

Substance Use Disorder Treatment Licensure and Certification Guidelines for DSAMH Provider Enrollment

Division of Substance Abuse and Mental Health (DSAMH)

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Applicability:

1. DSAMH Internal Policy
2. Targeted Use Policy (Defined in scope)

Approved By: Joanna Champney, Division Director



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I. PURPOSE

The treatment of substance use disorder (SUD) conditions outside of traditional licensed and certified SUD treatment programs has proliferated into physical health and mental health settings, with medications being utilized for a variety of substance use disorder and mental health conditions as a lifesaving intervention. These settings are not considered to be a specific ASAM level of care unless they expand services to include a licensable service.

Commonly used terms include Medication Assisted Treatment (MAT), Medications for Opioid Use Disorder (MOUD), Office Based Opioid Treatment (OBOT), Office Based Addiction Treatment (OBAT), and Management of Addiction in Routine Care (MARC). Types of medication used in the treatment of addiction include but are not limited to buprenorphine, Vivitrol, naltrexone, Sublocade, and Brixadi.

“The Department is authorized by 16 Del. C., Ch. 22 to license and regulate substance use disorder and co-occurring treatment facilities. These regulations shall apply to any facility as defined in 16 Del. C. Ch. 22 and Ch. 51 and address the minimum acceptable standards and programmatic conditions for consumers/clients receiving services in substance use disorder and co-occurring disorder treatment facilities. No organization or entity shall manage or operate a substance abuse treatment facility within the State of Delaware unless it has been so licensed by the Department.” See, 16 DE Admin. Code 6001 Substance Abuse Facility Licensing Standards.

This policy provides clarification on the statement that, “no organization or entity shall manage or operate a substance abuse treatment facility within the State of Delaware,” by providing guidance to facilities that are not “substance abuse treatment facilities,” but do offer substance use disorder treatment services as part of routine care within their medical or mental health setting.

This policy has been developed to clarify which practices may continue to provide enhanced substance use disorder services within their existing practices and which practices require licensure and certification once they have additional services that qualify them as substance use disorder treatment programs and thus fall under DSAMH licensure and certification.

Practices that do not require licensure and certification must ensure they are not expanding their practices to a level that would require licensure and certification by specializing in substance use disorder treatment services by:

- A. offering services under specific taxonomy codes designated ASAM levels of care in Table 1; or
- B. utilization of credentialed addiction staff, such as a certified alcohol and drug counselor (CADC), and para-professional staff, such as peers dedicated to substance use treatment programs, that are approved for addiction treatment services within a licensed and certified SUD facility.

This guidance is not intended to contravene any authority vested in the Department of Services for Children, Youth and Their Families. Programs with an adult population are not prohibited from treating adolescents if their program is able to meet State and federal treatment requirements for adolescents.

II. POLICY STATEMENT

DSAMH fully supports the integration of low-barrier access /early intervention medication and substance use disorder treatment services into medical settings (primary care) and mental health practices. These practices must establish a client-practice relationship or client-practitioner relationship prior to initiating SUD treatment services.

Programs shall require licensing and certification if they are billing for any ASAM levels of care from 1.0 to 3.7. Any provider who discovers or is discovered to be billing for an ASAM level of care shall contact DSAMH Policy and Compliance for licensure and certification or shall cease providing and billing for DSAMH-licensed and certified ASAM levels of care and refer clients to programs licensed and certified by DSAMH.

III. DEFINITIONS

“ASAM” means the American Society of Addiction Medicine.

“ASAM Criteria” means the criteria utilized in the published fourth edition *The ASAM Criteria* by ASAM or prior versions.

“Authority and Applicability” means the authority granted to the Department in 16 *Del. C.*, Ch. 22, which reads “the Department is authorized by 16 *Del. C.*, Ch. 22 to license and regulate substance use disorder and co-occurring treatment programs.”

“Comprehensive Specialized Substance Use Disorder Program” means a program that includes assessment, development of a treatment plan, treatment at an ASAM level of care, and referral and assistance as needed to gain access to other needed SUD or mental health services for adults 18 years or over. Adult programs may have adolescents in their programs if they meet all State and federal regulations that apply to adolescents.

