

CORONAVIRUS INFORMATION & UPDATES

March 29, 2020

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

MARCH 29, 2020 UPDATE

This is an update to the client alert published on March 20, 2020, [California Authorities Issue a Wide Range of Rules and Guidance on COVID-19](#).

This Alert is one of a series of advisories, podcasts and webinars by Ropes & Gray addressing a wide range of COVID-19 topics. These resources may be found at our [Coronavirus Resource Center](#).

Quick Summary: The Governor gives regulatory flexibility to CDPH to waive licensure and staffing requirements; Covered California, the state's ACA-based health insurance marketplace, reopens enrollment; Medi-Cal telehealth services are to be reimbursed on a level with in-person services; CMS grants some of the Section 1135 waiver relief sought by California while continuing to review other requests.

GOVERNOR'S EXECUTIVE ORDERS

- [Executive Order N-35-20](#) (March 21, 2020).
 - **Section 1** permits the director of the California Department of Public Health to waive certain licensing and staffing requirements with respect to any clinic, adult day health care, hospice, or mobile health care unit in order to assist in the care or to protect the health of individuals that are not in a hospital or health facility. Waivers must include alternative measures to protect the health of affected individuals and the public health and safety.

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

- [Medi-Cal Fee-For-Service \(FFS\) Pharmacy Benefit Section 1135 Waiver Flexibilities Relative to the 2019-Novel Coronavirus \(COVID-19\)](#) (March 26, 2020). This letter states that DHCS will cover and reimburse off-label and/or investigational medications not yet having the required published documentation for use in COVID-19.
- [DHCS COVID-19 Frequently Asked Questions: Medication-Assisted Treatment and Telehealth](#) (March 26, 2020). This FAQ addresses COVID-19-specific issues related to medication-assisted treatment for substance abuse disorders.
- [Coverage Options Notice](#) (March 19, 2020). This communication announces that uninsured, eligible individuals can enroll in private health insurance plans or Medi-Cal coverage through June 30, 2020.
- [Emergency Telehealth Guidance – Covid-19 Pandemic](#) (March 18, 2020). This notice requires all Medi-Cal managed care health plans (MCPs) to reimburse providers at the same rate whether a service is provided in person or through telehealth, if the service is the same, as determined by the provider's description of the service on the claim. It also requires MCPs to provide the same amount of reimbursement for a service rendered by telephone as they would if the service was rendered by video, provided the modality by which the service is rendered is medically appropriate.

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- [Guidance for Behavioral Health Programs Regarding Ensuring Access to Health and Safety during the COVID-19 Public Emergency](#) (March 19, 2020). This letter provides guidelines on the use of telehealth for behavioral health services, including, among other topics, acceptable modalities, in-person contact requirements, specialty behavioral health services, residential behavioral health services, and the process for requesting fee reductions or waivers.
- [DHCS' Directive for Targeted Case Management \(TCM\) Encounters Performed during State of Emergency](#). This letter directs Local Government Agency Coordinators (LGAs), during the period of the declared state of emergency, to conduct TCM encounters in a non-face-to-face manner, except when the LGA determines, on a case-by-case basis, that face-to-face contact is necessary.
- [Requirements and Procedures for Emergency Medi-Cal Provider Enrollment](#). This guidance document provides information on how providers may apply for streamlined enrollment in the fee-for-service Medi-Cal program, as authorized by the Section 1135 waiver granted by CMS. Such enrollments are valid for only 60 days, unless extended.

GENERAL HEALTH BENEFIT PLAN GUIDANCE

- [CMS Letter Addressing Section 1135 Waiver Flexibility Related to Novel Coronavirus Disease](#) (March 23, 2020).

This letter approves several of California's Section 1135 waiver requests, granting flexibility with respect to Medicaid. Some aspects of California's 1135 waiver requests were not addressed, and the CMS letter indicates that CMS is continuing to review these. Note that there are a number of CMS blanket waivers applicable to Medicare, listed [here](#).

CMS approved a request to allow enrollees up to an additional 120 days for an eligibility or FFS appeal to request a fair hearing. CMS noted that it cannot waive certain Medicaid managed care regulations related to appeals of adverse benefit determinations, but changed the timeframe before an enrollee may request a fair hearing to one day, to allow almost immediate access to the fair hearing without the managed care plan resolving the appeal first. Additional details are available [here](#) and [here](#) (for behavioral health).

CMS approved a modification of the timeframe for managed care enrollees to exercise their appeal rights so that any enrollee who would have passed the deadline any time from March 1, 2020 to the end of the public health emergency is given up to 120 additional days to request a fair hearing.

California's Medicaid program is allowed to temporarily enroll providers who are enrolled with another State Medicaid Agency or Medicare for the duration of the public health emergency. This includes waiving the application fee, criminal background check, site visit, and in-state/territory licensure requirements. It is still required to collect minimum data requirements to file and process claims (including NPI); collect SSN, EIN, TIN; and to screen against the OIG exclusion list and state licensure in the provider's home state. Additionally, CMS is waiving the requirement that such claims represent a single instance of care over 180 days, or multiple instances of care to a single individual over 180 days.

CMS approved a waiver so that alternate settings (NFs, ICF/IDDs, PRTFs and hospital NFs) may be fully reimbursed for services rendered in connection with a need to relocate residents in an emergency, provided that efforts are made to meet minimum standards.

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