorder Treatment Programs Operated by Penal Facilities

#### 164.605: Scope

The provisions of 105 CMR 164.607 through 105 CMR 164.626~~30~~, as well as any

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standards set forth by the Department shall apply to any program operated by a penal facility. ~~In addition to the standards contained within 105 CMR 164.607 through 105 CMR 164.630, each Licensed or Approved Provider shall comply with the provisions of 105 CMR 164.100, Part Two, applicable to the level or levels of service provided.~~

#### 164.607: Application Submission for Approval and Provisional Approval:

No penal facility shall hold itself out as operating a substance use disorder treatment program ~~or provide substance use disorder treatment~~ without an Approval from the Department.

(A) In order to operate ~~provide~~ substance use disorder treatment program, a penal facility must:

- (1) submit a complete application package in a manner prescribed by the Department;
- (2) meet the requirements contained within 105 CMR 164.612 through 105 CMR 164.630.

(B) Provisional Approval:

(1) When the Department finds a first time applicant for Approval, or an applicant for renewal of Approval, has not complied with all applicable requirements and regulations, but is in substantial compliance and has submitted an acceptable plan of correction for bringing the penal facility into full compliance, the Department may issue a provisional approval provided that:

- (a) The applicant demonstrates to the Department's satisfaction a good faith intent to meet all applicable requirements and regulations;
- (b) The Department finds the service offered protects the health, safety, and well-being of the penal facility's patients and;
- (c) The Department finds the applicant evidences the potential for full compliance within a reasonable period of time, not to exceed six months.

(2) A provisional approval is valid for a period not to exceed six months and may be renewed once for no more than six months. The Department may issue a provisional approval only when an applicant submits a written plan for full compliance. This written plan shall include specific target dates for achieving full compliance.

#### 164.608: Renewal of Approval

(A) Applicants seeking renewal for an Approval shall meet all requirements for approval specified in 105 CMR 164.6007.

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**(B) Applicants for renewal must submit to the Department completed applications required by the Department ~~at least 60 days~~ prior to the expiration of the Approval.**

**(1) If the complete renewal application is timely filed with the Department, the Approval shall not expire until the Department makes a determination on the renewal application.**

**(2) If an application is not submitted timely, the service may not continue to operate after the expiration of its Approval without the written permission of the Department.**

### **164.609 Administrative Action on the Approval**

**(A) Summary Suspension: The Commissioner may summarily suspend an Approval if the continued operation of the program or service poses an immediate threat to the health, safety, or well-being of its patients. The Approved Provider may not operate during the period of suspension of its license, after notification of the suspension.**

**(B) Grounds for Denial, Refusal to Renew, Restriction, Limitation, or Revocation of License:**

**Each of the following, separately, shall constitute full and adequate grounds to deny, revoke, limit, restrict, or refuse renewal of an Approval:**

**(1) Failure to satisfy the Department as to any of the application requirements under 105 CMR 164.6007.**

**(2) Failure to meet the requirements of applicable federal or state law or regulations.**

**(3) Violation of any applicable requirement of 105 CMR 164.000.**

**(4) Failure to give proper care to patients.**

**(5) Failure to remedy or correct a cited violation.**

**(6) Denial of entry to agents of the Department or attempt to impede the work of a duly authorized representative of the Department.**

**(7) Knowingly making an omission of material information or providing false or misleading statements orally or in writing to the Department.**

**(8) Operation of the Program without a required Approval or after the expiration of an Approval.**

**(C) Appeals:**

**(1) The Department shall provide written notice to the penal facility stating the grounds for the suspension, revocation, restriction, limitation, or refusal to renew an Approval. Such action shall take effect immediately upon issuance of the notice.**

**(2) The penal facility may, within 14 days of receipt of the written notice, file a written request for an adjudicatory hearing in accordance with M.G.L. c. 30A and the Standard Adjudicatory Rules and Practice and Procedure, 801 CMR 1.01 et seq.**

