From: DMHC Licensing eFiling

Subject: APL 21-003 - Transfer of Enrollees Per State Public Health Officer Order

Date: Wednesday January 6, 2021 9:35 AM

Attachments: APL 21-003 - Transfer of Enrollees Per State Public Health Officer Order (1.6.2021).pdf
Order of the State Public Health Officer – Hospital Surge (1.5.2021).pdf

Dear Health Plan Representative,

Please see attached All Plan Letter (APL) 21-003, along with the attached Order of the State Public Health Officer - Hospital Surge.

Thank you.

Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
980 9th Street, Suite 500
Sacramento, CA 95814
Phone: 916-324-8176 | Fax: 916-255-5241
www.HealthHelp.ca.gov

ALL PLAN LETTER

DATE: January 6, 2021

TO: All Full-Service Commercial Plans[1]

FROM: Sarah Ream
Chief Counsel

SUBJECT: APL 21-003 - Transfer of Enrollees Per State Public Health Officer Order

The State of California is experiencing a surge in COVID-19 positive cases and hospitalizations. This surge is causing many hospitals in the state to meet or exceed their usual capacity to serve patients, which can jeopardize the health and lives of the patients and staff.

Accordingly, to provide care to all patients in need, it is imperative to maximize the capacity of hospitals in the state by allowing for the expeditious transfer of patients from the most highly impacted hospitals to hospitals with more available capacity. This regional approach is central to an ethical and equitable response to the COVID-19 pandemic. Health plan prior authorization requirements for transfers between hospitals can cause unnecessary delays in effectuating such transfers.

On December 28, 2020, the California Department of Public Health (CDPH) issued "All Facilities Letter 20-91" to California hospitals. That letter outlines crisis care continuum guidelines with which California hospitals must abide during the COVID-19 surge.

On January 5, 2021, CDPH issued a State Public Health Officer Order (Order) to help ensure California hospitals and other health care facilities can prioritize services to those who are the sickest and priorities resources for the providers delivering direct care to them. A copy of the Order is attached to this All Plan Letter (APL).

The Order applies to hospitals in any region under the Regional Stay at Home Order that has zero percent (0%) ICU availability and the CDPH calculation of the ICU availability for a county in that region is ten percent (10%) or less. In such circumstances, section 1.5. of the Order requires, when clinically appropriate and

[1] This APL does not apply to Medicare Advantage plans, specialized health care service plans, or Medi-Cal plans. Medi-Cal managed care plans continue to be subject to the requirements of the Medi-Cal program, including DHCS All Plan Letter 20-004, issued August 18, 2020. Medi-Cal managed care plans should refer to that guidance and other information issued by DHCS.

capable, that a hospital in the county that has reached “crisis care” transfer patients as directed per the Order without consideration of a patient’s insurance status. Section 2 of the Order requires, when capable, all hospitals in the State of California to accept patients from hospitals in “crisis care,” transferred pursuant to section 1.5. of the Order, when such transfers are clinically appropriate.

I. Health plans may not prevent or delay the transfer of a plan enrollee pursuant to the Order.

Health plans must cover the medically necessary costs associated with the transfer of their enrollees per the Order.

Health plans may not require prior authorization or impose any other requirements on a hospital’s transfer of plan enrollees under the Order. Specifically, the Order prohibits hospitals transferring patients pursuant to the Order from considering a patient’s insurance status (or ability to pay) when making transfer decisions. Requiring prior authorization when a patient has health plan coverage would result in patients with insurance/health plan coverage being treated differently from patients without such coverage. Additionally, prior authorization and other administrative requirements may delay the quick and efficient transfer of patients under the Order, which could result in fewer patients receiving medically necessary care.

