



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



GAVIN NEWSOM  
GOVERNOR

DATE: March 25, 2022

Updates to Behavioral Health Information Notice No: 21-046E  
[Supercedes BHIN No.: 20-009](#)

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: Updated guidance for behavioral health programs regarding COVID-19 public health emergency flexibilities

PURPOSE: To provide counties updates on the status of public health emergency flexibilities as of February 2022. This Behavioral Health Information Notice (BHIN) updates and supersedes [BHIN 20-009](#).

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

BACKGROUND:

DHCS was given authority to grant flexibility for certain requirements through Executive Orders (EO) [N-43-20](#) and [N-55-20](#), which have sunset (see [Executive Order N-08-21](#) for details of when particular provisions end) and through a Section 1135 waiver approved by the Centers for Medicare and Medicaid Services (CMS), effective March 15, 2020. All guidance related to the public health emergency was collected on the [DHCS COVID-19 Response website](#).

This BHIN supersedes [BHIN 20-009](#). Information regarding BH telehealth policy is outlined separately in BHIN 21-047.

**POLICY:**

This BHIN provides updates on public health emergency flexibilities, indicating the current status: which are active and which have expired.

**1. 5150 Evaluations and 5151 Assessments: *ongoing policy***

W&I Code section 5150 evaluations and W&I Code section 5151 assessments may be performed by authorized providers via telehealth (synchronous audio and video) pursuant to W&I Code sections 5008(a), 5151(b) and 5150.5(a). This may include releases from involuntary evaluation and treatment, as appropriate. These services are billable to Medi-Cal regardless of whether they are provided in person or through telehealth as long as the individual has Medi-Cal coverage for the service and all Medi-Cal requirements are met.

**2. Additional Time to Complete Counselor Certification Requirements: *Flexibility expired***

EO-N-55-20 provided temporary flexibility for DHCS to provide Alcohol and Other Drug (AOD) counselors an extension of time to complete their certification if their efforts to become certified were impacted by the COVID-19 emergency. This temporary flexibility expired on September 30, 2021. California Code of Regulations, Title 9, §13035(f)(1) requires AOD registered counselors to obtain certification as an AOD counselor from a DHCS-recognized certifying organization within five (5) years of the date of registration.

**3. Adapting Oversight Requirements to Prioritize Patient Needs and Accommodate Workforce Challenges: *Flexibility expired***

DHCS is no longer providing the flexibilities outlined in BHIN 20-009, Item 6: Adapting Oversight Requirements to Prioritize Patient Needs and Accommodate Workforce Challenges. DHCS encourages counties to reach out to their DHCS liaison with concerns about meeting DHCS-mandated regulatory or reporting requirements and deadlines due to the impact of the public health emergency, as individual exceptions may be considered.

**4. Emergency Enrollment in Medi-Cal for Specialty Mental Health Service Providers: *flexibility will expire at the end of the State Public Health Emergency – guidance forthcoming***

Pursuant to section 1135 of the Social Security Act ([Section 1135 waiver](#)), CMS

waived the onsite visit requirement (42 C.F.R. §455.432, subd. (a)), allowing provisional, temporary enrollment of SMHS providers for the duration of the public health emergency if other specified requirements are met. Furthermore, per the 1135 Waiver, CMS authorized DHCS' request to temporarily cease revalidation of providers.

Part of the enrollment process for SMHS providers includes the requirement for the provider to obtain a fire clearance prior to the onsite visit, as specified in the county Mental Health Plan (MHP) contract. In light of the many challenges and safety concerns counties faced due to the COVID-19 crisis, including the inability to obtain a fire clearance, and the emergence of the Delta and Omicron variants, DHCS temporarily waived the Medi-Cal Certification requirements for an onsite review and a fire clearance during the approved 1135 Waiver period.

**NOTE:** For providers who were temporarily and provisionally enrolled during the public health emergency, ***the MHP will be required to submit any outstanding documentation and meet all certification requirements within 180 days upon the conclusion of the 1135 Waiver period, including the requirement for onsite review and a valid fire clearance.***

For providers having their re-certification come due during the public health emergency, these providers shall be reviewed by their next scheduled 3-year review date following the conclusion of the 1135 Waiver period.

All required documentation and email communication must be submitted to [DMHCertification@dhcs.ca.gov](mailto:DMHCertification@dhcs.ca.gov).

