

**California Department of Health Care Services
Proposed Trailer Bill Language**

Unwinding the Federal COVID-19 Public Health Emergency

FACT SHEET

Title: Unwinding the Federal COVID-19 Public Health Emergency (PHE). The Department of Health Care Services (DHCS) proposes to make specific flexibilities implemented during the COVID-19 PHE permanent in the Medi-Cal program.

Specifically, this proposal would make statutory changes to align with its COVID-19 PHE Unwinding Operational Plan. The document provides a comprehensive overview and justification of the changes being proposed in this trailer bill proposal. The proposed statutory changes would implement the following programmatic changes in the Medi-Cal program:

1. No longer require written signatures from voluntary patients who consent to receiving antipsychotic medications;
2. Include adults aged 65 and older as being eligible for the Hospital Presumptive Eligibility (HPE) program;
3. Provide that payments rates for Intermediate Care Facility for the Developmentally Disabled (ICF/DD) rates would be no lower than they are on the last day of the PHE inclusive of the 10% COVID-19 rate increase; and
4. Continue to reimburse at 100 percent of Medicare for: oxygen and respiratory durable medical equipment (DME), clinical laboratory services rates for COVID-19 diagnostic testing and specimen collection services; and COVID-19 vaccine administration.

Background: Since the initiation of the of the federal declaration of the COVID-19 PHE, DHCS has implemented over 100 programmatic flexibilities to help minimize the strain to the Medi-Cal program and its beneficiaries, and California's health care providers and systems. These changes were implemented under a variety of federal and State authorities, and impact almost all aspects of Medi-Cal's delivery systems. While many of these programmatic flexibilities will terminate on or around the end of the PHE, we are proposing to continue some due to the positive impact they have had on the Medi-Cal program.

Antipsychotic Medications: Patient Signature Requirement

Under California Code of Regulations, Title 9, section 852, facilities that provide specialty mental health services and community mental health services, are required to maintain a written record of a voluntarily admitted patient's consent to receive antipsychotic medication. This record must show that the prescribing physician has discussed information regarding the medication with the patient and the patient has consented to receive the medication. The physician asks the patient to sign a consent

form; and the signed consent form serves as the written record. This requirement creates inconsistency across delivery systems. A patient-signed consent is not required for patients receiving the same medications in other facilities (such as primary care offices) and providers report that it is a burden to patients and providers, without adding benefit.

During the COVID-19 Public Health Emergency, Governor Newsom signed Executive Order N-55-20, which states: “California Code of Regulations, Title 9, section 852 is suspended to the extent it prevents a patient from receiving psychiatric medication without the patient’s physical signature.” Under the Executive Order, DHCS had the flexibility in place to enable patients needing community mental health services and specialty mental health services (SMHS) delivered through telehealth to access needed medications without delay. However, the Executive Order expired on September 30, 2021.

Hospital Presumptive Eligibility (HPE) Program

The HPE Program provides immediate access to temporary Medi-Cal while applying for permanent Medi-Cal coverage or other health coverage.

Currently, HPE Providers can only make HPE determinations for former foster youth, parent/caretaker relatives, children, pregnant individuals, and individuals up to age 64. To be determined eligible for HPE, an applicant must be a California resident, not have existing Medi-Cal coverage, and meet the Modified Adjusted Gross Income (MAGI) limits based on self-attestation.

During the COVID-19 PHE, DHCS received federal approval to expand HPE eligibility to include individuals aged 65 or older, blind or disabled during the course of the PHE. This group is subject to all existing rules of HPE coverage, including an income limit of 138 percent of the federal poverty level.

ICF/DD Reimbursement Rates

DHCS provided an additional 10 percent reimbursement for certain long-term care facility types, including ICF/DD, ICF/DD Habilitative, ICF/DD Nursing, ICF-DD/Continuous Nursing, Freestanding Skilled Nursing Facilities (SNF) Level B, and Adult Freestanding Subacute Facilities Level B. DHCS received federal approval of State Plan Amendment (SPA) 20-0024, effective March 1, 2020, which authorized temporary additional reimbursement for eligible long-term care facilities during the PHE period. The 10 percent increase amounts are fixed amounts and were calculated based on 2019-20 per diem rates, inclusive of add-ons. The 10 percent increase does not apply to supplemental payments or Quality and Accountability Payments, or ancillary charges.

Medi-Cal Reimbursement Rates and Payments

During the PHE, DHCS implemented several changes to Medi-Cal reimbursement rates under Disaster Relief SPA authority. SPAs 20-0024, 20-0040, and 21-0016 authorized reimbursement rates to 100 percent of Medicare rates for oxygen and respiratory DME

and COVID-19 vaccine administration, respectively. Reimbursement rates for clinical laboratory services are currently at 100 percent of Medicare, pursuant to AB 133 (Committee on Budget, Chapter 143, Statutes of 2021). DHCS also exempted these services from the 10 percent provider payment reductions, pursuant to AB 97 (Chapter 3, Statutes of 2011).

Justification for the Change: As DHCS prepares to unwind the federal COVID-19 PHE, it has analyzed the temporary policies implemented during the PHE, and determined that the continuation of these four policies will help close coverage gaps, support Medi-Cal providers, and eliminate unnecessary barriers to care. DHCS has identified these specific PHE unwinding policies that require statutory changes.

Antipsychotic Medications: Patient Signature Requirement (Welfare & Institutions Code (WIC) Section 5325.3)

This proposal permanently eliminates the requirement to obtain the signature of a patient receiving antipsychotic medications in certain facilities, as specified, while leaving in place current requirements to inform the patient about the medication and obtain verbal informed consent. In addition, the statutory changes authorize DHCS to implement these provisions via all plan letters and other notifications, and allows DHCS to promulgate corresponding regulations.

Hospital Presumptive Eligibility (WIC Section 14011.66)

DHCS proposes to make permanent HPE eligibility to include individuals aged 65 or older.

Intermediate Care Facilities for the Developmentally Disabled Reimbursement Rates (WIC Section 14105.075)

DHCS proposes to continue the higher payment rates for ICF/DD facilities.

Medi-Cal Reimbursement Rates and Payments (WIC Sections 14105.48, 14105.192, and 14124.12)

DHCS proposes to continue reimbursing for oxygen and respiratory DME, clinical laboratory services, and COVID-19 vaccine administration at 100 percent of Medicare rates and exempting from the AB 97 10 percent provider payment reductions. Note: The proposed amendments in WIC Section 14105.192(h)(13)(A-O) are associated with the “Medi-Cal Provider Rates” proposal.

Estimate Issue # and Title: PC 189 – COVID-19 Eligibility, PC 187 COVID-19 FFS DME Respiratory Rates