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Compendium: Legal Changes That Supported Access to Behavioral Health Care in California During the COVID-19 Pandemic

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About the Authors

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About the Foundation

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This Legal Compendium is a companion to *How Legal Changes in Response to COVID-19 Can Improve Access to Community Behavioral Health* and summarizes federal and state legal changes made in response to the COVID-19 pandemic that affect the delivery of outpatient and residential behavioral health (BH) services in California.[1] The Compendium covers legal changes enacted between January 1 and July 17, 2020, including changes made through legislation, agency regulations, emergency waivers, or subregulatory guidance. Potentially relevant changes include:

Modifications to the scope of health coverage. These modifications may increase provider reimbursement, reduce patient cost sharing, or waive prior authorization requirements for particular services, such as services furnished via telehealth or services related to testing for COVID-19. Relevant payers include:

- California's Medicaid program, referred to as "Medi-Cal," which includes:
  - Fee-for-service (FFS) benefits administered by the California Department of Health Care Services (DHCS) and managed care benefits administered by Medicaid managed care plans (MCPs), most of which are regulated by the California Department of Managed Health Care (DMHC)
  - Specialty Mental Health Services (SMHS)
  - Substance use disorder (SUD) services provided under Drug Medi-Cal (DMC) or, for counties that have opted into the state's 1115 demonstration project, the Drug Medi-Cal Organized Delivery System (DMC-ODS)
- The federal Medicare program, including FFS benefits in Medicare Part A and B, the Part C managed care plans administered by Medicare Advantage Organizations (MAOs), and the prescription drug plans administered by Medicare Part D sponsors
- California's commercial health plans, which are regulated by the California Department of Insurance (CDI) and DMHC

Modified standards for health care licensure and service delivery. These rules may relate to, for example, the use of telehealth technology to deliver services or conduct state inspections, streamlined procedures for provider certification, relaxed restrictions on practitioner scope of practice and supervision, or waivers concerning Narcotic Treatment Programs (NTPs), which are referred to under federal law as Opioid Treatment Programs (OTPs).

The vast majority of these legal changes were implemented on a temporary basis. The duration for many of these changes is linked to either the federal Public Health Emergency (PHE)[2] declared by the US Department of Health and Human Services (HHS), effective January 27, 2020, or the State of Emergency[3] (PDF) declared by the California Governor on March 4, 2020.

Coverage for Telehealth Services

This section describes COVID-19-related changes in telehealth coverage under Medi-Cal, Medicare, and commercial health plans. In addition, telehealth-related materials appear in certain later sections:

- Waivers related to permissible telehealth platforms and inadvertent disclosures during telehealth communications are discussed in "Telehealth-Related Waivers" on page 9.
- Waivers related to consent requirements for telehealth services are discussed in "State Waivers of Consent and Signature Requirements" on page 13.
- Waivers concerning out-of-state licensure are discussed in "Out-of-State Licensure" on page 13.
- Controlled substances, including NTPs, are discussed in "Controlled Substances" on page 18.

Medi-Cal Coverage of Telehealth Services

General Medi-Cal Telehealth Coverage

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

DHCS has implemented the following changes, pursuant to a Disaster Relief State Plan Amendment (DR SPA):

- Enrolled Medi-Cal providers may furnish and bill for any covered Medi-Cal services provided via video telehealth, including to a patient located at home, as long as the treating health care practitioner believes that telehealth is clinically appropriate.
- Providers may furnish services via virtual or telephonic modalities other than video telehealth if all of the following apply:
  - The treating practitioner believes that the chosen modality is clinically appropriate.
  - The treating practitioner intends for the virtual/telephonic encounter to take the place of a face-to-face visit.
  - There are circumstances that prevent the visit from being conducted in person or via video telehealth, as documented in the patient's medical record.
- These flexibilities apply to:
  - Services in Medi-Cal managed care (physical health care), SMHS, and DMC/DMC-ODS (See "SUD Treatment…" on page 5 for additional detail on DMC/DMC-ODS.)
  - Licensed and unlicensed practitioners (including physicians, nurses, and BH practitioners), as long as they act within their scope of practice
  - Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs), and Tribal 638 Clinics (Normally, these providers may furnish telehealth only to "established" patients, and may not furnish telephone services.)
- DHCS will reimburse providers at the same rate for in-person and telehealth services, and will also apply this rate to virtual/telephonic services as long as the modality is clinically appropriate. This same parity policy applies to MCPs, effective March 18, 2020, unless an MCP and a provider have agreed to some other rate. (Note that MCPs also may be subject to the requirements for commercial insurers described in "Commercial Insurance Telehealth Coverage" on page 8.)

SOURCES

GENERAL MEDI-CAL TELEHEALTH COVERAGE

Medi-Cal Payment for Telehealth and Virtual /Telephonic Communications Relative to the 2019-Novel Coronavirus (COVID-19) (PDF), DHCS, June 23, 2020, revised January 5, 2021; *Behavioral Health Information Notice 20-009* (PDF), DHCS, updated May 20, 2020; Nathan Nau (chief, Managed Care Quality and Monitoring Div., DHCS) to all Medi-Cal managed care plans, all-plan letter 20-007 (revised), DHCS, April 13, 2020; *Disaster Relief State Plan Amendment 20-0024* (PDF), DHCS, May 13, 2020; Nathan Nau (chief, Managed Care Quality and Monitoring Div., DHCS) to all Medi-Cal managed care plans, all-plan letter 19-009 supplement (PDF), DHCS, March 18, 2020. **Appendix K:** Alissa Mooney DeBoy (Director, Disabled and Elderly Health Programs Group, Centers for Medicare & Medicaid Services [CMS]) to California State Medicaid Director, approval letter 1 (PDF), CMS, April 2, 2020; and approval letter 2 (PDF), CMS, May 27, 2020.

SUD Treatment (DMC/DMC-ODS)

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

Most services may be furnished via telehealth or telephone, using any originating and distant sites, as long as practitioners are acting within their scope of practice.

- DHCS has requested approval for Medi-Cal SPA 20-006 to add telehealth for DMC individual counseling on a permanent basis. It is anticipated that this SPA will be approved with retroactive effect to July 1, 2020.
- In DMC-ODS, telehealth is available even in counties that had not opted to provide telehealth services. After the PHE ends:
  - Telehealth will once again be optional, but DHCS recommends that counties opt to reimburse for telehealth services.
  - The only services that a DMC-ODS county may provide via telephone are those that are explicitly identified in the DMC-ODS terms and conditions.

Services that may be now provided by telehealth or telephone include:

- The initial clinical diagnostic assessment,[4] determination of medical necessity, and level of care
- Individual and group counseling services

Certain services, such as residential services, continue to require a clearly established site for services and in-person contact with the patient. Even so, certain components of these services can be provided via telehealth or telephone (e.g., counseling sessions provided to patients who are quarantined in their room at a residential facility).

Cost Sharing

As an exercise of enforcement discretion, the HHS Office of Inspector General (OIG) will permit health care providers to reduce or waive cost sharing for Medicaid telehealth visits during the federal PHE.

DMHC-regulated MCPs may not impose cost sharing on telehealth services that is any greater than the cost sharing for the equivalent in-person services during the California State of Emergency.

Local Educational Agency Medi-Cal Billing Option Program

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

Local Educational Agency (LEA) providers must provide covered direct medical services to Medi-Cal-enrolled students via telehealth whenever possible. They may bill for telehealth services under the LEA Billing Option Program, except for services such as specialized medical transportation that preclude a telehealth modality. LEAs may utilize any appropriate non-public-facing remote communication products available in their delivery of billable telehealth services during this period.

DHCS will reimburse telehealth services in the same manner and at the same rate as for face-to-face services. Consistent with current policy for LEA Billing

SOURCES

SUD TREATMENT (DMC/DMC-ODS)

Behavioral Health Information Notice 20-009 (PDF), DHCS, updated May 20, 2020; *Disaster Relief State Plan Amendment 20-009* (PDF), DHCS, May 13, 2020; and *FAQs: Provision of Methadone and Buprenorphine for the Treatment of Opioid Use Disorder in the COVID-19 Emergency* (PDF), Substance Abuse and Mental Health Services Administration (SAMHSA), April 21, 2020.

COST SHARING

HHS OIG Policy Statement Fact Sheet (PDF), US Department of Health and Human Services Office of Inspector General, March 2020; and Sarah Ream (acting general counsel, DMHC) to all health care service plans, all-plan letter 20-009 (PDF), DMHC, March 18, 2020.

LOCAL EDUCATIONAL AGENCY MEDI-CAL BILLING OPTION PROGRAM

Rick Record (chief, Local Educational Agency Medi-Cal Billing Option Program) to Local Educational Agencies, policy and procedure letter (PPL) No. 20-014R (PDF), September 15, 2020 (updated from May 11, 2020).

Option Program telehealth speech services, DHCS will not pay for ancillary costs, such as technical support, transmission charges, and equipment.

Medicare Coverage of Telehealth Services

ALL FLEXIBILITIES RELATE TO FEDERAL AUTHORITIES AND EXPIRE AT THE END OF THE FEDERAL PHE.

Coverage Extension via 1135 Waivers (Medicare FFS)

Section 1135 of the Social Security Act authorizes HHS and the Centers for Medicare & Medicaid Services (CMS) to temporarily waive certain federal health care requirements during federally declared emergencies. The Coronavirus Preparedness and Response Supplemental Appropriations Act, Public Law 116-123 (enacted March 6, 2020), substantially broadened CMS's authority to expand Medicare FFS telehealth coverage using 1135 waivers.

