

CORONAVIRUS INFORMATION & UPDATES

April 28, 2020

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

APRIL 28, 2020 UPDATE

This is an update to the 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](#) and [April 10, 2020](#). Accordingly, these are developments that have become publicly available from the period of April 10, 2020 through April 27, 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 N-55-20](#) (April 22, 2020). This Executive Order provides additional regulatory flexibilities to DHCS and Medi-Cal providers. Key elements include the following:
 - Section 4 suspends the requirement that in-person signatures and printed names be collected when delivering certain Medi-Cal covered drugs.
 - Section 6 permits DHCS to issue COVID-19 related bulletins or guidance on provider enrollment without advance notice or a public hearing.
 - Section 11 suspends the regulation that requires a patient's physical signature to receive a psychiatric medication.
 - Section 13 permits DHCS to temporarily delay or suspend, and may permit Medi-Cal managed care plans to temporarily delay or suspend, audit or review activities. Note that this requires further action on the part of DHCS or Medi-Cal managed care plans to effectuate.

OTHER NEWS FROM THE GOVERNOR'S OFFICE:

- Governor Newsom [announced](#) on April 22, 2020 that he plans, in connection with the other states of the Western States Pact, to allow hospitals to resume some elective surgeries, including heart valve replacements and tumor removals, as well as important preventive service, such as colonoscopies.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH ("CDPH") GUIDANCE

- [Resuming California's Deferred and Preventative Health Care](#) (April 27, 2020). This letter establishes general considerations and guidelines for hospitals and clinics as they prepare to resume preventive care and other non-urgent medical procedures. It emphasizes the need to consult local public health officers in neighboring counties, as areas of the state will be operating on varying timelines.

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- [Draft Letter on COVID-19 Crisis Care Guidelines](#) (April 23, 2020). This letter establishes a framework for prioritizing COVID-19 testing and treatment when resources are limited or insufficient to meet the medical needs of all patients. The letter indicates that it is in draft form, and revisions are being considered to ensure that the guidelines “reflect [California’s] values as a state.” The letter further notes that a revised version will be issued soon.
 - CDPH had originally published crisis care guidelines on April 20, 2020 but has since retracted the April 20th document and replaced it with the April 23rd draft.
- [Expanding Access to Testing: Updated Interim Guidance on Prioritization for COVID-19 Laboratory Testing](#) (April 19, 2020). This letter sets out guidance for prioritizing COVID-19 testing, including four tiers of categories of individuals based on need for testing. Individuals with top priority include hospitalized patients, symptomatic health care workers, persons identified for testing by public health contact investigations and disease control activities in high-risk settings, and those living in congregate living facilities or correctional facilities.

CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE (“DMHC”) GUIDANCE

- [Extension of Phase-In Period For Expedited Exemption Requests](#) (April 16, 2020). Entities seeking exemption from health care service plan licensing originally had until June 30, 2020 to apply for an expedited exemption request. This all plan letter extends the “phase-in” period prescribed in [All Plan Letter 19-014](#) to December 31, 2020 to account for uncertainty caused by COVID-19.

DHCS REQUESTS TO CMS FOR STATE PLAN AMENDMENTS

- [Provision of Care in Alternative Settings, Hospital Capacity, and Blanket Section 1135 Waiver Flexibilities for Medicare and Medicaid Enrolled Providers Relative to COVID-19](#) (April 22, 2020). This guidance clarifies new Section 1135 Waivers and supersedes the April 10, 2020 and March 27, 2020 guidance. It permits:
 - Inpatient facilities, including nursing facilities, intermediate care facilities for individuals with intellectual and developmental disabilities, psychiatric residential treatment facilities, and hospital nursing facilities to be fully reimbursed for services rendered in an unlicensed facility, so long as CDPH has made an assessment that the facility meets minimum standards;
 - Coverage of care in a skilled nursing facility for beneficiaries who have not met the three-day prior hospitalization requirement;
 - Critical Access Hospitals to have more than 25 beds;
 - Acute care hospitals to house acute care inpatients in excluded distinct part units, where the distinct part unit’s beds are appropriate for acute care inpatients;
 - Acute care hospitals with excluded distinct part inpatient psychiatric units to relocate inpatients into an acute care bed and unit; and

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- Medi-Cal ambulance providers to transport to alternative sites and bill at the standard ambulance transport rate.

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS ORDER

- [Order Waiving Nurse Practitioner Supervision Requirements](#) (April 14, 2020). This order waives Business and Professions Code § 2836.1(e), which prohibits surgeons and physicians from supervising more than four nurse practitioners at any one time, when furnishing or ordering drugs or devices. This order was effective immediately, and will remain in effect for 60 days from its issuance.

DHCS MEDI-CAL GUIDANCE

- [Waiver of Requirement for Patient Signature On-File for Mailed or Delivered Prescriptions](#) (April 24, 2020). This waiver permits any form of delivery service tracking or electronically documented proof of delivery to suffice as proof of receipt of a drug or device by a Medi-Cal and Family PACT beneficiary or authorized representative. It also clarifies that delivery carriers may leave the package discreetly at the door if the recipient does not answer at the time of delivery.
- [New Presumptive Eligibility for COVID-19: Aid Code – V2](#) (Updated April 23, 2020). This guidance introduces the new Presumptive Eligibility Aid Code, V2, which allows all medically necessary services related to COVID-19 to be provided at no cost to individuals, regardless of insurance coverage, immigration status, or income. These services will be paid up to the maximum reimbursement rate in the fee-for-service delivery system.
- [Information about Novel Coronavirus \(COVID-19\) for Medi-Cal Transportation Providers](#) (April 22, 2020). This letter announces that, during the public health emergency, DHCS is waiving the prescription requirement for eligible beneficiaries to use non-emergency medical transportation. However, a Treatment Authorization Request is still required, and the provider must incorporate the statement “Patient impacted by COVID-19” within the Miscellaneous Information field when seeking reimbursement. Additionally, ambulances may transport a patient to any destination that is able to provide treatment to the patient in a manner consistent with state and local EMS protocols.
- [New CPT Codes for COVID-19 Antibody Testing](#) (April 17, 2020). This guidance announces the AMA’s three CPT codes to report and track COVID-19 antibody testing. These codes are covered Medi-Cal benefits.
- [Guidelines for the Medi-Cal Subacute Care Unit during the COVID-19 Pandemic](#) (April 10, 2020). This Policy and Procedure Letter notifies providers participating in the Medi-Cal Subacute Care Program of the following flexibilities, which may be sought by providers by submitting a Medi-Cal Subacute Flexibility Request, which must be approved before taking effect:
 - Suspension of ongoing training requirements;
 - Coverage of certified nursing assistant (“CNA”) hour shortages with excess licensed staffing hours, as long as the CNA staffing hour shortages and licensed staffing hour excesses occur on the same day and the licensed staffing hour excesses are used to provide CNA care; and

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- Reduction in the number of required Service Coordinator/Social Worker staffing hours at pediatric subacute care units, so long as beneficiaries are not adversely affected.

COUNTY UPDATES

- On April 27, 2020, six Bay Area counties and one city issued a [press release](#) announcing an extension of the stay-at-home order through May 31. The public health departments plan to issue official orders later this week. The areas involved are:
 - Alameda County
 - The City of Berkeley
 - Contra Costa County
 - Marin County
 - San Mateo County
 - San Francisco County
 - Santa Clara County

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