



## Assembly Bill (AB) 1494 Guidance for Telehealth and Telephonic Services Rendered During Emergencies

### Overview

AB 1494<sup>1</sup> added Section 14132.724 to the Welfare and Institutions Code (WIC), which requires the Department of Health Care Services (DHCS) to post guidance on its website regarding reimbursement and submission of claims for telehealth or telephonic services rendered during a state of emergency. DHCS' existing telehealth policy gives enrolled Medi-Cal providers significant flexibility in making decisions about using telehealth as another modality (in lieu of in-person visits), when clinically appropriate, to deliver medically necessary Medi-Cal covered services to their patients. Medi-Cal's existing telehealth policy can help providers appropriately deliver Medi-Cal covered services, including but not limited to, medical, dental, mental health, and substance use disorder services, both during a state-declared emergency and/or federally-declared public health emergency (PHE), as described below.

Please note that this guidance is not specific to any particular state-declared emergency and/or federally-declared PHE, but rather provides information regarding potential state and federal flexibilities that DHCS may be able to request and implement in response a future state-declared emergency and/or federally-declared PHE. DHCS, like other state Medicaid programs, responds to these types of emergency situations on a case-by-case basis, and DHCS' approach may vary considerably depending on the specific details, parameters, and beneficiary needs relative to a particular state of emergency.

### State-Declared Emergency

WIC Section 14132.723 provides that a Medi-Cal enrolled community clinic (or another enrolled fee-for-service (FFS) provider, clinic, or facility) may provide services to Medi-Cal beneficiaries during or immediately following a state-declared state of emergency without face-to-face contact or a patient's physical presence on the clinic's premises. Additionally, WIC Section 14132.723 requires reimbursement for telehealth and telephonic services, subject to federal approval.

During a state of emergency declared by the Governor of California, and absent a federally declared PHE, Medi-Cal providers should follow DHCS' published telehealth policies, as outlined in the Medi-Cal Provider Manual and other Department-issued guidance. Medi-Cal allows providers flexibility to determine when a service is clinically appropriate for delivery via a telehealth modality, without restrictions on the originating

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<sup>1</sup> [AB 1494, \(Aguiar-Curry, Chapter 829, Statutes of 2019\)](#)

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or distant site. The "[Medicine: Telehealth](#)" section of the Medi-Cal Provider Manual provides guidance for how providers can bill for services delivered via synchronous audio-visual communication and asynchronous store-and-forward communication. DHCS released [All Plan Letter 19-009](#) to inform Medi-Cal managed care plans of billing and reimbursement requirements for providing covered services via a telehealth modality. Likewise, [Rural Health Clinics \(RHCs\), Federally Qualified Health Centers \(FQHCs\)](#), and [Indian Health Services Memorandum of Agreement 638 Clinics \(IHS-MOAs\)](#) should follow the guidance in their respective sections of the Medi-Cal Provider Manual on how to bill for services delivered via telehealth in clinics, including federal requirements unique to clinics. For example, RHCs and FQHCs may deliver services as an originating site or distant site provider. RHCs and FQHCs allow a patient's home to be the originating site if the patient is homebound due to medical necessity, homeless, or is a seasonal or agricultural migrant worker. IHS-MOA clinics may provide services outside their clinic if the patient is homeless, according to federal statutes.

To the extent DHCS can waive certain requirements and/or provide additional flexibilities during a state-declared emergency either administratively or through authority granted via a state-issued executive order and without federal approval, DHCS will post guidance on its website for providers on flexibilities available to them when providing care and submitting claims.

### **Federally Declared Emergency**

When the President of the United States declares a disaster or emergency under the Stafford Act or National Emergencies Act, and the Health and Human Services (HHS) Secretary declares a PHE under Section 319 of the Public Health Service Act, the HHS Secretary is authorized, under Social Security Act Section 1135, to temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program requirements. Federal law does not allow the Centers for Medicare and Medicaid Services (CMS) to waive federal Medicaid requirements without a federal declaration of an emergency or natural disaster. Although CMS generally grants federal flexibilities retroactively to the first day of the PHE with an approved waiver, federal flexibilities do not extend past the last day of the declared emergency. CMS has established how states may waive certain federal requirements through different waivers for the geographic areas impacted by an emergency or disaster, including the entire state, during a federally declared emergency. When there is a federal PHE, DHCS quickly requests that CMS allow DHCS to waive certain State Plan or federal requirements, including but not limited to, prior authorization, temporary expansion of locations of where services may be provided, and other flexibilities for practitioners, hospitals, long-term care facilities, and home health agencies.

