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

WILL LIGHTBOURNE
DIRECTOR

GAVIN NEWSOM
GOVERNOR

February 2, 2021

James G. Scott, Director
Division of Program Operations
Medicaid and CHIP Operations Group
U.S. Department of Health & Human Services
Centers for Medicare & Medicaid Services
601 East 12th Street, Room 355
Kansas City, MO 64106

STATE PLAN AMENDMENT 21-0016: DISASTER RELIEF FOR OXYGEN AND RESPIRATORY DURABLE MEDICAL EQUIPMENT REIMBURSEMENT

Dear Mr. Scott:

The Department of Health Care Services (DHCS) is submitting State Plan Amendment (SPA) 21-0016 for your review and approval. This SPA seeks to increase reimbursement rates for Durable Medical Equipment (DME) Oxygen and Respiratory equipment during the period of the public health emergency (PHE) related to the COVID-19 outbreak. The proposed effective date of this SPA is March 1, 2020.

Using the SPA template provided by the Centers for Medicare and Medicaid Services (CMS) for disaster relief during the COVID-19 PHE, DHCS seeks to increase reimbursement rates for DME oxygen and respiratory equipment to 100 percent of the corresponding Medicare rate. The impacted DME procedure codes include oxygen contents, oxygen equipment, and respiratory equipment procedure codes that are implemented by DHCS through the Medi-Cal Fee-For-Service Fee Schedule. The payment increase will be effective for dates of service on or after March 1, 2020, or at a later date when a new procedure code is implemented by the Department. The proposed reimbursement rates will also be exempt from the ten percent payment reductions authorized in Attachment 4.19-B, page 3.3, paragraph 13 of the State Plan.

DHCS seeks a waiver of the public notification requirements due to the COVID-19 PHE and will publish them after submission, in accordance with the timelines as proposed in the SPA. To the extent there is a direct impact to Tribal Health Programs requiring a notice, DHCS requests a ten business-day notice period that will occur after the SPA is submitted to CMS for approval. DHCS will post this SPA to its website as soon as possible.

DHCS is also submitting the CMS Form 179, the disaster relief SPA template, and Standard Funding Questions. The budget impact estimate is based on the additional cost to increase the reimbursement rates to the Medicare rate and exempt the payments from the ten percent payment reductions. DHCS estimated the aggregate annual federal fiscal impact for the rate increase will be approximately $3.4 million.

If you have any questions or need additional information, please contact Ms. Lindy Harrington, Deputy Director, Health Care Financing, at (916) 322-4831, or by email at Lindy.Harrington@dhcs.ca.gov.

Sincerely,

[redacted]

Jacey Cooper
Chief Deputy Director
Health Care Programs
State Medicaid Director

Enclosures

cc: Will Lightbourne
Director
Department of Health Care Services
Will.Lightbourne@dhcs.ca.gov

Erika Sperbeck
Chief Deputy Director
Policy & Program Support
Department of Health Care Services
Erika.Sperbeck@dhcs.ca.gov

Anastasia Dodson
Associate Director for Policy
Department of Health Care Services
Anastasia.Dodson@dhcs.ca.gov

cc: Continued next page

Lindy Harrington
Deputy Director
Health Care Financing
Department of Health Care Services
Lindy.Harrington@dhcs.ca.gov

René Mollow, MSN, RN
Deputy Director
Health Care Benefits & Eligibility
Department of Health Care Services
Rene.Mollow@dhcs.ca.gov

Kelly Pfeifer, MD
Deputy Director
Behavioral Health
Department of Health Care Services
Kelly.Pfeifer@dhcs.ca.gov

Kirk Davis
Deputy Director
Health Care Delivery Systems
Department of Health Care Services
Kirk.Davis@dhcs.ca.gov

Cheryl Young
Centers for Medicare & Medicaid Services
Medicaid and CHIP Operations Group
Division of Program Operations, West Branch
San Francisco Office
Cheryl.Young@cms.hhs.gov

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 21-0016

2. STATE: California

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SSA (MEDICAID)

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE: March 1, 2020

5. TYPE OF PLAN MATERIAL *(Check One)*

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION: 42 U.S.C. § 1320b-5; 42 CFR 447, Subpart F

7. FEDERAL BUDGET IMPACT
a. FFY 2020 $ 2,000 (in thousands)
b. FFY 2021 $ 3,428 (in thousands)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Section 7.4 pages 90rr-90aaa

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: N/A

10. SUBJECT OF AMENDMENT

Disaster Relief SPA to increase Durable Medical Equipment Oxygen and Respiratory reimbursement rates.

