California Policy Needs During COVID and Beyond: Access to Medi-Cal Services

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Introduction

The COVID-19 pandemic has highlighted the importance of creativity and flexibility in delivering critical care when individuals are not able to receive health care services and supplies in person. During the Public Health Emergency (PHE), California has implemented various policy changes to ensure that Medi-Cal beneficiaries are receiving the health care they need. Many of the state's policy changes should be continued after the pandemic ends so that telehealth services can continue to improve access to health care, while others should not because they are not in the interest of Medi-Cal beneficiaries.

I. COVID-related Flexibilities that should be continued

A. Increased flexibility for telehealth

Telehealth is not a distinct service, but another way that providers deliver health care to their patients. California already had a robust set of policies that guaranteed telehealth services for Medi-Cal beneficiaries, such as the 2019 update to the Medi-Cal Manual on Telehealth.[1] As discussed in more detail in COVID series Issue Brief on Telehealth, during the pandemic, California has adopted several important policies to make it easier for beneficiaries to access services through telehealth.[2] Studies are already showing that these measures have benefited Californians during the pandemic.[3] These include, allowing services to be delivered using

[1] *See* Cal. Dep't Health Care Servs., *Revised Medi-Cal Telehealth Manual* (2020) [hereinafter Telehealth Manual].
[2] *See* Fabiola Carrión, Nat'l Health Law Prog., *California Policy Needs During COVID: Telehealth* (2020), https://healthlaw.org/resource/telehealth-in-medi-cal-lessons-learned-during-covid-that-should-continue.
[3] *See, e.g.*, Elizabeth Morrison & Elizabeth Horevitz, California Health Care Found., *Clinicians Call for Making COVID-19 Emergency Telehealth Benefits Permanent* (2020), https://www.chcf.org/blog/clinicians-call-making-covid-19-emergency-telehealth-benefits-permanent.

audio-only modalities where appropriate, and allowing a provider-patient relationship to be established by telehealth. [4]

B. Eliminating and reducing prior authorization requirements

During the pandemic, Medi-Cal has eliminated all prior authorization requirements in fee-for-service Medi-Cal pursuant to federal authority.[5] For beneficiaries in managed care, the plans may not require prior authorization for services related to COVID-19, or for ongoing services that were authorized before March 18, 2020.[6] DHCS has encouraged Medi-Cal plans to eliminate or expedite prior authorization for all other services.[7] These flexibilities have streamlined access to services when prior authorization requirements slow down the process to life-saving care. Too often, beneficiaries encounter delays or forego medically necessary care due to bureaucratic prior authorization requirements. These barriers result in increased health risks and disparities. Before the COVID-19 emergency ends, DHCS should re-evaluate whether prior authorization requirements are necessary for all services on which they were applied before the pandemic, and remove or simplify prior authorization requirements throughout Medi-Cal, including fee-for-service and managed care delivery systems, to the extent possible.

C. Easing access to prescription and over-the-counter drugs

During the pandemic, Medi-Cal has put into place special rules to make it easier for beneficiaries to access prescription drugs.[8] For example, Medi-Cal has taken advantage of federal flexibilities to provide up to a 100-day supply of most prescriptions, permit early refills, and cover some "off label" and "investigational" drugs.[9] During the pandemic, Medi-Cal has

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See also, Yohualli Balderas-Medina Anaya et. al, *Telehealth & COVID-19: Policy Considerations to Improve Access to Care*, UCLA Center for the Study of Latino Health & Culture (2020); https://latino.ucla.edu/wp-content/uploads/2020/05/Telehealth-COVID-19-Report.pdf.

[4] *See* Carrión, *supra* note 2.

[5] *See* 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)* (2020), 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., APL 20-004 at 3-4 (Rev. Aug. 18, 2020) [hereafter APL 20-004], https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2020/APL20-004-Revised.pdf.

[7] *Id.* at 3.

