Department of Public Health
Office of Compliance & Privacy Affairs (OCPA)

Behavioral Health Compliance Office

Compliance Corner

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SPECIAL EDITION

Behavioral Health Services Compliance Guidance Summary

The Compliance Office has compiled this newsletter that highlights relevant guidance from several resources ensuring access to health and safety during the COVID-19 public emergency including the most recent DHCS (Department of Healthcare Services) Information Notice (IN) 20-009. (updated May 1, 2020) *(https://www.dhcs.ca.gov/Documents/COVID-19/IN-20-009-Guidance-on-COVID-19-for-Behavioral-Health.pdf)*

On April 22, 2020, Gov. Newsom issued an executive order *(EO N-55-20)* guiding DHCS and Medi-Cal providers on various requirements to ensure continuity of services to patients due to COVID-19. The EO will give flexibility for DHCS to continue providing mental health care services and programs.

Telehealth Quick Overview

Telehealth is a mode of delivering health care services and public health via information and communication technologies. Telehealth can be used to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and health care provider is at the distant site.

Telehealth at DPH

State law requires health care providers to inform the beneficiary, and maintain appropriate documentation. This pertains to services provided in all forms, whether via telehealth services or in person. It is best practice to share the risks and benefits of telehealth services and to obtain the client's written consent to this service.

When written consent is not possible, the clinician may obtain verbal consent and document it in the client's chart, including notation that obtaining a signed consent was not possible due to the COVID-19 emergency.

When possible, telehealth is preferable so that you can have visual clinical information (abnormal movements or behaviors). Drug Medi-Cal and Opiate Treatment Program clients must have an initial assessment using telehealth if not in-person.

All providers should complete service documentation in the patient treatment file whether the service is provided in person, by phone or through telehealth.

At BHS, we do not recommend using phone-only for an initial assessment if telehealth is possible. Exceptions should only be made when there is no video capacity. Reference: ***Holt, H. MD, et. al. (2020, April,6). Tele-behavioral Health for SFDPH Behavioral Health Services: Essential Elements and Tips for Treatment.*** Retrieved from *https://vimeo.com/showcase/6956018/video/404818343*

Platform

SFDPH prefers and recommends **ZOOM** HIPPA-compliant accounts for DPH employees providing telehealth.

This following is a summary of the *Behavioral Information Notice No: 20-009*. *Guidance for behavioral health programs during the COVID-19 public emergency.*

1. Behavioral health services via telephone and telehealth (Ref No.1 from IN 20-009)

Clinical documentation standards and scope of practice remains unchanged for both licensed providers and unlicensed staff.

- The standard of care is the same via person, telephone or telehealth.
- Services delivered via telehealth and telephone are reimbursable in Medi-Cal managed care.
- Maximize use of telehealth to prevent the spread of Covid-19. Contract rates remains the same.
- Patients may receive services via telehealth in their home, anywhere in the community, outside a clinic or other provider site.
- Services via telehealth are currently optional for counties in the DMC-ODS waiver, which expires on December 31, 2020. DMC-ODS counties that have NOT previously authorized services via telehealth in their program should allow providers to bill for services via telehealth during the period of heightened COVID-19 concern**; DHCS approval is not required.**

Services		
Effective 3/1/2020	**Substance Use Disorder (SUD)**	**Mental Health (MH)**
What services are available via telephone & telehealth? ***(In BHS, intake assessments via telehealth are preferable.)*** **(Ref No.1 from IN 20-009)** ***Group counseling (minimum of 2 clients)***	• Initial clinical diagnosis assessment • Determination of medical necessity • LOC (Level of Care Determination) • Individual counseling services • Group counseling services (12-client limit remains in place)	Examples of Mental health services: • Intake/Assessment • Individual counseling services • Group counseling services • Crisis intervention services • Targeted case management • Therapeutic behavioral services • Intensive care coordination • Intensive home-based services • Medication support services
For telehealth services, is a signed medication consent required?	**No.** This is not required during COVID-19, but must record the reason for missing signature. (FAQ #4, 12, 16)	
Is additional billing code required when submitting claims?	**No**	**Yes**, add telehealth billing modifier, GT.
What services must be provided in person? ***(Not all components need to be provided in-person during the public health emergency)***	• Residential Services	• Crisis stabilization • Day rehabilitation • Day treatment intensive • Crisis residential treatment services • Adult residential treatment
Place of Service Code Requirement	Not applicable	MH Outpatient: **No** MH Inpatient: **Yes**