11. GOVERNOR'S REVIEW *(Check One)*

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☒ OTHER, AS SPECIFIED

12. SIGNATURE OF STATE AGENCY OFFICIAL
[redacted]

13. TYPED NAME: Jacey Cooper

14. TITLE: State Medicaid Director

15. DATE SUBMITTED

16. RETURN TO
Department of Health Care Services
Attn: Director's Office
P.O. Box 997413, MS 0000
Sacramento, CA 95899-7413

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED

18. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL

20. SIGNATURE OF REGIONAL OFFICIAL

21. TYPED NAME

22. TITLE

23. REMARKS

For Box 11 "Other, As Specified," Please note: The Governor's Office does not wish to review the State Plan Amendment.

Section 7 – General Provisions
7.4. Medicaid Disaster Relief for the COVID-19 National Emergency

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

The State Medicaid agency (agency) seeks to implement the policies and procedures described below, which are different than the policies and procedures otherwise applied under the Medicaid state plan, during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak (or any renewals thereof), or for any shorter period described below:

Effective date is March 1, 2020.

NOTE: States may not elect a period longer than the Presidential or Secretarial emergency declaration (or any renewal thereof). States may not propose changes on this template that restrict or limit payment, services, or eligibility, or otherwise burden beneficiaries and providers.

Request for Waivers under Section 1135

__X_ The agency seeks the following under section 1135(b)(1)(C) and/or section 1135(b)(5) of the Act:

a. ___X_ SPA submission requirements – the agency requests modification of the requirement to submit the SPA by March 31, 2020, to obtain a SPA effective date during the first calendar quarter of 2020, pursuant to 42 CFR 430.20.

b. __X__ Public notice requirements – the agency requests waiver of public notice requirements that would otherwise be applicable to this SPA submission. These requirements may include those specified in 42 CFR 440.386 (Alternative Benefit Plans),

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

42 CFR 447.57(c) (premiums and cost sharing), and 42 CFR 447.205 (public notice of changes in statewide methods and standards for setting payment rates).

c. __X__ Tribal consultation requirements – the agency requests modification of tribal consultation timelines specified in California Medicaid state plan, as described below:

Please describe the modifications to the timeline. To the extent there is a direct impact to Tribal Health Programs requiring a notice, California requests a 10 business-day notice period that will occur after the SPA is submitted to CMS for approval.

Section A – Eligibility

1. _____ The agency furnishes medical assistance to the following optional groups of individuals described in section 1902(a)(10)(A)(ii) or 1902(a)(10)(c) of the Act. This may include the new optional group described at section 1902(a)(10)(A)(ii)(XXIII) and 1902(ss) of the Act providing coverage for uninsured individuals.

Include name of the optional eligibility group and applicable income and resource standard.

2. _____ The agency furnishes medical assistance to the following populations of individuals described in section 1902(a)(10)(A)(ii)(XX) of the Act and 42 CFR 435.218:

   a. _____ All individuals who are described in section 1905(a)(10)(A)(ii)(XX)

      Income standard: _____

      -or-

   b. _____ Individuals described in the following categorical populations in section 1905(a) of the Act:

      Income standard: _____

3. _____ The agency applies less restrictive financial methodologies to individuals excepted from financial methodologies based on modified adjusted gross income (MAGI) as follows.

   Less restrictive income methodologies:

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

Less restrictive resource methodologies:

4. _____ The agency considers individuals who are evacuated from the state, who leave the state for medical reasons related to the disaster or public health emergency, or who are otherwise absent from the state due to the disaster or public health emergency and who intend to return to the state, to continue to be residents of the state under 42 CFR 435.403(j)(3).

5. ____ The agency provides Medicaid coverage to the following individuals living in the state, who are non-residents:

6. _____ The agency provides for an extension of the reasonable opportunity period for non-citizens declaring to be in a satisfactory immigration status, if the non-citizen is making a good faith effort to resolve any inconsistences or obtain any necessary documentation, or the agency is unable to complete the verification process within the 90-day reasonable opportunity period due to the disaster or public health emergency.

Section B – Enrollment

1. _____ The agency elects to allow hospitals to make presumptive eligibility determinations for the following additional state plan populations, or for populations in an approved section 1115 demonstration, in accordance with section 1902(a)(47)(B) of the Act and 42 CFR 435.1110, provided that the agency has determined that the hospital is capable of making such determinations.