[8] *See, e.g.,* Cal. Dep't Health Care Servs., *Fee-for-Service Pharmacy Benefit Reminders and Clarifications – Updated* (2020), https://www.dhcs.ca.gov/Documents/COVID-19/Guidance-for-FFS-Pharmacy-Benefit.pdf; APL 20-004, *supra* note 6.

[9] *See* California State Plan Amendment (SPA) #: 20-0024 (approved May 15, 2020), https://www.dhcs.ca.gov/formsandpubs/laws/Documents/SPA-20-0024-COVID-Approval.pdf; Letter

also provided for mailed and home delivery of prescription drugs, supplies, and equipment at no additional cost, and without a signature to make it easier for beneficiaries to get what they need without requiring contact with another person.[10]

DHCS also relaxed rules to make it easier for beneficiaries to obtain some prescription drugs directly from a pharmacy, rather than a provider's office, including Depo-Provera.[11] In addition, Medi-Cal will cover over-the-counter acetaminophen (Tylenol) and cough medications during the public health emergency.[12] These treatments are available without prior authorization for beneficiaries in fee-for-service Medi-Cal and Medi-Cal managed care.[13] These flexibilities have greatly improved access for beneficiaries and should be continued to the greatest extent possible after the pandemic.

D. Increased access for substance use disorder services (SUDS)

Many of the policies enacted to ensure ongoing access to substance use disorder (SUD) care during the COVID-19 pandemic took place at the federal level. Most notably, the Substance Abuse and Mental Health Services Administration (SAMHSA) permitted states to request an exemption to allow patients of opioid treatment programs (or narcotic treatment programs (NTPs) in California) to receive from 14 to 28 days of take-home medication.[14] In addition, in

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from Calder Lynch, Ctrs. Medicare & Medicaid Servs., to Jacey Cooper, Cal. Dep't Health Care Servs. (Mar. 23, 2020) [hereafter First § 1135 Waiver Approval], https://www.dhcs.ca.gov/Documents/COVID-19/CA-1135-Flexibilities-Approval-Letter-Rev-032320.pdf; *see also* sources cited *supra* note 8*;* Cal. Dep't Health Care Servs., *Off-label and/or Investigational Drugs Used to Treat COVID 19 and/or Related Conditions* (2020), https://www.dhcs.ca.gov/Documents/COVID-19/COVID19-Drug-Policy-Revised-HCQ-061820.pdf.

[10] *See* sources cited *supra* note 8*; see also* Cal. Dep't Health Care Servs., *Waiver of Requirement for Patient Signature On-File for Mailed or Delivered Prescriptions* (2020), https://www.dhcs.ca.gov/Documents/COVID-19/Pharmacy-In-person-Signature-Rule-Suspended-for-Delivered-Medications.pdf.

[11] *See* First § 1135 Waiver Approval, *supra note* 9; *see also* Cal Dep't Health Care Servs., *Information Regarding the Use of Subcutaneous Depot Medroxyprogesterone Acetate During the 2019 Novel Coronavirus Public Health Emergency* (2020), https://www.dhcs.ca.gov/Documents/COVID-19/Medi-Cal-FFS-Depo-Provera-SQ-Temp-Policy.pdf.

[12] Cal. Dep't Health Care Servs., *Fee-for-Service Temporary Reinstatement of Acetaminophen, and Cough and Cold Medicines for Adults* (2020), https://www.dhcs.ca.gov/Documents/COVID-19/Coverage-of-Acetaminophen-and-CC-051320.pdf.

[13] *See id.*; *see also* APL 20-004, *supra* note 6, at 11-12.