II. Utilization management and prior authorization; reimbursement for services provided

A health plan may impose ordinary utilization management and prior authorization requirements for care delivered by the facility to which an enrollee is transferred pursuant to the Order, so long as such requirements do not threaten the life or health of the enrollee. However, the plan may not refuse to authorize medically necessary services simply because such services are provided by an out-of-network facility. Similarly, the plan may not refuse to cover medically necessary services provided by the out-of-network facility on the grounds the plan is attempting to transfer the enrollee to an in-network facility.

When a health plan enrollee is transferred to an out-of-network facility under the order, the health plan shall reimburse the facility and its providers for all medically necessary care delivered to the enrollee while the enrollee is treated at the facility. The health plan shall reimburse the facility and providers at the “reasonable and customary” rate as described in California Code of Regulations, title 28, section 1300.71(a)(3)(B).

III. In-network cost-sharing shall apply

Enrollees transferred to out-of-network facilities under to the Order shall be liable for no more than the cost-sharing amounts the enrollees would have incurred if they were treated at an in-network facility.

If you have questions regarding this APL, please contact your plan’s assigned reviewer in the DMHC’s Office of Plan Licensing.

TOMÁS J. ARAGÓN, M.D., Dr.P.H.
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health

GAVIN NEWSOM
Governor

January 5, 2021

TO: All Californians

SUBJECT: Order of the State Public Health Officer – Hospital Surge 1/5/2021

State Public Health Officer Order

January 5, 2021

California is experiencing an unprecedented and exponential surge in COVID-19 cases, and staffing and other resources are becoming strained. COVID-19 hospitalizations have increased sevenfold over the last two months, while COVID-19 Intensive Care Unit (ICU) hospitalizations have increased **by over sixfold** over the last two months, and large proportions of California hospitals have reached significant strain on their ability to provide adequate medical care to their communities. Over half of California hospitals have requested waivers for conventional staffing ratios per patient, and more anticipate ongoing staffing shortages. There is a shortage of ICU bed availability and many hospitals have added surge ICU beds but still need additional staffing to meet the ongoing demand. The distribution of COVID-19 hospitalizations is focused in some areas and hospitals, and the burden of care needs to be shared across our statewide healthcare resources. If this increase of COVID-19 patients continues, hospitals may be unable to provide necessary emergency and critical care to Californians.

Immediate action is necessary to preserve resources, to help prevent the need to adopt crisis standards of care, and to ensure that hospitals can continue to care for critically ill Californians suffering from COVID-19 as well as other life-threatening conditions.[1] Crisis care occurs when resources are scarce and the focus changes from delivering individual patient care to delivering the best care for the patient population. When intensive care unit capacity is limited by staffing, supplies, or space due to the surge of COVID-19 hospitalizations and ICU admissions, immediate measures must be taken to ensure there is system-wide capacity to provide safe and appropriate medical care. When hospitals are overwhelmed, they are unable to provide care meeting appropriate medical standards or to implement appropriate infection control measures needed to prevent further spread of COVID-19 disease in the healthcare setting. If hospitals lose the capacity to care for seriously ill COVID-19 cases, those highly infectious COVID-19 patients will be pushed into the general community which will further increase community transmission.

NOW, THEREFORE, I, as State Public Health Officer of the State of California, order:

1. In order to prioritize services to those who are sickest and prioritize resources for providers directly caring for them, when a county is in a region under the Regional Stay at Home Order that has zero percent ICU availability (0%) and the CDPH calculation of the ICU availability for that county is ten percent (10%) or less:

    1. All hospitals and ambulatory surgery centers shall categorize all elective procedures by Tier using the Elective Surgery Acuity Scale (ESAS) from St. Louis University and suggested by the American College of Surgeons.
    2. All hospitals and ambulatory surgery centers operating under the hospital license or hospital based clinic in the county shall delay ESAS Tier 1 and 2 surgical procedures for at least as long as this Order remains effective in the county.
    3. All ambulatory surgery centers still performing surgical procedures shall coordinate with local hospitals to ensure the hospitals where post-surgery admissions are usually referred to have capacity to accept any possible post-surgery admissions prior to performing any surgery or other invasive procedure.
    4. A hospital in the county that has reached crisis care and does not have the ability to examine and treat patients shall notify their Medical and Health Operational Area Coordinator (MHOAC)[2], Local Health Officer, and CDPH Licensing & Certification District Office[3] that the hospital has reached crisis care.
    5. When capable, a hospital in the county that has reached crisis care shall, when clinically appropriate:
        1. Transfer patients as directed by the:
            1. Medical Health and Operational Area Coordinator (MHOAC), when transfers are coordinated within the affected patient's operational area or county
            2. Regional Disaster Medical Health Specialist (RDMHS), when transfers require coordination out of the affected patient's local operational area, but within the same Office of Emergency Services (OES) region
            3. EMSA Director or designee, when transfers require coordination outside of the affected patient's OES region.
        2. Utilize the California Emergency Command and Transfer Center at (855) 301-2337, when the RDMHS or EMSA Director levels of transfer above are invoked.
        3. Comply with all non-waived and otherwise applicable sections of the federal Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, including the requirements to provide stabilizing treatment within the hospital's capabilities and capacity prior to the admission of the individual to the facility or the initiation of a transfer to another hospital, and to provide a medical screening examination to any individual who comes to the emergency department and requests examination or treatment.
        4. Not consider a patient's insurance status or ability to pay when making transfer decisions pursuant to this Public Health Order.

2. When they are capable and when such transfers are clinically appropriate, all hospitals in the State of California must accept patients from hospitals in crisis care transferred pursuant paragraph 1.e.i. as directed by the:

    1. Medical Health and Operational Area Coordinator (MHOAC), when transfers are coordinated within the affected patient's operational area or county
    2. Regional Disaster Medical Health Specialist (RDMHS), when transfers require coordination out of the affected patient's local operational area, but within the same OES region.
    3. EMSA Director or designee, when transfers require coordination outside of the affected patient's OES region.

3. When transferring patients pursuant to this Order, the MHOAC, RDMHS and EMSA Director or designee should take all measures to ensure balanced distribution of patients across the hospital system and shall immediately notify the MHOAC and RDMHS in the receiving county if it is different than the sending county or OES region.

4. Hospitals directed to and capable of accepting patients under this Order must acknowledge their acceptance of the patient within 60 minutes of the request.

5. This Order shall take effect **immediately**.

6. The provisions in Section 1 of this Order shall remain in effect for at least three weeks, and until the Order is rescinded. All other provisions of this Order shall remain in effect as long as any county is subject to Section 1.

7. The State Public Health Officer will continue to monitor the epidemiological data and will modify these terms as required by the evolving public health conditions.

8. This Order is issued pursuant to Health and Safety Code sections 120125, 120140, 120175,120195 and 131080; EO N-60-20, N-25-20, N-27-20, N-39-20, and other authority provided for under the Emergency Services Act; and other applicable law.

Tomás J. Aragón, M.D., Dr.P.H.

Director & State Public Health Officer

California Department of Public Health

[1] In June 2020 the California Department of Public Health published and circulated California Sars-CoV-2 Pandemic Crisis Care Guidelines.

[2] Medical Health Operational Area Coordination (MHOAC) Program: A comprehensive program under the direction of the Medical Health Operational Area Coordinator (MHOAC). The MHOAC Program coordinates the 17 public health and medical functions within the operational area as specified in Health and Safety Code §1797.153. In each operational area the county health officer and the local EMS agency administrator may act jointly as the medical health operational area coordinator (MHOAC). If the county health officer and the local EMS agency administrator are unable to fulfill the duties of the MHOAC they may jointly appoint another individual to fulfill these responsibilities.

[3] See AFL 20-91 "California Crisis Care Continuum Guidelines: Implementing During the Surge of Coronavirus Disease 2019 (COVID-19) Cases"

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)

Page Last Updated : January 6, 2021