“Division” or “DSAMH” means the Division of Substance Abuse and Mental Health within the Delaware Department of Health and Social Services.

“Facility” means as defined by 16 DE Admin. Code 6001 Substance Abuse Facility Licensing Standards and 16 *Del. C.* § 2203. “Facility” means “the physical area, grounds, building(s) or portions thereof, under direct program administrative control.” 16 DE Admin. Code 6001 Facility Licensing Standards; AND “facility” or “treatment facility” means, “an entity, other than a licensed hospital, that provides care, lodging or treatment to persons in need of treatment. A ‘residential treatment facility’ provides 24-hour, live-in treatment to persons in need of treatment. A treatment facility may have 1 or more ‘treatment programs’ which are distinct therapeutic service components that may also address different age populations.” 16 *Del. C.* § 2203. “Facility” does not include the outpatient practice offices of licensed independent practitioners, including, but not limited to, physicians, psychologists, social workers, and counselors.

“Group Practice” means a group of two or more licensed independent practitioners legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association, per the Legal Information Institute.

“Licensed independent practitioner” means individuals who are licensed in the State of Delaware to practice medicine or behavioral health as defined by the Delaware Division of Professional Regulation.

“Management of Addiction in Routine Care” or “MARC” means a vital initiative that supports the Division of Medicaid & Medical Assistance’s (DMMA) goal to increase adoption of life-saving buprenorphine treatment in outpatient medical settings for Medicaid beneficiaries with opioid use disorders. DMMA has designed specifications for its MARC model, delineating eligible provider types, patient eligibility criteria, service descriptions, payment model, staffing requirements, performance measures, and other

details. Commonly used terms include Medication Assisted Treatment (MAT), Medications for Opioid Use Disorder (MOUD), Office Based Opioid Treatment (OBOT), and Office Based Addiction Treatment (OBAT).

“Programs Requiring Licensure and Certification” means programs providing or advertising that they provide Specialized Substance Use Disorder treatment services and programming per the 16 DE Admin. Code 6001 Facility Licensing Standards, 16 *Del. C. Ch. 22*, and specialized substance use disorder treatment services as defined below.

“Specialized Substance Use Disorder Treatment Services” or “SSUDT” means programs that specialize in provision of SUD treatment services including services cited in the “Comprehensive Specialized Program” definition. Programs required to be licensed and certified include any Substance Use Disorder Treatment Program advertising and/or billing for (direct consumer pay, insurance payor, grant, or contract) the following levels of care and/or associated taxonomy codes:

Table 1: ASAM Levels of Care License and Certification Types

License Type	Medicaid Certifications	Taxonomy	Reimbursement Manual ref:
Outpatient Services ASAM Level 1	Outpatient Services ASAM Level 1	261QR0405X	Pages 26-29
Intensive Outpatient Program ASAM Level 2.1	Intensive Outpatient Program ASAM Level 2.1	261QR0405X	Pages 34-37
OP ASAM Level 1 & IOP Services ASAM Level 2.1	OP ASAM Level 1 & IOP Services ASAM Level 2.1	261QR0405X	Pages 26-29 & 34-37
Opioid Treatment Program ASAM Level 1	Opioid Treatment Program ASAM Level 1	261QR0405X	Pages 30-33
Partial Hospitalization Program ASAM Level 2.5	Partial Hospitalization Program ASAM Level 2.5	261QR0405X	Pages 38-42

WM Extended On-Site Monitoring ASAM Level 2	WM Extended On-Site Monitoring ASAM Level 2	261QR0405X	Pages 43-48
WM-23HR Extended On-site Monitoring ASAM Level 2	WM-23HR Extended On-site Monitoring ASAM Level 2	261QR0405X	Pages 43-48
WM Medically Monitored Inpatient ASAM Level 3.7	WM Medically Monitored Inpatient ASAM Level 3.7	261QR0405X	Pages 60-63
Clinically Managed Residential ASAM Level 3.1	Clinically Managed Residential ASAM Level 3.1	261QR0405X	Pages 49-53
Clinically Managed Residential ASAM Level 3.5	Clinically Managed Residential ASAM Level 3.5	261QR0405X	Pages 54-59
Medically Monitored ASAM Level 3.7	Medically Monitored ASAM Level 3.7	261QR0405X	Pages 60-63

“Substance Use Disorder Treatment Program” means the location or facility where an agency provides or offers to provide any of the various modalities of substance use disorder services when such services are provided or offered on a regularly scheduled basis or a program approved by the Division to provide 100% virtual services.

