



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



GAVIN NEWSOM  
GOVERNOR

DATE: August 9, 2021

Behavioral Health Information Notice No: 21-046  
[Supercedes BHIN No.: 20-009](#)

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 Association of Social Rehabilitation Agencies  
California Consortium of Addiction Programs and Professionals  
California Council of Community Behavioral Health Agencies  
California Hospital Association  
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: Updated guidance for behavioral health programs regarding COVID-19 public health emergency flexibilities

PURPOSE: Provide counties and providers with information on the status of public health emergency flexibilities as of August 2021. This Behavioral Health Information Notice (BHIN) updates and supersedes [BHIN 20-009](#).

REFERENCE: [DHCS COVID-19 Response website](#)

**BACKGROUND:**

DHCS was given authority to grant flexibility for certain requirements through Executive Orders (EO) [N-43-20](#) and [N-55-20](#), which are sunsetting (see [Executive Order N-08-21](#) for details of when particular provisions end) and through a [Section 1135 waiver](#) granted

by the Centers for Medicare and Medicaid Services (CMS), effective March 15, 2020. See [DHCS COVID-19 Response website](#) for updated information notices related other Executive Order flexibilities related to Driving Under the Influence (DUI) Programs, Alcohol and Other Drug (AOD) programs, and residential and inpatient mental health treatment facilities.

This BHIN supersedes [BHIN 20-009](#). Information regarding BH telehealth policy is outlined separately in BHIN 21-047.

**POLICY:**

**1. 5150 Evaluations and 5151 Assessments**

W&I Code section 5150 evaluations and W&I Code section 5151 assessments may be performed by authorized providers via telehealth (synchronous audio and video) pursuant to W&I Code sections 5008(a), 5151 (b) and 5150.5(a). This may include releases from involuntary evaluation and treatment, as appropriate. These services are billable to Medi-Cal regardless of whether they are provided in person or through telehealth as long as the individual has Medi-Cal coverage for the service and all Medi-Cal requirements are met.

**2. Additional Time to Complete Counselor Certification Requirements: Flexibility expires September 30, 2021.**

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.

**3. Adapting Oversight Requirements to Prioritize Patient Needs and Accommodate Workforce Challenges**

DHCS is no longer providing blanket workforce flexibilities. DHCS encourages counties to reach out to their DHCS liaison with concerns about meeting DHCS mandated regulatory or reporting requirements and deadlines due to the impact of the public health emergency, as individual exceptions may be considered.

**4. Emergency Enrollment in Medi-Cal for Specialty Mental Health Service Providers**

The streamlined enrollment process for providers ended June 30, 2021. Providers should use the standard enrollment process going forward.

**5. Alcohol and Other Drug (AOD) Residential and Outpatient Treatment Facility Flexibilities**

DHCS is no longer providing blanket flexibilities. DHCS encourages providers to reach out to their DHCS liaison if questions. See BHIN 20-017, Alcohol and Other Drug Facilities, for more information, on the [DHCS COVID-19 Response website](#).

**6. Temporary Suspension of MHPA Program On-site Reviews**

Per W&I Code section 5897(d), DHCS is required to conduct MHPA program reviews of county performance contracts once every three years. Due to the public health emergency, the MHPA program on-site reviews were temporarily suspended. DHCS will be reaching out to counties to schedule and resume onsite reviews.

**7. Signature Requirements**

**Release of Information:** DHCS does not have oversight authority over federal requirements. HIPAA requires all authorizations for release of information to have a signature in order to be valid per 45 CFR 164.508. There is no indication from the federal Office of Civil Rights, Health and Human Services that they have waived this requirement due to COVID.

***Informed Consent for Anti-psychotic Medications:  
Flexibility expires September 30, 2021.***

California regulations<sup>1</sup> require that mental health facilities maintain a consent form signed by a patient to receive anti-psychotic medications. The flexibility in paragraph 11 of Executive Order N-55-20 waiving this requirement expires September 30, 2021, and section 852 of Title 9 of the California Code of regulations shall go back into effect. If a patient chooses not to sign the consent form, the provider shall document in the patient's chart that the patient understands the nature and effect of the anti-psychotic medication(s) and consents to administration of the medication(s), but does not want to sign the consent form. Facilities are not expected to obtain signatures on these documents for patients that started and discontinued services during the COVID-19 public health emergency, or who discontinued services during the emergency period. During the COVID-19 public health emergency, Facilities must document in the patient's medical record the reason for the missing or late signature. This requirement only applies to anti-psychotic medications, not psychotropic medications generally.