**5. Alcohol and Other Drug (AOD) Residential and Outpatient Treatment Facility Flexibilities: *Flexibility expired.***

DHCS is no longer providing the flexibilities outlined in BHIN 20-017 to AOD Residential and Outpatient Treatment Facilities. DHCS encourages providers to reach out to their DHCS liaison if they have questions.

**6. Temporary Suspension of Mental Health Services Act (MHSA) Program On-site Reviews: *ongoing policy***

Per W&I Code section 5897(d), DHCS is required to conduct MHSA program reviews of county performance contracts once every three years, which can be on-site or virtual. During the public health emergency, the MHSA program on-site reviews were temporarily suspended. DHCS will contact counties prior to their scheduled review to determine whether an

on-site or virtual review will be conducted..

**7. Signature Requirements: *ongoing policy***

***Release of Information:*** DHCS does not have oversight authority over federal requirements. HIPAA requires all authorizations for release of information to have a signature in order to be valid per 45 CFR 164.508. There is no indication from the federal Office of Civil Rights, Health and Human Services that they have waived this requirement due to COVID.

***Informed Consent for Anti-psychotic Medications:  
Flexibility expired September 30, 2021.***

California regulations<sup>1</sup> require that mental health facilities maintain a consent form signed by a patient to receive anti-psychotic medications. The flexibility in paragraph 11 of Executive Order N-55-20 waiving this requirement expired September 30, 2021, and section 852 of Title 9 of the California Code of Regulations went back into effect. If a patient chooses not to sign the consent form, the provider shall document in the patient's chart that the patient understands the nature and effect of the anti-psychotic medication(s) and consents to administration of the medication(s), but does not want to sign the consent form. Facilities are not expected to obtain signatures on these documents for patients that started and discontinued services during the COVID-19 public health emergency or who discontinued services during the emergency period. During the COVID-19 public health emergency, facilities must document in the patient's medical record the reason for the missing or late signature. This requirement only applies to anti-psychotic medications, not psychotropic medications generally.

***Signatures on treatment plans: ongoing policy.***

Effective January 1, 2022, DHCS no longer requires a signature on the treatment plan.

For auditing purposes, prior to January 1, 2022:

When a signature is required on a client plan and a beneficiary was unavailable to sign the plan, such as when the service is done by telehealth or telephone, the reason for the missing signature shall be documented in the client plan. It is not necessary to obtain the signature when the client returns to in-person care. The following approaches are appropriate:

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<sup>1</sup> Cal. Code Regs., tit.9, § 852

- Documenting in the chart that oral consent was obtained in the course of telehealth services,
- Use of electronic signatures, such as via DocuSign or similar services, if the e-signature service has a business associate agreement with the applicable covered entity,
- Obtaining wet signatures when an in-person visit is made, and
- Documenting the reasons for any signatures that are late or missing.

***Signatures consenting to telehealth or telephone visits.***

California law requires a patient's consent to receive services via telehealth or via telephone to be documented in the client chart. Documentation of verbal consent is sufficient. California law does not specify the frequency a provider is required to obtain consent from a patient. For facilities that participate in Medi-Cal, the DHCS licensing and certification division will accept a one-time consent in the client file.

**8. Process to Request Fee Reductions or Waivers: *ongoing policy***

SB 601 went into effect on January 1, 2020. The new law, set forth in Gov. Code Section 11009.5, authorizes DHCS to establish a process to reduce or waive any fees required to obtain a license, renew or activate a license, or replace a physical license for display, when a business has been displaced, or experiences economic hardship as a result of an emergency.

DHCS Mental Health Rehabilitation Centers (MHRC), Psychiatric Health Facilities (PHF), Narcotic Treatment Programs (NTP), Driving Under the Influence (DUI) programs, or substance use disorder (SUD) residential and outpatient facilities, that have a license or certification issued by LCD, may submit a written request to DHCS for a fee reduction or waiver:

- Identify whether the request is for a reduction or waiver of fee(s);
- Identify the type of fee requested to be reduced or waived (i.e., renewal application fee, relocation fee, etc.) and the specific fee amount being requested to pay if seeking a fee reduction;
- Describe how this reduction or waiver is specific to the COVID-19 emergency;
- Describe the economic hardship or displacement that occurred due to the emergency;
- Identify the provider type (MHRC, PHF, NTP, DUI, SUD Residential

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or Outpatient);

- Identify the provider number and legal entity name;
- Identify the program/facility name;
- Identify the facility physical address;
- Identify the facility mailing address; and
- Identify the Program Director and contact person.

Sincerely,

Original signed by

Kelly Pfeifer, M.D.  
Deputy Director  
Behavioral Health