



Behavioral Health Compliance Office Compliance Corner

SPECIAL EDITION

Behavioral Health Services Compliance Guidance Summary Updated

The Compliance Office has compiled this newsletter to highlight relevant updates from [DHCS Information Notice 20-009 updated July 23, 2020](#). This newsletter will highlight the updates and COVID-19 changes since the June 20th version of IN 20-009. Here are the links to the prior [May Newsletter](#) and [June Newsletter](#).

1. During the emergency, will DHCS consider revising the timeline requirements for processing, issuing and logging grievances, appeals, and Notices of Adverse Benefit Determination (NOABDs)? (Ref FAQ No. 19)

- No. There are no changes or flexibilities regarding the counties' responsibility for NOABD timelines. As such, the exception is a temporary modification allowing beneficiaries an extra 120 days in addition to the standard 120 days to request a State Fair Hearing (for a total of 240 days).

2. During the emergency, will DHCS revise the timeline requirement for requests for service (timely access)? (Ref FAQ No. 20)

- No. DHCS is no longer pursuing this flexibility.

3. During the emergency, there have been provider reductions in staff and capacity. Do counties have to report provider changes to DHCS? (Ref FAQ No. 21)

- Yes, programs will still have to report provider changes within 10 business days any time there has been a significant change in the Plan's operations that would affect the adequacy and capacity of services, including but not limited to the composition of the plan's provider network.

4. Can counties postpone updating the Provider Directory during the emergency? (Ref FAQ No. 22)

- No, counties cannot postpone updating the Provider Directory.
- Provider paper directory must be updated at least monthly and update electronically within 30 calendar days after receiving information.

5. Will the required Performance Improvement Projects (PIP) which are submitted through External Quality Review Organization (EQRO) be waived during the emergency? (Ref FAQ No. 27)

- No. PIP requirements have not been waived.
- PIPs submitted through EQROs will not have any type of flexibility.

**No
Additional
Flexibilities**



6. For individuals placed on a 5150 hold and in the ER, is it permissible for the professional person in charge of a Crisis Stabilization Unit (CSU) or their designee to conduct an assessment via telehealth prior to admission to the CSU, so that the professional person in charge or their designee can be counted as part of the required staffing ratio at the CSU? (Ref FAQ No. 28)

There are no additional flexibilities.

- 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.

7. The Director of the California Department of Consumer Affairs has temporarily waived some legal requirements for certain individuals seeking to renew a license or registration pursuant to Division 2 of the Business and Professions Code, including suspending some exam and continuing education requirements. Has DHCS issued any guidance for providers who hold a license or registration issued by the Board of Behavioral Sciences (BBS) that is set to expire? Ref (FAQ No. 49)

- No. BBS, however, has issued FAQs on this issue. These FAQs can be [found here](#).
- Licensees/registrants have until September 30, 2020, to take and pass any required exams and/or to complete any continuing education requirements. DHCS will consider an individual’s license/registration valid during the extension such that the individual can continue to engage in the full scope of practice as allowable by law.

8. During the emergency, and in light of training cancellations, can staff whose “5150” certification is expired still be allowed to conduct 5150 holds? (Ref FAQ No. 50)

- Per W&I code 5121, the county behavioral health director has authority to develop requirements and processes to designate who can perform functions under W&I 5150, including the process for monitoring and reviewing professionals that have been designated. Therefore, this is a decision for counties to make.

9. Can MHPs and DMC-ODS Counties rely on provider credentialing performed by a subcontractor or credentialing agency to comply with the provider credentialing requirements contained in MHSUDS IN 18-019? (Ref FAQ No. 51)

- MHPs and DMC-ODS Counties may decide whether or not to accept credentialing performed by a subcontractor or other agency. However, if an MHP/DMC-ODS County makes the decision to rely on a subcontractor or other agency’s credentialing, it is ultimately responsible for verifying that the provider is credentialed in accordance with MHSUDS IN 18-019 wherein it states that:

“Provider Credentialing and Re-credentialing Procedures: A Plan may delegate its authority to perform credentialing reviews to a professional credentialing verification organization; nonetheless, the Plan remains contractually responsible for the completeness and accuracy of these activities. If the Plan delegates credential verification activities to a subcontractor, it shall establish a formal and detailed agreement with the entity performing those activities. To ensure accountability for these activities, the Plan must establish a system that:

- Evaluates the subcontractor’s ability to perform these activities and includes an initial review to assure that the subcontractor has the administrative capacity, task experience, and budgetary resources to fulfill its responsibilities;
 - Ensures that the subcontractor meets the Plan’s and DHCS’ standards; and
 - Continuously monitors, evaluates, and approves the delegated functions.
- Plans are responsible for ensuring that their delegates comply with all applicable state and federal law and regulations and other contract requirements as well as DHCS guidance, including applicable INs.”