**(3) Upon receipt of a timely filed request, the Department shall refer the matter to**

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**the DALA for hearing.**

**(4)The Commissioner shall review the recommended decision of DALA pursuant to 801 CMR 1.01 et seq. The decision of the Commissioner shall constitute a final agency decision in an adjudicatory proceeding, and is subject to judicial review pursuant to M.G.L. c. 30A, § 14.**

#### 164.612: Minimum Treatment Service Requirements

~~(A) The Approved Provider shall provide directly or through QSOAs, as specified in 105 CMR 164.074(A) through (N), the following services, as well as services prescribed for each service type in 105 CMR 164.000: *Part Two.*~~

(A) Medications for treatment of addiction, including all FDA-approved medications for addiction treatment;

(B) Overdose prevention education as part of evidence-based practices;

(C) Substance use disorder therapies

(D) Counseling and education as clinically indicated which conform to accepted standards of care, uses evidence-based practices, and monitors progress and outcomes;

(E) Case management including:

(1) directly connecting patients and residents to appropriate providers based on continuum of care and patient and resident educational, vocational, financial, legal and housing, and

(2) updating the patient or resident's primary care provider on treatment and progress, such as by providing the patient's or resident's record to the primary care provider upon the patient's or resident's documented authorization.

(3) documentation of patient or resident consent to provide treatment information to the patient or resident's primary care provider or release information to the receiving provider prior to or upon patient transfer. In the event the patient or resident refuses such consent, the Licensed or Approved Provider shall document such refusal in the patient or resident's record.

(F) Relapse prevention and recovery maintenance counseling and education and shall:

(1) include monitoring of the patient's or resident's behavior;

(2) address risks specific to the ~~client~~patient or resident, including, where applicable, risk of overdose; and

(3) include services intended to maintain the patient or resident in treatment and

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support recovery; and

(G) Planning for patient's or resident's completion of treatment, and identification of transitional, discharge and aftercare supports the patient or resident may require.

~~(B) Additional Requirements for Opioid Treatment Programs: Where the penal facility is seeking certification as an Opioid Treatment Provider or partnering with an existing Opioid Treatment Provider to dispense a full or partial opioid agonist or antagonist medication, the penal facility shall additionally comply with the requirements of 105 CMR 164.300: *Opioid Treatment*.~~

#### 164.614: Inspections

(A) The Department or its agents may visit at any time without prior notice and inspect the portion of the program approved for substance use disorder treatment, its staff, activities, and records to determine compliance with 105 CMR 164.000 and applicable state and federal laws.

(B) Applicants and Approved Providers shall provide Department inspectors with access to:

- (1) The entire physical plant, including those portions open to patients and staff and those open only to staff;
- (2) All information including but not limited to: records, and documentation related to the provision of substance use disorder treatment services, and to the operation of the program, including personnel records and documents relating to the licensed legal entity. All such records and documentation shall be in English, legible, and current to within five business days of the most recent provision of service.

(C) Refusal to allow entry to Department inspectors shall constitute grounds to seek a warrant in district or superior court to authorize entry.

#### 164.616: Correction Orders

The Department shall prepare a written deficiency correction order for each applicable violation of 105 CMR 164.600, et seq., M.G.L. c. 111E and M.G.L. c. 111B and send the deficiency-correction order to the Approved Provider of record. The deficiency correction order shall include a statement of the deficiencies found, the period within which the deficiency must be corrected, which shall not exceed 60 calendar days, except as provided for in 105 CMR 164.618(C), and the provision(s) of law and/or regulation relied upon.

#### 164.618: Plan of Correction

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(A) The Approved Provider shall submit a plan of correction to address each deficiency within 14 calendar days, unless otherwise specified by the Department and, as provided in 105 CMR 164.618(B), shall remedy or correct each deficiency cited within 60 calendar days of receipt of the deficiency correction order. The Department may modify the plan of correction by providing notice to the Approved Provider. The Approved Provider may submit a written request for administrative reconsideration of the modified plan of correction, or any portion thereof, within seven calendar days of receipt of notice.

