

DATE: March 29, 2024

Behavioral Health Information Notice No: 24-012

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: Driving-Under-the-Influence (DUI) Program Services in Virtual Settings

PURPOSE: To establish requirements for the provision of virtual services in DUI programs pursuant to subdivision (e) of Section 11836 of the Health and Safety Code (HSC), as amended by Assembly Bill (AB) 118.

REFERENCES: [Assembly Bill 118](#) (Budget Act of 2023: Health); HSC [Section 11836](#).

BACKGROUND:

Section 11836 of the HSC requires the Department of Health Care Services (DHCS) to license and perform compliance monitoring of all DUI programs in California. The objectives of the DUI program are to reduce the number of repeat DUI offenses by persons who complete a state-licensed DUI program, and to provide participants an opportunity to address problems related to the use of alcohol and/or other drugs.

During the COVID-19 public health emergency, DHCS authorized DUI programs the ability to offer their services virtually. DHCS issued a [FAQ](#) in September 2023, for DUI virtual services, and will continue to update this FAQ as necessary in order to provide guidance to providers and other stakeholders. Currently, DUI virtual services continue to



operate in accordance with this FAQ. On July 10, 2023, the Governor signed AB 118, which authorizes DHCS to issue regulations regarding the provision of DUI virtual services.

AB 118 amended HSC Section 11836 to require DHCS to promulgate regulations, on or before January 1, 2026, governing DUI programs' provision of alcohol or drug recovery services (DUI services) in virtual settings. (HSC § 11836(e)(2).) Pending the promulgation of these regulations, DHCS has the authority to implement, interpret, or make specific HSC Section 11836, as it applies to virtual services provided by DUI programs, by means of all-county letters, plan letters, information notices, or similar instructions. (HSC, § 11836(e)(1).)

POLICY:

In accordance with subdivision (e)(1) of Section 11836 of the HSC, this BHIN makes specific the requirements for the provision of DUI services in a virtual setting until DHCS promulgates regulations. The DUI Virtual Services FAQ will remain a resource for providers to reference if they have questions about compliance with this BHIN. The following policies shall apply to all licensed DUI programs electing to use virtual services as an additional mode of delivering educational and counseling sessions pursuant to California Code of Regulations (CCR), Title 9, Chapter 8, Certification of Alcohol and Other Drug Counselors:

Definitions

“Virtual Services” means the provision of synchronous counseling services by a licensed DUI program via real-time video over the internet. DUI programs are required to utilize a HIPAA-compliant platform when providing virtual services.

“Electronic Signature” means a digital version of a conventional handwritten signature. DUI programs utilizing electronic signatures must require a digital certificate to verify the identity of the signer, ensuring that the signature is authentic and cannot be forged. Electronic signatures may also be used to record relevant information, such as the date and time a document was digitally signed.

In utilizing electronic signatures, programs must ensure compliance with applicable laws and regulations governing digital transactions and electronic signatures to ensure both client confidentiality and the security of the document signing software.

Physical Site

In order to ensure that DUI services are available to all populations, licensed programs offering virtual services must also maintain a physical location where in-person services are provided. All services that are available to participants virtually must also be offered in-person at the physical site, so DUI participants have the option to receive services virtually or in-person. The physical site location must match the address listed on the DUI license issued by DHCS. DUI programs may not exclusively provide services in a virtual setting or refer participants to other DUI programs to avoid providing in-person services.

With the allowance of DUI services in a virtual setting, many programs have limited their normal hours of operation at the licensed physical site. In order to increase the accessibility of in-person services to participants, all DUI programs are required to post their hours of operation by the entrance of the physical location to inform the general public and participants of when the program will be open for administrative and counseling services. DUI programs' voicemail greetings and websites shall also include the hours of operation.

To ensure compliance with the aforementioned requirements, all DUI programs providing services in a virtual setting shall submit their hours of operation and a schedule of counseling services to DHCS and the county alcohol and drug program administrator no later than July 1, 2024. The schedule shall include the days and times of both in-person and virtual services for a minimum of one full week. Staffing is not required at the physical site while virtual services are in session, however, technical assistance must be available immediately before and during virtual sessions. Any updates to the hours of operation or schedule of services shall be reported to DHCS within 14 days of the change.

DUI programs that do not offer virtual services are not required to comply with the virtual service requirements and should submit an email to duiproviders@dhcs.ca.gov to inform DHCS.