Please describe the applicable eligibility groups/populations and any changes to reasonable limitations, performance standards or other factors.

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

2. _____ The agency designates itself as a qualified entity for purposes of making presumptive eligibility determinations described below in accordance with sections 1920, 1920A, 1920B, and 1920C of the Act and 42 CFR Part 435 Subpart L.

Please describe any limitations related to the populations included or the number of allowable PE periods.

3. _____ The agency designates the following entities as qualified entities for purposes of making presumptive eligibility determinations or adds additional populations as described below in accordance with sections 1920, 1920A, 1920B, and 1920C of the Act and 42 CFR Part 435 Subpart L. Indicate if any designated entities are permitted to make presumptive eligibility determinations only for specified populations.

Please describe the designated entities or additional populations and any limitations related to the specified populations or number of allowable PE periods.

4. _____ The agency adopts a total of _____ months (not to exceed 12 months) continuous eligibility for children under age enter age _____ (not to exceed age 19) regardless of changes in circumstances in accordance with section 1902(e)(12) of the Act and 42 CFR 435.926.

5. _____ The agency conducts redeterminations of eligibility for individuals excepted from MAGI-based financial methodologies under 42 CFR 435.603(j) once every _____ months (not to exceed 12 months) in accordance with 42 CFR 435.916(b).

6. _____ The agency uses the following simplified application(s) to support enrollment in affected areas or for affected individuals (a copy of the simplified application(s) has been submitted to CMS).

    a. _____ The agency uses a simplified paper application.

    b. _____ The agency uses a simplified online application.

    c. _____ The simplified paper or online application is made available for use in call-centers or other telephone applications in affected areas.

Section C – Premiums and Cost Sharing

1. _____ The agency suspends deductibles, copayments, coinsurance, and other cost sharing charges as follows:

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

Please describe whether the state suspends all cost sharing or suspends only specified deductibles, copayments, coinsurance, or other cost sharing charges for specified items and services or for specified eligibility groups consistent with 42 CFR 447.52(d) or for specified income levels consistent with 42 CFR 447.52(g).

2. _____ The agency suspends enrollment fees, premiums and similar charges for:

    a. _____ All beneficiaries

    b. _____ The following eligibility groups or categorical populations:

Please list the applicable eligibility groups or populations.

3. _____ The agency allows waiver of payment of the enrollment fee, premiums and similar charges for undue hardship.

Please specify the standard(s) and/or criteria that the state will use to determine undue hardship.

Section D – Benefits

Benefits:

1. _____ The agency adds the following optional benefits in its state plan (include service descriptions, provider qualifications, and limitations on amount, duration or scope of the benefit):

2. _____ The agency makes the following adjustments to benefits currently covered in the state plan:

3. _____ The agency assures that newly added benefits or adjustments to benefits comply with all applicable statutory requirements, including the statewideness requirements found at

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

1902(a)(1), comparability requirements found at 1902(a)(10)(B), and free choice of provider requirements found at 1902(a)(23).

4. _____ Application to Alternative Benefit Plans (ABP). The state adheres to all ABP provisions in 42 CFR Part 440, Subpart C. This section only applies to states that have an approved ABP(s).

    a. ____ The agency assures that these newly added and/or adjusted benefits will be made available to individuals receiving services under ABPs.

    b. ____ Individuals receiving services under ABPs will not receive these newly added and/or adjusted benefits, or will only receive the following subset:

Please describe.

Telehealth:

5. _____ The agency utilizes telehealth in the following manner, which may be different than outlined in the state's approved state plan:

Please describe.

Drug Benefit:

6. _____ The agency makes the following adjustments to the day supply or quantity limit for covered outpatient drugs. The agency should only make this modification if its current state plan pages have limits on the amount of medication dispensed.

Please describe the change in days or quantities that are allowed for the emergency period and for which drugs.

7. _____ Prior authorization for medications is expanded by automatic renewal without clinical review, or time/quantity extensions.

8. _____ The agency makes the following payment adjustment to the professional dispensing fee when additional costs are incurred by the providers for delivery. States will need to supply documentation to justify the additional fees.

Please describe the manner in which professional dispensing fees are adjusted.

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

9. _____ The agency makes exceptions to their published Preferred Drug List if drug shortages occur. This would include options for covering a brand name drug product that is a multi-source drug if a generic drug option is not available.