Pursuant to CMS's 1135 nationwide "blanket" waivers, the following flexibilities apply to Medicare FFS for dates of service starting March 6, 2020:

- Medicare will cover telehealth-furnished visits for a wide range of outpatient and inpatient services (see below), which may be provided to beneficiaries in all areas of the country and in all settings. Both the patient and the provider may be located at home. (Normally, Medicare will cover telehealth only in rural areas or health professional shortage areas, and only if the patient is located in a clinical setting.)
- These visits are reimbursed at the same rate as the equivalent in-person service.

These flexibilities apply to a range of providers, such as doctors, nurse practitioners (NPs), physician assistants (PAs), clinical psychologists, and licensed clinical social workers (LCSWs).

Although Medicare normally permits telehealth services only for patients who have an existing relationship with the practitioner, HHS will permit telehealth visits for new patients during the PHE. (Note: A similar flexibility was granted with respect to "virtual check-in" and "e-visit" services under CMS's interim final rules (IFRs), as noted below in "FFS Coverage Extension via Interim Final Rules.")

Practitioners may render telehealth services from their home without updating their Medicare enrollment to report their home address.

FFS Coverage Extension via Interim Final Rules (Medicare FFS)

For the duration of the PHE, CMS may amend the list of covered telehealth services by issuing guidance rather than proceeding through the formal rulemaking process. CMS has temporarily extended Medicare telehealth coverage to dozens of additional services, including:

- Care planning for patients with cognitive impairment
- Group psychotherapy
- Psychological and neuropsychological testing
- LCSW services
- Clinical psychologist services
- Emergency department visits
- Home visits

SOURCES

COVERAGE EXTENSION VIA 1135 WAIVERS (MEDICARE FFS)

"Medicare Telemedicine Health Care Provider Fact Sheet," CMS, March 17, 2020; and *COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS 1135 Blanket Waivers)* (PDF), CMS, updated December 1, 2020.

FFS COVERAGE EXTENSION VIA INTERIM FINAL RULES (MEDICARE FFS)

"Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency," CMS, 85 FR 19230, March 31, 2020; and "Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency," CMS, 85 FR 27550, May 8, 2020.

"Virtual check-in" and "e-visit" services (i.e., services that do not rise to the level of a full telehealth visit) may be provided to both new and established patients.

- These services had previously been limited to established patients only. (Note: A similar flexibility was granted with respect to telehealth services as a matter of HHS enforcement discretion, as noted above, under "1135 Waivers.")
- The annual consent for virtual check-ins may be obtained during the check-in itself.

Medicare will now cover several codes for telephonic services. CMS increased the rates for such calls.

Where Medicare requires that a service be "directly supervised" by a physician or advanced practice clinician, this supervision requirement can be met using telehealth technology.

Narcotic treatment programs

- Practitioners may use video telehealth or the telephone for the therapy and counseling portions of the weekly NTP bundles and the add-on code for additional counseling or therapy.
- The periodic patient assessments may be conducted by video telehealth, or by telephone if the beneficiary lacks access to video telehealth technology.

Supervision of medical residents

- For most Medicare-covered services (including psychiatric services), teaching physicians may supervise medical residents using interactive video telehealth. In-person supervision remains mandatory for surgeries and other high-risk services.
- The "primary care exception" allows medical residents to furnish certain low- and mid-level evaluation and management services in a primary care setting as long as certain requirements are met. Notably, a teaching physician must be "immediately available" during the encounter and must review all services furnished either during or after the encounter. CMS has broadened the primary care exception to cover additional evaluation and management codes as well as other services. In addition, the teaching physician may use telehealth to satisfy the "immediate availability" and service review requirements. Other "primary care exception" requirements continue to apply.

Cost Sharing

As an exercise of enforcement discretion, HHS OIG will permit health care providers to reduce or waive cost sharing for Medicare telehealth visits during the federal PHE.

Medicare Advantage

During the PHE, MAOs may:

- Expand coverage of telehealth services beyond those services approved by CMS in the plan's benefit package, including by covering Medicare Part B services furnished via telehealth in any geographic area and from locations including a beneficiary's home
- Waive or reduce enrollee cost sharing for telehealth services

SOURCES

COST SHARING

HHS OIG Policy Statement on Practitioners That Reduce, Waive Amounts Owed by Beneficiaries for Telehealth Services During the COVID-19 Outbreak (PDF), HHS OIG, March 2020.

MEDICARE ADVANTAGE

Information Related to Coronavirus Disease 2019 — COVID 19 (Medicare Advantage and Part D Guidance) (PDF), CMS, updated April 21, 2020.

FQHCs and RHCs

Section 3704 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136 (enacted March 27, 2020), authorizes FQHCs and RHCs to provide distant-site telehealth services to Medicare beneficiaries during the PHE. Medicare pays a flat fee of $92 for distant-site telehealth services.

Services may be provided by any practitioner working for the FQHC or RHC, subject to scope of practice limitations. The provider need not be physically located in the clinic while furnishing telehealth services.

CMS will pay for all reasonable costs for any service related to COVID-19 testing, including services provided via telehealth. FQHCs and RHCs must waive cost sharing for testing-related services.

Covered virtual communication services now include online digital evaluation and management services (i.e., non-face-to-face, patient-initiated, digital communications using a secure patient portal).

Commercial Insurance Telehealth Coverage

ALL FLEXIBILITIES RELATE TO STATE AUTHORITIES AND EXPIRE AT THE END OF THE CALIFORNIA STATE OF EMERGENCY.

CDI-Regulated Health Insurance Companies

Insurers must:

- Allow all network providers to use all available and appropriate modes of telehealth delivery, including, but not limited to, synchronous video and telephone-based service delivery
- Reimburse telehealth services at the same rate as an equivalent in-person visit
- Eliminate barriers to providing medically and clinically appropriate care using appropriate telehealth delivery models by:
  - Waiving any requirement that certain services be available only to established patients
  - Enabling providers and patients to be located at home during telehealth encounters
  - Allowing patients to consent verbally to receive online, video, or telephone services, as long as cost sharing is clearly disclosed
  - Waiving requirements related to encryption, consistent with the federal data security waivers described below under "Federal Enforcement Discretion Regarding HIPAA Security Rules."
- Use telehealth service delivery methods to enable consumers to have access to BH services and family therapy, including services to treat autism.

SOURCES

FQHCS AND RHCS

COVID-19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing (PDF), CMS, updated January 7, 2021; and "New and Expanded Flexibilities for RHCs and FQHCs During the COVID-19 PHE" (PDF), MLN Matters, No. SE20016, December 3, 2020.

CDI-REGULATED HEALTH INSURANCE COMPANIES

"Telehealth During COVID-19 State of Emergency" (PDF), CDI, press release, March 30, 2020.

DMHC-Regulated Managed Care Plans

EFFECTIVE MARCH 18, 2020

DMHC-regulated health plans may not:

- Reimburse services at different rates based on the modality (in-person, video telehealth, or telephone). Reimbursement must be the same across modalities for a given service, as determined by the provider's description of the service on the claim.
- Limit or exclude coverage based on the modality, if an enrollee's provider determines that a service can be effectively delivered via the selected modality (DMHC lists the example of Applied Behavioral Analysis services.)
- Deny coverage for telehealth services solely because the service was delivered outside the provider's usual place of business, as long as the provider can effectively deliver services via telehealth from another location (e.g., the provider's home), while also maintaining the patient's privacy
- Impose differential cost sharing on telehealth versus in-person services
- Require providers to use particular telehealth platforms or modalities
- Impose telehealth-specific provider credentialing or approval requirements
- Require enrollees to use the plan's preferred telehealth vendor or to switch providers before receiving telehealth services

Data Privacy and Security

This section describes COVID-19-related changes in standards for health care data privacy and security under federal and California law, including:

- Waivers related to telehealth technology and communications
- Revisions to the "Part 2" rules that govern SUD-related information held by certain types of providers
- Federal waivers that facilitate public health activities
- State waivers of certain consent and signature requirements

Telehealth-Related Waivers

Federal Enforcement Discretion Regarding HIPAA Security Rules

EFFECTIVE MARCH 17, 2020, UNTIL FURTHER NOTICE

During the federal PHE, the HHS Office of Civil Rights (OCR) will exercise enforcement discretion with respect to telehealth-related breaches of the Health Insurance Portability and Accountability Act (HIPAA) rules on privacy, security, and breach notification: OCR "will not impose penalties" against covered health care providers that violate HIPAA rules "in connection with the good faith provision of telehealth" services.

In particular, providers may use "any non-public facing remote communication product that is available to communicate with patients," including "popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype."

SOURCES

DMHC-REGULATED MANAGED CARE PLANS

Sarah Ream (acting general counsel, DMHC) to all health care service plans, all-plan letter 20-009 (PDF), DMHC, March 18, 2020; and Sarah Ream (acting general counsel, DMHC) to all commercial health care service plans, all-plan letter 20-013 (PDF), DMHC, April 7, 2020.

HHS OCR TELEHEALTH

"Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 PHE," HHS OCR, last updated March 30, 2020; and *FAQs on Telehealth and HIPAA During COVID-19 National Public Health Emergency* (PDF), HHS OCR, March 20, 2020.

State Waivers Regarding Telehealth Confidentiality and Data Security

EFFECTIVE APRIL 3, 2020, FOR THE DURATION OF THE CALIFORNIA STATE OF EMERGENCY

The Governor has:

- Suspended the requirement for health care providers to obtain and document verbal or written consent before providing services via telehealth
- Suspended administrative, civil, and criminal penalties (including private causes of action and professional discipline) arising from either of the following:
  - An inadvertent unauthorized access or disclosure of health information during the good faith provision of telehealth services, including through the use of telehealth technology "that does not fully comply with federal or state law"[5]
  - Failure to timely notify patients of such a breach
- Extended deadlines for notifying the California Department of Public Health (CDPH) and patients of an unauthorized access or disclosure of health information

Federal Part 2 Rules on SUD Information

ALL FLEXIBILITIES RELATE TO THE FEDERAL "PART 2" CONFIDENTIALITY STANDARDS THAT GOVERN FEDERALLY ASSISTED SUD PROGRAMS (42 U.S.C. 290DD–2 AND 42 C.F.R. PART 2).