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**Policy Guidance Before, During, and After Declared Emergencies**

DHCS will post all guidance and flexibilities authorized by a state-issued executive order or federal CMS waiver or disaster SPA approval on the DHCS website, including guidance on how providers should submit claims for prompt payment for services provided via telehealth. For examples of recent telehealth flexibilities in response to the 2019 Novel Coronavirus (COVID-19), please see Appendix A.

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**Appendix A: Recent Examples of Telehealth Flexibilities in Response to COVID-19**

The Centers for Medicare and Medicaid Services (CMS) developed a State Plan Amendment (SPA) template during the COVID-19 public health emergency (PHE) that allows states to submit requests for flexibility and implement temporary policies during a PHE that are different from policies and procedures otherwise applied under the State Plan. DHCS submitted [SPA 20-0024](#) on April 3, 2020, and received federal approval on May 13, 2020. DHCS also submitted [SPA 20-0025](#) on June 30, 2020, and received federal approval on August 20, 2020. Both SPAs will be effective retroactively to March 1, 2020, until the termination of the PHE.

Furthermore, the COVID-19 PHE has highlighted the importance of, and the need for, strong telehealth policy guidance that can and should be utilized during a state of emergency and/or PHE. Guidance specific to the COVID-19 PHE is available on DHCS' [COVID-19 Response webpage](#). DHCS' existing policy for providers to bill for services provided via telehealth, as well as additional, temporary flexibilities available to providers during the COVID-19 PHE, are available on its website for all enrolled Medi-Cal providers, including but not limited to RHCs, FQHCs, and IHS-MOAs, in this document: [Medi-Cal Payment for Telehealth and Virtual/Telephonic Communications Relative to the 2019-Novel Coronavirus \(COVID-19\)](#). This guidance describes when providers can bill for services provided via telephonic and other virtual communication modalities using specified procedure codes, as well as when RHCs, FQHCs, and IHS-MOAs can bill for services provided via telephonic and other virtual communication modalities with specified codes during the COVID-19 PHE. Additional instructions on when RHCs, FQHCs, and IHS-MOAs can provide services/visits via telephonic and other communication modalities, consistent with in-person visit criteria to receive their Prospective Payment System rate or All-Inclusive Rate, as applicable, are also included in the guidance. Providers are encouraged to check the DHCS website for updates to Medi-Cal's telehealth policy and other flexibilities.

Additionally, DHCS' existing telehealth policy guidance for the Local Educational Agency Billing Option Program (LEA BOP) prior to the COVID-19 PHE allowed LEA providers to bill for all covered speech therapy services provided in person or via telehealth. The telehealth policy during the COVID-19 PHE allows LEA providers to bill for all covered direct medical services provided via telehealth under the LEA BOP, except for services, such as specialized medical transportation services, that preclude a telehealth modality. The telehealth policy for LEA BOP providers during the COVID-19 PHE is located in [Policy and Procedure Letter 20-014](#).

To reduce potential exposure to COVID-19, DHCS also obtained federal approval for home and community-based service (HCBS) providers to provide case management

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services via telehealth for beneficiaries with nursing level of care needs who receive long-term services and supports outside of an institution during the PHE. The emergency policy guidance, including guidance on telehealth flexibilities, developed for HCBS Waivers, Program for All-inclusive Care for the Elderly Plans, Community-Based Adult Services Centers, and California Community Transitions Lead Organizations is available on [DHCS' COVID-19 Response webpage for providers](#), under the corresponding authorities.

Telehealth policy guidance to counties and providers for the Medi-Cal specialty mental health services (SMHS), Drug Medi-Cal State Plan (DMC State Plan), and the Drug Medi-Cal Organized Delivery System (DMC-ODS) programs during the COVID-19 PHE is described in the [Behavioral Health Information Notice \(BH IN\) 20-009](#), *Guidance for behavioral health programs regarding ensuring access to health and safety during the COVID-19 PHE*, including *DHCS COVID-19 Frequently Asked Questions: Behavioral Health*. Additionally, counties and providers may access Frequently Ask Questions resources regarding COVID-19 behavioral health telehealth policy guidance for [Medication Assisted Treatment \(MAT\)](#) and [Narcotic Treatment Programs \(NTPs\)](#). The expanded behavioral health telehealth policy guidance described in BH IN 20-009 encourages counties and providers to take all appropriate and necessary measures to ensure beneficiaries can access all medically necessary behavioral health services during the COVID-19 PHE, including providing services via telehealth and telephone. The guidance also describes when services are reimbursable in the Medi-Cal SMHS and DMC-ODS programs.