



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



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GOVERNOR

7/7/21 DHCS BH All Provider Call Brief Summary

DHCS presented a brief update, indicating that telehealth and telephone flexibilities offered during the public health emergency will be extended through December 2022. A stakeholder workgroup will be convened to provide recommendations to DHCS regarding billing and utilization management protocols for telehealth modalities used in Medi-Cal; these recommendations will be used to inform the Governor's proposed 2022/23 budget.

Most flexibilities related to the Governor's COVID-19 related executive orders are scheduled to end June 30, with some extending through September 30, 2021. Please see [Executive Order N-09-21](#) for details.

Questions and Answers

Q: Is the 12/2022 end date of telehealth subject to change?

A: DHCS does not plan to end telehealth on December 2022; rather, at that time, we may implement a revised telehealth policy, based on the stakeholder workgroup process described above.

Q: What are State regulations about masks, etc. now?

A: DHCS adheres to all guidance provided by CDPH and recommends all providers review the latest guidance released by CDPH for recommended guidelines regarding face coverings. [Link to CDPH latest guidance.](#)

Q: Are upcoming recertification inspections being done virtually or in person?

A: DHCS licensing staff are planning to resume on-site visits, inspections and re-inspections soon.

Q: Waiver of signature requirements for psychiatric medications - will this be extended to the end of December 2022 as well, or remain at September 30, 2021?

A: California regulations¹ require that mental health facilities maintain documentation of a written consent form signed by a patient to receive anti-psychotic medications. The flexibility in the Executive Order N-55-20 waiving this requirement expires September 30, 2021, and the regulation goes back into effect. If a patient does not choose to provide a signature, the provider should document this in the chart, and continue to offer appropriate treatment. Please note that this regulation only applies to anti-psychotic medications, not all psychiatric medications.

Q: Are providers (both SMHS and SUD) required to obtain and document consent for phone and televideo services at each encounter or is this a onetime requirement?

A: California law requires a patient's consent to receive services via telehealth (synchronous audio and video) or via telephone (audio-only) to be documented in the client chart. Documentation of verbal consent is sufficient. California statute 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.

Q: Are staff who obtain verbal consent on an ROI or treatment form (consent to treat for example) due to the service being provided via phone/telehealth as of 7/1/21 and moving forward, required to obtain a wet signature at their next face to face appointment with the client?

A: No. It is sufficient to document the reason for the missing signature in the client record.

Q: San Bernardino County could not locate dates and definitive information if the following flexibilities are in fact ending: Blanket Exceptions for Take-Home Meds, NTP provide Medication Delivery, and Annual Assessments and Intake Requirements.

A: All federal flexibilities granted for Narcotic Treatment Programs remain in place until they are rescinded federally. See updated [Narcotic Treatment Program FAQ](#).

Q: Please clarify the policy for initial assessments for DMC-ODS, DMC and SMHS.

A: While DHCS initially planned for DMC-ODS to return to the requirement for initial assessments to be done in-person or by telehealth and issued guidance accordingly ([Behavioral Health Information Notice 21-019](#)), DHCS subsequently made the policy decision to extend all public health emergency telehealth flexibilities through December 2022. Therefore DHCS will be updating all guidance documents to be consistent with this policy. Initial assessments in DMC-ODS, SMHS and DMC continue to be allowable

¹ 8 Cal. Code Regs., tit.9, § 852.

via telehealth (synchronous audio and video) or via telephone (audio-only) through December, 2022. The telehealth public health emergency flexibilities are consistent across all delivery systems, including DMC-ODS, DMC and SMHS.

Q: Are flexibility requests submitted through county liaison or other DHCS licensing email address?

A: Any flexibility requests for a Psychiatric Health Facility or Mental Health Rehabilitation Facility should be sent directly to DHCS for review. All requests can be sent to: MHLIC@dhcs.ca.gov

Q: Is SUD considered healthcare for the purpose of following guidance?

A: Yes, substance use disorder treatment is considered health care, as it relates to telehealth guidance.

Q: Is DocuSign, or similar tool, an acceptable method for obtaining client/legal guardian consent signatures?