(B) The plan of correction shall set forth, with respect to each deficiency, the specific corrective step(s) to be taken, a timetable for each step, and the date by which full compliance will be achieved. The timetable and the compliance dates shall be consistent with achievement of compliance in the most expeditious manner possible. The plan of correction shall be signed by either the Approved Provider or his or her designee.

(C) Where, in the opinion of the Department, the deficiency is not capable of correction within 60 calendar days, the Approved provider shall submit a written plan for correction of the deficiency in a reasonable manner within 14 calendar days of such determination by the Department. The plan of correction shall comply with 105 CMR 164.616.

(D) The Department may modify the plan of correction by providing notice to the Approved Provider. The Approved Provider may submit a written request for administrative reconsideration of the modified plan of correction, or any portion thereof, within seven calendar days of receipt of notice.

#### 164.620: Required Notifications to the Department

(A) Legal Proceedings: The Approved Provider shall report to the Department in a manner prescribed by the Department any civil action or criminal charge initiated against the Approved Provider or any person employed or contracted by the Approved Provider that relates to the delivery of the service or may affect the continued operation of the facility. The report shall be provided no later than one calendar day after the initiation of any legal action.

(B) Closure: When an Approved Provider plans to cease operation said Provider shall notify the Department, patients, and residents ~~pursuant to 105 CMR 164.087.~~

(C) The Department may grant permission for the temporary closure of the service or program provided that:

- (1) the Licensed or Approved Provider has submitted a plan for continued substance use disorder treatment for all patients during the temporary closure; and
- (2) the Licensed or Approved Provider may only close after approval from the Department.



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(D) Interruption or Suspension of Service: If an Approved Provider determines that the health, safety or well-being of patients or residents is in imminent danger as a result of conditions existing within the program, the Approved Provider shall notify the Department immediately upon becoming aware of the danger to patients and comply with 105 CMR 164.086.

(E) Change of Program or Service Provision: An Approved Provider shall notify the Department in a manner prescribed by the Department at least 30 calendar days before any change in program or service provision. The Department shall determine whether such change requires re-licensure.

(F) Change of Administrator, Executive or Program Director: An Approved Provider shall notify the Department at least 14 calendar days before a planned change of Administrator, Executive or Program Director. In the event of an unplanned departure of a director, the Approved Provider shall notify the Department upon the next business day of the change of director in a manner prescribed by the Department.

(G) Death, Serious Incident, Accident or Fire:

(1) Approved Providers that directly provide services shall notify the Department immediately upon the occurrence of any of the following at the program:

- (a) learning of the death of any person currently admitted to the program, regardless of where the death occurs;
- (b) full or partial evacuation of the facility for any reason;
- (c) fire;
- (d) suicide;
- (e) criminal acts alleged to have been committed by patients, contractors, or staff members;
- (f) pending or actual strike action by its employees, and contingency plans for operation of the program;
- (g) alleged abuse or neglect, or physical or sexual assault, or prohibited interaction which occurs between or among patients currently or previously treated by the program, or which occurs between or among such and current or former staff regardless of location, including any incident which is reported to another agency or law enforcement;
- (h) alleged abuse or neglect at the program which includes the following:
  - (i) any reports of child abuse or neglect made under M.G.L. c. 119, § 51A;
  - (ii) any reports of elder abuse or neglect made under M.G.L. c. 19A, § 15; and
  - (iii) any reports of abuse of a disabled person made under M.G.L. c. 19C;
- (i) any condition at the program which poses a threat to the health, safety, or well-being of patients or staff;
- (j) confirmed cases among staff or patients and residents of communicable diseases which are reportable under 105 CMR 300.000: Reportable Diseases; or
- (k) any other serious incident or accident as specified in guidelines of the

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## **Department.**

(2) **Approved Providers that directly provide services shall report to the Department any other serious incident occurring under the auspices of the Approved services that seriously affects the health, safety, or well-being of a patient(s) or that causes serious physical injury to a patient(s) within seven days of the date of occurrence of the event.**