10. Information notice 18-012 notes that updates to Information Technology systems in order to comply with Final Rule requirements may be reimbursable as a final rule claim. Would purchasing additional technology and software upgrades to continue to meet Network Adequacy Requirements during the COVID-19 situation be a claimable final rule expenditure? (Ref FAQ No. 59)

- No. While DHCS is encouraging the use of telehealth during the COVID-19 public health emergency, **it is not imposing a new requirement** on the counties to provide SMH and DMC services via telehealth; therefore, no additional funding is available for IT costs associated with implementing telehealth.
- Counties are mandated to ensure timely access to medically necessary SMH and DMC services. Accordingly, counties may choose to do so via telehealth using appropriate, existing funding resources to pay for it.

11. Is it acceptable to use the place of service code 02 in a telehealth claim for DMC services and specialty mental health services? (Ref FAQ No. 25)

- Yes. The place of service code 02 (telehealth modifier) is acceptable for services that may be provided through telehealth for both DMC and SMHS services. For more details see the SMHS billing manual and BHIN 20-009 for DMC ODS.

Mental Health

12. During the emergency, can the MHP certification of Network Adequacy Data and Documentation Submission Form be signed electronically? (Ref FAQ No. 13)

- Yes. The county MHP certification of Network Adequacy Data and Documentation Submission Form can be signed electronically.

13. What SMHS can be provided to a beneficiary before his or her client plan is approved? (Ref FAQ No. 34)

Prior to the client plan being approved, the following SMHS and service activities are reimbursable:



¹- **Medication Support Services** includes assessment, evaluation, or plan development; or if there is an urgent need, which must be documented.

²- **Intensive Care Coordination (ICC)** includes plan development, and referral/linkage to help a beneficiary obtain needed services including medical, alcohol and drug treatment, social, and educational services.

14. When is a beneficiary's signature required on a client plan? (Ref FAQ No. 35)

- There are no flexibilities with signature requirements for MH audits even during the PHE.
- The beneficiary's signature or the signature of the beneficiary's legal representative is required on the client plan when:
 - The beneficiary is expected to be in long-term treatment as determined by the MHP; and, the client plan provides that the beneficiary will be receiving more than one type of SMHS; and/or
 - The MHP documentation standards require it. Link to Doc Manual: tiny.cc/MHref



- When a beneficiary’s signature or the signature of the legal representative is required, but the beneficiary refuses to sign the client plan or is unavailable, the MHP shall ensure the client plan includes a written explanation of the refusal or unavailability (MHP Contract; Cal. Code Regs. tit. 9, § 1810.440(c)(2)).

SUD

15. During the emergency, are there any flexibilities for the DMC-ODS and State Plan Intensive Outpatient Treatment (IOT) and residential requirement that the therapist or counselor must record a minimum of 1 progress note per calendar week? (Ref FAQ No. 18)

- No. There are no flexibilities for the- progress note requirement. DMC-ODS counties must continue to comply with the progress note requirements per the Interagency Agreement (IA). Exhibit A. Attachment I.OO.14.i.a.i; and DMC State Plan counties must continue to comply with 22 CCR 51341.1(h)(3)(B).

16. During the emergency, will there be any additional flexibilities for the DMCODS required hours for Intensive Outpatient Treatment (IOT)? (Ref FAQ No. 23)