Clinical participation records of clients are either stored on-site or readily available to staff in electronic format using computer hardware that is installed or regularly available on-site, as defined by 16 DE Admin. Code 6001 Facility Licensing Standards. A SUD treatment program is any program that meets any of the following elements:

- A. Has Specialized Substance Use Disorder Treatment Services (as defined above SSUDT);
- B. Services that replicate SSUDT or ASAM Criteria Levels of Care;

- C. Advertises as a SUD Treatment Program;
- D. Bills for SUD services under the taxonomy codes listed above; or
- E. Accepts contracts, grants, or insurance monies for specialized SUD treatment programs.

“Violation of licensing requirement” means any organization that maintains, manages, operates, or aids or abets another in maintaining, managing, or operating a program knowingly without a valid license or outside of a facility’s proper designation is guilty of a class A misdemeanor and subject to the penalties as set out in Chapter 42 of Title 11 of the *Delaware Code*. In addition to any other remedy, the Secretary, through the Attorney General, may commence proceedings in the Chancery Court of the State to enjoin any violation of this chapter and may, in the case of a willful and wanton violation, be awarded the costs of prosecution, including a reasonable amount for attorney fees, if the Secretary prevails. See, 16 *Del. C.* § 2209.

IV. SCOPE

DSAMH shall continue to license and certify, per current regulations, all entities that offer specialized adult substance use disorder treatment programs as described above.

V. EXCEPTIONS

Exceptions are detailed in State code and regulations.

VI. PROCEDURES/RESPONSIBILITIES

- A. Medical Prescribers and Licensed Behavioral Health Practitioners admitting clients for on-going services within their milieu are not required to seek DSAMH licensure and certification if their site is primarily a medical milieu such as a primary care or a mental health program.
 - 1. These non-specialty substance use disorder programs are utilizing existing client/practice or client/practitioner relationships to offer low-barrier access to treatment services for not only medications, but access to qualified licensed behavioral health professionals that are able to counsel clients with SUD conditions within the scope of their licensure.
 - 2. If a concern is raised by the community, DMMA, an MCO, or any other external sources, DSAMH shall perform the following steps:
 - a. If raised by the MCO and/or DMMA, DSAMH shall meet with DMMA to discuss the engagement of the practice in question and review on a case-by-case basis.
 - b. If raised by the community or any other external source, DSAMH shall take concerns and contact the practice directly and explore current treatment programming offered on site and determine if the practice meets the criteria for requiring program licensure and certification.

3. The following are examples of programs that generally are not required to seek DSAMH licensure and certification:
 - a. Any program designated by the DMMA as a MARC program with an embedded integrated care model which remains within that model and does not expand into specialty SUD services;
 - b. Federally Qualified Health Care Clinics;
 - c. Primary Care; and/or
 - d. Mental Health Treatment Practices.
 4. A medical practice or mental health program that substantially engages in treating substance use disorder as a primary driver of the program requires DSAMH licensure and certification. Indicators of this specialization include:
 - a. Billing ASAM levels of care, or
 - b. Utilization of credentialed addiction staff, such as a certified alcohol and drug counselor (CADC), and para-professional staff, such as peers dedicated to substance use treatment programs, that are approved for addiction treatment services within a licensed and certified SUD facility.
- B. Providers who currently meet criteria in VI.A.4 and do not have a DSAMH License and Medicaid Certification shall contact DSAMH to determine if they are required to obtain licensure and certification. If they require licensure and certification, they shall apply for and complete the application process within 90 days of the decision to pursue DSAMH-licensure and certification to be in compliance with 16 *Del.C.* Ch. 22.
1. DSAMH provider enrollment team meets regularly with providers that want to explore if their practice needs DSAMH licensure and certification, the benefits of licensure and certification, and the process to obtain licensure and certification.
 2. The following information is obtained during the initial meeting:
 - a. current services provided
 - b. interest in services by category
 - c. interest in specific Licenses and Certifications for SUD services
 - d. facility location
 - e. credentials of staff providing services
 - f. staffing model
 - g. hours of operation
 - h. modality of services (in-person or virtual)
 - i. funding sources
 - j. corporate structure and ownership
 - k. population served
 3. If the provider meets the criteria defined above for licensure and certification, the provider is instructed how to obtain a license and certification or safely transfer clients to a licensed and certified provider via referrals if they choose not to pursue licensure and certification.

