



BRADLEY P. GILBERT, MD, MPP
DIRECTOR

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



GAVIN NEWSOM
GOVERNOR

April 17, 2020

To: Tribal Chairpersons, Designees of Indian Health Programs,
and Urban Indian Organizations

Subject: Notice of Proposed Changes to the Medi-Cal Program In Response to the
COVID-19 Public Health Emergency

The purpose of this letter is to provide information regarding proposed changes to the Department of Health Care Services' (DHCS) Medi-Cal Program, which are needed to address the COVID-19 public health emergency.

Please note that the Centers for Medicare and Medicaid Services (CMS) has provided flexibility that allows states to modify tribal notification timeframes, including conducting consultation after submission of Waivers, Demonstration Projects, and State Plan Amendments (SPA) in order to timely modify Medicaid programs to address the COVID-19 emergency. The modified process provides for notification and opportunity to comment within ten business days of submission to CMS of proposals related to the COVID-19 emergency. This notice meets DHCS' modified notification process.

DHCS has submitted the following proposal to CMS:

- **Medicaid Disaster Relief for the COVID-19 National Emergency (SPA 20-0024):** DHCS submitted SPA 20-0024 to request additional flexibilities for amending the State Plan in connection with the COVID-19 outbreak and public health emergency. The proposed SPA includes flexibilities related to eligibility, enrollment, premiums and cost sharing, benefits, and payment. DHCS seeks to align this SPA with the duration of the emergency period, starting with the effective date of March 1, 2020 unless otherwise specified. Please see the enclosed summary for a detailed description of this DHCS proposal.

QUESTIONS AND COMMENTS

Tribes, Indian Health Programs and Urban Indian Organizations may submit written comments or questions concerning this proposal within 10 days from the receipt of

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and Urban Indian Organizations

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notice. Comments may be sent by email to Angeli.Lee@dhcs.ca.gov or by mail to the address below:

Angeli Lee
Director's Office Department of Health Care Services
MS 0000
P.O. Box 997413
Sacramento, CA 95899-7413

Please note that Indian Health Programs and Urban Indian Organizations may also request a telephone consultation on these proposals at any time as needed.

Sincerely,

Original Signed By

Sandra "Sam" Willburn, Chief
Primary, Rural, and Indian Health Division
Department of Health Care Services
MS 8502
P.O. Box 997413,
Sacramento, CA 95899-7413



**Department of Health Care Services (DHCS)
Tribal and Designees of Indian Health Programs Notice**

PURPOSE:

To clarify proposed changes to the DHCS Medi-Cal Program which are needed to address the COVID-19 public health emergency.

BACKGROUND

DHCS submitted [State Plan Amendment \(SPA\) 20-0024](#) to the Centers for Medicare & Medicaid Services (CMS) on April 3, 2020 to request flexibilities related to the ongoing COVID-19 public health emergency. Please note that DHCS has modified SPA 20-0024 based on a subsequent discussion with CMS. CMS has allowed states flexibility with respect to tribal and public notice requirements as a result of the declared public health emergency. Therefore, DHCS is notifying tribes and designees of Indian health programs following the submission of this proposed SPA in order to ensure CMS can expeditiously review these important COVID-19 related flexibilities that impact the current State Plan.

SUMMARY OF PROPOSED CHANGES

This SPA proposes changes to Medi-Cal eligibility, enrollment, premiums and cost sharing, benefits, and provider payments, in order to assist Medi-Cal providers and beneficiaries during the COVID-19 public health emergency.

Please see the below summarized SPA proposals that incorporate changes requested by CMS subsequent to the initial submission of SPA 20-0024:

Eligibility:

- DHCS proposes to establish an optional uninsured coverage group. This coverage group includes individuals not otherwise eligible for full scope Medi-Cal benefits and individuals not enrolled in group, individual, or other public program coverage. The establishment of this coverage group is proposed to be effective March 18, 2020. Note DHCS is seeking approval under a Section 1115 amendment to cover COVID-19 treatment services for this proposed coverage group in addition to COVID-19 testing and testing-related services.

Impact: Tribal health programs and Federally Qualified Health Centers (FQHCs) will be able to provide care and seek reimbursement for COVID-19 testing and testing-related services for individuals in the uninsured optional coverage group. American Indians in this coverage group may have increased access to COVID-19 diagnostic services as a result of this proposal.

Enrollment:

- DHCS proposes expansion of the Hospital Presumptive Eligibility (HPE) Program to include additional covered populations and expanded coverage periods for HPE covered populations. Expansion of the HPE coverage periods will allow the state to meet the needs of HPE covered individuals who may have previously exhausted the allowable HPE coverage periods in a given 12-month timeframe.

