

CORONAVIRUS INFORMATION & UPDATES

March 20, 2020

California Authorities Issue a Wide Range of Rules and Guidance on COVID-19

On March 4, 2020, California governor Gavin Newsom declared a statewide [State of Emergency](#) in response to the rapidly growing number of COVID-19 cases within the state, nationally and worldwide. Eight days later, on March 12, 2020, Governor Newsom issued [Executive Order N-25-20](#) (discussed in more detail below) to further prepare California to confront a large, and increasing, number of COVID-19 cases and to provide relief to health systems, businesses, individuals, and other institutions. Since then, state agencies have issued new guidance and regulations to health care payers and providers to respond to constantly evolving conditions. While several counties ordered residents to “stay at home,” as of March 19, 2020, all individuals living in California must remain at home or at their place of residence, pursuant to [Executive Order N-33-20](#) unless needed to maintain continuity of operations of the federal critical infrastructure sectors. We summarize these state and local responses below.

This Alert is one of a series of advisories, podcasts and webinars by Ropes & Gray on COVID-19 topics. They can be found at our [Coronavirus Resource Center](#).

GOVERNOR’S PROCLAMATION OF STATE OF EMERGENCY

- Governor Newsom’s [March 4, 2020 Proclamation](#) includes the following:
 - **Section 1** provides for emergency response coordination by the Office of Emergency Services, the California Department of Public Health and the Emergency Medical Services Authority.
 - **Section 3** permits out-of-state personnel, including medical personnel, entering California to assist with the COVID-19 pandemic to provide services pursuant to the Emergency Management Assistance Compact, subject to the approval of the Director of the Emergency Medical Services Authority (for medical personnel) or the Director of the Office of Emergency Services (for non-medical personnel). Out-of-state providers are considered licensed, certified, or permitted in California under these conditions.
 - **Section 4** extends the prohibition on price gouging of emergency supplies and services, as set forth in California Penal Code section 396, to September 4, 2020.
 - **Section 10** gives the Director of the California Department of Public Health (“CDPH”) the **authority to waive any of the licensing requirements** of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations **with respect to any hospital or health facility identified in Health and Safety Code Section 1250**.
 - **Section 13** suspends statutes that prohibit emergency medical technicians from transporting patients to facilities other than acute care hospitals when approved by the California EMS Authority.
 - **Section 14** permits the Department of Social Services to waive provisions of the Health and Safety Code and Welfare Institutions Code as deemed necessary to respond to the threat of COVID-19.

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GOVERNOR'S EXECUTIVE ORDERS

- [Executive Order N-25-20](#) (March 12, 2020).
 - **Section 8** requires the California Health and Human Services Agency and the Office of Emergency Services to make available, **through contracts or through the state's power to commandeer property, medical facilities and other spaces for use as quarantine, isolation, or treatment centers** for individuals who test positive for SARS-CoV-2, the virus that causes the disease, COVID-19, or who have had high-risk exposure to the virus.
 - **Section 9 suspends the certification and licensure requirements** of California Code of Regulations, Title 17, section 1079 and Business and Professions Code section 1206.5 **for persons who meet the requirements under the federal Clinical Laboratory Improvement Amendments** of section 353 of the Public Health Service Act for high complexity testing and who are performing COVID-19 tests in a certified public health laboratory or licensed clinical laboratory.
- [Executive Order N-29-20](#) (March 17, 2020). This Order **waives Medi-Cal eligibility re-determinations for 90 days**. Current Medi-Cal beneficiaries may continue their coverage without interruption.
- [Executive Order N-31-20](#) (March 17, 2020). This Order exempts transporters engaged in emergency relief efforts from carrying a California Motor Carrier Property Permit and allows drivers to exceed the hours-of-service limits in the California Vehicle Code. Additionally, this order suspends layoff notification requirements for businesses adversely affected by COVID-19.
- [Executive Order N-33-20](#) (March 19, 2020).
 - **Section 1 requires all individuals living in the State of California to stay at home or at their place of residence indefinitely**, except as needed to maintain continuity of operation of the federal essential critical infrastructure sectors. This EO is intended to be read in conjunction with the March 19, 2020 [Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response](#) from the Director of the federal Cybersecurity and Infrastructure Security Agency in the U. S. Department of Homeland Security, which sets forth 16 categories of workers who are deemed to be essential to continued critical infrastructure viability and accordingly are exempt from the "stay at home" mandate.
 - **Section 2** requires the health care delivery system to **prioritize services for those who are the sickest and to prioritize resources, including personal protective equipment, for the providers directly caring for them**.