[14] Substance Abuse & Mental Health Services Admin., *Provision of Methadone and Buprenorphine for the Treatment of Opioid Use Disorder in the COVID-19 Emergency* 2 (2020) [hereafter SAMHSA, *Provision of Methadone and Bupenorphrine*], https://www.samhsa.gov/sites/default/files/faqs-for-oud-prescribing-and-dispensing.pdf; *see also* Substance Abuse & Mental Health Services Admin., *Opioid Treatment Program (OTP) Guidance* (2020), https://www.samhsa.gov/sites/default/files/otp-guidance-20200316.pdf.

conjunction with the Drug Enforcement Administration (DEA), SAMHSA waived the federal requirement that buprenorphine providers conduct a face-to-face evaluation before prescribing the medication.[15] California quickly heeded these opportunities. The State requested an exemption to provide increased take-home medications from NTPs and released guidance encouraging NTPs in the State to submit blanket exception requests for increased take-home doses.[16] DHCS also informed NTPs that they may provide medication delivery to patients at home or in a controlled treatment environment as long as the delivery is conducted by an authorized person.[17] While California will not be able to take advantage of these important policies after the emergency ends without changes at the federal level, the state must join the numerous voices calling for permanent reforms and should continue providing guidance to SUD providers about changes in federal and state policy.

In addition to taking advantage of new federal rules, California implemented several other measures to enhance SUD services in Medi-Cal during the pandemic, some of which the State should now consider extending or making permanent. Most importantly, DHCS significantly extended the availability of reimbursement for SUD services provided via telehealth. Almost all SUD service (including group services if the provider obtains consent from all participants) can be provided via telehealth or telephone and is reimbursable when provided in this manner.[18] In addition, services that include an in-person component (such as residential treatment) could also include individual components that could be provided via telehealth or telephone.[19] DHCS should continue to allow services to be provided by telehealth in this way after the pandemic ends to the greatest extent it can.

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[15] Letter from Thomas W. Prevoznik, Drug Enforcement Admin., to DEA Qualifying Practitioners & DEA Qualifying Other Practitioners (Mar. 31, 2020), https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf; SAMHSA, *Provision of Methadone and Bupenorphrine, supra* note 14, at 1-2.

[16] *See* Cal. Dep't Health Care Servs., *DHCS COVID-19 Frequently Asked Questions: Narcotic Treatment Programs (NTPs)* 3-4 (2020), https://www.dhcs.ca.gov/Documents/COVID-19/COVID-19-FAQ-NTP.pdf.

[17] *Id.* at 6-7.

[18] *See id.* at 3-4; Cal. Dep't Health Care Servs., *DHCS COVID-19 Frequently Asked Questions: Medication-Assisted Treatment and Telehealth* (2020), https://www.dhcs.ca.gov/provgovpart/Documents/COVID-19-FAQ-MAT-and-Telehealth_CSD.pdf; Cal. Dep't Health Care Servs., IN 20-009 at 4-5 (Rev. May 20, 2020) [hereinafter IN 20-009], https://www.dhcs.ca.gov/Documents/COVID-19/IN-20-009-Guidance-on-COVID-19-for-Behavioral-Health.pdf.

[19] *See* IN 20-009 at 4-6; Cal. Dep't Health Care Servs., IN 20-017 at 2 (2020), https://www.dhcs.ca.gov/Documents/COVID-19/BHIN-20-017-Alcohol-and-Other-Drug-Facilities.pdf.

II. Protections that should be restored after the COVID health crisis ends

A. Privacy protections for telehealth

As discussed in more detail in our paper on telehealth, the Medi-Cal Provider Manual on Telehealth already allows oral or written consent by the Medi-Cal beneficiary.[20] While this policy should continue, confidentiality protections such as HIPAA and other state privacy laws should resume when the public health emergency ends. It is important to safeguard the privacy rights of all health patients, including Medi-Cal beneficiaries, since loosening these protections would mean that confidential and sensitive information of low-income populations would be at risk.

