NATIONAL HEALTH LAW PROGRAM

ADDENDUM: ACCESSING MEDI-CAL SERVICES DURING COVID-19 PANDEMIC

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The COVID-19 pandemic has changed access to Medi-Cal in many ways: from expanding eligibility to how to access services. This supplement addresses some changes to Medi-Cal coverage and benefits as well as the needs of beneficiaries during the pandemic. The federal Medicaid agency (CMS) and the state Medi-Cal agency (DHCS) have issued extensive guidance on Medi-Cal eligibility and services since the state and federal emergencies were declared related to the pandemic and state and county shelter-in-place orders.

A. Accessing Medi-Cal Services During The COVID-19 Pandemic:

DHCS has directed many providers to limit non-essential, non-urgent, elective procedures during the pandemic.[1] California's Public Health Department issued guidelines on how providers should deliver services during the pandemic to ensure the safety of patients and medical staff. Medical offices that are currently open are screening patients for symptoms of the virus and taking extra precautions with non COVID-19 services.

Although providers currently have the option to delay certain services, most managed care plans cannot delay or cancel medically necessary treatment that would result in harm to a person's health even during a health crisis.[2] Medi-Cal providers must make individualized, clinically appropriate decisions before postponing or cancelling medically necessary treatment. However, providers are obligated to ensure certain medically necessary services are still available, "including but not limited to all acute emergency procedures, procedures necessary due to acute, debilitating symptoms, pregnancy-related services, labor and delivery, organ transplantation, dialysis, cancer treatments, neurosurgery, trauma, cardiac treatment and limb threatening vascular surgery." [3] During the pandemic, DHCS has directed Medi-Cal providers to provide services via telehealth and/or virtual communications "whenever clinically appropriate and practicable."[4]

1. Prior Authorizations

During the course of the pandemic, all prior authorization requirements are waived for fee-for-service Medi-Cal beneficiaries.[5] Managed care plans also cannot require prior authorization for COVID-19 related services or for ongoing services authorized before March 18, 2020, and no cost-sharing is allowed for COVID-19 related screening and testing.[6] DHCS requested plans to eliminate or expedite prior authorizations for all other services, including but not limited to "elective hospitalizations and/or procedures, durable medical equipment (DME), magnetic resonance imaging (MRI), hearing aids, laboratory services, speech/occupational/physical therapy services, nonemergency medical transportation, etc."[7] However, providers are still required to submit Treatment Authorization Requests (TARS)/Service Authorization Requests (SARS), including in the request that the "patient was impacted by COVID-19."[8]

B. TELEHEALTH

1. Telehealth under California Law

Since 2011, California law has defined telehealth as "the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site (e.g. home) and the health care provider is at a distant site."[9]

State law requires: 1) documentation of either verbal or written consent for the use of telehealth from the patient; 2) compliance with all state and federal laws regarding the confidentiality of health care information; 3) patient's rights to the patient's own medical information apply to telehealth interactions; and 4) that the patient not be precluded from receiving in-person health care services after agreeing to receive telehealth services.[10] There is no limitation on the type of setting between a health care provider and a patient when providing covered services appropriately through a telehealth modality.[11] Services provided via telehealth do not require prior in-person contact between a health care provider and a patient.[12] Further, a health care provider is not required to be present with the patient at the originating site unless determined medically necessary by the provider at the distant site.[13]

2. Medi-Cal Telehealth Provider Manual

Medi-Cal offers providers flexibility to determine if a particular service or benefit is clinically appropriate based on evidence-based medicine. It has traditionally covered two main telehealth modalities: (1) audio-visual, two-way, real time communication (synchronous) or (2) asynchronous store-forward communication, including e-consults.[14]

The DHCS Medi-Cal Telehealth Provider Manual ("Manual") currently allows for increased flexibility in providers' use of telehealth as a modality for delivering medically necessary services to their patients.[15] Patients can provide consent either orally or in writing and the health care provider at the originating site must inform the patient, where appropriate, of the option to utilize a telehealth modality.[16] Only the provider can assess the appropriateness of the telehealth modality to the patient's level of acuity at the time of the service.[17]

Consultations via asynchronous electronic transmission cannot be initiated directly by patients.[18] In other words, e-consults are permissible only between health care providers.[19] Telehealth may also be used for purposes of meeting network adequacy.[20]

California's family planning program, Family PACT (Planning, Access, Care and Treatment).[21] Family PACT services are allowed to utilize telehealth to support the use of contraceptive methods by assisting individuals who have a medical necessity for family planning services.[22] Providers can utilize existing telehealth policies as an alternative modality for delivering Family PACT covered services when medically appropriate.[23]