Section E – Payments

Optional benefits described in Section D:

1. _____ Newly added benefits described in Section D are paid using the following methodology:

   a. ____ Published fee schedules –

      Effective date (enter date of change): _____

      Location (list published location): _____

   b. ____ Other:

Describe methodology here.

Increases to state plan payment methodologies:

2. __X__ The agency increases payment rates for the following services:

Please list all that apply. Durable medical equipment (DME), as described in State Plan Attachment 3.1-A, paragraph 2a and paragraph 7c.2, and Attachment 4.19-B, pages 3a – 3c and 3e – 3f, that are considered to be oxygen and respiratory equipment. For purposes of this section, DME will include oxygen contents, oxygen equipment, and respiratory equipment procedure codes that are implemented by the Department through the Medi-Cal fee-for-service fee schedule. The payment increase will be effective for dates of service on or after March 1, 2020, or at a later date when a new procedure code is implemented by the Department. This change will affect the DME methodology for the above described oxygen and respiratory equipment as the methodology is set forth on pages 3a – 3c and 3e – 3f of Attachment 4.19-B. The change will authorize a reimbursement rate equivalent to 100 percent of the Medicare rate for oxygen and respiratory DME procedure codes.

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

a. __X__ Payment increases are targeted based on the following criteria:

Please describe criteria.
DME providers are experiencing increased cost pressures for oxygen and respiratory equipment due to the COVID-19 pandemic. The payment increases will provide additional reimbursement in order for DME providers to continue to provide the necessary equipment during the COVID-19 pandemic and national emergency.

b. Payments are increased through:

i. ____ A supplemental payment or add-on within applicable upper payment limits:

Please describe.

ii. __X__ An increase to rates as described below.

Rates are increased:

_____ Uniformly by the following percentage: _____

_____ Through a modification to published fee schedules

Effective date (enter date of change): _____

Location (list published location): _____

__X__ Up to the Medicare payments for equivalent services.
The payment for DME oxygen and respiratory equipment will be equal to the Medicare payment for equivalent services.

_____ By the following factors:

Please describe.

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

Payment for services delivered via telehealth:

3. _____ For the duration of the emergency, the state authorizes payments for telehealth services that:

    a. _____ Are not otherwise paid under the Medicaid state plan;

    b. _____ Differ from payments for the same services when provided face to face;

    c. _____ Differ from current state plan provisions governing reimbursement for telehealth;

Describe telehealth payment variation.

    d. _____ Include payment for ancillary costs associated with the delivery of covered services via telehealth, (if applicable), as follows:

        i. _____ Ancillary cost associated with the originating site for telehealth is incorporated into fee-for-service rates.

        ii. _____ Ancillary cost associated with the originating site for telehealth is separately reimbursed as an administrative cost by the state when a Medicaid service is delivered.

Other:

4. __X__ Other payment changes:

Please describe.
The oxygen and respiratory equipment procedure codes mentioned above will be exempt from the 10 percent payment reductions in Welfare and Institutions Code section 14105.192, as described in Attachment 4.19-B, page 3.3, paragraph 13 of the State Plan.

Section F – Post-Eligibility Treatment of Income

1. _____ The state elects to modify the basic personal needs allowance for institutionalized individuals. The basic personal needs allowance is equal to one of the following amounts:

    a. _____ The individual's total income

    b. _____ 300 percent of the SSI federal benefit rate

    c. _____ Other reasonable amount: _____

2. _____ The state elects a new variance to the basic personal needs allowance. (Note: Election of this option is not dependent on a state electing the option described the option in F.1.

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.

above.)

The state protects amounts exceeding the basic personal needs allowance for individuals who have the following greater personal needs:

Please describe the group or groups of individuals with greater needs and the amount(s) protected for each group or groups.

Section G – Other Policies and Procedures Differing from Approved Medicaid State Plan /Additional Information

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148 (Expires 03/31/2021). The time required to complete this information collection is estimated to average 1 to 2 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. Your response is required to receive a waiver under Section 1135 of the Social Security Act. All responses are public and will be made available on the CMS web site. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850. ***CMS Disclosure*** Please do not send applications, claims, payments, medical records or any documents containing sensitive information to the PRA Reports Clearance Office. Please note that any correspondence not pertaining to the information collection burden approved under the associated OMB control number listed on this form will not be reviewed, forwarded, or retained. If you have questions or concerns regarding where to submit your documents, please contact the Centers for Medicaid & CHIP Services at 410-786-3870.

This SPA is in addition to the California Disaster Relief SPA approved on 5/13/20 and 8/20/20, and it does not supersede anything approved in those SPAs.