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<sup>1</sup> Cal. Code Regs., tit.9, § 852.

***Signatures on treatment plans.***

When a signature is required on a client plan and a beneficiary is unavailable to sign the plan, such as when the service is done by telehealth or telephone, the reason for the missing signature shall be documented in the client plan. It is not necessary to obtain the signature when the client returns to in-person care. The following approaches are appropriate:

- Documenting in the chart that oral consent was obtained in the course of telehealth services,
- Use of electronic signatures, such as via DocuSign or similar services, if the e-signature service has a business associate agreement with the applicable covered entity,
- Obtaining wet signatures when an in-person visit is made, and
- Documenting the reasons for any signatures that are late or missing.

***Signatures consenting to telehealth or telephone visits.***

California law requires a patient's consent to receive services via telehealth or via telephone to be documented in the client chart. Documentation of verbal consent is sufficient. California law does not specify the frequency a provider is required to obtain consent from a patient. For facilities that participate in Medi-Cal, the DHCS licensing and certification division will accept a one-time consent in the client file.

**8. 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 substance use disorder (SUD) residential and outpatient facilities, that have a license or certification issued by LCD, may submit a written request to DHCS for a fee reduction or waiver:

- 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;

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- Describe the economic hardship or displacement that occurred due to the emergency;
- Identify the provider type (MHRC, PHF, NTP, DUI, SUD 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.

Sincerely,

Original signed by

Kelly Pfeifer, M.D.  
Deputy Director  
Behavioral Health

**DHCS COVID-19 Frequently Asked Questions:  
Behavioral Health  
Updated August 9, 2021**

**Operational Requirements**

**1. May providers share SUD diagnosis information during this emergency?**

This is a federal, not state issue. The Substance Abuse and Mental Health Services Administration (SAMHSA) issued [guidance](#) which allows providers to share patient SUD diagnosis information that would normally be protected under 42 CFR Part 2 in instances of a bona fide medical emergency. Usage of the medical emergency exception must be documented by providers.

**Data Reporting**

**2. Can DHCS clarify current expectation for the various county data reporting requirements?**

Flexibilities on data reporting rescinded as of June 30, 2021. All county reporting requirements are in place.

**Provider Enrollment**

**3. How can providers enroll in Medi-Cal during the public health emergency?**

Providers should use the regular enrollment process; the flexibility allowing accelerated enrollment ended June 30, 2021.

**4. How can providers waive fingerprinting requirements?**

The flexibility for alternate pathways to obtain fingerprints for background checks was rescinded as of June 30, 2021.

## Licensing and Certification

**5. Can DHCS waive the requirement that SUD treatment programs maintain a minimum of 30% licensed staff?**

Pursuant to California Code of Regulations Title 9 Chapter 8 Section 13010, at least 30% of staff providing counseling services in all AOD programs shall be licensed or certified.

**6. Can individual providers receive a waiver to operate above their licensed capacity?**

**This flexibility rescinded as of June 30, 2021.** For questions related to a specific facility, contact: [LCDQuestions@dhcs.ca.gov](mailto:LCDQuestions@dhcs.ca.gov). MHRCs and PHFs should email [MHLC@dhcs.ca.gov](mailto:MHLC@dhcs.ca.gov).

**7. What are the licensure requirements to allow SUD residential programs to relocate into new locations on an emergency basis?**

In accordance with California Code of Regulations Title 9 Chapter 5 Section 10527(c), facilities that move operations to new locations shall submit a Supplemental Application (DHCS 5255) within 60 days from the date of the move.

**8. Are facilities able to provide treatment or recovery services outside the facility service location if there are concerns about providing treatment at the location due to COVID-19?**

Providers should contact their Licensing Analyst for questions.

## Billing

**9. Can DHCS can consider parity with respect to requirements of the specialty MH and SUD systems where we are disadvantaging DMC-ODS systems with 6 months to work denials versus 12 months in the MH system?**

DHCS has addressed the issue of denials, and now accept 12 months to work denials in both SUD systems and MH systems.