ALL CHANGES DESCRIBED IN THIS SECTION ARE PERMANENT, AS OF THE SPECIFIED EFFECTIVE DATES.

Substance Abuse and Mental Health Services Administration (SAMHSA) Guidance

Under existing rules, SUD information may be disclosed "to medical personnel, without patient consent, to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained." Medical personnel who receive SUD information pursuant to this exception may re-disclose the information "for treatment purposes as needed."

Recent guidance from SAMHSA emphasizes that:

- "Providers make their own determinations whether a bona fide medical emergency exists for purposes of providing needed treatment to patients."
- This exception to the consent requirement is potentially applicable with respect to telehealth and telephonic services.

SOURCES

STATE WAIVERS REGARDING TELEHEALTH CONFIDENTIALITY AND DATA SECURITY

Executive Order No. 43-20 (PDF), State of California, April 3, 2020.

SAMHSA GUIDANCE

COVID-19 Public Health Emergency Response and 42 CFR Part 2 Guidance (PDF), SAMHSA, March 19, 2020.

Revised "Part 2" Rules

EFFECTIVE AUGUST 14, 2020

SAMHSA finalized the following regulatory revisions and clarifications, originally proposed in August 2019:

- Treatment records created by non-Part 2 program are excluded from Part 2 as long as they do not incorporate information received from a Part 2 program. Patient records may be segmented to keep Part 2-related information separate.
- If a Part 2 program employee receives a patient communication on a personal device that the employee "does not use in the regular course of employment" in the Part 2 program, the employee may "sanitize" the device by deleting the message.
- SUD patients may consent to disclosure of their Part 2 treatment records to an entity (such as the Social Security Administration) without naming a specific individual recipient.
- SAMHSA clarified the types of disclosures that are permitted with written consent for the purpose of "payment and health care operations." The revised rule provides an illustrative list of 18 qualifying activities, including certain care coordination and case management activities, and also removes the prohibition on disclosure to "contractors, subcontractors, and legal representatives."
- Non-NTP and non-central-registry treating providers are now eligible to query a central registry, in order to determine whether their patients are already receiving opioid treatment through a member program.
- NTPs are permitted to enroll and participate in a state prescription drug monitoring program consistent with state law, including with respect to controlled substances listed on Schedules II to V.
- If a natural disaster (1) results in a federal- or state-declared emergency and (2) disrupts treatment facilities and services, the disaster qualifies as a "bona fide medical emergency," such that SUD records may be disclosed without patient consent.
- Disclosures of Part 2 data for research purposes are permitted by a HIPAA-covered entity or business associate to individuals and organizations who are neither covered entities nor subject to the "Common Rule" (which governs federally funded research on human subjects).
- The rule clarifies the scope of permissible disclosures related to audits and program evaluation activities.
- The period for court-ordered placement of an undercover agent or informant within a Part 2 program is extended to 12 months, which may be further extended through a new court order.

CARES Act Changes

EFFECTIVE NO SOONER THAN MARCH 27, 2021

Section 3221 of the CARES Act directs HHS to revise the Part 2 rules to make the following changes:

- Once a patient has provided written consent for disclosure of SUD records, those records may be used or disclosed by any HIPAA-covered entity, business associate, or SUD program for purposes of treatment, payment, or health care operations, as permitted under HIPAA for non-SUD protected health information. (Even after the July 15, 2020 revisions, current rules continue to require a new written consent for many types of "re-disclosure" by the original recipient of a Part 2 record.)
- Part 2 providers may disclose de-identified SUD information to public health agencies without

SOURCES

REVISED "PART 2" RULES

"Confidentiality of Substance Use Disorder Patient Records (Final Rule)," HHS, 85 FR 42986, July 15, 2020.

CARES ACT CHANGES

"H.R.748, CARES Act," Pub. Law 116-136 § 3221 (March 27, 2020).

the need for individual consent. (This is arguably permitted under existing law, but the CARES Act removes any doubt.)

- Any entity that receives Part 2 SUD records is prohibited from discriminating based on SUD status with respect to the provision of health care, employment, worker's compensation, housing, access to the courts, or publicly funded benefits.
- The CARES Act aligns Part 2 with existing enforcement mechanisms for HIPAA, including requirements for self-disclosure of breaches, as well as new authority for HHS to impose civil penalties on violators.

Federal Public Health Waivers

Public Health and Oversight Activities

EFFECTIVE APRIL 7, 2020, FOR THE DURATION OF THE FEDERAL PHE

HHS OCR will not impose penalties for violations of the HIPAA privacy rules by covered health care providers or their business associates with respect to a business associate's use or disclosure of protected health information for purposes related to public health and health oversight.[6]

This enforcement discretion applies only if:

- The business associate makes a good faith use or disclosure for public health or health oversight activities, as described in 45 C.F.R. § 164.512; and
- The business associate informs the covered entity within 10 calendar days of the use or disclosure.

Community-Based Testing Sites

EFFECTIVE MARCH 13, 2020, FOR THE DURATION OF THE FEDERAL PHE

HHS OCR will not impose penalties for HIPAA violations by covered health care providers or their business associates in connection with the good-faith participation in the operation of a COVID-19 community-based testing site, such as a mobile, drive-through, or walk-up site that provides COVID-19 specimen collection or testing services to the public.

This waiver applies to the HIPAA privacy, security, and breach notification rules.

OCR encourages covered entities and business associates to implement reasonable safeguards to protect privacy, as described in the notice.

Contacting Former COVID-19 Patients About Blood and Plasma Donation

HHS OCR clarified that, under existing HIPAA rules, a covered health care provider may, without individual consent, use protected health information to identify patients who have recovered from COVID-19 in order to provide them with information about how they can donate their blood and plasma, which contain SARS-CoV-2 antibodies.

This flexibility applies only if the covered entity itself contacts patients and receives no payment (direct or indirect) from the blood/plasma donation center.

SOURCES

PUBLIC HEALTH AND OVERSIGHT ACTIVITIES

"Enforcement Discretion Under HIPAA to Allow Uses and Disclosures of Protected Health Information by Business Associates for Public Health and Health Oversight Activities," HHS, 85 FR 19392, April 7, 2020.

COMMUNITY-BASED TESTING SITES

"Enforcement Discretion Regarding COVID-19 Community-Based Testing Sites (CBTS) During the COVID-19 Nationwide Public Health Emergency," HHS, 85 FR 29637, May 18, 2020.

CONTACTING FORMER COVID 19 PATIENTS ABOUT BLOOD AND PLASMA DONATION

Updated Guidance on HIPAA and Contacting Former COVID-19 Patients About Plasma Donation (PDF), HHS OCR, August 2020.

State Waivers of Consent and Signature Requirements

Through Executive Orders, the Governor has suspended the following requirements:

- The requirement for health care providers to obtain and document verbal or written consent before providing services via telehealth, effective April 3, 2020
- The requirement that physical signatures and printed names be collected in connection with delivery of certain Medi-Cal covered drugs, effective April 22, 2020
- The requirement for a patient's physical signature in connection with dispensing certain psychiatric medications, effective April 22, 2020

Professional Licensing and Certification

This section describes COVID-19-related changes to the standards for health care practitioner licensure and certification, scope of practice, and supervision. Many of these changes arise under the authority of the California Department of Consumer Affairs (DCA), which oversees practitioner licensure. Relevant changes include:

- Waivers that permit practice in California by practitioners holding out-of-state licenses
- Relaxed supervision requirements for advanced practice clinicians, such as NPs and PAs
- Modified standards and procedures for initial licensure and certification, as well as renewals
- Legal changes regarding health care student trainee education and supervision

In addition, "Pharmacist Authority to Order and Administer COVID-19 Tests" on page 28 discusses temporary legal changes that allow pharmacists to order and administer COVID-19 tests.

Out-of-State Licensure

1135 Waivers for Medicare and Medicaid

During the federal PHE, CMS has waived the federal requirement that Medicare and Medicaid services be delivered by a practitioner with in-state licensure. (These waivers do not modify state licensure requirements, which are governed by state law.)

California's Temporary Recognition of Out-of-State Personnel

Requests for temporary approval of out-of-state medical personal may be submitted to the Emergency Medical Services (EMS) Authority by any of the following:

- A California medical facility (hospital, facility, doctor's office, alternate care site or health care business currently approved or located in California to provide medical care or medical advice)
- A telehealth agency contracted with a California medical facility

SOURCES

CALIFORNIA EXECUTIVE ORDERS

Executive Order No. 43-20 (PDF), State of California, April 3, 2020; and *Executive Order No.55-20* (PDF), State of California, April 22, 2020.

1135 WAIVERS FOR MEDICARE AND MEDICAID

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS 1135 Blanket Waivers) (PDF), CMS, updated December 1, 2020; and "Section 1135 Waiver Flexibilities — California Coronavirus Disease 2019," CMS, March 23, 2020.

CALIFORNIA'S TEMPORARY RECOGNITION OF OUT-OF-STATE PERSONNEL

Policy to Implement the Emergency Proclamation of the Governor on Authorization of Out-of-State Medical Personnel (PDF), EMS Authority, March 24, 2020; and *Proclamation of a State of Emergency* (PDF), Executive Department of the State of California, March 4, 2020.

- A staffing agency providing staffing to California medical facilities

EMS Authority approval for out-of-state personnel lasts until the end of the State of Emergency unless an earlier end date is specified on the temporary recognition form.

