

Nursing practices in OASAS certified Part 822 Opioid Treatment Programs (OTPs) & Medication Assisted treatment (MAT) for incarcerated individuals

Nursing practices in OASAS certified Part 822 Opioid Treatment Programs (OTPs)

OASAS OTPs are an integral part of the spectrum of treatment modalities available to New York residents struggling with Opioid Use Disorder (OUD). OTPs provide urgently needed relief to an individual with OUD who is immediately assessed, admitted and dosed with appropriate medications to relieve any withdrawal symptoms. Many individuals with OUD are able to achieve sustained recovery when maintained on an appropriate dose of methadone and with supportive services available when needed. Over time individuals who have appeared for daily methadone dosing, provided acceptable toxicology and met treatment goals can be evaluated for “take home” methadone dosing. Take home dosing is always done in individual bottles with a single dose per bottle together with patient specific labeling. OTPs are certified by OASAS, licensed by the Drug Enforcement Administration (DEA) and Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment (CSAT) and accredited by a federally approved accrediting body (e.g. The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF)). Physicians (MD), Registered Nurses (RN) and Licensed Practical Nurses (LPN) are an essential part of the medical staff of an OTP and critical to the various licenses and accreditations of an OTP. OASAS Part 822 regulations require an MD be present or available for consultation whenever an OTP is open. OTPs must have at least 2 full time nurses, at least 1 of whom is an RN, on staff. Programs exceeding 300 patients must have additional nurses. A nurse must be present whenever methadone is being provided to patients. OTPs must be open at least 6 days a week with flexible dosing hours. Physicians determine all patient dosages and schedules of administration of methadone and document them in a patient record. No changes to dose or administration may be made without a new order.

The practice of nursing is governed by the NYS Department of Education. NYS Education Law Section § 6902 defines the practice of nursing as follows:

Definition of practice of nursing. 1. The practice of the profession of nursing as a registered professional nurse is defined as diagnosing and treating human responses to actual or potential health problems through such services as case finding, health teaching, health counseling, and provision of care supportive to or restorative of life and well-being, and ***executing medical regimens*** prescribed by a licensed physician, dentist or another licensed health care provider legally authorized under this title and in accordance with the commissioner’s regulations. ***A nursing regimen shall be consistent with and shall not vary any existing medical regimen.***

2. The practice of nursing as a licensed practical nurse is defined as performing tasks and responsibilities within the framework of case finding, health teaching, health counseling and provision of supportive and restorative care under the direction of a registered professional nurse, licensed physician, dentist or

other licensed health care provider legally authorized under this title and in accordance with the commissioner's regulations.

The **medical regimen** in an OTP for patients on methadone consists of an MD ordering a dose and schedule of methadone for each specific patient. This medical regimen is entered and stored in the medical record of an OTP by an RN. The vast majority, if not all OTPs in NY, utilize a computer based dispensing machine for dispensing of methadone. The machine is synchronized with the OTPs Electronic Medical record (EMR) such that the nurse administering methadone verifies the identity of the patient and confirms it in the EMR. Programs utilize RNs and LPNs to administer dispensed medications; however, LPNs are always supervised by an RN. The EMR then communicates patient information on dose to the dispensing machine which then dispenses the medication into a receptacle (cup or take-home bottle). A single dose in a cup is provided to the patient (and may be accompanied by another cup with water or a similar beverage). The nurse watches the patient take the medication and then confirms, by visual inspection or asking patient to speak, that all medication had been taken. Patients then properly dispose of the cups (by returning to the nurse or placing in secure receptacles). Take-home doses are communicated to the dispensing machine, which dispenses the dose and prints a label with necessary information (patient name, dose). Nurses prompt the dispensing machine to dispense as many single take home doses as have been ordered by the MD and place a label provided by the machine on each receptacle in accordance with the medical regimen provided. Take home doses are given to a patient. Patients must return empty take home bottles to the OTP after all doses have been taken. The nurse will ensure the appropriate number of bottles are returned consistent with the regimen ordered by the MD. Nurses do not measure or pour individual doses of methadone. Nurses do not complete labeling of any dose dispensed by a dispensing machine.

