



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



GAVIN NEWSOM
GOVERNOR

DATE: UPDATED: July 8, 2021

Behavioral Health Information Notice No: 20-015

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: Guidance on available flexibilities pursuant to Governor Newsom's Executive Order N-55-20 for Mental Health Rehabilitation Centers (MHRCs) and Psychiatric Health Facilities (PHFs) during the COVID-19 emergency. **Flexibilities rescinded as of June 30, 2021.**

PURPOSE: Provide guidance on flexibilities allowed to MHRCs and PHFs during the COVID-19 emergency to ensure ongoing access to mental health treatment services.

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

BACKGROUND:

The Department of Health Care Services (DHCS) is issuing guidance to counties and providers to communicate the availability of flexibility for mental health treatment facilities related to the COVID-19 national public health emergency. DHCS released [Behavioral Health Information Notice 20-009 and Behavioral Health FAQs](#) to provide guidance on concrete steps counties and providers should take to minimize the spread of COVID-19 while ensuring ongoing access to care. DHCS recently received approval to grant flexibility for certain requirements through the Governor's Executive Order N-55-20. This Information Notice communicates the available flexibilities applicable to MHRCs and PHFs (collectively referred to as facilities).

POLICY:

Pursuant to Executive Order N-55-20 and California Code of Regulations (CCR), title 9, section 783.18 and title 22, section 77049, the following list identifies flexibilities available to MHRCs and PHFs licensed by DHCS to address the COVID-19 emergency. Facilities with additional flexibility requests should contact their DHCS liaison for further guidance. The flexibility described herein is effective April 23, 2020, and will terminate **on 6/30/21.**

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

1. Psychiatric Health Facility Licensed Mental Health Professionals.
Update: flexibility ends 6/30/21

CCR title 22, division 5, chapter 9, section 77012 currently defines a Licensed Mental Health Professional (LMHP) to mean any of the following:

- (a) a licensed psychologist who qualifies as a clinical psychologist, as defined in section 77004;
- (b) a psychiatrist, as defined in section 77023;
- (c) a licensed clinical social worker, as defined in section 77011.2; and
- (d) a licensed marriage, family and child counselor, as defined in section 77014.

In order to assist with staffing shortages during the COVID-19 emergency, Executive Order N-55-20 allows a Licensed Professional Clinical Counselor (LPCC) as defined in subdivision (e) of section 4999.12 of the Business and Professions Code, to be included in the professional classification of LMHPs. Consequently, a PHF may employ a LPCC as a LMHP to provide psychiatric health facility treatment services consistent with the LPCC's scope of practice.

2. Suspension of PHF on-site biennial licensing inspections
Update: flexibility ends 6/30/21: DHCS will work with facilities to schedule on-site inspections going forward.

Per Welfare and Institution Code (W&I) section 4080(d), every PHF for which a license has been issued shall be periodically inspected by a multidisciplinary team appointed or designated by DHCS. The inspection shall be conducted no less than once every two years and as often as necessary to ensure the quality of care provided. During the inspections, the review team shall offer advice and assistance to the PHF as it deems appropriate.

During the COVID-19 state of emergency, Executive Order N-55-20 grants DHCS authority to suspend biennial on-site licensing inspections to PHFs, on a case-by-case basis, to reduce the potential for COVID-19 spread.

As a result of the suspension of on-site inspections, DHCS will assess PHF regulatory and statutory compliance via virtual means (video conferencing, photographs, secure email, and/or conference calls). PHFs shall send requested documents and files via secure email. DHCS staff will communicate with the PHF throughout the inspection process and during the exit interview, including to provide any necessary technical assistance.

3. Suspension of MHRC on-site annual licensing inspections
Update: flexibility ends 6/30/21; DHCS will work with facilities to schedule on-site inspections going forward.

Per W&I section 5675(b), DHCS shall conduct annual licensing inspections of MHRCs to ensure compliance with applicable MHRC statutes and regulations for each new license or license renewal.

During the COVID-19 state of emergency, Executive Order N-55-20 grants DHCS authority to suspend annual on-site licensing inspections of MHRCs on a case-by-case basis to reduce the potential for COVID-19 spread.

As a result of the suspension of on-site inspections, DHCS will assess MHRC regulatory and statutory compliance via virtual means (video conferencing, photographs, secure email, and/or conference calls). MHRCs shall send requested documents and files via secure email. DHCS staff will communicate with the MHRC throughout the inspection process and during the exit interview, including to provide any necessary technical assistance.

4. Expedited licensing application process for PHFs and MHRCs, including at alternate sites such as hotels, motels or other facilities during the emergency
Update: flexibility ends 6/30/21

In order to address the need for additional access for mental health treatment services, DHCS will expedite the review and approval of PHF and MHRC applications to grant emergency licensure at [alternative sites](#), including but not limited to hotels or motels. DHCS has reduced the documentation required for the application process and will work with each applicant to provide flexibility in

the timeline to meet all PHF or MHRC requirements, as determined on a case-by-case basis.