Supervision of Advanced Practice Clinicians

DCA Waivers

DCA has issued the following waivers for renewable 60-day periods:

- Physicians may supervise any number of NPs, PAs, or certified nurse-midwives (CNWs). (Normally, a physician is limited to supervising four clinicians in each of these licensure classes.)
- A PA may practice under the supervision of a physician who has not executed a practice agreement or "delegation of services" agreement if, due to COVID-19, there is no physician available on-site who has executed such an agreement with the PA.

1135 Waivers Regarding FQHCs and RHCs

During the federal PHE, CMS has waived the following federal requirements:

- The requirement that an NP, PA, or CNW must be available to furnish patient care at least 50% of the time that the FQHC/RHC operates. FQHCs and RHCs must, however, continue to ensure that one or more of the following practitioners is available for patient care during all hours of operation: a physician, NP, PA, CNW, LCSW, or clinical psychologist.
- The requirement that physicians provide medical direction for, and supervision of, NPs. State scope of practice laws continue to apply. Physicians remain responsible for direction and supervision of other staff members, whether in-person or via telehealth.

Scope of Practice for Medicare Diagnostic Testing

For the duration of the federal PHE, certain diagnostic tests may be ordered, furnished, and supervised by an NP, clinical nurse specialist, PA, or CNW, consistent with state law. (Normally, Medicare rules require that these tests be supervised by a physician.) This flexibility applies to the following tests:

- Diagnostic tests that are covered under Social Security Act Section 1861(s)(3) and payable under the Medicare Physician Fee Schedule
- COVID-19-related diagnostic psychological and neuropsychological testing services

SOURCES

DCA WAIVERS

"DCA Waivers and Guidance Documents," California DCA, n.d.; and *Executive Order No. 39-20* (PDF), State of California, March 30, 2020.

1135 WAIVERS REGARDING FQHCS AND RHCS

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS 1135 Blanket Waivers) (PDF), CMS, updated December 1, 2020.

SCOPE OF PRACTICE FOR MEDICARE DIAGNOSTIC TESTING

"Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency," CMS, 85 FR 27550, May 8, 2020.

Standards and Procedures for Licensure and Certification

DCA Waivers

DCA has temporarily suspended:

- Renewal requirements for licenses that are scheduled to expire during designated date ranges
- Examination and continuing education requirements for current health care licensees, and also in connection with reinstatement requirements for inactive, retired, or canceled health care licenses

DCA has issued waivers for renewable 60-day periods that extend the time for:

- Trainees to take their licensure exams, including with respect to physicians, nurses, associate marriage family therapists, associate professional clinical counselors, and associate LCSWs
- Medical school graduates to obtain a postgraduate training license

New "Social Worker" Classification

CHANGES ARE PERMANENT, EFFECTIVE APRIL 1, 2020

Regulatory revisions have created a new "social worker" classification for individuals who are not licensed as LCSWs, but who satisfy certain requirements for education and experience. This new social worker classification applies only to the following provider types: adult day health centers, home health agencies, intermediate care facilities (including intermediate care facilities/developmentally disabled), and referral agencies.

Alcohol and Other Drug (AOD) Counselors

DHCS has suspended the requirement to complete AOD registration for the duration of the California State of Emergency, and will extend registrants' completion date by the same number of months that the requirement was suspended. (AOD counselors must be certified within five years of their date of registration.)

Health Care Student Trainees

DCA has issued the following waivers for renewable 60-day periods:

- Permitting telehealth-based supervision of psychology trainees, associate marriage family therapists, associate professional clinical counselors, and associate LCSWs (Normally, in-person supervision is required for psychology trainees, and for any associate not working in certain exempt settings.)
- Suspending various requirements related to nursing preceptorships and nursing student clinical training, including with respect to courses in mental health and psychiatric nursing
- Waiving the requirement that marriage family therapists, professional clinical counselors, and LCSWs perform face-to-face mental health services as part of their training

SOURCES

DCA WAIVERS / HEALTH CARE STUDENT TRAINEES

"DCA Waivers and Guidance Documents," California DCA, n.d.; and *Executive Order No. 39-20* (PDF), State of California, March 30, 2020.

NEW "SOCIAL WORKER" CLASSIFICATION

Heidi W. Steinecker (deputy director, Center for Health Care Quality) to all ADHCs, HHAs, ICFs, ICF/IDDs, and referral agencies, all-facility letter 20-29, CDPH, March 26, 2020.

AOD COUNSELORS

Executive Order No. 55-20 (PDF), State of California, April 22, 2020.

Prescription Ordering and Dispensing

This section describes COVID-19-related changes with respect to ordering and dispensing prescription drugs. Relevant changes include:

- Relaxed prior authorization procedures and dispensing limits for prescription drugs under Medicare and Medi-Cal
- Reduced federal restrictions around controlled substances, including with respect to NTPs

Prior Authorization and Dispensing Limits

Medi-Cal FFS

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

DHCS will:

- Allow providers to dispense up to a 100-day supply at one time of all covered outpatient drugs (Medi-Cal limitations on opioid-containing medications still apply, except that DHCS has suspended the 30-day supply limit on medications approved by the Food and Drug Administration [FDA] for SUD treatment, including buprenorphine-containing products.)
- Waive the limitation of six prescriptions per calendar month for all covered outpatient drugs

Prior authorization

- Effective March 1, 2020, all existing medication authorizations are extended by automatic renewal without clinical review or time/quantity extensions for the duration of the federal PHE.
- Under existing law, utilization limits on quantity, frequency, and duration of medications dispensed to Medi-Cal beneficiaries may be waived if there is a documented medical necessity to do so, by means of an approved Treatment Authorization Request/Service Authorization Request (TAR/SAR). COVID-19-related waivers should include the phrase "Patient impacted by COVID-19" under Miscellaneous Information.
- Under existing law, pharmacy providers must dispense at least a 72-hour supply of prescribed medications in an emergency and may provide the emergency supply without an approved TAR/SAR. In COVID-19-related cases, the general emergency statement should include the phrase "Patient impacted by COVID-19" in the Emergency Certification Statement.

Medi-Cal already permits dispensing of prescription drugs by mail-order pharmacy providers. Effective April 24, 2020, and for the duration of the California State of Emergency, DHCS has waived the requirement for a signature upon delivery of a drug or device, and will allow any form of delivery service tracking or electronically documented proof of delivery to serve as proof of receipt. In addition, deliveries may be left at the door if attempts to communicate with the recipient fail.

With respect to subcutaneous depot medroxyprogesterone acetate (DMPA-SQ), an injectable contraceptive, DHCS will allow dispensing directly to the beneficiary for self-administration at home. The prescribing provider is responsible for educating the beneficiary about self-administration, sharps disposal, etc. This policy is effective April 9, 2020, until further notice.

SOURCES

MEDI-CAL FFS

Disaster Relief State Plan Amendment 20-0024 (PDF), DHCS, May 13, 2020; and *Executive Order No. 55-20* (PDF), State of California, April 22, 2020. **DHCS Guidance:** *Fee-for-Service Pharmacy Benefit Reminders and Clarifications* (PDF), DHCS, updated May 13, 2020; *Waiver of Requirement for Patient Signature On-File for Mailed or Delivered Prescriptions* (PDF), DHCS, April 24, 2020; and *Information Regarding the Use of Subcutaneous Depot Medroxyprogresterone Acetate During the Novel Coronavirus PHE* (PDF), DCHS, April 9, 2020. **Cal. 1135 Waivers:** "Section 1135 Waiver Flexibilities — California Coronavirus Disease 2019," CMS, March 23, 2020.; and "Section 1135 Waiver Flexibilities — California Coronavirus Disease 2019 (First and Third Request)," DHCS, May 8, 2020.

Medi-Cal Managed Care

EFFECTIVE APRIL 24, 2020, FOR THE DURATION OF THE CALIFORNIA STATE OF EMERGENCY

MCPs must:

- Cover generic and brand maintenance medications at a minimum 90-day supply (Medi-Cal limitations on opioid-containing medications still apply, except that DHCS has suspended the 30-day supply limit on medications approved by FDA for SUD treatment, including buprenorphine-containing products.)
- Cover or waive any prescription delivery costs so that members may receive free prescription delivery
- Approve out-of-network overrides for members who may be temporarily outside the MCP's service area due to COVID-19 concerns
- Adjust refill-too-soon edits for maintenance medications so that early refills are permissible, at the latest, when 75% of prior prescription has been used (This policy change does not apply to medications for which specific quantity/frequency limitations are required by law.)
- Ensure 24-hour call center support for pharmacies, providers, and members
- In the event of a shortage for any given drug, waive any prior authorization or step therapy requirements if a member's prescribing provider recommends an alternative drug

DHCS has waived the requirement for a signature upon delivery of a drug or device and will allow any form of delivery service tracking or electronically documented proof of delivery to serve as proof of receipt. In addition, deliveries may be left at the door if attempts to communicate with the recipient fail.

With respect to subcutaneous DMPA-SQ, an injectable contraceptive, MCPs must allow dispensing directly to the beneficiary for self-administration at home. The prescribing provider is responsible for educating the beneficiary about self-administration, sharps disposal, etc. This policy is effective April 9, 2020, until further notice.

Medicare Part D

EFFECTIVE MARCH 27, 2020, FOR THE DURATION OF THE FEDERAL PHE

As an exercise of enforcement discretion, CMS will permit Part D sponsors to take the following actions:

- Waive or relax prior authorization requirements for any formulary drugs
- Waive medication delivery documentation and signature log requirements
- Suspend plan-coordinated pharmacy audits

In accordance with the CARES Act, Part D sponsors must:

- Permit members to obtain the total amount prescribed for a covered drug in one fill/refill, up to a 90-day supply, if:
  - Requested by the enrollee;
  - Prior authorization or step therapy requirements have been satisfied; and
  - No safety edits otherwise limit the quantity dispensed.