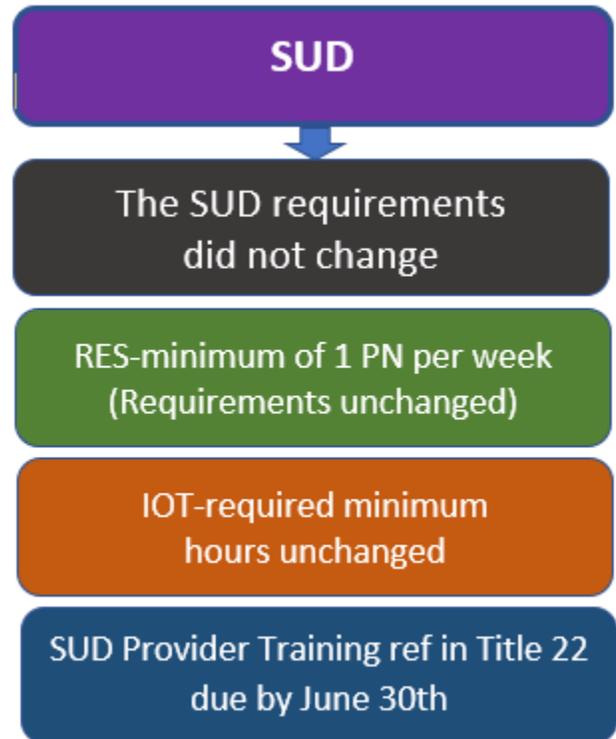
- No. The requirements for Intensive Outpatient Treatment services are described in the Intergovernmental Agreement for those counties participating in the DMC-ODS.
- All requirements must be met as stated on the SUD IOT audit tool. [Link to SUD OS IOT RES Audit Tool.](#)

17. During the emergency, if a county that has opted into the DMC-ODS waiver has closed a facility or no longer accepts clients due to physical distancing, is the county required to offer the same type of modality at another site? (Ref FAQ No. 24)

- Yes. Counties must meet network adequacy standards. If a provider could no longer accept client/s due to physical distancing. The provider must offer the same MODALITY at another site.
- Do evaluate if the service could be provided via telehealth or telephone without transferring the RU.

18. During the emergency, will there be flexibilities for the annual SUD Provider training referenced in Title 22 training which is required by the end of the fiscal year (June 30th). (Ref FAQ No. 26)

- No. There are no flexibilities for the required SUD provider training referenced in Tittle 22. Please note that the training can be provided via a virtual setting (e.g., webinar).





19. Will the telehealth Health Insurance Portability and Accountability Act (HIPAA) flexibilities be expanded to include 42 CFR Part 2 requirements? (Ref FAQ No. 33)

- No. DHCS did not request any flexibilities for 42 CFR Part 2, which addresses the confidentiality of substance use disorder records.

Key Takeaways:

- Programs will still have to report provider changes within 10 business days any time there has been a significant change in the Plan's operations that would affect the adequacy and capacity of services.
- Provider Directory updates are still required. Provider paper directory must be updated at least monthly and update electronically within 30 calendar days after receiving information.
- The Board of Behavioral Sciences (BBS) Licensees/registrants have until September 30, 2020, to take and pass any required exams and/or to complete any continuing education requirements.
- The Performance Improvement Projects (PIP) which are submitted through External Quality Review Organization (EQRO) have not been waived.
- The county MHP certification of Network Adequacy Data and Documentation Submission Form can be signed electronically.
- The telehealth Health Insurance Portability and Accountability Act (HIPAA) flexibilities will not be expanded to include 42 CFR Part 2 requirements. The confidentiality of SUD records remains unchanged.





Important links/resources for COVID-19

- California Department of Public Health-COVID-19 Updates
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx>
- California Telehealth Policy Coalition
<https://www.cchpca.org/about/projects/california-telehealth-policy-coalition>
- CDC COVID-19 webpage
<https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- Community Behavioral Health Services DPH
<https://www.sfdph.org/dph/comupg/oservices/mentalHlth/CBHS/default.asp>
- 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.
<https://www.dhcs.ca.gov/Documents/BH-Information-Notice-20-003-CANS-CIN-UPDATE.pdf>
- DHCS Stakeholder Communication Update August 2020
<https://www.dhcs.ca.gov/services/Documents/StakeholderCommunication-August2020.pdf>
- Guidance for Employers
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- Medi-Cal Payment for Telehealth and Virtual/Telephonic Communications Relative to the 2019-Novel Coronavirus (COVID-19) March 24, 2020 (Supersedes March 19, 2020 Guidance)
https://www.dhcs.ca.gov/Documents/COVID19/Telehealth_Other_Virtual_Telephonic_Communications_V3.0.pdf
- Medicaid.gov COVID-19 resource page
<https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/coronavirus-disease-2019-covid-19/index.html>
- San Francisco Department of Public Health – CORONA VIRUS FACTS
<https://www.sfdph.org/dph/alerts/coronavirus.asp>