Provision of Virtual Services

In addition to all statutory and regulatory requirements¹ pertaining to the provision of counseling services, DUI programs electing to provide virtual services must also:

¹ [California Code of Regulations, Title 9, Division 4, Chapter 3 Programs for Alcohol and Drug Impaired Drivers, HSC 11836-11838.11, Chapter 9, Services to Persons Convicted for Driving While Under the Influence of Alcohol and Other Drugs, HSC 11833, Chapter 7.2 Personnel Requirements, and California Code of Regulations, Title 9, Chapter 8 Certification of Alcohol and Other Drug Counselors.](#)

- Maintain sign-in rosters for all educational and group counseling sessions, including electronically captured signatures for each participant in attendance. DUI programs are required to put in place mechanisms to ensure the accuracy of attendance documentation and authenticity of the electronic signatures.
- Provide an email address and/or phone number that participants can utilize to notify the DUI program if they encounter problems with attending a virtual service. The email or phone number must be supported by a live DUI program staff member to provide needed technical assistance. In order to receive credit for attendance, participants are expected to log into the counseling session early to address any technical difficulties. There is no grace period allowed for tardiness or technical issues.
- Require all counselors and participants to attend counseling sessions in a private setting to ensure confidentiality. Cameras must be turned on during virtual services in order for both parties to actively engage throughout the counseling session.

Policies and Procedures

DUI programs are accountable for the general supervision of the licensed facility, including virtual services, and for the establishment of policies and procedures concerning the delivery of virtual services. Policies and procedures must be maintained at the physical site, made available to all staff and volunteers, and are subject to review during onsite compliance reviews.

At a minimum, policies and procedures shall contain the following:

- Participant screening to determine if virtual services are appropriate. Screening criteria shall include the participant's access to internet services and appropriate equipment (i.e., computer, phone or tablet with video and audio capabilities). The policy shall also include the requirement for all participant screening documents to be maintained in the participant case folder.
- Program policy for participants who are experiencing connectivity issues or are disconnected from a virtual service. The policy shall specify the circumstances in which a participant will be allowed to obtain credit for attending the counseling session.
- Counselor behavior and professionalism while providing virtual services. Policies and procedures shall include both the DUI program's rules as well as the requirement for all counselors to comply with all laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice while providing virtual services, including, but not limited to, Section 4992.3 of the Business & Professions Code, and Section 13060 of Title 9 of the CCR, as applicable.

- Process for identifying alcohol/drug impairment and consequences if a participant is determined to be under the influence while attending a virtual service.

DUI programs shall submit policies and procedures pertaining to virtual services to DHCS and the county alcohol and drug program administrator for review and approval by July 1, 2024. Failure to comply with this requirement may result in the issuance of a Notice of Deficiency and the assessment of civil penalties pursuant to Section 9827 of Title 9 of the CCR.

Virtual Services Contract

DUI program rules and information pertaining to services provided in a virtual setting must be included in a virtual services contract between the program and each participant. The virtual services contract shall be provided in addition to the participant contract and is used to address the expectations and requirements of virtual services, including, but not limited to:

- Confidentiality, in accordance with 42 CFR Part 2, including confidentiality of other participants in virtual services.
- Alcohol/drug use before or during virtual services and the consequences for insobriety.
- The requirement for counselors and participants to attend virtual services in a quiet space without distractions. Distractions may include, but are not limited to, driving, taking a walk, cooking, exercising, smoking, eating, or laying down while attending virtual services.
- The requirement for cameras to be on for the entire duration of the scheduled session. To ensure that participants are attending services alone and in an appropriate setting, virtual and blurred backgrounds are prohibited.
- Phone number/email address that participants can use to contact the DUI program if there are issues with attendance/connectivity.
- Consequences for violating any program rules pertaining to virtual services.

The virtual services contract shall include a statement informing participants that both in-person and virtual services are available at the DUI program. The contract shall allow participants the option of selecting either modality, or a hybrid of both.

Prior to attending virtual services, the DUI program shall review the virtual services contract with the participant and require dated signatures from both the counselor and the participant.

COMPLIANCE:

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All licensed DUI programs providing services in a virtual setting shall comply with this BHIN until DHCS adopts formal regulations. DHCS shall ensure compliance with this BHIN as part of its licensing compliance reviews required by subdivision (c) of Section 11836.12 of the HSC. Pursuant to Section 11838.4 of the HSC, any licensed DUI program that fails to adhere with the requirements set forth in this BHIN may be subject to disciplinary action, including but not limited to, being issued a Notice of Deficiency for non-compliance, assessment of civil penalties, and license suspension or revocation.

Please address all questions regarding this BHIN to the DUI Officer of the Day at (916) 322-2964 or duiproviders@dhcs.ca.gov.

Sincerely,

Original signed by

Janelle Ito-Orille, Chief
Licensing and Certification Division