SOURCES

MEDI-CAL MANAGED CARE

May Saeturn (section chief, Contract Management and Administration Medi-Cal Dental Services Division, DHCS) to all Medi-Cal dental managed care plans, all-plan letter 20-004 (PDF), DHCS, revised December 23, 2020; *Waiver of Requirement for Patient Signature On-File for Mailed or Delivered Prescriptions* (PDF), DHCS, April 24, 2020; and *Executive Order No. 55-20* (PDF), State of California, April 22, 2020.

MEDICARE PART D

Information Related to Coronavirus Disease 2019 — COVID 19 (Medicare Advantage and Part D Guidance) (PDF), CMS, updated April 21, 2020; and CARES Act, Pub. Law 116-136 § 3714 (March 27, 2020).

- Relax their "refill-too-soon" edits. Safety edits continue to apply, but Part D sponsors otherwise have operational discretion as to how these edits are relaxed as long as access to Part D drugs is provided at the point of sale.

In light of the emergency situation that may make it difficult for plan members to travel to a retail pharmacy, CMS encourages Part D sponsors to exercise their flexibility under existing law to relax any plan-imposed policies that may discourage certain methods of delivery, such as mail or home delivery.

Controlled Substances

Narcotic Treatment Programs (NTPs)

During the federal PHE, the US Drug Enforcement Administration (DEA) and SAMHSA have issued waivers to allow the following:

- Practitioners may prescribe buprenorphine to new and existing patients based on telehealth and/or telephonic encounters, if deemed clinically acceptable by the treating practitioner.
- With respect to methadone, the initial physical must be conducted in person, but follow-up physicals may be conducted via telehealth. For a Medi-Cal beneficiary, if a physical exam cannot be secured within 30 days, it is acceptable to list the physical exam as a goal in the treatment plan.
- Medications may be delivered to a patient's home by an authorized NTP staff member, law enforcement officer, or National Guard personnel.
- Providers may seek approval from DHCS for waivers that allow:
  - Take-home doses up to a 28-day supply to stable patients, and up to a 14-day supply to those who are less stable but still able to safely handle take-home doses, as determined by the NTP
  - The establishment of an unregistered off-site location to deliver take-home doses of methadone, subject to meeting certain requirements
  - Exceptions to certain urinalysis requirements
  - Exceptions to certain counseling requirements

Other Controlled Substances

EFFECTIVE MARCH 16, 2020, FOR THE DURATION OF THE FEDERAL PHE

DEA-registered practitioners may issue prescriptions for all controlled substances on Schedules II to V to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice
- The practitioner communicates with the patient using video telehealth
- The practitioner acts in accordance with all applicable federal and state laws

If these requirements are met, the practitioner may issue the prescription using any of the methods currently available under DEA regulations, including:

- Electronic prescribing for Schedules II to V

SOURCES

NTPs

Opioid Treatment Program (OTP) Guidance (PDF), SAMHSA, March 16, 2020; "COVID-19 Information Page," Drug Enforcement Administration, Diversion Control Division, updated April 13, 2020; *Behavioral Health Information Notice 20-009* (PDF), DHCS, updated May 20, 2020; *COVID-19 Frequently Asked Questions: Narcotic Treatment Programs (NTPs)* (PDF), DHCS, April 23, 2020; and "Rural Health Care and Medicaid Telehealth Flexibilities," *CMCS Informational Bulletin* (PDF), April 2, 2020.

OTHER CONTROLLED SUBSTANCES

"Telemedicine Policy," "COVID-19 Information Page," DEA, Diversion Control Division, March 31, 2020; and *21 U.S.C. § 802(54)(d)* (PDF).

- Calling in a prescription to the pharmacy for a medication on Schedule III to V
- Calling in an emergency Schedule II prescription to the pharmacy

Other Behavioral Health Services

This section describes COVID-19-related changes specific to BH services, beyond those related to telehealth (which are discussed above in the first section) or prescription drugs and NTPs (discussed in the previous section). Relevant changes include:

- Enhancements to Medi-Cal coverage and reimbursement of BH services
- Flexibilities that apply automatically, or upon request, to specific BH provider types, including various residential and outpatient programs for mental health and SUD, as well as primary care clinics (PCCs), FQHCs, and RHCs
- Flexibilities for California counties as they administer and fund BH services

Medi-Cal Coverage and Reimbursement

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

Drug Medi-Cal

DHCS modified the DMC rehabilitative services benefit so that individual counseling visits may focus on short-term personal, family, job/school or other problems, and their relationship to substance use. (Normally, individual counseling visits are limited to the purposes of intake, crisis intervention, collateral services, and treatment and discharge planning.)

The following reimbursement changes apply to DMC services other than NTP:

- DHCS will provide interim reimbursement equal to the lower of:
  - The county's billed amount, or
  - The Statewide Maximum Allowance (SMA) increased by 100%.
- In the State Plan settlement process, DHCS will settle these payments to allowable cost, and thereby waive the limitations of usual and customary charge or SMA.

Specialty Mental Health Services

DHCS will provide interim reimbursement to county-owned and -operated SMHS providers based on the established interim rates for the current year increased by 100%; and

At cost settlement, DHCS will settle interim payments to allowable cost for the following types of providers (in lieu of the standard settlement process to the lower of allowable cost or usual and customary charges):

- Private organizational providers
- Private and state-owned and -operated hospital-based outpatient providers

Rehabilitative Services

DHCS will allow rehabilitative services to be provided in alternative locations, including crisis stabilization services, crisis residential treatment services, adult residential treatment services, day treatment intensive

SOURCES

DRUG MEDI-CAL

Disaster Relief State Plan Amendment 20-0024 (PDF), DHCS, May 13, 2020; and *Behavioral Health Information Notice No. 20-023* (PDF), DHCS, May 29, 2020.

SPECIALTY MENTAL HEALTH SERVICES

Disaster Relief State Plan Amendment 20-0024 (PDF), DHCS, May 13, 2020; and *Behavioral Health Information Notice No. 20-031* (PDF), DHCS, June 11, 2020.

REHABILITATIVE SERVICES

Disaster Relief State Plan Amendment 20-0025 (PDF), DHCS, August 20, 2020.

services, day rehabilitative services, and psychiatric health facility services.

FQHCs and RHCs: Additional Types of Billable Visits

The services of associate clinical social workers and associate marriage and family therapists are now billable visits for FQHCs and RHCs at the Prospective Payment System rate.

These visits must continue to satisfy normal supervision requirements and should be billed under the FQHC or RHC's licensed billable behavioral practitioner.

Flexibilities for Specific Institutional Provider Types

Residential Mental Health Providers

The following waivers may be requested during the California State of Emergency by the following provider types:

- Short-Term Residential Treatment Programs (STRTPs)
- Community Residential Treatment Systems/ Social Rehabilitation Programs (CRTS/SRPs)
- Community Treatment Facilities (CTFs)
- Special Treatment Programs (STPs)

Providers may request programmatic and operational flexibilities related to:

- Increasing client length of stay
- Adjusting mental health program staff scheduling
- Changing mental health programs staffing ratios
- Altering socialization and group programming within the program and general community

Providers may request administrative flexibilities related to initial facility certification and annual reviews, including delayed on-site reviews and/or conducting reviews by virtual means.

Psychiatric Health Facilities (PHFs) and Mental Health Rehabilitation Centers (MHRCs)

DHCS will expedite the review of applications for emergency licensure at alternative PHF and MHRC sites, including non-traditional sites, such as hotels and motels. DHCS has, in addition, reduced the amount of documentation required for the application and will work with each applicant to provide flexibility in the timeline to meet all PHF or MHRC requirements.

PHFs and MHRCs may request other operational flexibilities, including the ability to operate above licensed capacity.

A Licensed Professional Clinical Counselor (LPCC) may act as a Licensed Mental Health Professional and may provide PHF treatment services consistent with the LPCC's scope of practice.

Inspections

- PHF biennial licensing inspections may, on a case-by-case basis, be conducted by virtual means rather than in person.
- Annual MHRC licensing inspections will be conducted by virtual means rather than in-person.

SOURCES

FQHCS AND RHCS: ADDITIONAL TYPES OF BILLABLE VISITS

Disaster Relief State Plan Amendment 20-0024 (PDF), DHCS, May 13, 2020; and *Associate Clinical Social Worker and Associate Marriage and Family Therapists for Federally Qualified Health Centers and Rural Health Clinics* (PDF), DHCS, May 20, 2020.

RESIDENTIAL MENTAL HEALTH PROVIDERS

Behavioral Health Information Notice No. 20-014 (PDF), DHCS, April 23, 2020; and *Executive Order No. 55-20* (PDF), State of California, April 22, 2020.

PHFs AND MHRCs

Behavioral Health Information Notice No. 20-015 (PDF), DHCS, April 23, 2020; and *Executive Order No. 55-20* (PDF), State of California, April 22, 2020.

Requirements to conduct criminal background checks continue to apply, but DHCS guidance outlines a number of procedural flexibilities for meeting those requirements, including the following:

- An online criminal background check may be permissible in some instances.
- A criminal background check is not required for an individual who will solely be providing services through telehealth and will have no direct patient contact.

Alcohol and Other Drug (AOD) Residential Treatment Facilities

During the California State of Emergency:

- DHCS has implemented an expedited application process for AOD residential treatment facility licensure, and may, upon request, grant extensions of time to meet licensure and certification application requirements.
- Initial and biennial licensing inspections may be conducted by virtual means.
- DHCS may expedite review of requests to increase treatment bed capacities for existing AOD residential treatment facilities up to the maximum capacity allowed under the approved facility fire clearance.
- Requirements for criminal background checks continue to apply with respect to individuals employed in an AOD facility with an adolescent treatment waiver, but the following flexibilities are available:
  - An online criminal background check may be permissible in some instances.
  - A criminal background check is not required for an individual who will solely be providing services through telehealth and will have no direct patient contact.
- DHCS has granted certain waivers with respect to AOD counselor certification requirements, as described above under "Alcohol and Other Drug (AOD) Counselors" on page 15.

