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DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

DATE: April 23, 2020

Behavioral Health Information Notice No: 20-017

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: Flexibility for Alcohol and Other Drug (AOD) facilities during the COVID-19 Public Emergency

PURPOSE: Provide guidance to AOD Programs on flexibility during the COVID-19 emergency

REFERENCE: [Behavioral Health Information Notice: 20-009 and Behavioral Health FAQs](#)
[DHCS COVID-19 Response website](#)

BACKGROUND:

The Department of Health Care Services (DHCS) is issuing the following guidance to counties and providers regarding the temporary waiver of specific requirements for AOD programs and facilities in response to the COVID-19 public health emergency, related to the Governor's Executive Order N-55-20.

DHCS previously released Behavioral Health Information Notice 20-009 to provide guidance to minimize the spread of COVID-19 and ensure ongoing access to care. This Information Notice includes new flexibility from Executive Order N-55-20 and summarizes the previously released guidance and flexibilities applicable to AOD treatment facilities, so all relevant guidance is in one information notice. Facilities with additional requests should contact their DHCS liaison for more information.

POLICY:

Pursuant to Executive Order N-55-20 and DHCS guidance to counties and providers, the following list identifies waivers granted to AOD programs licensed by DHCS in connection with the COVID-19 emergency. Facilities with additional requests should contact their DHCS liaison for further guidance and more information. The flexibility described herein is effective April 23, 2020, and will terminate upon termination of the public health emergency via DHCS notification, including any extensions.

Approved waivers for facilities under this process will be posted via a link on the [DHCS COVID-19](#) website.

Application Extensions Licensed or Certified AOD Residential and Outpatient Treatment Facilities

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.

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. 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. Service documentation should be completed in the patient treatment file in the manner as the provider would for an in-person visit. [Executive Order N-43-20](#) states that the requirements specified in Business and Professions Code section 2290.5(b) related to the responsibility of a health care provider to obtain verbal or written consent before the use of telehealth services and to document that consent, as well as any implementing regulations, are suspended. Telehealth and telephone services are allowable and covered under Drug Medi-Cal per [Centers for Medicare & Medicaid Services guidance](#).

For additional information regarding telephone and telehealth services please see [Behavioral Health Information Notice 20-009 and Behavioral Health FAQs](#).

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 AOD residential and outpatient treatment 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, AOD 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.

AOD Residential Treatment Bed Capacity

In order to address the concerns of an insufficient bed capacity in AOD residential treatment facilities, Executive Order N-55-20 authorizes DHCS to expedite the review and approval of requests to increase treatment bed capacities for AOD residential treatment facilities. This request must not exceed the capacity allowed in the approved facility fire clearance. Licensed AOD residential treatment facilities seeking to increase treatment bed capacity shall electronically submit a Supplemental Application ([DHCS 5255](#)) along with a Facility Staffing Data form ([DHCS 5050](#)) for review to LCDQuestions@dhcs.ca.gov.

Initial and Biennial Inspections

In accordance with California Code of Regulations (CCR), Title 9, Section 10522 (a)(2), 10544(a), and DHCS AOD Program Certification Standards Section 4000, AOD residential and outpatient treatment facilities shall be inspected by the Department to determine compliance with applicable statutes and regulations. An inspection shall be conducted prior to issuance of initial licensure or certification, and once during the two-year licensure or certification period.

During the COVID-19 state of emergency, the Executive Order N-55-20 grants DHCS a waiver of on-site inspection requirements to allow DHCS the flexibility to conduct initial and biennial licensing inspections virtually. DHCS will conduct inspections of AOD facilities to determine compliance with applicable statutes and regulations via virtual means, such as video conferencing, photographs, and/or conference calls. DHCS staff will also verify facility compliance with applicable regulations and certification standards through receipt of facility documentation via a secure email box. DHCS staff will communicate with program via email or video throughout the inspection process and during the exit interview, and will continue to provide technical assistance to all facilities via electronic and telephonic means.

Drug Medi-Cal Certification

On March 23, 2020, the Centers for Medicare and Medicaid Services [authorized DHCS to provisionally and temporarily enroll providers](#) enrolled with another State Medicaid Agency (SMA) or Medicare for the duration of the public health emergency. In addition, CMS is granting waiver authority for DHCS to enroll providers not currently enrolled with another SMA or Medicare, on the condition specific requirements are followed.

For specific questions related to Drug Medi-Cal certification, please see the DHCS Provider Enrollment Division's [Emergency Waiver Bulletin](#). Facilities may also contact the Provider Enrollment Division by phone at (916) 323-1945 or by email at DHCSDMCRecert@dhcs.ca.gov.

