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GAVIN NEWSOM  
GOVERNOR

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**Behavioral Health Information Notice No: 20-009**

**TO:** California Alliance of Child and Family Services  
California Association for Alcohol/Drug Educators  
California Association of Alcohol & Drug Program Executives, Inc.  
California Association of DUI Treatment Programs  
California Consortium of Addiction Programs and Professionals  
California Council of Community Behavioral Health Agencies  
California Opioid Maintenance Providers  
California State Association of Counties  
Coalition of Alcohol and Drug Associations  
County Behavioral Health Directors  
County Behavioral Health Directors Association of California  
County Drug & Alcohol Administrators

**SUBJECT:** Guidance for behavioral health programs regarding ensuring access to health and safety during the COVID-19 public emergency

**PURPOSE:** Provide guidance on concrete steps counties and providers should take to minimize the spread of Coronavirus disease 2019 (COVID-19) and ensure ongoing access to care.

**BACKGROUND:** As the Department of Health Care Services (DHCS) continues to closely monitor the emerging 2019 Novel Coronavirus (COVID-19) situation, DHCS is issuing guidance to counties and Medi-Cal providers to assist them in providing medically necessary health care services in a timely fashion for patients impacted by COVID-19. In light of both the federal Health and Human Services (HHS) Secretary's January 31, 2020 public health emergency declaration, as well as the President's March 13, 2020 national emergency declaration, DHCS is exploring additional possibilities and options to temporarily waive and/or modify certain federal and state requirements through an 1135 Waiver to ensure the health and safety of Californians. Further guidance will be provided after California submits an 1135 Waiver.

This Information Notice covers:

1. Behavioral Health services via telephone and telehealth.
2. Adapting oversight requirements to prioritize patient needs and accommodate workforce challenges.
3. Access to prescription medications.
4. Alcohol and other drug (AOD) residential and outpatient treatment facility applications.
5. Process to request fee reductions or waivers.
6. Canceling meetings and gatherings to prevent COVID-19 transmission.

## **POLICY**

DHCS encourages counties and providers to take all appropriate and necessary measures to ensure beneficiaries can access all medically necessary services while minimizing community spread.

### **1. Behavioral health services via telephone and telehealth**

Telehealth is not a distinct service, but an allowable mechanism to provide clinical services. The standard of care is the same whether the patient is seen in-person, by telephone, or through telehealth.

Telehealth is reimbursable in Medi-Cal managed care (physical health care),<sup>1</sup> Specialty Mental Health Services (SMHS), and the Drug Medi-Cal Organized Delivery System (DMC-ODS).

DHCS strongly encourages all counties to work with providers to maximize the number of services that can be provided by telephone and telehealth, to minimize community spread of COVID-19, as well as to protect the behavioral health workforce from illness.

DMC-ODS counties that have NOT previously included services via telehealth in their program should allow providers to bill for services via telehealth during the period of heightened COVID-19 concern. County approval of services via telehealth is sufficient; contract changes are not required.

DHCS does not restrict the location of services via telehealth. Patients may receive services via telehealth in their home, and providers may deliver services via telehealth from anywhere in the community, outside a clinic or other provider site.

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<sup>1</sup> DHCS has also released [guidance](#) to Medi-Cal Managed Care Plans regarding COVID-19.

DHCS does not have requirements about which live video platform can be used, as long as it is Health Insurance Portability and Accountability Act (HIPAA)-compliant. Although many phone and tablet live video applications are encrypted and may be HIPAA-compliant, services provided via telehealth are subject to the same privacy and security laws and regulations as services provided by in-person services, and providers must ensure that they comply with HIPAA, California's Confidentiality of Medical Information Act, and, if applicable, 42 CFR Part 2 or California Welfare & Institutions Code section 5328. Specific guidance for providers regarding HIPAA and telehealth is available from the external resources listed on DHCS' [Telehealth Resources](#) page.

The U.S. Department of Health and Human Services Office of Civil Rights (HHS-OCR) has clarified that they will use enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules when providers use telehealth in good faith during the COVID-19 public health emergency. The HHS-OCR guidance states that providers can use any non-public facing remote communication product that is available to communicate with patients. Specifically, providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video or Skype to provide telehealth. However, public facing applications such as Facebook Live, Twitch, TikTok, and similar video communication applications should not be used in the provision of telehealth. Additional guidance regarding HHS-OCR's HIPAA enforcement during the COVID-19 public health emergency can be found on [HHS-OCR's webpage](#).

[SAMHSA has also issued guidance](#) on 42-CFR Part 2 compliance during the emergency.