Driving Under the Influence (DUI) Programs

During the California State of Emergency:

- Should a DUI program need to cease operations as a result of the COVID-19 emergency, the DUI program may grant Leaves of Absences to all enrolled participants. When the DUI program is able to resume services, the program must immediately notify DHCS and all program participants. Each participant file must be documented to reflect the termination date of the blanket Leaves of Absence.
- DHCS may, on a case-by-case basis, conduct inspections for new DUI programs by virtual means rather than in person.
- DUI programs may accept funding from sources other than participant fees, such as federal, state, or county government grants. (Normally, DUI programs must be self-supported through fees collected from program participants.)
- DHCS has granted certain waivers with respect to AOD counselor certification requirements, as described above under "Alcohol and Other Drug (AOD) Counselors" on page 15.

SOURCES

AOD RESIDENTIAL TREATMENT FACILITIES

Behavioral Health Information Notice No. 20-017 (PDF), DHCS, April 23, 2020; and *Executive Order No. 55-20* (PDF), State of California, April 22, 2020.

DUI PROGRAMS

Behavioral Health Information Notice No. 20-016 (PDF), DHCS, April 23, 2020; and *Executive Order No. 55-20* (PDF), State of California, April 22, 2020.

Community Mental Health Centers (CMHCs)

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

CMHCs may establish alternative sites of care, potentially including a patient's home. Services that may be provided in these "temporary expansion locations" include:

- Hospital outpatient therapy, education, and training services, including partial hospitalization program services, psychoanalysis, and psychotherapy
- Hospital services associated with a professional service delivered by telehealth

CMS waived the requirement that at least 40% of a CMHC's services must be rendered to individuals who are not eligible for Medicare benefits.

CMS has waived certain quality assessment and performance improvement (QAPI) requirements, allowing CMHCs to "reconfigure their QAPI programs, as needed, to adapt to specific needs and circumstances that arise during the PHE."

Primary Care Clinics (PCCs) and Mobile Health Care Units (MHCUs)

APPLY UNTIL MARCH 1, 2021, UNLESS TERMINATED SOONER BY CDPH

Once providers have submitted an application for any of the following, they may begin providing services while waiting for CDPH approval:

- Initial licensure of a PCC or MHCU (including as an affiliate clinic)
- Addition of an MHCU to an existing license
- Remodel of physical plant, or establishment of a new site maintained and operated on separate premises
- Modification or addition of services (including special services)
- Renewal of a license or special permit, or reinstatement of a license or special permit that has been voluntarily and temporarily suspended

A PCC may convert existing space to provide additional patient care or triage areas without obtaining prior approval from CDPH, provided any space conversions are implemented to ensure safe and adequate patient care and follow CDPH guidelines on COVID-19 mitigation strategies (PDF). Potential mitigation strategies include:

- Extension of clinic hours
- Use of non-patient areas for patient care
- Creation of overflow space for screening, triage, isolation, and transfer/discharge
- Establishment of separate screening areas on the facility property (e.g., room to cohort patients, tents erected in the parking lot, drive-by testing locations)
- Establishment of safety checkpoints at portals of entry

Additional flexibilities for PCCs include:

- An intermittent clinic operated by a PCC may extend operating hours beyond 40 hours a week.
- The tuberculosis test requirement for new PCC personnel is suspended until 60 days after the end of the State of Emergency.

SOURCES

CMHCs

"Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency," CMS, 85 FR 27550, May 8, 2020; and *COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS 1135 Blanket Waivers)* (PDF), CMS, updated December 1, 2020.

PCCs AND MHCUs

Heidi W. Steinecker (deputy director, CDPH) to PCCs and MHCUs, all-facilities letter No. 20-30.1, CDPH, June 26, 2020; and *Executive Order No. 35-20* (PDF), State of California, March 21, 2020.

- CDPH has extended the deadline for PCCs to report:
  - Any change in principal officer or administrator (now 30 days), or
  - The closure of a PCC that ceases operations, along with all required arrangements for the safe preservation of patients' health records (now five days).

Additional flexibilities for MHCUs include:

- A transfer agreement with a nearby hospital or other health facility is not required for the operation of an MHCU.
- An MHCU operated by an acute care hospital may be used to provide a basic service of a hospital, subject to meeting certain conditions.

FQHC and RHC Capacity

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

CMS has waived the requirements for FQHCs and RHCs to seek federal certification for each location where services are furnished to Medicare beneficiaries. Temporary expansion locations need not meet the locational requirements for FQHCs and RHCs (e.g., health professional shortage area, rural designation).

RHCs that are provider-based to a hospital with fewer than 50 beds are exempt from the national RHC payment limit. For purposes of this policy, the hospital's official bed count prior to the start of the PHE will be held constant during the PHE.

BH-Related Flexibilities for Counties

Legislative Amendment to the Mental Health Services Act (MHSA)

The California State Legislature modified the requirements for counties' use of Mental Health Services Act (MHSA) funds during the federal PHE in the following ways:

- A county that is unable to complete a three-year "program and expenditure" plan or annual update due to the COVID-19 may extend the submission deadline to July 1, 2021.
- Counties may transfer Prudent Reserve funding into their Community Services and Supports (CSS) and Prevention and Early Intervention components to meet local needs.
- DHCS will allow counties flexibility in allocating funding across the CSS service categories, including Full Service Partnership, General System Development, and Outreach and Engagement.
- For unspent funds that would normally be subject to reversion on July 1, 2019 and July 1, 2020 (including AB114 reversion funds, and any interest accruing on those funds), the reversion deadline is extended to July 1, 2021.

Administrative Costs for BH Programs

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

DHCS will increase reimbursement for administrative costs associated with counties' administration of the Medi-Cal Specialty Mental Health Services (SMHS) program and DMC/DMC-ODS. The reimbursement limit is now 30% of the actual cost for direct client services in each program, up from the normal limit of 15%.

SOURCES

FQHC AND RHC CAPACITY

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS 1135 Blanket Waivers) (PDF), CMS, updated December 1, 2020.

LEGISLATIVE AMENDMENT TO THE MHSA

Behavioral Health Information Notice No. 20-040 (PDF), DHCS, July 1, 2020; and Assembly Bill 81, State of California, June 29, 2020.

ADMINISTRATIVE COSTS FOR BH PROGRAMS

Behavioral Health Information Notice No. 20-033 (PDF), DHCS, June 17, 2020; and *Executive Order No.55-20* (PDF), State of California, April 22, 2020.

Project Roomkey for Individuals Experiencing Homelessness

"Project Roomkey" is a multi-department effort coordinated by the Department of Social Services (DSS) to provide non-congregate emergency shelter for people experiencing homelessness in response to COVID-19. The effort is led by counties who enter into agreements with hotels and motels in order to provide the opportunity to self-isolate.

Counties are working with local Behavioral Health Departments to provide BH services in Project Roomkey locations, especially through telehealth.

DHCS Recommendations

DHCS "strongly encourages counties to minimize administrative burden and waive any additional county oversight and administrative requirements that are above and beyond DHCS and/or federal requirements" during the California State of Emergency.

DHCS is willing to work with counties if they have concerns about meeting state regulatory requirements or deadlines due to the impact of COVID-19.

COVID-19 Testing and Treatment

This section reviews coverage for COVID-19 testing and treatment under Medi-Cal, Medicare, and commercial insurance, as well as legal changes that allow pharmacists to order and administer COVID-19 tests. In addition, waivers of federal confidentiality laws with respect to community-based testing sites are discussed above in "Community-Based Testing Sites" on page 12.

Medi-Cal Coverage of COVID-19 Testing and Treatment

Medi-Cal FFS

DHCS has waived cost sharing for testing, testing-related services, and treatments for COVID-19, including vaccines, specialized equipment, and therapies. This policy applies effective March 1, 2020, through the end of the quarter in which the federal PHE ends.

Clinical laboratory procedure codes related to COVID-19 will be reimbursed at the Medicare payment rate and will be exempt from the 10% payment reductions described in state law and the State Plan.

Medi-Cal will cover off-label drug uses and investigational medications for the purpose of COVID-19 treatment in certain circumstances (e.g., drugs used as a part of a clinical trial). This policy is effective April 3, 2020, until further notice.

SOURCES

PROJECT ROOMKEY

Project Roomkey: Emergency Housing for Immediate Protection Fact Sheet (PDF), California Department of Social Services (CDSS), March 18, 2020; and *DHCS COVID-19 Frequently Asked Questions: Behavioral Health Services for People Experiencing Homelessness* (PDF), DHCS, n.d.

DHCS RECOMMENDATIONS

Behavioral Health Information Notice 20-009 (PDF), DHCS, updated May 20, 2020.

MEDI-CAL FFS

Disaster Relief State Plan Amendment 20-0024 (PDF), DHCS, May 13, 2020; and *Off-Label and/or Investigative Drugs Used to Treat COVID-19 and/or Related Conditions* (PDF), DHCS, June 18, 2020; and FFCRA, Pub. Law 116-127 § 6004 (March 18, 2020).

Medi-Cal Managed Care

MCPs must cover COVID-19 tests that are authorized by FDA or approved by the state. These tests, and related screening and testing services, must be covered without prior authorization and at no cost to the enrollee. This policy is effective March 1, 2020, through the end of the quarter in which the federal PHE ends.

With respect to COVID-19 treatments:

- MCPs must waive prior authorization requirements for COVID-19-related treatment services effective March 1 and for the duration of the federal PHE.
- MCPs must cover off-label drug uses and investigational medications for the purpose of COVID-19 treatment in certain circumstances (e.g., drugs used as a part of a clinical trial). This policy is effective April 3, 2020, until further notice.