Signatures		
Effective 3/1/2020	**Substance Use Disorder (SUD)**	**Mental Health (MH)**
Is a consent required for providing telehealth?	**No** (see FAQ 16)	**No** (see FAQ 16)
	• Inform the beneficiary to share the risks and benefits of telehealth services • It is best practice obtain the client's written consent • But if written consent is not possible, the clinician can obtain verbal consent and document it in the client's chart, including that obtaining a signed consent was not possible	
Are TPOC signatures required during the public health emergency?	**No** (see FAQ 14)	**No** (see FAQ 14)
	• All providers should complete service documentation in the patient treatment file whether the service is provided in person, via telephone or telehealth. • During the COVID-19 public health emergency, Counties must document in the beneficiary's medical record the reason for the missing signature. • For **Specialty Mental Health**, if the client is unavailable to sign, note this in the chart and obtain the signature at their next regularly scheduled in-person appointment once the public health emergency has ended. Signatures should not be back-dated, but rather indicate the actual date signed.	
Other required signatures like intake/admission/ consent for treatment forms	**No** (see FAQ 17)	**No** (see FAQ 17)
	• Providers must document in the beneficiary's medical record the reason for the missing or late signature.	
Release of Information (ROI), consent forms, notices of privacy practices	**Unknown** (see FAQ 12)	**Unknown** (see FAQ 12)
	• DHCS did not specifically request waivers of signatures on these items; therefore, we do not have specific guidance at this time.	
Are patient signatures required for Psychiatric Medications?	**No** (Ref No.3 from IN 20-009)	
	If written consent is not possible, the clinician can obtain verbal consent and document it in the client's chart, including that obtaining a signed consent was not possible.	

2. 5150 evaluations and 5151 assessments (Ref No. 2 from IN 20-009 & FAQ No. 1)

- 5150 evaluations **may be** performed by authorized providers face-to-face via telehealth
- 5151 assessments are to be completed "in person" and **shall not** be provided using telehealth.
- 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.

3. Adapting oversight requirements to prioritize patient needs and accommodate workforce challenges (Ref No. 5 & No. 9 from IN 20-009)

- BHS will minimize the administrative burden on providers and waive any additional county oversight and administrative requirements that are above and beyond DHCS and/or federal requirements during the state of emergency.
- Examples include converting on-site audits and site reviews to virtual desk audits, postponing audits and provider reviews that are not time-sensitive, deferring additional training or reporting requirements, and waiving minimum requirements for clinical hours per week that are above and beyond DHCS requirements (e.g., for residential facilities), to accommodate for staff shortage.
- The scheduled 2020 MHP Triennial Medi-Cal Mental Health review, Office of Privacy and Compliance audits for Mental Health and Substance Use Disorder are currently on hold.

4. Access to prescription medications (Ref No. 7 & FAQ No. 8 from IN 20-009)

- Medi-Cal allows prescribing and dispensing of 100-day supplies of medications, including certain controlled medications. Early refills are allowed, as long as 75% of the expected duration has occurred.
- Counties and providers should refer to the DHCS Fee-for-Service Pharmacy Benefit Reminders for clarifications: *http://files.medi-cal.ca.gov/pubsdoco/newsroom/newsroom_30366.asp*
- DHCS recommends that providers prescribe 100-day supplies of all chronic medications, and patients may obtain early refills if 75% of the estimated duration of the supply dispensed has elapsed (other than certain medications with quantity/frequency limitations). Pharmacies are required to supply up to 72 hours of prescribed medications in an emergency and may provide the emergency supply without an approved TAR.
- Medi-Cal allows for, and reimburses, mail order pharmacy providers enrolled as pharmacy providers in the Medi-Cal program. This will ensure that patients do not run out of medications.

5. Alcohol and Other Drug (AOD) residential and outpatient treatment facility flexibilities (Ref No. 8, FAQ 24 & 25 from IN 20-009)

- DHCS has granted flexibility to Residential and Outpatient Treatment Facilities **to allow ongoing access during the emergency**.
- SUD residential programs may relocate to new locations on an emergency basis and submit a Supplemental Application (DHCS 5255) within 60 days from the date of the move.
- In some circumstances, DHCS shall consider and may allow facilities to provide treatment or recovery services off-site for any concerns related to COVID-19. Providers should contact their Licensing Analyst for questions.

6. Convert or limit meetings and gatherings to prevent COVID-19 transmission (Ref No. 11 from IN 20-009)

- DHCS recommends that counties and providers follow guidance by the California Department of Public Health and limit unnecessary meetings, gatherings and events, and convert all possible meetings into virtual (live video or telephone) events.

