



COMMONWEALTH of VIRGINIA

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MEMORANDUM

To: DBHDS Licensed Providers

From: Jae Benz, Director, Office of Licensing

Date: March 2, 2021

Re: Behavioral Health Enhancement and American Society of Addiction Medicine (ASAM) Levels of Care Criteria Emergency Regulations

Purpose: The purpose of this memorandum is to inform DBHDS licensed providers that the following emergency actions are effective as of February 20, 2021.

- [Amendments to align the Children's Residential Regulations with ASAM criteria;](#)
- [Amendments to align the General Regulations with ASAM criteria;](#) and
- [Amendments to align General Regulations with Enhanced Behavioral Health Services.](#)

Transition: The three emergency regulatory actions became effective on February 20, 2021. Although these regulations are effective, the Office of Licensing will delay implementation and enforcement of the emergency actions until July 1, 2021. Delayed implementation will allow time for the Office of Licensing to hold provider trainings on each emergency action, create and disseminate resource materials to providers, and process service modifications and initial applications as needed for corresponding services. The July 1, 2021, implementation date also corresponds with the Virginia Department of Medical Assistance Services (DMAS) "Go-Live" date for reimbursement for the following three Behavioral Health Enhancement (BHE) Services: Mental Health Intensive Outpatient Program (MHIOP), Mental Health Partial Hospitalization Program (MHPHP), and Assertive Community Treatment (ACT).

Amendments to Align Regulations with ASAM criteria

Background:

DBHDS was directed by the 2020 General Assembly within the Appropriations Act to utilize emergency authority to promulgate licensing regulations that align with the ASAM Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and

strengths-based care in the treatment of addiction. The goal of this regulatory action was to amend the Licensing Regulations [12VAC35-105] and the Regulations for Children's Residential Facilities [12VAC35-46], to align with ASAM, which ensure individualized, clinically driven, participant-directed, and outcome-informed treatment. While providers of substance use disorder services were once certified by ASAM level of care by Westat, Inc. in order to bill DMAS, providers will now be licensed by ASAM level of care in accordance with the Licensing and Children's Residential regulations.

Process to be Re-licensed for Substance Use Disorder Services Based on ASAM Level of Care

In April 2021, the Office of Licensing will begin to prioritize and process service modifications for current providers of substance use disorders services who will need to be re-licensed based on the ASAM level of care provided. The new licenses, which correspond with the amendments to align the Children's Residential Regulations with ASAM criteria and the amendments to align the General Regulations with ASAM criteria, will be as follows:

1. Medically managed intensive inpatient (ASAM Level 4.0)*;
2. Medically monitored intensive inpatient (ASAM Level 3.7);
3. Clinically managed high-intensity residential (ASAM Level 3.5);
4. Specific high-intensity residential (ASAM Level 3.3);
5. Clinically managed low-intensity residential services (ASAM Level 3.1);
6. Partial hospitalization (ASAM Level 2.5);
7. Substance abuse intensive outpatient (ASAM Level 2.1);
8. Substance abuse outpatient services (ASAM Level 1.0);
9. Clinically managed medium-intensity residential care for children (ASAM Level 3.5);
10. Clinically managed low-intensity residential care for children (ASAM Level 3.1); and
11. Medication assisted opioid treatment (Opioid Treatment Programs).

*Note: DMAS historically recognized only Virginia Department of Health licensed hospitals as ASAM Level 4.0. DBHDS is expanding ASAM Level 4.0 to also apply to inpatient psychiatric units of acute care hospitals which DMAS will also recognize.

To support a quick and seamless transition for providers who are currently certified to provide one of the above ASAM levels of care and already licensed by the DBHDS, the Office of Licensing has established an expedited review process and has developed a specialized service modification form. The service modification form will require basic information from the provider and completion of a sworn attestation form that will confirm the provider meets all regulatory requirements for the ASAM levels of care for which the provider is applying. Once the service modification has been approved, the provider will be issued a conditional license for the new service.

A conditional license will be issued for each new substance use disorder service as part of the transition process. Pursuant to Code of Virginia § 37.2-415, a conditional license may be granted to a provider to operate a new service in order to permit the provider to demonstrate compliance with all licensing standards. As the regulatory changes to align the Licensing Regulations with the ASAM criteria include new service specific Licensing Regulations for substance use disorder services, providers will need to demonstrate compliance with these regulations prior to the issuance of an annual license. The licensing specialist will conduct a thorough review of each provider's compliance with the emergency regulations as part of the annual inspection. Once compliance with all the applicable regulations within each service is demonstrated, including the

new ASAM regulations for the corresponding service, then the provider will be granted an annual license.

