

CORONAVIRUS INFORMATION & UPDATES

April 10, 2020

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

APRIL 10, 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](#), which was previously updated on [March 29, 2020](#). Accordingly, these are developments that have become publicly available from the period of March 30, 2020 through April 9, 2020.

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](#).

Governor's Executive Orders

- [Executive Order 43-20](#) (April 3, 2020). This Order expands legal protections to medical providers who are using video or teleconferencing services to provide routine and non-emergency medical appointments. It also relaxes certain state privacy and security laws for medical providers offering telehealth services, including suspending certain state telehealth consent requirements, suspending penalties for violation of timely breach notification requirements, and suspending penalties for violation of certain state law health information safeguards in certain circumstances.
- [Executive Order N-39-20](#) (March 30, 2020). This Order allows the Director of the California Emergency Medical Services Authority to suspend licensing requirements for certain licensed EMS personnel. Also, the certification and permitting requirements of the Radiologic Technology Act are suspended for those who fall within an enumerated personnel category, which includes being certified by another state to perform radiologic technology or holding an expired certificate or permit issued pursuant to the Radiological Technology Act, so long as they are working under the supervision of a licensed person and are deemed necessary by a California health facility. The order also allows the Director of the Department of Developmental Services to lease any real or personal property, or enter into any other agreement to procure residences or facilities and necessary equipment, goods or services, in order to serve those individuals with developmental disabilities in response to COVID-19.

Other News From the Governor's Office

- The Governor created a [COVID-19 Testing Task Force](#), a public-private collaboration that will work with stakeholders to rapidly boost testing capacity. (April 4, 2020)

California Department of Managed Health Care ("DMHC") Guidance

- [Telehealth Services](#) (April 7, 2020). This all plan letter provides guidance on how providers should bill services rendered via telehealth and clarifies the scope of [All Plan Letter 20-009](#). It explains that when a provider delivers a service virtually that would normally be delivered in-person, the provider should document and bill the service as if it had occurred in person, with Use Place of Service "02" to designate telehealth.

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DHCS Requests to CMS for State Plan Amendments and Demonstration Authority

- [Request for Additional State Plan Amendments Related to COVID-19 National Emergency/Public Health Emergency](#) (April 3, 2020). This letter requests CMS approval of additional Section 1135 flexibilities, which have not yet been granted, pertaining to the California State Plan, including those listed below:
 - Increased Drug Medi-Cal (DMC) reimbursement for non-Narcotic Treatment Program services;
 - Reimbursement of DMC state plan services provided by telehealth as if they had been provided face to face;
 - Increased specialty mental health services reimbursement;
 - Increased clinical laboratory and laboratory service reimbursement rates to equal the Medicare payment equivalent;
 - Increased reimbursement for certain long-term care facilities; and
 - Suspension of premiums and cash-sharing for applicable Medicaid and Children's Health Insurance Program beneficiaries for COVID-19-related treatment.
- [Request for Section 1115 Demonstration Authority Related to COVID-19 Public Health Emergency](#) (April 3, 2020). This letter requests CMS approval of Section 1115 flexibilities geared towards maintaining safe and sufficient beneficiary access to covered services during the COVID-19 pandemic, including those listed below. Note that this request has not yet been granted.
 - Waiver of the 16-bed limitation applicable to certain Institutions for Mental Disease;
 - Extension of coverage of COVID-19 treatment to the optional uninsured category at the 100 percent FMAP rate;
 - Classification of COVID-19 testing and treatment provided to Medi-Cal beneficiaries as emergency services, regardless of whether the treatment is provided outside of hospital emergency rooms;
 - Waiver of certain utilization limits applicable to the resident treatment benefit provided in approved Drug Medi-Cal-Organized Delivery System (DMC-ODS) pilots under the Medi-Cal 2020 Demonstration;
 - Reimbursement for retainer payments in specified Home and Community-Based Services programs;
 - Waiver of the interim rate setting methodology for DMC-ODS pilots approved under the Medi-Cal 2020 Demonstration; and
 - Authorization of DHCS and contracted managed care plans to make incentive payments on a pay-for-reporting basis within the Public Hospital Redesign and Incentives in Medi-Cal program and the Quality Incentive Pool directed payment program.

