

**From:** DMHC Licensing eFiling

**Subject:** APL 23-002 – Senate Bill 979 – Health Emergencies Guidance

**Date:** Thursday, January 12, 2023 10:27 AM

**Attachments:** APL 23-002 – Senate Bill 979 – Health Emergencies Guidance (1.12.2023)

Dear Health Plan Representative,

The Department of Managed Health Care (Department) issues this All Plan Letter (APL) 23-002 which requires health care service plans (health plans) to provide an enrollee who has been displaced or whose health may otherwise be affected by a state of emergency, as declared by the Governor, or a health emergency, as declared by the State Public Health Officer, access to medically necessary health care services.

Thank you.



Gavin Newsom, Governor  
State of California  
Health and Human Services Agency  
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## ALL PLAN LETTER

**DATE:** January 12, 2023

**TO:** All Health Care Service Plans

**FROM:** Jenny Phillips  
Deputy Director  
Office of Plan Licensing

**SUBJECT:** APL 23-002 (OPL) Senate Bill 979 – Health Emergencies Guidance

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On September 18, 2022, Governor Gavin Newsom signed Senate Bill (SB) 979. SB 979 requires health care service plans (health plans or plans) to provide an enrollee who has been displaced or whose health may otherwise be affected by a state of emergency, as declared by the Governor, or a health emergency, as declared by the State Public Health Officer, access to medically necessary health care services. SB 979 also authorizes the Department of Managed Health Care (Department) to issue guidance to plans regarding compliance with the bill's requirements during the first three years following the declaration of emergency, or until the emergency is terminated, whichever occurs first.

This All Plan Letter (APL) sets forth the Department's guidance regarding how plans shall demonstrate compliance with SB 979. The Department expects plans to comply with SB 979 effective January 1, 2023.<sup>1</sup>

### **I. Background**

This bill, which amends Health and Safety code section 1368.7, requires health plans to ensure enrollees who have been displaced or whose health may be affected by a state of emergency or health emergency have access to medically necessary health care services. Within 48 hours of declaration of an emergency that displaces, or has the immediate potential to displace, enrollees or health care providers, or that otherwise

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<sup>1</sup> This APL applies to **all licensed health plans, including full-service, dental, vision, acupuncture, chiropractic, Employee Assistance Program (EAP), and plans operating under Mexican Law**. This APL does not apply to health plans licensed exclusively to offer Medicare Advantage products (MA plans), or to entities offering only exempt EAP products ("Exempt EAPs"). Accordingly, Exempt EAPs and MA plans do not need to submit the compliance filings identified below.

affects or may affect health care providers or the health of enrollees, health plans must file with the Department a notification describing whether the plan has experienced or expects to experience any disruption to the operation of the plan, explaining how the plan is communicating with potentially impacted enrollees, and summarizing the actions the plan has taken or is in the process of taking to ensure the health care needs of enrollees are met. Health plans may be required to take actions including, but not limited to, the following:

- Shorten time limits for health plans to approve prior authorization, precertification, or referrals, and extend the time that prior authorizations, precertifications, and referrals remain valid.
- Extend filing deadlines for claims.
- Suspend prescription refill limitations and allow an impacted enrollee to refill their prescriptions at an out-of-network pharmacy.
- Authorize an enrollee to replace medical equipment or supplies.
- Allow an enrollee to access an appropriate out-of-network provider if an in-network provider is unavailable due to the emergency or if the enrollee is out of the area due to displacement.
- Have a toll-free telephone number that an affected enrollee may call for answers to questions, including questions about the loss of health insurance identification cards, access to prescription refills, or how to access health care.

In the event of an emergency, the Department may issue guidance to health plans regarding compliance with Section 1368.7, during the first three years following declaration of the emergency, or until the emergency is terminated, whichever occurs first. Such guidance is not subject to the Administrative Procedure Act<sup>2</sup>.

## **II. Compliance and Filing Requirements**

Please submit by **January 23, 2023**, one filing to demonstrate compliance with SB 979 requirements discussed in this APL. **Submit the filing via eFiling as an Amendment titled “Compliance with SB 979.”**

- In the “Compliance with SB 979” Amendment filing, include an Exhibit E-1 (the “Compliance E-1”) that addresses how the plan intends to comply with SB 979. The Compliance E-1 should include the following information:
  - Affirm the health plan has previously submitted an Exhibit J-17 and provide the filing number in which the Exhibit J-17 was approved by the

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<sup>2</sup> Chapter 3.5 (commencing with Section 11340) of Part 1 of Divisions 3 of Title 2 of the Government Code.

Department. If the health plan has not yet submitted an Exhibit J-17, the health plan must submit an Exhibit J-17 demonstrating compliance with SB 979 as part of the “Compliance with SB 979” filing.

- Affirm the health plan will submit a filing with the Department activating its approved Exhibit J-17 within 48 hours of declaration of a state of emergency by the Governor, or a health of emergency by the State Public Health Officer, if the health plan is operating in the county or counties included in the declaration. These filings should explain the following:
  - Whether the health plan has experienced or expects to experience any disruption to operation of the plan.
  - How the health plan is communicating with potentially impacted enrollees.
  - Actions the health plan has taken or is in the process of taking to ensure the health care needs of enrollees are met.
- Affirm the health plan will comply with guidance issued by the Department regarding compliance with a declaration of emergency.
- Submit updated Exhibit J-17s reflecting compliance with the requirements of SB 979, including:
  - Revisions consistent with amendments to Section 1368.7.
  - Language ensuring the policy applies in the event of states of emergency declared by the Governor *and* health emergencies declared by the State Public Health Officer.
  - Affirmation the health plan will comply with guidance issued by the Department related to the emergency.
- If the health plan has not previously submitted an Exhibit J-17, the plan must submit a new Exhibit J-17 demonstrating compliance with the terms of SB 979 and this APL.

Once the health plan’s Exhibit J-17 is approved and on file with the Department, following the declaration of an emergency by the Governor or State Public Health Officer, the plan can submit an abbreviated filing stating it is activating its previously approved Exhibit J-17 and any additional steps the plan is taking with respect to the particular emergency. These abbreviated filings should be submitted as an Amendment filing in eFiling and any exhibits submitted to demonstrate plan compliance should be submitted as an Exhibit J-17.

If you have questions regarding the timelines for filing or other questions about the requirements of this APL, please contact your health plan's assigned Office of Plan Licensing reviewer.