3. Updates on Medi-Cal Telehealth Policy as a Result of the COVID-19 Public Health Emergency

Prior to the pandemic, Medi-Cal only reimbursed providers who were licensed in California and enrolled as Medi-Cal providers.[24] In order to fill the needs for additional providers during the COVID-19 public

health emergency, these licensure requirements have been relaxed.[25] Beginning March 23, 2020 (and effective retroactively to March 1, 2020), out-of-state providers may apply for enrollment in the FFS Medi-Cal program.[26] Among other flexibilities, these providers can be licensed to practice in another state.[27] These out-of-state providers, however, can only provide services to a Medi-Cal beneficiary who has been affected by COVID-19.[28] Medi-Cal FFS and Medi-Cal Managed Care Plans must reimburse providers at the same rate –whether a service is provided in-person or through telehealth—if the service is the same regardless of the modality of delivery, as determined by the provider's description of the service on the claim.[29]

As a result of the public health emergency, Medi-Cal and Medi-Cal Managed Care Plans are also reimbursing providers for services rendered over the phone and at the same rate as services rendered via video as long as those services are medically appropriate for the beneficiary. Virtual or telephonic communication may include a brief communication with another practitioner or with the patient, who because of COVID-19, cannot or should not be physically present.[30]

Although the Family PACT program had offered family planning services through telehealth, a recent change allows eligible individuals to virtually enroll and be recertified for Family PACT in order to slow the spread of COVID-19.[31]

4. SPECIFIC MEDI-CAL SERVICES

1. Prescription Drugs

Medi-Cal relaxed the rules for accessing prescription drugs in an effort to minimize in-person contact during the pandemic. Currently, beneficiaries can get up to a 100-day supply of most prescriptions, including early refills and medication assisted treatment for substance use disorders (SUD).[32] DHCS allows for additional flexibilities in drug utilization controls, including for the six-month prescription limit and emergency prescriptions.[33] Currently Medi-Cal allows for mailed and home delivery of prescription drugs, supplies, and equipment without the signature of the beneficiary.[34]

During the public health emergency, Medi-Cal also covers over-the-counter acetaminophen (Tylenol) and cough medications. These are available without prior authorization in fee-for-service Medi-Cal. Managed care plan enrollees can contact their health plans to learn how to access this benefit.[35] Medi-Cal plans can also cover the cost of certain disinfectant solutions and wipes to help prevent the spread of COVID-19.[36]

2. Behavioral Health Services

Medi-Cal covers behavioral and mental health care services, including specialty mental health and substance use disorders. There are several mental health and substance use programs to help individuals, including Medi-Cal beneficiaries, through the pandemic.[37] Medi-Cal County Mental Health Plans and Drug-Medi-Cal (DMC) programs must still assist individuals with finding a provider and most behavioral health services are available through telehealth to facilitate sheltering in place, whether it is fee-for-service or managed care.[38] At a time when beneficiaries may be facing heightened conditions such as depression, anxiety, trauma, or other stressful or obsessive thoughts by the pandemic, Medi-

Cal beneficiaries can get specialty mental health services (SMHS) and services with an in-person component (i.e. residential treatment) via telehealth or telephone.[39]

Beneficiaries in need of SUD services can also access most services via telehealth. In the DMC-Organized Delivery System (ODS) program, DHCS clarified that most SUD services may be provided via telehealth, including initial evaluations and follow-up interventions.[40] However, while DHCS has not included similar guidance for non-DMC-ODS counties, CMS issued guidance explaining that states may expand telehealth services without submitting a State Plan Amendment as long as there are no distinctions between reimbursement for services provided through telehealth and services provided through other ways.[41]

While the federal government waived some of the strict requirements for delivery of opioid medication, DHCS also released guidance encouraging Narcotic Treatment Programs (NTP) to submit blanket exception requests for patients to receive their medications.[42] Stable patients can receive 28 days of take-home doses and less stable patients can receive 14 days of take-home doses.[43] Flexibilities also allow for NTPs to provide medication delivery to patients at home or in a controlled treatment environment as long as it is done by an authorized NTP staff member, law enforcement officer, or National Guard personnel.[44]