DHCS encourages MCPs to reimburse providers for COVID-19 testing at the Medicare fee schedule rates, as in Medi-Cal FFS, unless an MCP and a provider have agreed to some other rate.

New Eligibility Group for COVID-19 Testing and Treatment

EFFECTIVE APRIL 8, 2020, FOR THE DURATION OF THE FEDERAL PHE

DHCS has established a new Medicaid eligibility group that covers COVID-19-related services for "uninsured individuals." This coverage includes medically necessary diagnostic testing, testing-related services, and treatment services provided during the office, clinic, or emergency room visit related to COVID-19.[7]

- Services are covered at no cost to the individual.
- Services are reimbursed up to the maximum reimbursement rate in the FFS delivery system.
- Coverage under this group lasts for at least 60 days from the date of the initial application, through the end of that calendar month.[8]

CMS Interim Final Rules on Medicaid Diagnostic Testing

DHCS has relaxed restrictions on Medicaid coverage of COVID-19 tests, allowing for:

- Tests administered in non-office settings
- Laboratory processing of self-collected COVID-19 tests that are FDA-authorized for self-collection

Pursuant to CMS's interim final rule, this flexibility applies during the federal PHE, as well as any subsequent periods of "active surveillance," meaning a communicable disease outbreak during which no approved treatment or vaccine is widely available.

SOURCES

MEDI-CAL MANAGED CARE

May Saeteurn (section chief, Contract Management and Administration Medi-Cal Dental Services Division, DHCS) to all Medi-Cal dental managed care plans, all-plan letter 20-004 (PDF), revised December 23, 2020; Frequently Asked Questions: *Coverage of COVID-19 Testing* (PDF), DMHC, May 22, 2020; Sarah Ream (acting general counsel, DMHC) to all full-service commercial and Medi-Cal health care service plans, all-plan letter 20-006 (PDF), DMHC, March 5, 2020; "Section 1135 Waiver Flexibilities — California Coronavirus Disease 2019," CMS, March 23, 2020; and FFCRA, Pub. Law 116-127 § 6004 (March 18, 2020).

NEW ELIGIBILITY GROUP FOR COVID-19 TESTING AND TREATMENT

"COVID-19 Uninsured Group Program," DHCS, updated December 17, 2020; *Disaster Relief State Plan Amendment 20-0024* (PDF), DHCS, May 13, 2020; and FFCRA, Pub. Law 116-127 § 6004(a)(3) (March 18, 2020).

CMS INTERIM FINAL RULES ON MEDICAID DIAGNOSTIC TESTING

"Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency," CMS, 85 FR 27550, May 8, 2020; and *Disaster Relief State Plan Amendment 20-0025* (PDF), DHCS, August 20, 2020.

Medicare Coverage of COVID-19 Testing

The following changes apply to dates of service beginning March 18, 2020, through the duration of the federal PHE, pursuant to the Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 (enacted March 18, 2020) and the CARES Act:

- Medicare FFS and MAOs must cover, without any form of cost sharing (including deductibles, co-pays, and coinsurance):
  - Clinical laboratory tests to diagnose COVID-19, the administration of such tests, and certain testing-related services, as described in CMS guidance
  - COVID-19 vaccines and the administration of such vaccines
- MAOs may not impose any prior authorization or other utilization management requirements with respect to the coverage of these services.

Commercial Insurance Coverage of COVID-19 Testing

CDI and DMHC Directives to California Health Plans

EFFECTIVE MARCH 5, 2020, UNTIL FURTHER NOTICE

Health insurers must eliminate cost sharing (including co-pays, deductibles, and coinsurance) for all medically necessary screening and testing for COVID-19, including hospital, emergency department, urgent care, and provider office visits where the purpose of the visit is to be screened or tested for COVID-19.

In addition, CDI strongly encourages insurers to waive prior authorization requests for services related to COVID-19 or, at a minimum, respond to such requests more quickly than the time frames required by law.

Congressional Mandates for Commercial Health Plans

EFFECTIVE MARCH 18, 2020, FOR THE DURATION OF THE FEDERAL PHE

Under FFCRA and the CARES Act, commercial health plans must cover, without prior authorization or cost sharing, certain items and services related to diagnostic testing for the detection of SARS-CoV-2 or the diagnosis of COVID-19 (including serology tests).

These requirements apply to individual and group health plans nationwide, including self-insured employer plans (ERISA plans) and plans operated by state/local governments.

SOURCES

MEDICARE COVERAGE OF COVID-19 TESTING

Special Edition (PDF), MLN Connects, CMS, April, 7, 2020; *Information Related to Coronavirus Disease 2019 — COVID 19* (Medicare Advantage and Part D Guidance) (PDF), CMS, updated April 21, 2020; FFCRA, Pub. Law 116-127 § 6004 (March 18, 2020); and CARES Act, Pub. Law 116-136 §§ 3201, 3713 (March 27, 2020).

CDI AND DMHC DIRECTIVES TO CALIFORNIA HEALTH PLANS

California Department of Insurance, "COVID-19 Screening and Testing" (PDF), bulletin, March 5, 2020; and Sarah Ream (acting general counsel, DMHC) to all full-service commercial and Medi-Cal health care service plans, all-plan letter 20-006 (PDF), DMHC, March 5, 2020.

CONGRESSIONAL MANDATES FOR COMMERCIAL HEALTH PLANS

FAQs About Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 42 (PDF), US Departments of Labor, HHS, and Treasury, April 11, 2020; FFCRA, Pub. Law 116-127 §§ 6001 (March 18, 2020); and CARES Act, Pub. Law 116-136 §§ 3201-02 (March 27, 2020).

Pharmacist Authority to Order and Administer COVID-19 Tests

HHS PREP Act Declarations

EFFECTIVE FEBRUARY 4, 2020, THROUGH OCTOBER 1, 2024 (UNLESS TERMINATED SOONER)

Pursuant to the Public Readiness and Emergency Preparedness (PREP) Act (42 USC § 247d-6d), HHS has taken the following actions:

- Authorized licensed pharmacists in all states to order and administer FDA-authorized COVID-19 tests (including serology tests), notwithstanding any state or local restrictions on pharmacist scope of practice
- Granted immunity to pharmacists against liability for all claims for loss arising out of the administration of such tests except in cases of willful misconduct that proximately caused death or serious injury

DCA Waivers

DCA has authorized pharmacists to order, and collect specimens for, FDA-authorized COVID-19 tests, without the need to coordinate with the patient's primary care provider or any other diagnosing prescriber, as long as the pharmacist is trained and competent to do so.

This waiver is effective for a 60-day period beginning May 12, 2020, and may be renewed for additional 60-day periods.

Legal Changes of General Applicability

This section reviews general legal changes that are not specific to BH providers or services but that may affect access to and delivery of BH services. These changes relate to:

- Modifications to Medicare and Medi-Cal procedures concerning provider enrollment, beneficiary appeals, and prior authorization
- FFCRA provisions that prohibit certain restrictions on Medicaid enrollment or benefits
- Waivers regarding commercial coverage enrollment and premiums

Procedural Changes in Medicare and Medicaid

EFFECTIVE MARCH 1, 2020, FOR THE DURATION OF THE FEDERAL PHE

Streamlined Provider Enrollment

CMS and DHCS have implemented streamlined procedures for providers to temporarily enroll in Medicare and Medi-Cal, including waivers of the requirements regarding application fees, site visits, and criminal background checks.

With respect to Medi-Cal managed care, MCPs may temporarily suspend the contractual requirement for in-person site reviews, medical audits of MCP

SOURCES

HHS PREP ACT DECLARATIONS

Guidance for Licensed Pharmacists, COVID-19 Testing, and Immunity Under the PREP Act (PDF), HHS, April 8, 2020; *Advisory Opinion 20-20 on the Public Readiness and Emergency Preparedness Act and the Secretary's Declaration Under the Act* (PDF), HHS Office of General Counsel (OGC), May 19, 2020; and *Advisory Opinion on the Public Readiness and Emergency Preparedness Act and the March 10, 2020, Declaration Under the Act* (PDF), HHS OGC, updated May 19, 2020.

DCA WAIVERS

Order Waiving on Pharmacists Ordering and Collecting Specimens for COVID-19 Tests (PDF), California Department of Consumer Affairs, May 12, 2020; and *Executive Order No. 39-20* (PDF), State of California, March 30, 2020.

STREAMLINED PROVIDER ENROLLMENT

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS 1135 Blanket Waivers) (PDF), CMS, updated December 1, 2020; *2019 Novel Coronavirus (COVID-19) Medicare Provider Enrollment Relief Frequently Asked Questions* (PDF), CMS, July 2020; *Behavioral Health Information Notice No. 20-023* (PDF), DHCS, May 29, 2020; *Requirements and Procedures for Emergency Medi-Cal Provider Enrollment* (PDF), DHCS, March 24, 2020; Nathan Nau (chief, Managed Care Quality and Monitoring Div., DHCS) to all Medi-Cal managed care plans, all-plan letter 20-011 (PDF), DHCS, April 24, 2020; *Executive Order No. 55-20* (PDF), State of California, April 22, 2020; and "Section 1135 Waiver Flexibilities — California Coronavirus Disease 2019," CMS, March 23, 2020.

subcontractors and network providers, and similar monitoring activities that would require in-person reviews.

Already-enrolled providers may postpone scheduled revalidations.

Beneficiary Appeals

CMS has authorized extensions in the time frames for Medicare beneficiaries to file appeals and for appeals to be adjudicated. Appeals may proceed even if certain forms are missing or incomplete. These flexibilities apply to:

- Medicare FFS, including both Medicare Administrative Contractors (MACs) and Qualified Independent Contractors (QICs)
- Medicare Advantage and Part D plans, including Part C and Part D Independent Review Entities (IREs)

In Medi-Cal, CMS and DHCS have authorized extensions of the time frames for beneficiaries (FFS and managed care) to seek State Fair Hearings, and for those hearings to be resolved. In addition, beneficiaries enrolled in managed care may bypass internal review by the managed care organization and proceed to a State Fair Hearing.