Service documentation should be completed in the patient treatment file in the manner as the provider would for an in-person visit, and a patient's verbal or written consent<sup>2</sup> for the telephone or telehealth visit should be documented in the file.

Services provided by telephone or telehealth may be provided and reimbursed by the following programs;<sup>3</sup> details for each program are described below:

- ***Drug Medi-Cal Organized Delivery System:***
  - While the initial clinical diagnostic assessment must be done by video or in-person; subsequent services can be done by telephone or telehealth.

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<sup>2</sup> Business and Professions Code section 2290.5(a)(6).

<sup>3</sup> See [State Plan – Targeted Case Management](#) and [State Plan – outpatient specialty mental health services and Drug Medi-Cal](#) for more detail.

- Medical necessity can be established through telehealth.
  - Licensed providers and non-licensed staff may provide services via telephone and telehealth, as long as the service is within their scope of practice.
  - Certain services, such as residential services, require a clearly established site for services and in-person contact with a beneficiary in order to be claimed. However, California's Medicaid State Plan does not require that all components of these services be provided in-person. (An example could include services via telephone for a patient quarantined in their room in a residential facility due to illness).
  - Any DMC-ODS service, including an individual or group service<sup>4</sup>, that a provider determines to be clinically appropriate by telephone is currently reimbursable in all DMC-ODS counties (examples include outpatient, intensive outpatient, opioid treatment programs, recovery services, and case management).
  - Services via telehealth are currently optional for counties in the DMC-ODS waiver, which expires on December 31, 2020. DMC-ODS counties that have NOT previously included services via telehealth in their program should allow providers to bill for services via telehealth during the period of heightened COVID-19 concern; DHCS approval is not required.
  - No additional billing code is required. The service provided should be claimed with the appropriate procedure code.
- **DMC State Plan:** Currently, neither telephone visits nor live video telehealth are reimbursable in the DMC State Plan. Counties may use other funds, such as Substance Abuse and Mental Health Services Administration (SAMHSA) block grants, to reimburse services via telehealth. However DHCS is submitting a federal waiver to receive approval to provide more flexibility. More guidance on this will be forthcoming.
  - **Specialty Mental Health Services:**
    - Any service, including an individual or group service<sup>5</sup>, that can be provided by telephone or telehealth is reimbursable in all counties (examples include mental health services, crisis intervention services, targeted case management, therapeutic behavioral services, intensive care coordination, intensive home-based services, medication support services, and components of day treatment

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<sup>4</sup> Group counseling sessions may be conducted via telehealth if the provider obtains consent from all the participants and takes the necessary security precautions, in compliance with HIPAA and 42CFR Part 2.

<sup>5</sup> Providers are still required to follow relevant privacy laws to ensure patient privacy protections.

intensive, day rehabilitation, adult residential treatment services, and crisis residential treatment services).<sup>6</sup>

- Licensed providers and non-licensed staff may provide services via telephone and telehealth, as long as the service is within their scope of practice.
  - Certain services, such as day rehabilitation, day treatment intensive, crisis residential treatment services, and adult residential treatment services, require a clearly established site for services and in-person contact with a beneficiary in order to be claimed. However, not all components of these services must be provided in person.<sup>7</sup> (An example could include services via telephone for a patient quarantined in their room due to illness).
  - Providers should add the telehealth billing GT to identify that the specialty mental health service was rendered via telehealth. (See [Mental Health Services Division Medi-Cal Billing Manual](#), page 87-94 for more information). However, the Short Doyle system will accept and pay the claim even if the modifier is not attached to the claim. During the emergency, DHCS strongly encourages all counties to allow SMHS to be provided via telehealth and telephone, and if the county systems are not set up yet to add the modifier, claims may still be submitted and processed; the lack of systems in place to add the modifier should not be a barrier to the provision of services. The place of service code is not required, other than inpatient services.
- ***Mental Health Services Act (MHSA)***: Counties may use MHSA funding to pay for services provided via telephone or telehealth as long as the services provided are consistent with the MHSA requirements and are not able to be covered by any other source of funding.

More information on telehealth can be found on the [DHCS telehealth website](#).

## **2. Adapting oversight requirements to prioritize patient needs and accommodate workforce challenges**

The COVID-19 public health emergency may increase demands at clinical facilities during a time when staff resources may be strained. Staff may need to plan, respond

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<sup>6</sup> DHCS received questions about intake/assessments; DHCS confirms that these service components may be appropriately provided to beneficiaries through telephone or telehealth.