- DHCS proposes to leverage the HPE program for enrollment of the uninsured optional coverage group who are in need of screening and testing services for COVID-19.
- DHCS also proposes expanding HPE to individuals that are 65 years or older, blind, or disabled and to apply an income disregard up to 138 percent of the Federal Poverty Level (FPL) for these individuals. There will be no resource test for purposes of this HPE coverage group.

Impact: Tribal health programs and FQHCs will be able to seek reimbursement for COVID-19 testing, testing-related services and/or treatment services for individuals covered by the HPE program. American Indians covered through the HPE program may have increased access to care as a result of this proposal.

Premiums and Cost Sharing

- DHCS proposes suspending all Medi-Cal deductibles, copayments, coinsurance, and other cost sharing for testing services (including in vitro diagnostic products), testing-related services, and treatments for COVID-19 (including vaccines, specialized equipment and therapies) pursuant to sections 6004 and 6008 of the Families First Coronavirus Response Act (FFCRA). Additionally, DHCS will suspend premium payments for Optional Targeted Low-Income Children (OTLIC) in Medi-Cal. Medi-Cal premiums are currently required for certain children who are 1 up to 19 years of age in Medi-Cal for families with incomes above 160 percent of the FPL up to and including 266 percent of the FPL.

Impact: DHCS does not anticipate any impact as a result of this proposal for Tribal health programs, FQHCs, or American Indian Medi-Cal beneficiaries. American Indian Medi-Cal beneficiaries are exempt from premiums and cost sharing. American Indians who have share of cost Medi-Cal may have increased access to care due to the elimination of fiscal challenges that may inhibit them from seeking medical services related to this public health emergency.

Benefits

- **Changes to Current State Plan Benefits**
 - Under the Home Health Agency (HHA) benefit, the SPA proposes to allow physicians and other licensed practitioners, in accordance with State law, to order Medicaid Home Health services as authorized in the COVID-19 Public Health Emergency Medicare interim final rule (CMS-1744-IFC).

Impact: To the extent that a tribal health program or FQHC is enrolled as a HHA, they will have increased flexibility to allow physicians and other licensed practitioners to order home health services. American Indian Medi-Cal beneficiaries may have increased access to HHA services as a result of this proposal.

- DHCS proposes to add Associate Clinical Social Worker (ACSW) and Associate Marriage and Family Therapist (AMFT) services in FQHCs and Rural Health Clinics (RHC) for the duration of the public health emergency.

Impact: DHCS does not anticipate an impact to tribal health programs as ACSW and AMFT services are already billable at the All-Inclusive Rate (AIR) under the State Plan. FQHCs and RHCs will be able to bill for services provided by ACSWs and AMFTs at the Prospective Payment System (PPS) rate. American Indian Medi-Cal beneficiaries may have increased access to behavioral health services as a result of this proposal.

- **Telehealth**

- DHCS proposes to modify face-to-face requirements for State Plan benefits/services that can be provided via telehealth, including telephonic services and individual and group counseling. Please note that CMS has advised that the State must ensure that the clinic serves as either the originating or distant site for services rendered via telehealth.

Impact: Tribal health programs and FQHCs will be able to seek reimbursement for telehealth services that take place via virtual communication or via telehealth/telephonically provided the clinic serves as either the originating or distant site.

- Drug Medi-Cal (DMC) State Plan benefits: DHCS proposes to modify requirements for individual or group counseling within the State Plan to allow use of telehealth in the DMC program and allow for group or individual counseling by telehealth. This proposal will allow for the provision of services by telephone and telehealth for the purposes of delivering Substance Use Disorder treatment services. It will also allow counseling services permissible in group settings to be allowed in individual sessions.

Impact: Tribal health programs and FQHCs may be able to provide individual/group counseling via telehealth. American Indian beneficiaries may have increased access to substance use disorder treatment services.

- **Drug Benefit**

- DHCS proposes to cover certain acetaminophen-containing products, cough, and cold products as covered outpatient drugs included in the pharmacy benefit. DHCS also proposes to enable providers to dispense up to a 100-day supply of any covered outpatient drug.

Impact: Tribal health programs and FQHCs that operate a retail pharmacy will be able to seek reimbursement for dispensing up to a 100-day supply of certain acetaminophen-containing products cough, and cold medications, and will be able to dispense and be reimbursed for up to a 100-day supply of any covered outpatient drug. American Indians Medi-Cal beneficiaries may have increased access to these medications as a result of this proposal.

- DHCS proposes to remove the six-prescription per calendar month limitation on covered outpatient drugs.

Impact: Tribal health programs and FQHCs that operate a retail pharmacy will be able to seek reimbursement for increased pharmacy services.