- C. If the provider is unable or elects not to apply for DSAMH-licensure and certification, the provider shall submit a plan to arrange for appropriate care for any client who requires SUD treatment services. The provider shall cease billing for DSAMH-licensed and certified ASAM levels of care and refer clients to programs licensed and certified by DSAMH. Client services must not be disrupted without safe and appropriate transfer. All referrals must be completed within 60 days of notification to DSAMH of decision to not pursue DSAMH licensure and certification.
- D. Any provider who does not work cooperatively with DSAMH to resolve their unlicensed status when licensure and certification is required, is in violation of State code, and is subject to 16 *Del. C. § 2209*:
1. “Any organization that maintains, manages, or operates, or aids or abets another in maintaining, managing, or operating, a facility knowingly without a valid license or outside of a facility’s proper designation is guilty of a class A misdemeanor and subject to the penalties as set out in Chapter 42 of Title 11.” 16 *Del. C. § 2209*.
 2. DSAMH shall not refer providers for legal action without attempting a good faith effort for remediation with providers. Providers willfully practicing specialized substance use disorder services and avoiding licensure and certification under the umbrella of medical or behavioral health care shall be referred to the relevant authorities for legal action.
- E. DSAMH shall, through the Policy and Compliance Unit, continue to offer technical assistance and licensing and certification support for programs pursuing SUD treatment licensure and certification.
1. DSAMH shall advise any willing provider of the requirements above when contacted to explore if licensing and certification is required.
 2. DSAMH shall also continue to provide oversight and all applicable regulatory activities for licensed and certified programs.
 - a. It is the provider’s responsibility to register the Medicaid certification in the Gainwell portal and follow all appropriate steps.
 - b. Any provider seeking to obtain licensure and certification should contact DSAMH Provider Enrollment to begin the application process at: DHSS_DSAMH_ProviderEnrollment@delaware.gov.
 - c. Applications must be completed and approved within six (6) months of contact with Provider Enrollment. See, DSAMH020 Policy and Compliance Pathway to Full Licensure and Certification.
- F. DSAMH does not have regulatory authority over programs that are not required to be licensed and certified. Constituents with concerns or complaints that fall outside DSAMH’s regulatory authority will be directed to the appropriate authority based on the service setting and the applicable licensing body for the individual or entity involved. This may include referrals to the following entities:
1. The program director,
 2. The managed care organization,

3. Division of Medicaid and Medical Assistance,
 4. Delaware Department of Justice (different departments based on complaint),
 5. Delaware Department of Insurance, and/or
 6. Division of Professional Regulation.
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VII. References

- A. [TITLE 16 - 6001 Substance Abuse Facility Licensing Standards](#),
 - B. [TITLE 16 – CHAPTER 22. Substance Abuse Treatment](#),
 - C. Delaware Adult Behavioral Health DHSS Service Certification and Reimbursement Manual,
 - D. Delaware Health and Social Services DMMA Delaware Medical Assistance Program Practitioner Provider Specific Policy Manual
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VIII. POLICY LIFESPAN

This policy will be reviewed annually.

IX. RESOURCES

- A. [TITLE 16 - 6001 Substance Abuse Facility Licensing Standards](#)
 - B. [Delaware Adult Behavioral Health DHSS Service Certification and Reimbursement Manual](#)
 - C. [Legal Information Institute](#)
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X. RELATED POLICIES

- A. DSAMH020 Pathway to Licensure