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES ("DCHS") MEDI-CAL GUIDANCE

- Up-to-date case statistics can be found on the [CDPH Daily Updates page](#).

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- [Memo to Medi-Cal Managed Care Health Plans re: COVID-19 Screening and Testing](#) (March 6, 2020). This memorandum reminds Medi-Cal managed care plans that they must, by law, ensure that members are able to access medically necessary services in a timely manner. The memo clarifies how this requirement applies with respect to COVID-19:
 - Requires that all emergency care be provided without prior authorization.
 - Encourages managed care health plans (“MCPs”) to waive prior authorization requests for screening and testing related to COVID-19. This is not mandated, but compliance with utilization review time frames is.
 - Requires that provider networks be adequate to handle increase in need for services associated with COVID-19.
 - Requires that members not be liable for balance bills from providers, including COVID-19 testing-related bills.
 - Requires that MCPs have access to a representative 24/7 to authorize services and that the contact information for that representative be provided to DHCS.
 - Requires offering members and providers the option to utilize telehealth where medically appropriate.
 - Requires approval of transportation requests for members who may have contracted COVID-19 and need to be seen in person.
 - Encourages MCPs to waive prior authorization and/or step therapy requests if a provider recommends a different drug to treat a member’s condition.
- [COVID-19 Lab Tests Are New Medi-Cal Benefits](#) (March 13, 2020). This document provides the newly implemented HCPCS codes U0001 and U0002 for providers to use in billing for COVID-19 testing and notes that **any rejected payment claims for these services will be automatically reprocessed**. This applies retroactively, but only to dates of service on or after February 4, 2020.
- [COVID-19 Medi-Cal Services and Telehealth Notice](#) (March 17, 2020). This document clarifies existing telehealth policies and notes that virtual communications may be reimbursed using HCPCS codes G2010 and G2012. It also notes that, when providers are making a Treatment Authorization Request or a Service Authorization Request for medical supplies requiring an authorization, they should include the statement “Patient impacted by COVID-19” in the “Miscellaneous Information” field. Providers are directed to use the ICD-10 diagnosis codes promulgated by the [CDC](#) and [WHO](#).
- [Medi-Cal Payments for Telehealth and Virtual/Telephonic Communications Relative to the 2019-Novel Coronavirus \(COVID-19\)](#) (March 18, 2020). This document provides additional guidance to Medi-Cal providers on telehealth treatment.

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- [Information for Indian Health Care Providers Regarding the Novel Coronavirus \(COVID-19\)](#) (March 18, 2020). This document gives Indian Health Care Providers recommendations to prevent the spread of the coronavirus, preparedness strategies, and operational reminders about out-of-network and telehealth services.
- [COVID-19 Guidance for Non-emergency Medical Transportation \(“NEMT”\) and Non-medical Transportation \(“NMT”\) Providers](#) (March 14, 2020). This guidance provides general infection prevention advice and indicates that CDPH is tracking CDC advice on EMS and other precautions. It also notes that NEMT/NMT providers should report any suspected COVID-19 cases to local health jurisdictions, although this is not framed as a mandate.
- [COVID-19 Guidance for Telehealth and Virtual/Telephonic Communications](#) (March 19, 2020). This document provides additional guidance to Medi-Cal providers on telehealth treatment.

