

Blog Post

California Telehealth Updates in Response to COVID-19

April 9, 2020

California has joined the growing ranks of states, as well as the federal government, in efforts to facilitate the efficient provision of healthcare services during the pandemic. Accordingly, in response to federal agency updates with respect to relaxations to existing requirements related to telehealth services, California's Governor Gavin Newsom issued an Executive Order No. 43-20 (the Order) on April 3, 2020, to expand telehealth services there (available [here](#).)

Licensure Relaxations

Similar to other states, any out-of-state licensed medical personnel may provide services within California without a license during the stated emergency upon submission of an authorization request form. Such form must be submitted to the California Emergency Medical Services Authority by a California medical facility (e.g., hospital, doctor's office, care site, etc.), a telehealth agency contracted with a California medical facility, or a staffing agency (available [here](#).)

Additionally, physicians, nurses, and other medical professionals with inactive or retired licenses that became inactive within the last 5 years unrelated to disciplinary action may obtain a temporary license without the payment of any fees for up to 6 months. Individuals must complete and submit an

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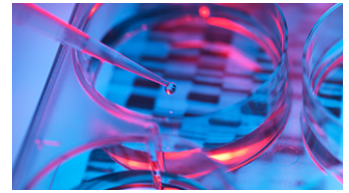
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application to the California Department of Consumer Affairs (available [here](#).)



The California Board of Registered Nurses (the Nursing Board) also advised healthcare providers and the public that nursing students may be deployed to assist healthcare facilities under existing law during a public health crisis even though they are not currently licensed. To assist the students and healthcare facilities in gauging the competency level of nursing students, the Nursing Board released a chart reflecting the skills/competency likely achieved by nursing students based on the completion of the applicable nursing course listed (available [here](#).) Nursing students, as well as any other health professionals willing to volunteer, are encouraged to register with the [California Health Corps system](#).

Further, the California Department of Consumer Affairs temporarily waived the requirement for licensees to take and pass an exam to renew a license or complete certain continuing education requirements for any individuals licensed under Division 2 of the Business and Professions Code (e.g., physicians nurses, dentists, therapists, etc.) whose active or current licenses are expiring between March 31, 2020 and June 30, 2020. The renewal applications to the applicable professional board must still be submitted, but responses to questions may reflect the temporary waivers noted above.

Relaxation of Existing Telehealth & Teleprescribing Requirements.

To provide more flexibility to healthcare providers in anticipation of the surge in healthcare needs caused by the COVID-19 pandemic, the Order suspended and waived certain telehealth (including mental and behavioral health services) related requirements including, for example, the following:

- Suspension of the requirement for healthcare providers to obtain verbal or written consent

before the use of telehealth services, and the documentation requirement for the same;

- Suspension of administrative fines, civil penalties, criminal penalties, and certain causes of action (including private rights of action) arising out of, or related to, the inadvertent, unauthorized access or disclosure of health information during the good faith provision of telehealth services (e.g., Civil Code §§56.35 and 36, Civil Code §§1798.29 and 1798.82 related to the timely notification to patients of such a breach of a security system and Unfair Competition Law causes of action predicated on such sections; violation of the Health and Safety Code §§1280.15 and 1280.17 if use of the technology during the good faith provision of telehealth services does not fully comply with federal or state law; Welfare and Institutions Code §14100.2(h) for Medi-Cal beneficiaries); and
- Extension of the timeframe required to provide notice to patients of the unauthorized access or disclosure of health information from 15 days to 60 days required under the Health and Safety Code §1280.15 when the unauthorized access or disclosure is related to the good faith provision of telehealth services.

The Order also provides that telehealth services conducted by a “covered healthcare provider” subject to HIPAA must comply with the Office for Civil Rights notice of enforcement discretion for telehealth services issued on March 17, 2020.

Consistent with the waiver that the federal Drug Enforcement Agency (DEA) issued, for as long as a public health emergency remains, DEA-registered practitioners may prescribe controlled substances without an in-person exam.

All other existing telehealth practice requirements not otherwise waived or relaxed remain including, but not limited to, the application of the same standard of care as in-person services.

Medi-Cal Telehealth Updates

The California Department of Health Care Services (DHCS) issued several pieces of guidance related to telehealth coverage for Medi-Cal providers (available [here](#)), which generally provide for the following:

- Reimbursement for: (i) telehealth services at the same rate as in-person services; and (ii) telehealth services provided via telephone at the same rate as telehealth service provided via video provided it is medically appropriate to use the applicable modality (payment parity requirements also applies to Medi-Cal managed care health plans);
- Reimbursement for synchronous telehealth services to “established patients” provided by Federally Qualified Health Clinics, Rural Health Clinics, and Tribal 638 clinics through a Section 1135 Waiver; and
- Reimbursement to Family PACT providers (California’s program for providing family planning services to low income California residents) who use telehealth or virtual/telephonic communication modalities to enroll and re-certify clients.

Medi-Cal providers must continue to comply with coverage and reimbursement requirements for the telehealth services including, but not limited to, detailed patient’s history, description of covered service provided, and other documentation supporting the healthcare services provided.

Private Third Party Payors

The California Insurance Commissioner directed health insurance companies to increase telehealth access during the COVID-19 pandemic by (notice available [here](#)):

- Allowing network providers to use all available and appropriate modes of telehealth delivery

including synchronous video and telephone-based service delivery;

- Immediately implementing reimbursement rates for telehealth services at the same rate as in-office visits;
- Eliminating barriers to providing medically and clinically appropriate care using telehealth delivery models; and
- Using telehealth service delivery methods to enable consumers to have access to mental health, substance use, and other behavioral health services.

Providers should review individual private third party payor agreements, policies, and procedures to confirm coverage and reimbursement for telehealth services.

Please review our previously issued articles on federal and state telehealth updates issued in response to the COVID-19 crisis. For questions or more information for these new and developing telehealth requirements and implications in California, please contact any member of the Akerman Healthcare team.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.