### 164.622: ~~All Hazard and Emergency Planning and Procedures~~

~~The Approved Provider shall establish a written plan for response to emergencies. Said plan shall be formulated on an all-hazards approach: provide for response to internal, local, community, state, regional or national emergencies, regardless of cause (natural or man-made). The plan shall document the Approved Provider's communications with community emergency management and response agencies. The plan shall include at a minimum a plan for relocation of staff and patients in the event of an evacuation. Such plan shall identify the local evacuation sites and procedures, and shall specify provisions for evacuation of individuals whose mobility is impaired and/or who require adaptive equipment. The Approved Provider shall determine, and document, any restrictions that may apply to evacuation sites.~~

### 164.623 Waiver

(A) The Department may, in its discretion, waive the applicability of one or more of the requirements of 105 CMR 164.600 as requested by an Approved Provider, upon a written finding that:

- (1) Compliance would cause undue hardship to the provider, as documented by the Licensed or Approved Provider in a manner defined by the Department;
- (2) the provider is in substantial compliance with the spirit of the requirement and has instituted compensating features that are acceptable to the Department;
- (3) the provider's non-compliance does not jeopardize the health, safety, or well-being of its patients or residents and does not limit the provider's capacity to provide the service; and
- (4) the provider provides to the Department written documentation supporting its request for a waiver.

(B) The Department may, in its discretion, rescind or impose a time limit on any waiver it grants.

### 164.624: Patient Records

~~(A)~~ **The Approved Provider shall maintain separate records for each patient in a secure and confidential manner consistent with state and federal law, including 42 CFR Part 2.**

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**Records shall be legible and up to date no later than five business days from the date of last patient contact.**

~~(B) The written individual patient record shall include, but not be limited to, the following information:~~

- ~~(1) name, unique patient identifier, date of birth, sex, race/ethnicity, relationship status, and primary language, if other than English;~~
- ~~(2) name and contact information of the referring agency, court or person;~~
- ~~(3) presenting problem(s);~~
- ~~(4) all necessary authorizations, consents, and updates;~~
- ~~(5) patient assessment as required by 105 CMR 164.072;~~
- ~~(6) insurance coverage information;~~
- ~~(7) individual treatment plan and service plan reviews;~~
- ~~(8) signed patient confirmation of receipt of program policy manual, information regarding maintenance of client confidentiality, and contact information for the Department's Bureau of Substance Addiction Services complaint line;~~
- ~~(9) signed and dated progress notes entered by patient's counselor after every patient contact or attempted contact;~~
- ~~(10) documentation of STD, TB, Viral Hepatitis, HIV/AIDS risk assessment;~~
- ~~(11) documentation of STD, TB, Viral Hepatitis, HIV/AIDS education;~~
- ~~(12) record of any threat made by patient to harm self or another, and the action taken by Approved Provider in response to threat(s);~~
- ~~(13) record of multidisciplinary team reviews concerning patient including plan for coordination with other substance use disorder treatment, mental health, and physical health care services;~~
- ~~(14) discharge summary;~~
- ~~(15) aftercare service plan;~~
- ~~(16) record of attempts at post-discharge follow-up by letter, phone call, home visit or through contacts with aftercare providers;~~
- ~~(17) records of any warnings, disciplinary actions, grievances or complaints, and actions taken by Approved Provider;~~
- ~~(18) patient fee information, including method by which fee was determined, and documentation of all fees paid by patient; and~~
- ~~(19) record of care coordination, including relevant releases of information.~~

~~(C) Progress notes shall be current, legible, dated, and signed by the individual making the entry. Group counseling and educational session progress notes may describe the session in general, but the patient's record must also include in each progress note specific comments on the patient's participation and progress in the group.~~

~~(D) All patient cases reviewed by a Clinician and Counselor shall receive a quarterly record review by his or her supervisor. Evidence of this review shall be documented in the clinical record.~~