3. Reproductive and Sexual Health Services

Telehealth capabilities also extend to Family PACT providers as explained in the "Telehealth" section.[45] Beneficiaries can still access pregnancy-related services, which includes abortions and family planning services during the pandemic. Beneficiaries may also access Depo-Provera directly from their pharmacy for self-administration.[46] Every Woman Counts (EWC), which provides free breast and cervical cancer screening and diagnostic services, is now requiring that providers accept applications and recertifications by telephone, including with telephonic signatures. The Breast and Cervical Cancer Treatment Program (BCCTP) provides cancer treatment to eligible individuals diagnosed with breast and/or cervical cancer and who are in need of treatment. EWC and FPACT providers who enroll individuals in BCCTP may accept telephonic signatures for BCCTP applications for immediate enrollment. Lastly, during the public health emergency, a person under the age of 21 can apply and get certified by telephone to Minor Consent Medi-Cal for coverage of certain services like family planning, pregnancy counseling, STI testing and treatment, substance use, and outpatient mental health. Lastly, monthly premiums for Medi-Call Access Program have been waived for pregnant individuals who have been impacted by the public health emergency.[47]

4. Dental Services

While dental providers can also cancel or postpone appointments, DHCS also encouraged dental providers to utilize teledentistry where possible.[48] Beneficiaries may access IV sedation or general anesthesia to treat emergency dental services during the pandemic.[49] Most recently, California announced that dentists could begin scheduling patients again for preventive and routine services, including if the appointment was cancelled before.[50]

5. Children's Health Services

Children should still be able to access the Medi-Cal benefits they need during the COVID-19 pandemic, either in person or through telehealth. DHCS issued relevant guidance specifically expanding telehealth and relaxing prior authorization protocols for enrollees of the California Children's Services (CCS) program.[51] All other guidelines described in this addendum apply for children who need services during the COVID-19 pandemic and the EPSDT criteria still stand.

6. Access to Durable Medical Equipment

Medi-Cal still must ensure access to durable medical equipment (DME) during the COVID-19 pandemic. The state of California directed that "rationing care based on a person's disability status is impermissible and unlawful under both federal and state law." This means that Medi-Cal providers, and providers at large, cannot ration care for persons with disabilities.[52]

During the pandemic, beneficiaries in need of nonemergency medical transportation (NEMT) and nonmedical transportation (NMT) during the pandemic are not required to obtain a prescription from a provider.[53] However, a TAR is still required to access NEMT and beneficiaries should be able to utilize the "safest available" transportation service between NMT and NEMT.[54] CMS also expanded the list of allowable destinations for ambulance transports, which may include "any destination that is able to provide treatment to the patient in a manner consistent with state and local Emergency Medical Services (EMS) protocols in use where the services are being furnished."[55] Such destinations include, but are not limited to: locations determined to be an alternative site as part of a hospital, critical access hospitals (CAH) or skilled nursing facilities (SNF), community mental health centers, FQHCs, physician offices, urgent care facilities, ambulatory surgery centers, any other location furnishing dialysis services outside of the End Stage Renal Disease (ESRD) facilities, and the beneficiary's home.[56]

PRESUMPTIVE ELIGIBILTY FOR COVID-19 TESTING & TREATMENT:

Effective April 8, 2020, DHCS implemented the Presumptive Eligibility for COVID-19 program for underinsured and uninsured California residents during the public health emergency.[57] The PE COVID-19 program covers diagnostic testing, testing-related services, and treatment services, "including medically necessary care such as the associated office, clinic, or emergency room visits related to COVID-19 at no cost to the individuals."[58] Eligible applicants for PE COVID-19 are those without insurance coverage and individuals with private insurance that does not cover diagnostic testing, testing-related services, and treatment services, including medically necessary care as a result of COVID-19.[59] There are no income, resource, immigration, or other requirements to qualify and coverage begins when the individual applies for this program.[60]

Coverage through PE COVID-19 ends on the last day of the month in which the 60th day falls after the individual applies.[61] Individuals can apply at their nearest qualified provider or contact the Medi-Cal nurse helpline to find a qualified provider. Medi-Cal beneficiaries also are eligible for no-cost COVID-19 testing and treatment, even for those who have a share of cost.[62] Older adults and persons with disabilities who might need immediate and more extensive services outside of COVID-19, may apply for Hospital Presumptive Eligibility (HPE). HPE is another program that, unlike COVID-19 PE, provides full scope services immediately upon applying at an eligible hospital.[63] During the pandemic, HPE

providers can utilize telephonic signatures for HPE applications by noting in the case file "COVID-19 protocol."[64]