PHFs

During the time of the COVID-19 state of emergency, any adult, firm, partnership, association, corporation, county, city, public agency, or other governmental entity that wants to obtain a PHF emergency license must complete the General Information Section, items 1-11, 15 and 16 on the PHF application ([DHCS 1814](#)) and include the following with the application:

- Documentation of approval of the application by the governing body pursuant to W&I section 4080(b)(1).
- Policies, procedures, and supporting documentation demonstrating how the facility will meet the following requirements:
 - Unusual occurrence standards, including reporting communicable diseases, in CCR, title 22, section 77137, and as defined within CCR, title 22, section 77036.
 - Communicable disease requirements in CCR, title 22, section 77135.
 - Admissions process and criteria standards in CCR, title 22, section 77113 that include an exclusion policy for individuals whose treatment requires medical interventions beyond the level appropriate at a PHF.
 - Medical client transfer agreement requirements in CCR, title 22, section 77089.
 - Client rights standards in compliance with CCR, title 22, section 77099.
 - Restraint and seclusion requirements in CCR, title 22, sections 77101 and 77103.
 - Pharmaceutical standards in CCR, title 22, sections 77079.1-77079.13.
 - Psychiatric and psychological services standards in CCR, title 22, section 77063.
 - Confidentiality of client records in CCR, title 22, section 77139, subdivision (e).
 - Quality assurance, including utilization review and medication monitoring that meets the standards specified in CCR, title 22, section 77083.
- A list of diagnoses proposed to be treated by the applicant's program, as required by CCR, title 22, section 77113.
- A list of diagnostic and treatment services, including all personnel, equipment and modalities that will be used to treat the various diagnoses provided by the program and clinical treatment and staffing.
- The number, description and qualifications of proposed staff, and a list of staff identified or hired to date, with a brief resume and copy of current licensure

- for each licensed professional, to meet the staffing standards specified in CCR, title 22, section 77061.
- A detailed description summarizing the planned program that includes how the programmatic space will be used, what treatments and activities will be available to patients, and how the program will provide an appropriate, safe and therapeutic environment.
 - A schedule of weekly activities to be engaged in by each patient and a schedule of a patient's typical day. This should include the anticipated flexibility of the program activities being provided [via telehealth](#) to meet the individual needs of each patient in accordance with the standards in CCR, title 22, section 77069.
 - Statements from the administrator, clinical director, and staff identified, stating whether their licenses have ever been suspended or revoked and whether they are under current indictment, as well as a listing of their arrest record, if any; any convictions of a felony; and malpractice actions, if any, against them; any charged felonious activities; and any currently pending actions by any private individual, government body, hospital staff office, or hospital affiliation, involving their professional duties.
 - Description of the applicant's experience in mental health service delivery.
 - Documentation in State of California Form STD. 850 that the facility meets the Safety, Zoning and Building Clearance requirements in CCR, title 22, sections 77039 and 77131.
 - Copy of the program's disaster plan per CCR, title 22, section 77129
 - Documentation of a floor plan of the proposed program space, and photographs if possible (Polaroid photos are acceptable).
 - PHF application fee of one thousand dollars (\$1000).
 - An applicant may also submit a request for a [fee waiver](#) during the COVID-19 national public health emergency.

Once DHCS has determined that the application and supporting documentation are complete and that the information submitted demonstrates that the applicant meets the initial requirements to provide services as a PHF, DHCS will conduct a virtual inspection of the facility in lieu of an on-site licensing inspection to verify that the facility meets applicable PHF licensing regulations. DHCS will provide the PHF Administrator or designated representative a copy of the inspection protocol and a checklist that identifies documents needed for review during the initial inspection process. Any requested documents shall be sent via secure email. DHCS staff will communicate with the applicants throughout the inspection process and during the exit interview, including providing any necessary technical assistance.

MHRCs

During the time of the COVID-19 state of emergency, any adult, firm, partnership, association, corporation, county, city, public agency, or other governmental entity that wants to obtain a MHRC emergency license or apply for an alternate site must submit a letter signed by the applicant and the County Behavioral Health Director, requesting the emergency license, which includes the name and address of the facility, applicant's contact information, legal classes to be admitted, and requested license capacity. The following must be included with letter:

- Plan of Operation according to CCR, title 9, section 783.13, which includes written policies, procedures, and supporting documentation demonstrating how the facility will meet the following requirements:
 - Administration and management policies and procedures pursuant to CCR, title 9, sections 783.13(b) and 784.00(a).
 - Personnel policies and procedures pursuant to CCR, title 9, section 784.00(b)(1), (5), which shall include:
 - Job descriptions detailing qualifications, duties, limitations and total number of each classification of employee, including nursing staff (licensed and unlicensed), rehabilitation program staff, and activity program staff, as required by CCR, title 9, sections 785.15, 786.12 and 786.19; and
 - Verification of licensure, credentials and references.
 - Specific target population group to be served, and the method and frequency of evaluating client progress as required by CCR, title 9, section 784.13(b).
 - Unusual occurrence standards in CCR, title 9, section 784.15.
 - Communicable disease reporting standards in CCR, title 9, section 784.16.
 - Infectious disease control requirements in CCR, title 9, sections 784.17-784.23.
 - Admissions process and criteria standards in CCR, title 9, section 784.26.
 - Informed consent to medical treatment standards in CCR, title 9, section 784.29.
 - Medical client transfer agreement requirements in CCR, title 9, section 784.30.
 - Clients' rights standards in CCR, title 9, section 784.31.
 - Restraint and seclusion requirements in CCR, title 9, sections 784.35-784.38.
 - Basic services and staffing standards in CCR, title 9, sections 785.00-785.19.