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~~(E) All patient records shall be marked confidential and kept in a secure, locked location, accessible only to authorized staff. Electronic records shall be secured through firewall and password protection and shall be accessible only to authorized staff.~~

~~(F) Except as otherwise provided in 105 CMR 164.000 or by applicable state or federal law, access to patient records shall be limited to the patient or his or her designee pursuant to patient's written authorization, and to those staff members authorized by the administrator. The Approved Provider shall have a written procedure regulating and controlling access to patient records by staff members whose responsibilities require access.~~

~~(G) Upon a patient's request, the Approved Provider shall provide, in a timely manner, to the patient, another Approved Provider or other specifically authorized person:~~

- ~~(1) The opportunity to inspect the patient's records;~~
- ~~(2) A copy of such record, except in circumstances described in 243 CMR 2.07(13)(e) governing licensed physicians engaged in the practice of psychiatry;~~
- ~~(3) A copy of any previously completed report required for third party reimbursement.~~

~~(H) The Department shall have access to patient records for the purposes of reviews required under 105 CMR 164.000. The Approved Provider shall obtain any signed consent from its patients that it deems necessary to provide such access.~~

### 164.626: Confidentiality

Patient-specific information shall be privileged and confidential and shall be made available only in conformity with all applicable state and federal laws and regulations regarding the confidentiality of patient records, including but not limited to, 42 CFR Part 2, and 45 CFR Parts 160 and 164 (HIPAA Privacy and Security Rules) if applicable.

### 164.628: ~~Transfer and Storage of Service Records~~

~~(A) The Approved Provider shall maintain patient records in a secure place for a minimum of seven years from the date of patient's termination of services unless required by law to do so for a longer period. Bureau approved programs licensed under M.G.L. c. 111, § 51 as a hospital or clinic shall maintain patient medical records for 20 years, as required by M.G.L. c. 111, § 70. The Approved Provider shall ensure clinical records accompany patients upon transfer. Transfer of records shall be made in accordance with federal and state confidentiality law and regulations. A signed consent from each patient must be obtained prior to the transfer of such records.~~

~~(B) When closing a program, service or facility, the Approved Provider shall ensure all records not transferred to a new facility with the patient are securely stored for the remainder of the seven year period mandated for each record. For all current patients~~

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~~of the Approved Provider at the time of closure, the Approved Provider shall also make every effort to provide a copy of the record to the patient at the time of closure, if the record is not transferred with the patient to a new treatment program. Public notice shall be given regarding the date of service termination and the site at which such records shall be securely stored. The Approved Provider shall prepay the full cost of such storage and shall contract to ensure the records are appropriately maintained for the entire period and that the records are destroyed at the end of the period in a manner that protects their confidential nature.~~

### ~~164.630: Interruption or Suspension of Service~~

~~(A) If an Approved Provider notifies the Department pursuant to 105 CMR 164.035(C) or the Department determines the health, safety or well-being of patients is in imminent danger as a result of conditions existing within the service, program or facility, the Department will determine whether there is a need to interrupt or suspend a service or program.—~~

~~(B) If the Department determines there is a need to interrupt or suspend a service or program because the health, safety, or well-being of patients is in imminent danger as a result of conditions existing within the service, program, or facility, the Approved Provider shall:~~

- ~~(1) notify patients of the interruption or suspension;~~
- ~~(2) provide for continuity of care for patients during the period of interruption or suspension; and,~~
- ~~(3) provide for the secure storage or safe transfer of patient records, with patient authorization.~~

~~(C) Within five calendar days of the interruption or suspension of services or program, the Approved Provider shall notify the Department in writing of its plans to resume service, or for transfer of services to another program or facility.~~

### REGULATORY AUTHORITY

105 CMR 164.000: M.G.L. c. 17, § 19, c. 90, §§ 24 and 24D, c. 94C, § 6A, c. 111, § 3, c. 111B, § 6, and c. 111E, § 7.

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