ENDNOTES

[1] Cal. Dep't Health Care Servs., Medi-Cal Guidance Relating to Non-Urgent, Non-Essential or Elective Procedures Relative to the 2019-Novel Coronavirus (COVID-19) (Mar. 24, 2020) [hereinafter Non-Urgent, Non-Essential or Elective Procedures], https://www.dhcs.ca.gov/Documents/COVID-19/Non-Essential-Essential-Procedures-032420.pdf.
[2] Cal. Dep't of Managed Health Care, APL 20-008 (March 18, 2020), https://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-008%20(OPL)%20-%20Provision%20of%20Health%20Care%20Services%20During%20Self%20Isolation%20Orders%20(3_18_20).pdf?ver=2020-03-18-105412-317.
[3] Non-Urgent, Non-Essential or Elective Procedures, *supra* note 1.
[4] Non-Urgent, Non-Essential or Elective Procedures, *supra* note 1; *See also*, Cal. Dep't Health Care Servs., Medi-Cal Payment for Telehealth and Virtual/Telephonic Communications Relative to the 2019-Novel Coronavirus (COVID-19) (April 30, 2020), https://www.dhcs.ca.gov/Documents/COVID-19/Telehealth_Other_Virtual_Telephonic_Communications_V4.0.pdf.
[5] Cal. Dep't Health Care Servs., Medi-Cal Fee-For-Service (FFS) Prior Authorization Section 1135 Waiver Flexibilities Relative to the 2019-Novel Coronavirus (COVID-19) (June 3, 2020) [hereinafter Medi-Cal Fee-For-Service (FFS) Prior Authorization], https://www.dhcs.ca.gov/Documents/COVID-19/Section-1135-Waiver-Flexibilities-PA-updated-6-3-2020-Approved.pdf.
[6] Cal. Dep't Health Care Servs., All Plan Letter 20-004, https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2020/APL20-004.pdf. *See also*, Cal. Dep't Managed Care, APL-20-006 (Mar. 5, 2020), https://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-006%20(OPL)%20-%20COVID-19%20Screening%20and%20Testing%20(3_5_20).pdf?ver=2020-03-12-154205-807. *See also*, CMS, COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies (May 5, 2020), https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf.
[7] Medi-Cal Fee-For-Service (FFS) Prior Authorization, *supra* note 5 at 2.
[8] Medi-Cal Fee-For-Service (FFS) Prior Authorization, *supra* note 5 at 2.
[9] AB 415, the Telehealth Advancement Act (2011), http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0401-0450/ab_415_bill_20111007_chaptered.html.
[10] Cal. Bus. & Prof. Code §2290.5
[11] Cal. Health & Safety Code §1374.13.
[12] Cal. Welf. & Inst. Code §14132.72(c).
[13] Cal. Dep't Health Care Servs., Revised Medi-Cal Telehealth Manual (Jan. 2020) (Telehealth Manual); 42 C.F.R. §410.78.
[14] Cal. Dep't Health Care Servs., Revised Medi-Cal Telehealth Manual (Jan. 2020) (Telehealth Manual). Asynchronous store and forward involves the transmission of a patient's medical information from a provider at the originating site (where the patient is located) to a provider in the distant site (the treating provider).
[15] *Id.*
[16] *Id.*
[17] Cal. Dep't Health Servs., All Plan Letter 19-009 (Oct. 16, 2019), https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2019/APL19-009.pdf.
[18] *Id.*
[19] *See supra* note 14, Telehealth Manual.
[20] Cal. Dep't Health Care Servs., All Plan Letter 19-002 (Jan. 30, 2019), https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2019/APL19-002.pdf.
[21] Cal. Dep't Health Care Servs., Family PACT (Planning, Access, Care and Treatment) Program: Clinical Services: An Overview (Aug. 2019).
[22] *Id.*
[23] *Id.*

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25 *Id.*

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27 *Id.*

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31 Cal. Dep't Health Care Servs., Update to Information on Coronavirus (COVID-19) for Family PACT Providers (Mar. 27, 2020), http://files.medi-cal.ca.gov/pubsdoco/newsroom/newsroom_30339_16.asp.

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39 *Id.*

40 *Id.* at 13. *See also*, U.S. Dep't of Justice Drug Enforcement Admin. DEA068 (March 31, 2020), https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf.

41 CMS, *CMCS Informational Bulletin* (April 2, 2020), https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/cib040220.pdf.

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57 Cal. Dep't of Health Care Servs., COVID-19 Presumptive Eligibility Program (April 8, 2020), https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/COVID-19-Presumptive-Eligibility-Program.aspx.

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64 *Id.*