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DHCS Medi-Cal Guidance

- [Coverage of Emergency COVID-19 Inpatient or Outpatient Services](#) (April 8, 2020). This guidance clarifies that all enrolled Medi-Cal beneficiaries, regardless of their scope of coverage under Medi-Cal or documentation status, are entitled to all inpatient and outpatient services necessary for the testing and treatment of COVID-19, even if treated outside a hospital emergency department. It also provides information on how to bill for COVID-19-related services.
- [Updated Rate for New COVID-19 Diagnostic Testing CPT Code 87635](#) (April 8, 2020). This update notifies providers of a new CMS CPT code, 87635, for COVID-19 diagnostic testing services. Providers may be reimbursed up to \$5.31 for these services.
- [Coverage of Emergency COVID-19 Inpatient or Outpatient Services](#) (April 8, 2020). This communication announces that COVID-19 testing and related medically necessary treatment services, including services rendered outside of a hospital emergency department, are covered benefits for all enrolled Medi-Cal beneficiaries. It also specifies billing processes for reimbursement.
- [Hospital Presumptive Eligibility \(HPE\) Flexibilities due to COVID-19](#) (Updated April 8, 2020). This guidance allows enrolling providers to use telephonic signatures for HPE applications so long as proper consent is obtained.
- [Specimen Collection for COVID-19 Now Medi-Cal Benefit](#) (April 7, 2020). This communication announces that specimen collection for COVID-19 is now a Medi-Cal covered benefit.
- [Child Health and Disability Program \(CHDP\) Gateway Flexibilities due to COVID-19](#) (April 2, 2020). This guidance allows enrolling providers to use telephonic signatures for CHDP Gateway Applications so long as proper consent is obtained.
- [California Appendix K Approval Letter](#) (April 2, 2020). This letter indicates approval of California's request to amend the following 1915(c) Home and Community-Based Services Waivers with the Emergency Preparedness and Response Appendix K:
 - Home and Community-Based Alternatives Waiver
 - Multipurpose Senior Services Program
 - HIV/AIDS
 - HCBS Waiver for Californians with Developmental Disabilities
 - California Assisted Living Waiver
- Guidance documents related to the 1135 Waiver request approved on March 23, 2020:
 - [Off-Label and/or Investigational Drugs Used to Treat COVID-19 and/or Related Conditions](#) (April 2, 2020). This temporary guidance states that DHCS will cover and reimburse off-label and/or investigational medicines that meet certain criteria and that are used to treat COVID-19.

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- [Medi-Cal Fee-For-Service Prior Authorization Section 1135 Waiver Flexibilities Relative to the 2019-Novel Coronavirus](#) (April 2, 2020). This document announces a temporary suspension of prior authorization requirements to eliminate unnecessary face-to-face contact and possible exposure to COVID-19. It also provides guidance on the Treatment Authorization Request and Service Authorization Request requirements.
- [Emergency Guidance for Medi-Cal Managed Care Health Plans in Response to COVID-19](#) (March 27, 2020). This all plan letter summarizes 1135 Waiver approvals pertaining to state fair hearings, provider enrollment/screening, prior authorization, reimbursement for COVID-19 testing, and provisions of care in alternative settings, hospital capacity, and blanket section 1135 Waiver flexibilities.
- [Provision of Care in Alternative Settings, Hospital Capacity, and Blanket Section 1135 Waiver Flexibilities Relative to the 2019-Novel Coronavirus](#) (March 27, 2020). This document states that inpatient facilities may provide care to Medi-Cal beneficiaries in alternative settings and receive full reimbursement. It also discusses in detail the waivers pertaining to skilled nursing facilities, critical access hospitals, hospital acute care patients in excluded distinct part units, psychiatric units, rehabilitation units, and long-term care acute hospitals.

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