Emergency Initial Licensure of AOD Residential Treatment Facilities

DHCS has the authority during a public emergency to expedite and streamline the application process for an entity applying for licensure as an AOD residential treatment facility. Facilities shall submit the Initial Treatment Provider Application ([DHCS 6002](#)), applicable [fees](#), and all required documentation as outlined below:

- 1) Initial Treatment Provider Application (Form DHCS 6002, Rev. 06/16)

- 2) Lease agreement, donated space agreement, or letter from school approving use of space (Tab 3 of Application)
- 3) Bacteriological Analysis of Water, if applicable (Tab 4 of Application)
- 4) Fire Clearance (Form Std. 850)
- 5) Facility Staff Data (Form DHCS 5050)
- 6) Outline of Activities and Services (Tab 10 of Application)
- 7) Job Descriptions (Tab 16 of Application)
- 8) Admission Agreement (Tab 18 of Application)
- 9) Sketch of Building and Grounds (Tab 19 of Application)
- 10) Sample Menu (Tab 20 of Application)
- 11) Safeguarding of Personal Property of Residents (Tab 21 of Application)
- 12) Photos or Virtual Walkthrough of Facility
- 13) Disclosure to DHCS (Form DHCS 5140)
- 14) Relapse Plan

Applicants should reach out to the DHCS liaison for any questions about the process; DHCS is committed to helping facilities expand capacity during the emergency. Applicants may submit this information electronically to LCDQuestions@dhcs.ca.gov and mail the signed original(s) with fees to:

Department of Health Care Services
Licensing and Certification Section
MS 2600
P.O. Box 997413
Sacramento, CA 95899-7413

Application Review

DHCS shall conduct an expedited review of the submitted application for licensure and attached documentation, to determine completeness and compliance with the requirements as outlined in herein. If DHCS determines that the application is incomplete, the applicant shall provide the required information within thirty (30) calendar days from the date DHCS issued the notice of incomplete application. After DHCS deems the application and supporting documentation to be complete, DHCS shall conduct a virtual inspection of the facility to determine compliance with applicable statutes and regulations. The licensee is permitted to utilize video conferencing, photographs, and/or conference calls to ensure compliance. DHCS staff will verify the facility's compliance with applicable regulations and certification standards through receipt of facility documentation via a secure email box. DHCS staff will communicate with program via email or video throughout the inspection process and during the exit

interview, and will continue to provide technical assistance to all facilities via electronic and telephonic means.

Provisional Licensure

Upon approval of the application, a facility shall receive an initial two-year AOD license with a one-year provisional period in accordance with Health and Safety Code 11834.09(d). At any time during the one-year provisional license period, DHCS may revoke a license for good cause if the licensee fails to operate in compliance with Chapter 7.5 of Part 2, Division 10.5 of the Health and Safety Code or any regulations adopted pursuant to that chapter.

Upon termination of the declaration of emergency, all provisional licensees are required to demonstrate compliance with all application requirements through submission of any outstanding documentation. DHCS shall issue a notice to inform each provisional licensee of the outstanding documentation they must provide within thirty (30) calendar days from the date DHCS issued the notice.

Additional Time to Complete Counselor Certification Requirements

California Code of Regulations, Title 9, §13035(f)(1) requires AOD registered counselors to obtain certification as an AOD counselor, from a DHCS recognized certifying organization, within five (5) years of the date of registration.

Under the authority of Executive Order N-55-20, DHCS shall suspend the requirement to complete AOD registration for the duration of the declaration of emergency. DHCS shall extend the AOD registrants' completion date by the same number of months that the requirement was suspended.

Criminal Background Check (CBC)

Health and Safety Code §11834.50 requires that individuals employed in AOD Residential Treatment Facilities with an adolescent treatment waiver undergo criminal background checks, including fingerprinting, and these requirements remain in effect. However, DHCS may grant program flexibility when a provider proposes to use alternate concepts to comply with existing staffing regulations. Facilities requesting program flexibility should describe the alternate concepts to meet the intent of the above requirement and submit it to LCDQuestions@dhcs.ca.gov for consideration.

Additionally, to facilitate processing of CBC clearances during the COVID-19 pandemic, DHCS has instituted the following:

- An online criminal background check may be considered.
- If the individual will solely be providing services through telehealth, and will have no direct contact with the patient, then a criminal background check will not be required.

For additional information regarding congregate care settings, please see the Department of Social Services [guidance for adult and senior care facilities](#) as well as the National Council for Behavioral Health [COVID-19 Guidance for Behavioral Health Residential Facilities](#) and the American Society of Addiction Medicine [Infection Mitigation in Residential Treatment Facilities](#).

The California Department of Public Health also published a [mitigation playbook](#) to provide a summary for a mitigation strategy in the State of California and the health care system.

DHCS continues to closely monitor this situation and will issue further reminders and guidance as appropriate.

If you have questions about this Information Notice, please contact the Licensing and Certification Officer of the Day at (916) 322-2911 or LCDQuestions@dhcs.ca.gov.

Sincerely,

Original signed by

Janelle Ito-Orille, Chief
Licensing and Certification