Amendments to Align General Regulations with Enhanced Behavioral Health Services

Background:

The regulatory changes made to align the Licensing Regulations with Behavioral Health Enhancement services consist of only those changes that were necessary to align the DBHDS Licensing Regulations with anticipated changes to DMAS behavioral health regulations by removing provisions that would conflict with newly funded behavioral health services and establishing new licensed services for those newly funded behavioral health services that cannot be nested under an existing DBHDS license.

As stated above, most of the anticipated newly funded behavioral health services do not conflict with the existing service definitions within the Licensing Regulations. Only very minimal changes were included in this action for these services, including: Functional Family Therapy (FFT), Multisystemic Family Therapy (MST), Mental Health Intensive Outpatient Program (MHIOP), Mental Health Partial Hospitalization Program (MHPHP), Mobile Crisis Intervention Services, 23 hour temporary observation services, Community Stabilization Services, and Residential Crisis Stabilization Services.

The existing license requirements for Program for Assertive Community Treatment (PACT) services, however, are inconsistent with the Assertive Community Treatment (ACT) services that will be funded as part of Behavioral Health Enhancement. Substantive changes have been made to the service specific licensing regulations for this service to align licensing requirements with ACT service requirements. These changes are intended to ensure that providers licensed to provide ACT services adhere to a base level of fidelity to the ACT model. While the Office of Licensing will not be monitoring fidelity to the ACT model, the DBHDS Office of Adult Community Behavioral Health Services will track adherence to the ACT model and determine annual ACT performance outcomes from teams through their participation in the administration of the most current ACT fidelity assessment.

Process to Become Licensed for Behavioral Health Enhancement Services for Existing Providers

The Office of Licensing will also begin to prioritize and process service modifications for the following Behavioral Health Enhancement services in April 2021 in anticipation of a licensure “Go-Live” date of July 1, 2021:

1. Small ACT team;
2. Medium ACT team;
3. Large ACT team;
4. Mental Health Partial Hospitalization Program (note: this is not a new service for licensure); and
5. Mental Health Intensive Outpatient Program.

The DBHDS Office of Adult Community Behavioral Health Services and DMAS have remained in constant contact with providers of both PACT and ICT services related to the transition over to the ACT team licenses. The interagency BHE ACT service specific workgroup has been

meeting since the summer of 2019 concerning the upcoming transition and the two agencies hosted an ICT and ACT Provider Meeting on February 17, 2021 where additional information as well as opportunities for follow up consultation were provided. For non-regulatory questions related to transitioning teams from the PACT or ICT model to the ACT model, please reach out directly to Jeff VanArnam, Adult Mental Health Services Coordinator at jeffrey.vanarnam@dbhds.virginia.gov.

In addition to service modifications for existing providers, the Office of Licensing will also begin to prioritize initial applications for new providers who wish to provide one of the three Behavioral Health Enhancement Services as of April 2021. Each applicant should submit a cover letter with the application including a request to be expedited and a brief explanation of the service to be provided. Please note that while these applications will be expedited, they will still be subject to the full policy review process that may take up to a year depending on the provider's response times and completion of the submitted application. Additional information related to the new applicant process can be found on the DBHDS [Office of Licensing webpage](#).

Please note this will be one of several communications related to the ASAM and BHE emergency actions. Over the next several months, the Office of Licensing will be in touch frequently with additional information related to training opportunities for these emergency regulations as well the service modification process. The next communication will include: the specific forms existing providers will need to complete to become licensed for BHE services and ASAM levels of care services; who to submit information to; and the timeframe for when information must be received by the Office of Licensing in order for materials to be reviewed and new licenses approved by July 1, 2021. Additional information related to the December 2021 enhancement services including Functional Family Therapy, Multisystemic Family Therapy, Mobile Crisis Intervention services, 23 hour temporary observation services, Community Stabilization Services and Residential Crisis Stabilization services will be provided beginning in summer 2021 as the Medicaid implementation date of these services will be December of 2021.

For additional questions related to the amendments to align the Children's Residential Regulations with ASAM criteria and the amendments to align the General Regulations with ASAM criteria, please contact Susan Puglisi at susan.puglisi@dbhds.virginia.gov.

For questions related to the amendments to align with enhanced behavioral health services, please contact Emily Bowles at Emily.Bowles@dbhds.virginia.gov.

For general questions related to Behavioral Health Enhancement or substance use disorder treatment services, please contact the Behavioral Health Division at DMAS at the following emails:

- For enhanced behavioral health services: EnhancedBH@dmass.virginia.gov.
- For Addiction and Recovery Treatment Services (ARTS): SUD@dmass.virginia.gov.

Additional information related to BHE implementation can be found on the DMAS website here: <https://www.dmass.virginia.gov/#/behavioralenhancement>. DMAS memos and manuals related to BHE are forthcoming and will be posted for public comment.

Last, for general questions relating to the licensing process, please reach out directly to your assigned licensing specialist.

Sincerely,

Jae Benz

Jae Benz
Director, Office of
Licensing DBHDS