A: Yes, electronic signatures are acceptable, including DocuSign.

Q: Re: face-to-face and telehealth initial assessments, appreciate if DHCS can consider parity with respect to requirements of the specialty MH and SUD systems, among other areas where we are disadvantaging DMC-ODS systems (6 mo to work denials in SUD systems vs. 12 mo in MH systems, etc.).

A: DHCS will be issuing updated guidance to clarify that telehealth policy is consistent across DMC-ODS, DMC and SMHS, including related to initial assessments by telephone and telehealth. We are in the process of evaluating the feasibility of granting 12 months to address denials in the SUD system to parity MH.

Q: In outpatient SUD are staff able to continue to work remote under telehealth flexibility or do they need to return to the site to provide service?

A: DHCS does not restrict the physical location of the client or the provider for telehealth services. DHCS recommends that providers work with their DHCS-assigned analyst to ensure that all staffing-related processes are in accordance with regulations.

Q: There was permission for FQHCs to use AMFT/ASWs for licensed providers during the health emergency -- has this been extended to 12/31/22, too? It has been virtually impossible to find licensed MH providers during this period.

A: Flexibilities for FQHCs are not extended past June 30, 2021. However, DHCS has received inquiries from clinics to continue this flexibility and is exploring feasibility to do so post the public health emergency.

Q: *After the flexibilities potentially end in December 2022, will MH initial assessments be allowed by telephone?*

A: DHCS will issue updated guidance regarding telehealth policies after December, 2022, after a stakeholder input process.

Q: *Will any fire clearances or site reviews that we were completed during this pandemic's waived period will be honored by DHCS?*

A: Yes, if a program received an approved fire clearance during the pandemic, DHCS will still accept this clearance.

Q: *Are there restrictions on telehealth platforms, such as requirements to have HIPAA compliant Zoom, or is it still ok to use platforms included in original IN 20-009?*

A: DHCS does not have restrictions on telehealth platforms, as long as state and federal privacy laws are followed.

Q: *If I recall, a recent EO rescinded the use of non-HIPAA compliance platforms for Telehealth, such as FaceTime. Just to clarify, is the Telehealth flexibility that allows use of non-HIPAA compliant devices for providing Telehealth still in effect?*

A: DHCS does not have regulations requiring use of specific platforms, other than the ongoing requirements to follow all state and federal privacy laws. The Governor's executive order on telehealth flexibilities does not mention specific platforms, but just mentions suspension of administrative penalties. See [Executive Order-43-20](#) for the details on the original COVID-19 flexibilities, and [Executive Order N-09-21](#) for details of when particular provisions end.

As a reminder, the specific guidance around platforms is a federal flexibility related to the federal public health emergency, which is still in place. Below is an excerpt from [Behavioral Health Information Notice 20-009](#):

The U.S. Department of Health and Human Services Office of Civil Rights (HHS-OCR) has clarified that they will use enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules when providers use telehealth in good faith during the federal COVID-19 public health emergency. The HHS-OCR guidance states that providers can use any non-public facing remote communication product that is available to

communicate with patients. Specifically, providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype to provide telehealth. However, public facing applications such as Facebook Live, Twitch, TikTok, and similar video communication applications should not be used in the provision of telehealth. Additional guidance regarding HHS-OCR's HIPAA enforcement during the COVID-19 public health emergency can be found on [HHS-OCR's webpage](#).

Q: What you had said about telehealth and documenting not being able to get consent - is that only with regard for telehealth treatment, or does it also apply to Title 2 SUD consent to treatment?

A: If a patient is receiving services by telephone or telehealth, and a patient signature on the treatment plan, release of information, or other documentation is required, electronic signatures are allowable. If it is not possible to obtain an electronic signature, a written explanation in the client record is sufficient. It is not necessary to obtain a signature when the patient returns for an in-person visit.

[DHCS COVID-19 Response Page](#)

[State Plan Limitations Attachment](#)

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Questions on staffing for MHL facilities MHLC@dhcs.ca.gov

Questions on COVID-19 updates going forward DHCSBHLicenCert@dhcs.ca.gov