GENERAL HEALTH BENEFIT PLAN GUIDANCE

- [Bulletin to All Health Insurers re: COVID-19 Screening and Testing](#) (March 5, 2020). This bulletin is a directive that all commercial health insurers reduce cost-sharing amounts to zero for screening and testing for COVID-19. This information must be provided to insurers’ contracted providers, nurse lines, customer service representatives, call center staffs, and on insurers’ public websites. This bulletin also reminds providers of the requirements that emergency care be provided without prior authorization, that utilization review time frames be complied with (or preferably accelerated or waived for COVID-19 related services), that provider networks be adequate, and that insureds are not liable for unlawful balance bills or balance bills related to COVID-19 testing.
- [DMHC All Plan Letter APL-20-006 COVID-19 Screening and Testing](#) (March 5, 2020). This letter includes many of the same requirements and suggestions as the above health insurer bulletin related to cost-sharing, waiving authorization requirements, and other requirements. It applies to all full-service commercial plans and full-service Medi-Cal plans.
- [DMHC All Plan Letter APL 20-009 Reimbursement for Telehealth Services](#) (March 18, 2020). This letter requires health plans to reimburse providers at the same rate, regardless of whether a service is provided in-person or through telehealth, so long as the service is the same. Additionally, a health plan may not subject enrollees to greater cost-sharing for services provided via telehealth.
- [Request to CMS for Section 1135 Waiver Flexibilities Related to Novel Coronavirus Disease \(COVID-19\) National Emergency/Public Health Emergency](#) (March 16, 2020). Section 1135 of the Social Security Act authorizes the Secretary of HHS, during a public health emergency, to temporarily waive or modify certain Medicare, Medicaid, and Children’s Health Insurance Program requirements to ensure that sufficient health care items and services are available to meet the needs of enrollees. This is a request by DHCS for waiver and/or flexibility of certain requirements that are currently imposed on fee-for-service Medi-Cal plans, MCPs, the state’s Children’s Health Insurance Program, and others state-run programs. Areas requested for waiver and/or flexibility include provider participation and billing requirements, service authorization and utilization controls, benefit and eligibility flexibilities, and others. *Approval of this waiver request has not been granted.*

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CMS EMTALA GUIDANCE

- [CMS Memorandum on EMTALA Requirements and Implications Related to Coronavirus Disease](#) (March 9, 2020). This memorandum reiterates that all Medicare-participating hospitals must follow CDC guidance on EMTALA requirements. At a minimum, EMTALA requires hospitals to conduct an appropriate Medical Screening Exam (“MSE”), isolate, and begin stabilizing treatment, as appropriate, for any individual with COVID-19 symptoms. However, if a hospital no longer has the capacity to screen and treat individuals, EMTALA would not prohibit the hospital from closing its emergency department to new patients, so long as the hospital follows all applicable state and local notice requirements. Additionally, the MSE may take place at an alternative on-campus site, including a tent.

CDPH GUIDANCE

- To increase bed capacity and isolate COVID-19 patients, hospitals throughout the state have begun erecting treatment tents and other temporary treatment sites. Per [2018 guidance from CDPH](#), general acute care hospitals wishing to use “surge” tents during a disease outbreak must contact their CDPH Licensing & Certification Program district office and submit form [CDPH 5000 A for approval](#).
- [Section 10 of the Governor’s proclamation of a State of Emergency](#) gives the Director of CDPH the authority to waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code Section 1250. For example, in *Guidance for Limiting the Transmission of COVID-19 in Long-Term Care Facilities* (discussed at the end of this section), CDPH invokes this right by permitting long-term care facilities to request modification of their visitation policies in accordance with CMS and CDC guidance by posting a [waiver notice](#) in their facility along with a copy of their revised visitation policy.
- [Guidance for Health Care Facilities on Preparing for Coronavirus Disease](#) (March 3, 2020). This guidance provides strategies for health care facilities to prepare for community transmission of COVID-19, ways in which the spread of COVID-19 in long-term care facilities can be prevented, guidance on the use of N95 respirators that have exceeded their shelf life, and recommendations on the conversion of space into patient-screening areas.
- [Guidance for Procedures and Transfer of Deceased Persons with Confirmed or Suspected Coronavirus Disease 2019](#) (March 16, 2020). This All Facilities Letter provides resources and guidance for health care facilities for deceased persons with confirmed or suspected COVID-19.
- [Guidance for Limiting the Transmission of COVID-19 in Long-Term Care Facilities](#) (March 11, 2020). This All Facilities Letter notifies long-term care facilities of CMS and CDC guidance for improving their infection control and prevention practices to inhibit the transmission of COVID-19.