This long standing system of RN's and supervised LPNs completing a nursing regime that has been dictated by a prescribed medical regimen is appropriate and in accordance with state laws and the federal opioid treatment standards that require that "... opioid agonist treatment medications are administered or dispensed only by a practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to administer or dispense opioid drugs, or by an agent of such a practitioner, supervised by and under the order of the licensed practitioner. *This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other healthcare professional authorized by Federal and State law to administer or dispense opioid drugs.*" (emphasis added) 42 CFR Part 8.12.

MAT for incarcerated individuals

In NY's ongoing efforts to combat addiction and the opioid epidemic, OASAS and its OTPs have been engaged in partnership with the criminal justice system to ensure Medication Assisted Treatment (MAT), including Methadone, is available to inmates in public institutions (local jails and state prisons). Recently medical staff at NYS correctional facilities have been advised MAT is available in penal facilities, its use will be expanding and that they should familiarize themselves with the various versions of MAT.¹ SAMHSA has recognized the importance of continuing individuals that are otherwise unable to attend their OTP on their OTP regimen. In 2015 SAMHSA advised OTPs that in order to "ensure that the

¹ See Memorandum from John Morley, MD, Deputy Commissioner/Chief Medical Officer at NYS Department of Corrections and Community Supervision (July 29, 2019)

patient's treatment is continued safely while also ensuring appropriate handling and delivery of medication to the patient a possible solution is to use a chain-of-custody record, which is a document containing the signatures of all people who have handled the medication. This record also should contain spaces for the patient to initial each day that the medication is administered, as well as spaces for the initials of the person who administered the medication. The patient and the medical professional administering the medication should contact the program immediately if the medication seems altered in any way." See Substance Abuse and Mental Health Services Administration. *Federal Guidelines for Opioid Treatment Programs*. HHS Publication No. (SMA) XX-XXXX. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015. Further, it is important to note that this NYS initiative is timely given the recent cases and settlements finding that denial of MAT to an incarcerated individual is a violation of such person's rights under the Americans with Disabilities Act.²

The process NYS has established for methadone administration at NYS correctional facilities involves a NYS Department of Corrections and Community Supervision (DOCCS) primary care medical provider completing a physical examination for an inmate as part of its MAT program. The DOCCS medical provider consults with an OTP and the physician at the OTP provides an order for methadone for a MAT eligible inmate. The DOCCS medical provider orders that DOCCS staff follow the medical regime for methadone ordered by the OTP physician. The methadone is transported by correctional facilities staff in locked boxes where the daily medication is placed for each inmate, such medication having been dispensed from the OTP dispensing machine in accordance with the physicians prescribed regimen. Upon arrival at the correctional facility the locked box is stored by medical staff and the daily doses of methadone are administered according to labeling and the prescribed regimen. The staff transporting the methadone do not have keys to access the medication in the locked box, the only staff having keys to the locked box are medical staff at the OTP and the correctional facility. Used medication receptacles are returned to the OTP. This routine generally occurs weekly.

The process NYS has established for ensuring inmates have access to MAT is in line with federal law and guidelines and state professional practice laws. All medication is prescribed by licensed practitioners according to a medical regimen and there is no opportunity for deviation from such regimen. Further, appropriate steps have been taken to ensure medication is not diverted or altered in any way through a chain of custody process.

Thus, it is the opinion of OASAS Counsel that the practices utilized by OTPs to provide methadone to both incarcerated individuals and those not incarcerated comply with the professional practice laws and regulations.

² See Smith v Aroostic County, No. 19-1340 (1st Cir. 2019); Pesce v Coppinger, Case 1:18-cv-11972-DJC Document 57 (USDC Mass 2018); Kortlever v. Whatcom County et. al, Case 2:18-cv-00823-JLR Document 35-1 Filed 04/29/19 settlement agreement at: <https://www.aclu-wa.org/docs/settlement-agreement-1>