



Special Legislative Update ■ March 24, 2020

DOF to Legislative Leaders, State Departments: Plan for a Workload Budget

Citing the widespread decline in economic activity across all sectors associated with the COVID-19 pandemic, the Department of Finance released a [budget letter](#) to state departments today, outlining plans for a workload budget for purposes of a May Revision. DOF also informed the Joint Legislative Budget Committee of the same news ([here](#)) and communicated that they will not propose any April 1 Finance Letter adjustments, nor will they propose any May 1 adjustments to appropriations for capital outlay. All budget changes will be reevaluated in the context of a workload budget, meaning that any April 1, May 1, May Revision, and even adjustments proposed in the Governor's January budget will be reconsidered. DOF is prepared to meet the constitutional obligation to enact a balanced budget for 2020-21, but has made it clear that the upcoming state budget will be scaled back considerably.

Governor Issues Executive Order on State Prisons and Juvenile Detention Facilities

In Executive Order [N-36-20](#) released this evening, Governor Newsom issued direction to the state's correctional institutions – the state prisons under the California Department of Correction and Rehabilitation (CDCR) and the juvenile facilities under the Division of Juvenile Justice (DJJ) – to further limit the risks associated with COVID-19. Notable in the Executive Order are the following provisions:

- Intake of inmates into CDCR facilities and wards into DJJ facilities is suspended for 30 days;
- Direction to the Board of Parole Hearings to (1) develop a process for conducting parole hearings via videoconference no later than April 13, 2020 and (2) cease any in-person parole hearings for 60 days; and
- Detailed instructions regarding how parolees currently in the queue for a parole hearing – and any others who have a right to be present at a parole hearing – may proceed.

We would note that the state has already taken similar action to suspend intake at the Department of State Hospitals.

Additionally, CDCR has a dedicated, comprehensive information [page](#) spelling out all the steps the department has taken in the face of the COVID-19 outbreak. To date, six COVID-19 cases (five staff and one inmate) have been identified at four separate prison facilities, as detailed [here](#).

Feds Approve Portions of State's Section 1135 Waiver Request

The Centers for Medicare and Medicaid Services (CMS) [responded](#) yesterday to California's Section 1135 waiver request, taking action to approve portions of it. CMS is approving all of the following aspects of the state's request to:

- Waive or modify prior authorization requirements and processes for benefits administered through the fee-for-service delivery system.
- Extend pre-existing authorizations for which a beneficiary has previously received prior authorization through the end of the public health emergency. CMS interprets prior authorization requirements to be a type of pre-approval requirement for which waiver and modification authority under section 1135(b)(1)(C) of the Act is available.
- Modify state fair hearing request and approval timeline, including:
 - Modification of the timeframe for managed care entities to resolve appeals under 42 C.F.R. §438.408(f)(1) before an enrollee may request a State fair hearing to no less than one day; this allows managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements.
 - Modification of the timeframe under 42 C.F.R. §438.408(f)(2) for enrollees to exercise their appeal rights to allow an additional 120 days to request a fair hearing when the initial 120th day deadline for an enrollee occurred during the period of this section 1135 waiver.
 - Modification of the timeframe, under 42 C.F.R. §438.408(f)(2), for managed care enrollees to exercise their appeal rights. Specifically, any managed care enrollees for whom the 120-day deadline described in 42 C.F.R. §438.408(f)(2) would have occurred between March 1, 2020 through the end of the public health emergency, are allowed up to an additional 120 days to request a State Fair Hearing.
- Modify provider enrollment:
 - Authorization to provisionally, temporarily enroll providers who are enrolled with another State Medicaid Agency (SMA) or Medicare for the duration of the public health emergency.
 - Authorization to reimburse out-of-state providers for multiple instances of care to multiple participants, so long as the other criteria are met.
 - Permission to provisionally, temporarily enroll the out-of-state provider for the duration of the public health emergency in order to accommodate participants who were displaced by the emergency.
 - Ability to waive screening requirements under 1135(b)(1) and (b)(2) of the Act, so the state may provisionally, temporarily enroll the providers for the duration of the public health emergency:
 - Permission to enroll providers who are not currently enrolled with another SMA or Medicare so long as the state meets specified minimum requirements.

- Ability to temporarily cease revalidation of providers who are located in California or are otherwise directly impacted by the emergency.
- Application of the provider enrollment emergency relief efforts also apply to the Children's Health Insurance Program (CHIP).
- Authorize services in alternate settings. CMS is allowing facilities, including nursing facilities (NFs), intermediate care facilities for individuals with intellectual and developmental disabilities (ICF/IDDs), psychiatric residential treatment facilities (PRTFs), and hospital NFs, to be fully reimbursed for services rendered to an unlicensed facility (during an emergency evacuation or due to other need to relocate residents where the placing facility continues to render services) provided that the State makes a reasonable assessment that the facility meets minimum standards, consistent with reasonable expectations in the context of the current public health emergency, to ensure the health, safety and comfort of beneficiaries and staff.

The section 1135 waivers are effective March 1, 2020 and will cease upon termination of the public health emergency, including any extensions.

Chief Justice Revises Direction to Courts; Suspends Jury Trials for 60 Days

Last night, [word broke](#) that Chief Justice Tani Cantil-Sakauye has taken more additional actions to facilitate courts' adherence to the strict social distancing directives in place to curtail the spread of the COVID-19 virus. The statewide order suspends all jury trials in the trial courts for 60 days and permits courts to immediately adopt new or modify existing local court rules meant to address the pandemic without advance circulation for public comment. Review the Chief's full order [here](#).

LAO Posts New Update on Federal Disaster Assistance

The Legislative Analyst's Office (LAO) [posted](#) a budget update today providing additional details on federal disaster assistance available to states following the President's emergency and major disaster declarations. The LAO indicates it likely will be updating the post, given the rapidly changing environment.