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GAVIN NEWSOM  
GOVERNOR

DATE: March 26, 2020

Behavioral Health Information Notice No: 20-11

TO: California Alliance of Child and Family Services  
California Association for Alcohol/Drug Educators  
California Association of Alcohol & Drug Program Executives, Inc.  
California Association of DUI Treatment Programs  
California Consortium of Addiction Programs and Professionals  
California Council of Community Behavioral Health Agencies  
California Opioid Maintenance Providers  
California State Association of Counties  
Coalition of Alcohol and Drug Associations  
County Behavioral Health Directors  
County Behavioral Health Directors Association of California  
County Drug & Alcohol Administrators

**SUBJECT:** Emergency State Fair Hearing Timeframe Changes

**PURPOSE:** Provide counties with guidance on changes in State Fair Hearing (SFH) timeframes, given the Novel Coronavirus Disease (COVID-19) public health emergency.

**BACKGROUND**

On March 16, 2020, and March 19, 2020, DHCS submitted requests to waive or modify a number of federal requirements under Section 1135 of the Social Security Act (Title 42 United States Code section 1320b-5) to the Centers for Medicare and Medicaid Services (CMS). DHCS' Section 1135 Waiver submissions requested flexibility due to the COVID-19 public health emergency, including flexibility on the timeframes for beneficiaries to request Medi-Cal State Fair Hearings (SFH) during the emergency period. On March 23, 2020, CMS sent a letter to DHCS summarizing its approval of specific requested Section 1135 Waiver flexibilities.<sup>1</sup>

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<sup>1</sup> The Section 1135 Waiver requests and CMS approval letter can be found on the [DHCS COVID-19 Response webpage](#).

## **POLICY**

The following supplemental guidance applies to county Mental Health Plans (MHPs), Drug Medi-Cal Organized Delivery System (DMC-ODS) county plans, and Drug Medi-Cal State Plan counties, and will remain in effect until further notice.

### **Temporary Changes to State Fair Hearing Request Timeframes**

#### ***MHP and DMC-ODS:***

Medi-Cal beneficiaries receiving services from an MHP or DMC-ODS county plan wishing to exercise their right to request a SFH after exhausting the county appeal process are currently required to make that request no later than 120 calendar days from the date of the county's written Notice of Appeal Resolution (NAR).<sup>2</sup> In cases of deemed exhaustion, the beneficiary has 120 days from the expiration date of the timeframe, in which the county should have sent the Notice of Adverse Benefit Determination (NOABD) to the beneficiary, or the date of the beneficiary's receipt of the county's deficient written NOABD.

In the March 23, 2020, approval letter, CMS allowed a modification of the timeframe for beneficiaries receiving services from an MHP or DMC-ODS county plan to make SFH requests under Title 42 of the CFR section 438.408(f)(2). Specifically, any beneficiary for whom the 120-day deadline would have occurred between March 1, 2020, through the end of the COVID-19 public health emergency, are now allowed up to an additional 120 days to request a SFH (i.e., initial 120 day timeframe plus an additional 120 days, for a total of 240 days).<sup>3</sup>

All counties should be flexible in granting aid paid pending (APP) during the COVID-19 public health emergency as beneficiaries may not receive timely notices nor be able to respond with a request for APP within ten days of receipt of the NAR.

#### ***DMC State Plan***

Medi-Cal beneficiaries receiving substance use disorder services in DMC State Plan counties are not required to request a first-level appeal with the county (22 CCR §51341.1).

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<sup>2</sup> 42 Code of Federal Regulations (CFR) 438.408(f)(2)

<sup>3</sup> This expanded timeframe for beneficiaries to request a State Fair Hearing modifies the MHP Contract terms located at Exhibit A, Attachment 12, Section 6 (Contractor Obligations related to State Fair Hearings), Subdivision A.

In accordance with Title 42 of the Code of Federal Regulations (CFR) Section 431.221(d), states can choose a reasonable timeframe for individuals to request a State Fair Hearing, not to exceed 90 days from the date that the notice of action (NOA) is mailed. The March 23, 2020 CMS approval letter allows any beneficiary residing in a DMC State Plan county to have an additional 120 days to request a state fair hearing (for a total of 210 days).

### Notification to Beneficiaries

#### ***MHP and DMC-ODS:***

During the COVID-19 public health emergency, MHPs and DMC-ODS county Plans must notify beneficiaries receiving a NOABD or a NAR that upholds an adverse benefit determination that they have an additional 120 days over and above the initial 120 days allowed to request a SFH (240 total days). If a county is unable to include this temporary SFH rights information with the NAR at the time of the mailing, it must call the beneficiary at the time the NAR is being mailed to notify the beneficiary of the right to request a SFH within 240 days from the date of the NAR. If the county calls the beneficiary, the date, the time, and confirmation of the beneficiary's identity shall be documented in the beneficiary's medical record. The county shall also document the applicable deadline provided to the beneficiary in the call, and document that the beneficiary heard and understood the deadline(s) the county provided for requesting a SFH.

#### ***DMC State Plan:***

22 CCR §51341.1(p) requires a provider to advise beneficiaries in writing of the intention to terminate or reduce services. Therefore, during the COVID-19 public health emergency, DMC State Plan counties must ensure that its county and/or contracted providers are informed of the additional 120 day timeframe for beneficiaries to request a state fair hearing.

### Other CMS Approved Section 1135 Modifications

#### ***MHP and DMC-ODS:***

While CMS also approved an additional modification of the timeframe for MHPs and DMC-ODS counties to resolve first-level appeals under 42 CFR section 438.408(f)(1) to no less than one day before a beneficiary may request a SFH, DHCS has chosen not to exercise this authority at this time because it could disrupt the current appeals system and cause confusion for beneficiaries. However, DHCS reminds counties of their obligations to resolve expedited appeals for any service within 72 hours from the request. In the future DHCS may invoke the one-day appeal allowance authorized in the

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Section 1135 Waiver approval to ensure that beneficiaries have access to all medically necessary services during this emergency.

If you have any questions regarding this Information Notice, please contact your county liaison, or email [CountySupport@dhcs.ca.gov](mailto:CountySupport@dhcs.ca.gov).

Sincerely,

Brenda Grealish  
Chief, Medi-Cal Behavioral Health Division