B. Robust and in-person monitoring of Medi-Cal managed care plans

During the pandemic, DHCS has understandably relaxed some performance requirements for managed care plans, and has also made adjustments to how plans are monitored. For example, plans will not be held to the same quality and performance improvement standards this year, since it would be impossible to meet many of those standards given the reductions and changes to service delivery in the early months of the pandemic.[21] Similarly, plans have been given additional time to complete initial health risk assessments of new members.[22] In addition, due to travel restrictions and physical distancing requirements, site reviews and audits of plans and their subcontractors are largely occurring virtually, rather than in-person, during the pandemic.[23] While these measures appropriately respond to the need to avoid spreading COVID-19, once the PHE ends and threat of the virus is minimized, DHCS should return to robust requirements to monitor plans and hold them accountable to providing a high standard of services to beneficiaries.

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[20] *See* Telehealth Manual, *supra* note 1.
[21] *See* Cal. Dep't Health Care Servs., Supp. to APL 19-017 (Apr. 30, 2020), https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2019/APL19-017QISupp.pdf.
[22] *See* Cal. Dep't Health Care Servs., APL 20-011 at 2-3 (Rev. Jun. 12, 2020), https://www.dhcs.ca.gov/Documents/COVID-19/APL-20-011-EO-Revision.pdf.
[23] *See id.* at 1-2.

III. Protections Needed That Are Not Currently in Place

A. Expand Medi-Cal coverage of personal protective equipment (PPE) and other supplies

It is becoming clear that even once the pandemic ends, COVID-19 and other, similar viruses, will be with us for years to come. Medi-Cal beneficiaries, especially those who are at high risk of complications from the virus, will likely need to continue to take precautions to protect themselves even after a vaccine becomes widely available. DHCS has already encouraged Medi-Cal plans to cover any disinfectant solutions and wipes that can be processed through the plans' pharmacy benefit systems, to help beneficiaries access the supplies they need to stay safe.[24] In addition, the State has made available face masks and gloves to both providers and recipients of personal care services (known as In-Home Supportive Services).[25] California should expand on these policies to ensure that all beneficiaries who need them have access to PPE, disinfecting supplies, and other safety supplies like hand sanitizer, to be able to protect themselves from COVID-19 and other viruses.

B. Additional policies to ensure equitable access to telehealth

As discussed in more detail in our paper on Telehealth, there is much more that California to ensure that Medi-Cal beneficiaries have meaningful and equitable access to services through telehealth.[26] Low-income households, rural communities, as well as Black and Latinx populations lack access to broadband and technology that enables telehealth utilization.[27] Policymakers should expand efforts to ensure access to these technology devices and infrastructure, as well as to digital literacy that will improve equity and reduce health care disparities.

Moreover, in addition to covering audio-only telephone calls, Medi-Cal should also cover text messaging as well as other text-based communications to help expand access to services. Washington and Colorado are already covering text-based services under Medicaid.[28] Finally, Medi-Cal still does not reimburse for services delivered via remote patient monitoring (RPM),

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[24] APL 20-004, *supra* note 6, at 8.
[25] Cal. Dep't Social Servs., ACL 20-57 (May 19, 2020), https://mcusercontent.com/73901133dd7ea1a5581344daf/files/755117fd-036c-42ee-93a6-fc6195fdf352/20_57.pdf.
[26] *See* Carrión, *supra* note 2.
[27] *See* Pew Research Center, *Internet/Broadband Fact Sheet* (2019), https://www.pewresearch.org/internet/fact-sheet/internet-broadband.
[28] *Id.*

which at least twenty-two states already allow.[29] RPM involves the use of telehealth technologies to collect medical data, such as vital signs and blood pressure, from patients in one location in order to electronically transmit that information to health care providers in a different location. This modality enables more frequent monitoring and consultation between patients and providers without requiring the former to leave the safety of their homes. California should follow the lead of other states and authorize Medi-Cal providers and beneficiaries to take advantage of these technologies.

The pandemic offers us with an opportunity to study the outcomes of those who are and should be benefiting from telehealth. The evidence is clear that Latinx, Black, and other communities of color in California are at increased risk of, and are experiencing higher rates of serious illness and death from COVID-19.[30] California policymakers and researchers should analyze telehealth utilization and health outcomes among low-income Medi-Cal beneficiaries.