American Indians Medi-Cal beneficiaries may have increased access to outpatient prescription services as a result of this proposal.

Payments

○ **Payment for Telehealth Services**

- Telehealth: DHCS proposes to modify face-to-face requirements for telehealth/telephonic visits for tribal health clinics and FQHCs when the treating health care practitioner satisfies all other procedural and technical components of the Medi-Cal covered service or benefit being provided. Reimbursement for such services will be paid at the PPS rate (for a FQHC) or the AIR (for a tribal health program) for new or established patients irrespective of the date of the last visit.
- Virtual Communication: DHCS proposes to modify the face-to-face requirement for virtual communications. Payment will be available for communication technology-based services of 5 minutes or more between a tribal health program or FQHC clinic practitioner and a new or established patient, irrespective of date of last visit. Tribal health clinics and FQHCs will be reimbursed at the Medicare reimbursement rate.

Impact: Tribal health programs and FQHCs will be able to seek reimbursement for services provided via telehealth and virtual communication. This proposal will allow providers to continue providing services in ways that are consistent with physical distancing requirements. American Indian Medi-Cal beneficiaries may have increased access to care as a result of this proposal.

- DHCS also proposes to reimburse DMC State Plan services including, Intensive Outpatient Treatment, Naltrexone Treatment, Narcotic Treatment Program, Outpatient Drug Free Treatment, and Perinatal Residential Substance Use Disorder Services when provided via telehealth as if the service had been provided face to face.

Impact: To the extent that a tribal health program or FQHC provides DMC State Plan services, they may be able to receive reimbursement for providing these services. American Indian beneficiaries may have increased access to substance use disorder treatment services.

- DHCS proposes to modify requirements for a “face-to-face contact between the beneficiary and a treatment staff person of the facility on the day service” for Adult Residential Treatment Services and Crisis Residential services

Impact: DHCS does not anticipate that tribal health programs and FQHCs will be impacted by this proposal. American Indian beneficiaries may have increased access to adult residential treatment services and crisis residential services as a result of this proposal.

- **Other Payment Provisions**

- DHCS proposes to provide interim reimbursement to county owned and operated Specialty mental health services (SMHS) providers based upon the established interim rates for the current year increased by 100 percent.

Impact: To the extent that a tribal health program or FQHC contract with a county to provide SMHS, they may be able to receive interim reimbursement for SMHS. DHCS does not anticipate any impact as a result of this proposal for American Indian Medi-Cal beneficiaries.

- In accordance with the [Emergency Paid Sick Leave](#) DHCS proposes to allow the IHSS Individual Provider Rate to include payment for paid time off of IHSS providers related to COVID 19 sick leave benefits for a limited time period, from April 2, 2020 through December 31, 2020.

Impact: DHCS does not anticipate any impact as a result of this proposal for tribal health programs or FQHCs. American Indian Medi-Cal beneficiaries may have decreased access to IHSS as a result of this proposal due to IHSS providers using COVID 19 sick leave benefits.

The SPA has other proposals for which DHCS does not anticipate an impact to tribal health programs, FQHCs, or American Indian Medi-Cal beneficiaries including:

- Increase reimbursements to clinical laboratories due to increased costs associated with providing a high volume of COVID-19 diagnostic testing and related specimen collection services.
- Increase payments to Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities for the Developmentally Disabled (ICF-DDs) to allow consideration of all costs being incurred by facilities and to ensure the health and safety of residents.
- Revise the reimbursement methodology for DMC non-Narcotic Treatment Program services provided throughout the duration of the emergency.
- Exempt the clinical laboratory COVID-19 diagnostic testing procedure codes described from the 10 percent payment reductions pursuant to Welfare and Institutions Code section 14105.192, as described in Attachment 4.19-B, page 3.3, paragraph 13 of the State Plan.

The effective date of the proposed SPA is March 1, 2020 unless otherwise specified. The SPA is subject to approval by CMS. DHCS encourages review of the full proposal on the [DHCS webpage](#).

Additionally, based on CMS guidance, DHCS removed the following proposals from this SPA:

- Allowing Tribal 638 clinics to provide COVID-19 related services outside the clinic four walls as described in CMS Tribal FQHC guidance of January 2017. CMS subsequently clarified that if tribal health programs bill for services provided outside the clinic four walls at the AIR during the COVID-19 public health emergency, CMS will not recover overpayments.
- Allowing payment for E-consultation services.

RESPONSE DATE

Indian Health Programs and Urban Indian Organizations may also submit written comments or questions concerning this proposal within 10 days from the receipt of notice. Comments may be sent by email to Angeli.Lee@dhcs.ca.gov or by mail to the address below:

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