- Pharmaceutical services and self-medication standards in CCR, title 9, sections 785.20-785.31.
- Clinical treatment rehabilitation program and staffing standards, including psychiatric and psychological services standards, in CCR, title 9, sections 786.00-786.15.
- Clients' records confidentiality standards, including those pertaining to the access to, duplication of, and dissemination of information from client records, in CCR, title 9, sections 784.00(d) and 784.28(b).
- Description of the applicant's experience in mental health service delivery.
- Documentation in State of California Form STD. 850 that the facility meets the Safety, Zoning and Building Clearance requirements in CCR, title 9, section 783.14.
- Description of the program space, and of the physical plant or buildings (including a floor plan).
- Copy of the program's disaster plan per CCR, title 9, section 784.24.
- Photos of medication room reflecting appropriate storage of medical equipment, a locked cabinet for medications, a separate locked storage for narcotics, and a biohazard bin.

Once DHCS has determined that the application and supporting documentation are complete and that the information submitted demonstrates that the applicant meets the initial requirements to provide services as a MHRC, DHCS will conduct a virtual inspection of the facility in lieu of an on-site licensing inspection to verify that the facility meets applicable MHRC licensing regulations. DHCS will provide the MHRC Facility Director a copy of the inspection protocol and a checklist that identifies documents needed for review during the initial inspection process. Any requested documents shall be sent via secure email. DHCS staff will communicate with the applicants throughout the inspection process and during the exit interview, including providing any necessary technical assistance.

Applicants may submit their completed PHF and MHRC applications to the DHCS Mental Health Licensing secure email box at: MHLC@dhcs.ca.gov with the subject line, Attention: Emergency PHF or MHRC Application, as applicable.

5. Increase in existing licensed capacity
Update: flexibility ends 6/30/21

For any specific operational flexibilities, including the need to operate above the licensed capacity for MHRCs and PHFs, requests may be made at any time and

shall be in writing and emailed to: MHLC@dhcs.ca.gov. The request shall include the following components:

- Description of alternate concepts, methods, procedures, techniques, equipment, and personnel qualifications.
- The reasons for the program flexibility request and justification that the goal or purpose of the regulations would be satisfied.
- The time period for which the program flexibility is requested.
- Policies and Procedures to implement the provisions of the program flexibility and which demonstrate that this flexibility meets or exceeds provisions for patient care and safety.

6. Criminal Background Check (CBC)
Update: flexibility ends 6/30/21

The requirements of Welfare and Institutions Code (W&I) §5405 that individuals employed in MHRCs and PHFs undergo criminal background checks, including fingerprinting, remain in effect; however, DHCS may grant program flexibility when a provider proposes to use alternate concepts to comply with existing MHRC and PHF staffing regulations. If you would like the Department to consider a request for program flexibility, please describe the alternate concepts you are considering in meeting the intent of the above requirement and submit it to MHLC@dhcs.ca.gov for consideration.

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

- DHCS Mental Health Licensing Section will work collaboratively with facilities to process a Criminal Record Approval Transfer Notification (CRATN). An additional criminal background check (CBC) is not required if an individual or licensee has received a prior CBC clearance while working in a licensed facility and wishes to transfer to another similar facility. The individual or licensee who wishes to obtain a CRATN shall complete the DHCS Form 1818.
- An online criminal background check may be considered with the submission of the [DHCS Form 3007](#) and [DHCS Form 3085](#).
- Once the DHCS Form 1818 has been submitted to DHCS, the individual who has a DHCS-issued CBC clearance is allowed to start working in a PHF or MHRC.
- As was the case before the COVID-19 crisis, a new employee who has submitted fingerprint images/live scans can start working in a PHF or a MHRC

- while awaiting the CBC clearance as long as the employee is under constant supervision.
- 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.

7. Telehealth and telephone counseling

Updated 7/6/21: All telehealth flexibilities available during the public health emergency remain available until December, 2022. See DHCS telehealth policy for details.

If a patient requires isolation in a room due to illness, telephone or telehealth mental health services are reimbursable in community and residential settings. See the DHCS COVID-19 Information Notice, the [DHCS telehealth website](#) and the [DHCS Telehealth FAQ](#) for more detail. Telehealth and telephone services are allowable and covered under Drug Medi-Cal per [Centers for Medicare & Medicaid Services guidance](#).

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](#). 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 Mental Health Licensing Section at (916) 323-1864 or MHLIC@dhcs.ca.gov.

Sincerely,

Original signed by

Janelle Ito-Orille, Chief
Licensing and Certification Division