C. Reduce barriers to accessing abortion services

As discussed in more detail in our paper on reproductive and sexual health, DHCS has instructed Medi-Cal providers to prescribe mifepristone for abortions without an in-person visit or signature so that it can be dispensed by mail or delivery in compliance with a court order.[31] Because the provision of mifepristone is subject to FDA requirements, which prohibited mail order or delivery, California could not on its own change those rules. Even so, DHCS can and should do more to facilitate easier access to medication abortion. For example, after the pandemic, DHCS should relax the requirements for in-person pregnancy testing, pelvic examination, ultrasound or labs when they are not medically necessary.[32]

Conclusion

The COVID-19 pandemic and PHE has demonstrated that telehealth is critical to further guarantee health care access for Medi-Cal beneficiaries. California has been prepared to meet

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[29] *See* Center for Connected Health Pol'y, *State Telehealth Medicaid Fee-For-Service Policy: A Historical Analysis of Telehealth: 2013-2019* (2020), https://www.cchpca.org/sites/default/files/2020-01/Historical%20State%20Telehealth%20Medicaid%20Fee%20For%20Service%20Policy%20Report%20FINAL.pdf.

[30] *See* Rong-Gong Iin II, *California Latino, Black Residents Hit Even Harder by Coronavirus as White People See Less Danger*, LOS ANGELES TIMES (June 27, 2020), https://www.latimes.com/california/story/2020-06-27/california-latinos-black-people-hit-even-harder-by-coronavirus.

[31] *See* Cal. Dep't Health Care Servs., *Important News about Women's Health Services* (2020), https://filessysdev.medi-cal.ca.gov/pubsdoco/newsroom/newsroom_30339_77.aspx.

[32] *See* Amy Chen, Nat'l Health Law Prog., *California Policy Needs During COVID and Beyond: Reproductive and Sexual Health* (2020), https://healthlaw.org/resource/california-policy-needs-during-covid-and-beyond-reproductive-and-sexual-health.

the challenge in many instances, but there is more work to be done and the need for it will continue well after the PHE ends.

List of Recommendations

- Abortion: Eliminate requirements for in-person pregnancy testing, pelvic examination, ultrasound or labs when not medically necessary.
- Personal Protective Equipment: California should provide PPE, disinfecting supplies, and other safety supplies to all beneficiaries who need them.
- Prescription and OTC drugs:
    - Retain rules that allow for bigger fills and earlier refills of prescription drugs in Medi-Cal.
    - Continue to allow drugs to be provided to beneficiaries by mail or delivery without a signature or any additional cost.
    - Continue to allow pharmacies to dispense drugs like Depo-SubQ Provera for self-administration at home.
    - Permanently restore coverage of over-the-counter acetaminophen and certain cold and cough medicines.
- Prior authorization: Continue to remove or simplify prior authorization requirements throughout Medi-Cal, including fee-for-service and managed care delivery systems as much as possible.
- Privacy: Confidentiality protections such as HIPAA and other state privacy laws should be restored when the public health emergency ends.
- Substance Use Disorder Services:
    - Medi-Cal should continue to allow for SUD services to be delivered by telehealth when medically appropriate, to the extent allowed under federal law.
- Telehealth:
    - Medi-Cal should continue to reimburse for audio-only telephone calls if the provider deems the service to be appropriate through this modality.
    - Medi-Cal should continue to allow a provider-patient relationship to be established by telehealth;
    - The state should adopt policies that bridge the digital divide and close other gaps that impede access to telehealth.
    - Medi-Cal should reimburse for text-based services.
    - Medi-Cal should reimburse for remote patient monitoring.
    - The state should study the outcomes of those who are and should be benefiting from telehealth, particularly Medi-Cal beneficiaries.