<sup>7</sup> See Title 9, California Code of Regulations, Sections 1840.318, 1840.320, 1840.332, 1840.334 and the California's Medicaid State Plan: Supplement 1 to Attachment 3.1-A – Targeted Case Management (TCM) Services for Medi-Cal Beneficiaries that Meet Medical Necessity Criteria for TCM Covered as Part of the Specialty Mental Health Services Program; Supplement 2 to Attachment 3.1-B - Rehabilitative Mental Health Services (Medically Needy); and Supplement 3 to Attachment 3.1-A - Rehabilitative Mental Health Services (Categorically Needy)

and adapt due to the changing environment, including staff or patient illness and quarantine.

DHCS encourages counties to reach out to their DHCS liaison if there are any concerns about meeting any state-mandated regulatory requirements or DHCS reporting requirements and deadlines due to the impact of COVID-19.

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 state of emergency. Examples include converting on-site audits and site reviews to virtual desk audits, postponing audits and provider reviews that are not time-sensitive, deferring additional training or reporting requirements, and waiving minimum requirements for clinical hours per week that are above and beyond DHCS requirements (e.g., for residential facilities), to accommodate for staff shortages.

### **3. Access to Prescription Medications**

Since many individuals who receive Medi-Cal Specialty Mental Health and Drug Medi-Cal Services are prescribed medications to address their mental health and substance use disorder needs, counties and providers should refer to the DHCS [Fee-for-Service Pharmacy Benefit Reminders and Clarifications](#) web page for guidance in response to questions regarding dispensing policies governing the Medi-Cal fee-for-service pharmacy benefit as it relates to COVID-19.

Medi-Cal allows prescribing and dispensing of 100-day supplies of medications, including certain controlled medications. Early refills are allowed, as long as 75% of the expected duration has occurred.

### **4. Alcohol and Other Drug (AOD) Residential and Outpatient Treatment Facility applications**

For the purpose of licensing requirements, DHCS will grant extensions for application deadlines. The assigned DHCS Licensing Analyst will work with the program to address any outstanding and/or needed documentation. DHCS will grant extensions to programs to respond to regulatory and certification standard requirements.

### **5. Process to Request Fee Reductions or Waivers**

SB 601 went into effect on January 1, 2020. The new law, set forth in Gov. Code Section, 11009.5, authorizes the DHCS to establish a process to reduce or waive any fees required to obtain a license, renew or activate a license, or replace a physical

license for display, when a business has been displaced, or experiences economic hardship as a result of an emergency.

DHCS Mental Health Rehabilitation Centers (MHRC), Psychiatric Health Facilities (PHF), Narcotic Treatment Programs (NTP), Driving Under the Influence (DUI) programs, or substance use disorder (SUD) residential and outpatient facilities, that have a license or certification issued by LCD, may submit a written request to DHCS for a fee reduction or waiver. The request must include:

- Identify whether the request is for a reduction or waiver of fee(s);
- Identify the type of fee requested to be reduced or waived (i.e., renewal application fee, relocation fee, etc.) and the specific fee amount being requested to pay if seeking a fee reduction;
- Describe how this reduction or waiver is specific to the COVID-19 emergency;
- Describe the economic hardship or displacement that occurred due to the emergency;
- Identify the provider type (MHRC, PHF, NTP, DUI, SUD Residential or Outpatient);
- Identify the provider number and legal entity name;
- Identify the program/facility name;
- Identify the facility physical address;
- Identify the facility mailing address; and
- Identify the Program Director and contact person.

## **6. Meetings, Gatherings and Events**

DHCS recommends that counties and providers follow guidance by the California Department of Public Health and limit unnecessary meetings, gatherings and events, and convert all possible meetings into virtual (live video or telephone) events. Governor [Newsom's Executive Order N-25-20](#) provides guidance that meetings required to follow Bagley-Keene standards may be done virtually.

For this reason, DHCS is reaching out to training and technical assistance contractors and will consider no-cost extensions for events cancelled due to COVID-19, and encourages counties to do the same. Contracts funded by the Substance Abuse and Mental Health Services Administration must be obligated and expended by the end of the period of availability for each grant award.

DHCS continues to closely monitor this situation and will issue further reminders and guidance, as appropriate. For questions regarding this IN, please contact DHCS Medi-

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Cal Behavioral Health County and Provider Monitoring at [CountySupport@dhcs.ca.gov](mailto:CountySupport@dhcs.ca.gov)  
or contact your assigned DHCS liaison.

Sincerely,

Kelly Pfeifer, MD  
Deputy Director, Behavioral Health