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CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS GUIDANCE

- [Cal/OSHA Interim Guidance on Coronavirus for Health Care Facilities: Efficient Use of Respirator Supplies](#) (March 3, 2020). This page sets forth a respiratory protection policy for health care workers to maximize respirator supplies and reduce the need for respirator use.
- [Interim Guidance for Protecting Health Care Workers from Exposure to Coronavirus Disease](#) (March 3, 2020). This page sets out high-level aerosol transmission and diseases standards, protocols, and training requirements to protect health care workers from exposure to COVID-19.

STATE LEGISLATION

- [Senate Bill 89](#) (Signed into law on March 17, 2020). This law provides up to \$1 billion in funds, with \$500 million immediately appropriated, to be used for any purpose related to the Governor's March 4, 2020 proclamation of a state of emergency.

CALIFORNIA ATTORNEY GENERAL COMMUNICATIONS

- On March 4, 2020, California Attorney General Xavier Becerra issued an [alert](#) reminding the public that price-gouging on essential supplies and services during a declared state of emergency is illegal under Penal Code Section 396. Essential supplies include food, gas, medical supplies, building materials and other necessary consumer goods. **Sellers are prohibited from raising the price of these goods and services by more than 10% through September 4, 2020.** The statute also permits sellers to make certain bona fide cost-based price increases. Violators are subject to criminal and civil penalties.

COUNTY ORDERS

- [Executive Order N-33-20](#) (March 19, 2020) requires **all individuals living in the State of California to stay at home or at their place of residence until further notice** unless necessary to maintain continuity of operations of the federal critical infrastructure sectors discussed earlier.
- At the time of issuance, eighteen California counties already had similar orders in place. Section 1 of [Governor Newsom's March 12 EO \(N-25-20\)](#) states that "[a]ll residents are to **heed any orders and guidance of state and local public health officials**, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19." (Emphasis added.) In light of the fact that a stated purpose of the Governor's subsequent March 19 Order EO N-33-20 is to establish consistency across the state in order to mitigate the impact of COVID-19, in the event of conflict between a local order and the Governor's EO, the latter prevails, in our view.
- Counties that had issued "stay at home" orders prior to March 19, 2020:
 - Alameda

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- Contra Costa
- Lake
- Marin
- Mendocino
- Monterey
- Napa
- San Benito
- San Francisco
- San Luis Obispo
- San Mateo
- Santa Clara
- Santa Cruz
- Solano
- Sonoma
- Sutter
- Yuba
- Yolo

For further discussion on the orders in Los Angeles, Santa Clara, San Diego, and San Francisco counties, please see the March 17, 2020 Ropes & Gray Alert, [*State and Local Jurisdictions Impose Restrictions on Gatherings and Non-Essential Businesses: Defining What is, and is not, an “Essential Business” that Can Remain Open in Non-Remote Mode*](#). Additional information on how COVID-19 may affect employers can be found in our March 16, 2020 Alert, [*COVID-19: Mitigating Risk Using Evolving Guidance*](#).

California’s governmental response to the COVID-19 pandemic is evolving rapidly. Please revisit this page for periodic updates.