

**DATE:** April 4, 2023

SUPPLEMENT TO ALL PLAN LETTER 21-011  
SUPERSEDES SUPPLEMENT TO ALL PLAN LETTER 17-006

**TO:** ALL MEDI-CAL MANAGED CARE HEALTH PLANS

**SUBJECT:** EMERGENCY STATE FAIR HEARING TIMEFRAME CHANGES

**PURPOSE:**

The purpose of this supplement to All Plan Letter (APL) 21-011 is to provide Medi-Cal managed care health plans (MCPs) with information regarding the Centers for Medicare and Medicaid Services' (CMS) approval of portions of the Department of Health Care Services' (DHCS) Section 1135 Waiver request as related to the Novel Coronavirus Disease (COVID-19) public health emergency (PHE).<sup>1</sup>

**BACKGROUND:**

On March 16, 2020 and March 19, 2020, DHCS submitted requests to waive or modify a number of federal requirements under Section 1135 of the Social Security Act (Title 42 United States Code section 1320b-5) to CMS. DHCS' Section 1135 Waiver submission requested various flexibilities as related to the COVID-19 PHE, including flexibility on the timeframes for members to request Medi-Cal State Fair Hearings (SFH) during the emergency period. On March 23, 2020, CMS submitted an approval letter to DHCS summarizing its approval of specific requested Section 1135 Waiver flexibilities.

On January 30, the Biden-Harris Administration announced that it intends to end the COVID-19 PHE on May 11, 2023.<sup>2</sup> On February 9, 2023, the United States Department of Health and Human Services (HHS) Secretary, Xavier Becerra, sent a letter to Governors confirming the planned May 11, 2023 PHE end date.<sup>3</sup> As a result, the above mentioned Section 1135 Waiver flexibilities are set to expire at the end of the day on May 11, 2023.

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<sup>1</sup> The Section 1135 Waiver requests and CMS approval letter can be found on the DHCS COVID-19 Response webpage at the following link:

<https://www.dhcs.ca.gov/Pages/DHCS-COVID%E2%80%91Response.aspx>

<sup>2</sup> The Statement of Administration Policy is available at: <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>

<sup>3</sup> The Letter to U.S. Governors from HHS Secretary Xavier Becerra is available at:

<https://www.hhs.gov/about/news/2023/02/09/letter-us-governors-hhs-secretary-xavier-becerra-renewing-covid-19-public-health-emergency.html>

**POLICY:**

The following supplemental guidance will remain in effect until the end of the PHE, which is set to expire at the end of the day on May 11, 2023. Effective May 12, 2023, this supplemental guidance is rescinded, and the timeframes for requesting a SFH as contained in APL 21-011 and associated attachments will apply.

Temporary Changes to State Fair Hearing Request Timeframes

MCP members who wish to exercise their right to request a SFH following the exhaustion of the in-plan appeal process are currently required to make that request no later than 120 calendar days from the date of the MCP's written Notice of Appeal Resolution (NAR).<sup>4</sup> In cases of deemed exhaustion, the member has 120 days from: 1) the expiration date of the timeframe in which the MCP should have sent a NAR to the member; 2) the expiration date of the timeframe in which the MCP should have sent a Notice of Action (NOA) to the member; or 3) the date of the member's receipt of the MCP's deficient written NAR/NOA.

In the March 23, 2020 approval letter, CMS allowed a modification of the timeframe for MCP members to make SFH requests under Title 42 of the CFR section 438.408(f)(2). Specifically, any MCP member for whom the 120-day deadline would have occurred between March 1, 2020, through the end of the COVID-19 PHE, are now allowed up to an additional 120 days to request a SFH (i.e. initial 120 day timeframe plus an additional 120 days, for a total of 240 days). MCPs should also be flexible in granting aid paid pending (APP) during the COVID-19 PHE, as members may not receive notices timely or have the ability to respond with a request for APP within ten days of receipt of the MCP's NOA or NAR.

MCP Notification to Members

During the COVID-19 PHE, MCPs must notify members receiving a NAR that upholds an adverse benefit determination that they have an additional 120 days over and above the initial 120 days allowed to request a SFH. If an MCP is unable to include this temporary SFH rights information with the NAR at the time of the mailing, it must call the member at the time the NAR is being mailed to notify the member of the right to request a SFH within 240 days from the date of the NAR.

Other CMS Approved Section 1135 Modifications

While CMS also approved an additional modification of the timeframe for MCPs to resolve appeals under 42 CFR section 438.408(f)(1) to no less than one day, before a member may request a SFH, DHCS has chosen not to exercise this authority at this time because it could disrupt the current appeals system and cause confusion for members. However, DHCS reminds MCPs of their obligations to resolve expedited

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<sup>4</sup> 42 Code of Federal Regulations (CFR) 438.408(f)(2).

appeals for any service within 72 hours from the request. If DHCS learns that MCPs are systemically denying medically necessary services it will invoke the one day appeal allowance authorized in the Section 1135 Waiver approval to ensure members have access to all medically necessary services during this emergency.

If you have any questions regarding this supplemental guidance, please contact your Managed Care Operations Division Contract Manager.

Sincerely,

Original Signed by Dana Durham

Dana Durham, Chief  
Managed Care Quality and Monitoring Division