Important FAQ's from IN 20-009

1. Can Mental Health Specialists and staff who will not be licensed, but have AOD Certification, provide a billable telehealth assessment? (FAQ No. 7)

An intern, trainee, or waivered licensed professional under the supervision of a Licensed Professional of the Healing Arts (LPHA) may perform specialty mental health assessments and subsequent services by telephone, telehealth, or in-person, under supervision of a licensed professional.

2. Can DHCS clarify current expectation for the various county data reporting requirements? (FAQ No. 18)

a) **Consumer Perception Survey** - According to the new IN 20-009 updated May 1, 2020, the next scheduled survey period is May 2020. Due to the COVID-19 emergency, DHCS has rescheduled the survey collection period to June 22-26, 2020.

b) **Client and Services Information System (CSI), Data Collection and Reporting System (DCR), California Outcomes Management System (CalOMS) and American Society of Addiction Medicine (ASAM) Level of Care** - DHCS recognizes that there may be delays in submitting data. However, due to federal reporting requirements, DHCS is not able to waive data reporting requirements for CSI, DCR, CalOMS, and ASAM Level of Care Data.

c) **CYF - Child and Adolescent Needs and Strengths (CANS) & Pediatric Symptoms Checklist – 35 (PSC 35)**
During this time of COVID-19, DHCS recognizes that there may be limitations in staff time as some staff are being redirected due to the emergency. As such, the CANS should be completed in partnership with placing agencies via telehealth or telephone. Furthermore, although IN 20-003 requires counties to include the CIN number with CANS and PSC-35 submissions to the FAST system, due to COVID-19, DHCS will extend the implementation of the mandatory CIN requirement to July 1, 2020.

3. May providers share SUD diagnosis information during this emergency? (FAQ No. 13)

Yes. The Substance Abuse and Mental Health Services Administration (SAMHSA) issued new guidance which allows providers to share patient SUD diagnosis information that would normally be protected under 42 CFR Part 2 in instances of a bona fide medical emergency. Usage of the medical emergency exception must be documented by providers.

Key Takeaways:

- In order to continue to provide all medically necessary services while minimizing community spread during the COVID-19 public emergency, many of the MH & SUD services are available via telephone & telehealth.
- Providers are still required to follow relevant privacy laws to ensure patient privacy protections.
- The scheduled 2020 MHP Triennial Medi-Cal review and the Office of Privacy and Compliance audits for Mental Health and Substance Use Disorder are currently on hold.
- PSC-35/CANS requires a CIN (9-digit no.). Submissions without a CIN will fail and produce a FATAL Error.
- Communications via text messaging are non-billable.

Other Important links/resources for COVID-19

- Guidance for behavioral health programs during the COVID-19 public emergency

  https://www.dhcs.ca.gov/Documents/COVID-19/IN-20-009-Guidance-on-COVID-19-for-Behavioral-Health.pdf

- DHCS COVID-19 response

  https://www.dhcs.ca.gov/pages/dhcs-covid-response.aspx

- San Francisco Department of Public Health – COVID-19 Alerts

  https://www.sfdph.org/dph/alerts/coronavirus.asp

- DHCS Medi-Cal Payment for Telehealth and Virtual/Telephonic communications related to COVID-19

  https://www.dhcs.ca.gov/Documents/COVID-19/Telehealth_Other_Virtual_Telephonic_Communications_V3.0.pdf

- California Department of Public Health-COVID-19 Updates

  https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx

- CDPH Gathering/Meeting Guidance

  https://www.cdph.ca.gov/programs/cid/dcdc/cdph document library/COVID-19/cdph-guidance-gatherings-covid19-transmission-prevention-03-16-2020.pdf

- CDC COVID-19 webpage

  https://www.cdc.gov/coronavirus/2019-ncov/index.html

- Guidance for Employers

  https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html

- Medicaid.gov COVID-19 resource page

  https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/coronavirus-disease-2019-covid-19/index.html

- Governor Newsome's Executive Order N-43-20

  https://www.gov.ca.gov/wp-content/uploads/2020/04/4.3.20-EO-N-43-20-text.pdf

- Governor Newsom's order 3/12/20

  https://www.gov.ca.gov/2020/03/12/governor-newsom-issues-new-executive-order-further-enhancing-state-and-local-governments-ability-to-respond-to-covid-19-pandemic/

- California Telehealth Policy Coalition

  https://www.cchpca.org/about/projects/california-telehealth-policy-coalition

- Telehealth – DHCS – CA.gov

  https://www.dhcs.ca.gov/provgovpart/Pages/TelehealthFAQ.aspx

- Behavioral Health Service – Communications April 2020

  https://www.sfdph.org/dph/files/CBHSdocs/CBHSDirMonRpts/2020/BHS_Communication_Report_April2020.pdf