Prior Authorization

Medicare Advantage

- Under existing federal law (42 CFR § 422.100(m)), MAOs must take the following actions "during a disaster or emergency"[9]:
  - Cover services furnished at any non-contracted facility that participates in Medicare
  - Waive, in full, requirements for gatekeeper referrals
  - Provide the same cost sharing for the enrollee as if the service or benefit had been furnished at a plan-contracted facility
- During the federal PHE, CMS will allow MAO to expand coverage beyond the CMS-approved benefit package, including by waiving or reducing enrollee cost sharing.

Medi-Cal

- During the federal PHE, DHCS is suspending prior authorization requirements for all Medi-Cal FFS benefits.
- Managed care plans are "strongly encouraged to implement expedited authorization procedures," but are not required to waive prior authorization except with respect to COVID-19 testing and treatment services, as described in "Medi-Cal Managed Care" on page 25.

SOURCES

BENEFICIARY APPEALS

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS 1135 Blanket Waivers) (PDF), CMS, updated December 1, 2020; *Behavior Health Information Notice No. 20-011* (PDF), DHCS, March 26, 2020; Nathan Nau (chief, Managed Care Quality and Monitoring Div., DHCS) to all Medi-Cal managed care plans, supplement to all-plan letter 17-006, DHCS, n.d.; and "Section 1135 Waiver Flexibilities — California Coronavirus Disease 2019," CMS, March 23, 2020.

PRIOR AUTHORIZATION

Information Related to Coronavirus Disease 2019 —COVID 19 (Medicare Advantage and Part D Guidance) (PDF), CMS, updated April 21, 2020; *42 CFR § 422.100(m)* (PDF); *Medi-Cal Fee-for-Service (FFS) Prior Authorization Section 1135 Waiver Flexibilities Relative to the 2019-Novel Coronavirus (COVID-19)* (PDF), DHCH, updated June 3, 2020; and "Section 1135 Waiver Flexibilities — California Coronavirus Disease 2019," CMS, March 23, 2020.

FFCRA Medicaid Provisions

California must satisfy the following conditions to qualify for the temporary 6.2% increase in the federal Medicaid match rate, as described in FFCRA § 6008.

Continuous Coverage

Effective March 18, 2020, DHCS cannot terminate or reduce coverage for any individual enrolled in Medicaid. Even if the circumstances of individuals change such that they are no longer eligible, they cannot be disenrolled (or moved to an eligibility category with reduced benefits) until the end of the month in which the federal PHE ends.

Maintenance of Effort

The state must maintain program-wide Medicaid eligibility standards (including premiums), methodologies, and procedures that are no more restrictive than what the state had in place as of January 1, 2020. This requirement applies until the end of the quarter in which the federal PHE ends.

Commercial Coverage

Special Enrollment Period for Covered California

From March 20 through June 30, 2020, Covered California opened the health insurance exchange to any eligible uninsured individuals who need health care coverage amid the COVID-19 national emergency.

Grace Period for Insurance Premiums

CDI requested that all insurers (including health insurers) provide at least a 60-day grace period for premiums so that insurance policies are not cancelled for nonpayment of premiums.

SOURCES

CONTINUOUS COVERAGE

FFCRA, Pub. Law 116-127 § 6008(b)(3) (March 18, 2020).

MAINTENANCE OF EFFORT

FFCRA, Pub. Law 116-127 §§ 6008(b)(1)–(2) (March 18, 2020).

SPECIAL ENROLLMENT PERIOD FOR COVERED CALIFORNIA

"California Responds to COVID-19 Emergency by Providing Path to Coverage for Millions of Californians," press release, Covered California, March 20, 2020.

GRACE PERIOD FOR INSURANCE PREMIUMS

California Department of Insurance, "60-Day Grace Period for Insurance Premium Payments Due to the Disruption Caused by the Novel Coronavirus (COVID-19) Outbreak" (PDF), notice, March 18, 2020.

Appendix. Glossary of Abbreviations and Key Terms

1135 Waiver	An emergency waiver issued by the US Department of Health and Human Services (HHS) or the Centers for Medicare & Medicaid Services (CMS) pursuant to Section 1135 of the Social Security Act (42 U.S.C. § 1320b5). CMS has issued dozens of "blanket" (i.e., nationwide) waivers (PDF), as well as 1135 waivers specific to Medi-Cal (on March 23 and May 8, 2020).
AOD Facility or Counselor	An Alcohol and Other Drug facility or counselor
ASAM	The American Society of Addiction Medicine, which releases guidance concerning placement, transfer, or discharge of patients with addiction and co-occurring conditions
BH	Behavioral health
CARES Act	The Coronavirus Aid, Relief, and Economic Security Act, Public Law No. 116-136, enacted March 27, 2020
CDI	The California Department of Insurance, which regulates insurance issuers
CDPH	The California Department of Public Health
CMS	The Centers for Medicare & Medicaid Services, a federal agency within HHS
CNW	Certified nurse-midwife
DCA	The California Department of Consumer Affairs, which oversees professional licensure
DEA	The US Drug Enforcement Administration, which establishes federal limits on prescribing and dispensing controlled substances
DHCS	The California Department of Health Care Services, which oversees the Medi-Cal program
DMC	Drug Medi-Cal, the program through which Medi-Cal SUD services are furnished in counties that have not opted into the newer DMC-ODC 1115 demonstration project
DMC-ODS	The Drug Medi-Cal Organized Delivery System, the Medi-Cal 1115 demonstration project through which certain counties provide Medi-Cal SUD treatment. (Counties that have not opted into DMC-ODS continue to provide SUD services under DMC.)
DMHC	The California Department of Managed Care, which regulates: all health maintenance organization plans, some preferred provider organization and exclusive provider organization products, as well as dental and vision plans. DMHC oversees some large group plans, most small group plans, most Medi-Cal managed care plans, and many individual and family products.
DR SPA	A temporary "disaster relief" State Plan Amendment in the Medicaid program. California's DR SPA 20-0024 (PDF) was approved, effective March 1, 2020.
FDA	The US Food and Drug Administration, a federal agency within HHS
FFCRA	The Families First Coronavirus Response Act, Public Law No. 116-127, enacted March 18, 2020
FFS	Fee-for-service

FQHC	Federally Qualified Health Center
IFR	Interim final rules with comment period. During the time period discussed in this report, CMS issued two relevant rules with effective dates of March 31 and May 8, 2020.
HIPAA	The federal Health Insurance Portability and Accountability Act of 1996
HHS	The US Department of Health and Human Services
HHS OCR	The HHS Office for Civil Rights, which enforces HIPAA
HHS OIG	The HHS Office of the Inspector General, which investigates fraud and abuse in federal health care programs
LCSW	Licensed clinical social worker
MAO	Medicare Advantage Organization
MCP	Medi-Cal managed care plan
NP	Nurse practitioner
NTP	Narcotic Treatment Program, referred to under federal law as an Opioid Treatment Program (OTP)
PA	Physician assistant
PHE	The federal COVID-19 Public Health Emergency declared by HHS, effective January 27, 2020, and any renewals thereof, pursuant to Section 319 of the Public Health Service Act (42 U.S.C. § 247d)
RHC	Rural Health Clinic
SAMHSA	The federal Substance Abuse and Mental Health Services Administration, which sits within HHS, and which regulates certain aspects of SUD programs
SMHS	The Medi-Cal Specialty Mental Health Services program
State of Emergency	The State of Emergency declared by California Governor Gavin Newsom (PDF) on March 4, 2020
SUD	Substance use disorder

Endnotes

1. This Compendium does not address legal changes affecting inpatient psychiatric facilities or behavioral health care furnished in a hospital setting. In addition, the Compendium does not cover newly created sources of government funding, such as the federal "CARES Act Provider Relief Fund" and the "Telehealth Network Grant Program".
2. "Determination that a Public Health Crisis Exists," US Department of Health and Human Services (HHS), January 31, 2020.
3. *Proclamation of a State of Emergency* (PDF), Executive Department of the State of California, March 4, 2020.
4. The initial physical examination for NTP methadone maintenance must be conducted in person, as described in "Narcotic Treatment Programs (NTPs)" on page 18.
5. The Executive Order specifies that these provisions "apply to the provision of behavioral or mental health services [to] the same extent" as "other forms of health care."
6. OCR also issued guidance reminding public health authorities and first responders, such as paramedics and law enforcement officers, of existing HIPAA rules that allow disclosures of protected health information without consent in certain circumstances. HHS OCR First Responder Guidance.
7. The Families First Coronavirus Response Act (FFCRA) authorizes federal funding for testing-related services for "uninsured individuals" who satisfy certain requirements with respect to citizenship or immigration status. California has extended coverage to COVID-19-related treatments and has extended eligibility to all individuals regardless of immigration status.
8. This expiration timeline may be inconsistent with the "continuous coverage" requirement under FFCRA, described in "Continuous Coverage" on page 29.
9. Although the "special requirements" in Section 422.100(m) may be triggered by various types of federal and state emergency declarations, the requirements expire after 30 days if the triggering declaration does not specify an end date. No end date is specified in the HHS PHE declaration (effective January 27, 2020), California's State of Emergency declaration (effective March 4, 2020), or the President's national emergency declarations under the National Emergencies Act or the Stafford Act (both issued on March 13, 2020), although some of these declarations are subject to automatic expiration timelines as a matter of law. Assuming the 30-day sunset applied to all applicable declarations in this instance, the special requirements would have expired, at the latest, on April 12, 2020.