WESTERN CENTER ON LAW & POVERTY

Health Care Practice Tip - September 2019

Accessing Health Care After Surviving a Disaster

After disasters in California, survivors may need extra assistance to access health care. Fortunately, several consumer-friendly protections help survivors access the services, supplies, and care that they need. Read on for special rights and remedies available to survivors seeking prescription drugs, medical supplies and equipment, physician and specialist care, eligibility and coverage, health plan enrollment changes, and more.

Remember: Covered California's Certified Enrollment Counselors provide free Medi-Cal and Covered California application assistance. **Search online** for counselors by zip code and language.

Prescription Drugs and Medical Supplies and Equipment

Whether survivors are insured or uninsured, rights and resources exist to help replace prescription drugs, as well as medical supplies and equipment lost during disasters.

- **Uninsured survivors** can access prescription drugs and supplies via the Emergency Prescription Assistance Program, which provides free refills with a prescription at participating pharmacies.
  - To locate a participating pharmacy, call 855-793-7470 or visit **https://go.usa.gov/xPUGC**.
- **Insured survivors** can contact their prescribing providers, pharmacies, and/or managed care plans to request refills. To locate open pharmacies, visit: **https://www.healthcareready.org/rxopen**.
  - Medicare Part D Plans must lift certain limits (including quantity) for prescription drug benefits, and allow out-of-network access when drugs are unavailable from network pharmacies.**[1]**
  - Medi-Cal beneficiaries are entitled to at least a 72-hour fill of prescription drugs in an emergency situation, even when awaiting a TAR decision.**[2]**
  - DHCS must adjudicate pharmacy TARs within 24 hours.**[3]** Medi-Cal managed care plans must do the same.**[4]**
- **DMHC- & CDI-Regulated Plans (including Covered California):** As of January 1, 2019, California law requires DMHC- and DOI-regulated health plans to "provide an enrollee who has been displaced by a state of emergency [declared by the Governor] … access to medically necessary health care services."**[5]**
  - DMHC and DOI may require plans to suspend prescription refill limitations, authorize replacement of medical supplies and equipment, and allow members to access out-of-network pharmacies if in-network options are unavailable or the disaster forced the member out of the area.**[6]**
  - Because this law is new and does not require plans to declare publicly their special post-disaster coverage guidelines, please contact Western Center if you want to know how DMHC and DOI are pushing regulated plans to provide prescription drugs and medical supplies to survivors.
- **Medi-Cal Dental:** Removable dental appliances (orthodontic retainers, space maintainers, partial and full dentures, and temporomandibular joint appliances) may be replaced under special expedited procedures. Claims for these appliances, exams, and radiographs should not require prior authorization, and limitations should not apply. DHCS (via Smile, California) should issue a Provider Bulletin with

further details after a major disaster.[7]

- **FEMA Other Needs Assistance (ONA)** provides grants for "necessary expenses and serious needs" caused by the disaster including medical and dental expenses not covered by primary health insurance (including if insurance denies or excludes coverage, or the survivor is uninsured).[8] Grants may be awarded to cover a broad array of medical and dental "costs," plus "[r]epair or replacement of medical equipment."[9] The maximum grant amount is adjusted annually for inflation.[10]
  - Survivors with disabilities or other access/functional needs can get more than the maximum grant amount to replace accessibility-related real and personal property damaged or destroyed by a disaster.[11]
  - FEMA "Critical Needs Assistance" may provide a one-time $500 payment to purchase "lifesaving and life-sustaining items," such as infant formula, prescriptions, diapers, medical supplies and durable medical equipment.
  - For medical and dental assistance, survivors do not need to first apply for a Small Business Administration loan (unlike for other assistance).[12]
  - Apply for FEMA ONA at Disaster Recovery Centers, (800) 621-3362, or **https://www.disasterassistance.gov/**.

Physician & Specialist Care

Survivors may need access to care and medical appointments urgently in the months after a disaster. Several protections require health plans and providers to make care available.

- **Emergency care:** Federal law prohibits hospitals from turning away women in labor and patients facing emergency medical conditions—no matter their insurance status.[13]
- **Dialysis:** Patients should first contact their regular dialysis center for help locating a replacement center. A directory of major dialysis providers with phone numbers is available at the Kidney Community Emergency Response (KCER) website: **https://kcercoalition.com/en/patients/**.
  - HealthInsight and the Health Services Advisory Group (HSAG) contract with CMS to help patients locate dialysis centers following disasters. To locate a new dialysis center, contact the hotline in your local area:
    - Network 18: The Southern California HealthInsight patient hotline at (800) 637-4767 (Monday to Friday, 8am to 4:30pm).
    - Network 17: The Northern California HSAG patient hotline at (800) 232-3773 (Monday to Friday, 8am to 5pm).
  - You may also access a dialysis center directory at: **http://www.dialysisunits.com/**.
- **Medi-Cal managed care plans:** If contracted providers are unavailable after a disaster, plans must still provide adequate provider networks, including by authorizing out-of-network care if no providers are available in network.[14] Timely access standards require plans to make available urgent care that does not require prior authorization within 48 hours (and within 96 hours when prior authorization is required), non-urgent physician appointments within 10 days, and specialty physicians within 15 days.[15]
- **Medicare managed care plans:** Medicare Advantage Plans must allow members to access out-of-network care after "a Presidential emergency declaration, a Presidential (major) disaster declaration, a declaration of emergency or disaster by a Governor, or an announcement of a public health emergency by the Secretary of Health and Human Services."[16]
- **DMHC- & CDI-Regulated Plans (including Covered California):** As of January 1, 2019, the California law described above also requires DMHC- and DOI-regulated health plans to make available to disaster survivors medically necessary physician and specialist care.[17]
  - DMHC and DOI may require plans to extend time limits for prior authorizations and referrals, and allow members to access out-of-network providers if in-network options are unavailable or the disaster forced the member out of the area.[18]
  - DMHC-regulated plans must make available urgent care that does not require prior authorization within 48 hours (and within 96 hours when prior authorization is required), non-urgent physician appointments within 10 days, and specialty physicians within 15 days.[19]
  - Please contact Western Center if a regulated health plan is not meeting a survivor's needs. Western Center's health advocates can help make sure that DMHC and DOI are ensuring plans comply with this new California law.

Eligibility & Coverage

During and after a disaster, survivors may need help applying for Medi-Cal and Covered California, or just keeping their existing coverage. Medi-Cal's complex rules provide several special protections, and Covered California's enrollment and exemption policies acknowledge the needs of survivors.

Medi-Cal Eligibility

- **Expedited applications:** Many disaster survivors may be newly eligible for Medi-Cal due to job loss and/or reduction in earnings. They may obtain expedited Medi-Cal through Hospital Presumptive Eligibility (60 days of immediate eligibility), Pregnancy Presumptive Eligibility, and the CHDP Gateway.[20]
  - Locate a qualified Hospital Presumptive Eligibility provider list at **https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/HospitalPE.aspx**.
  - Counties must "[e]xpedite eligibility determinations, whenever possible, for any Medi-Cal applicant or beneficiary who has immediate medical needs."[21] So you can advocate for a county to immediately process Medi-Cal applications for disaster survivors needing urgent coverage.
- **Relaxed application requirements:** After a disaster, Medi-Cal application requirements are less restrictive.
  - A signed and dated written affidavit, under penalty of perjury, can be used in place of requested verification documents (except for citizenship and immigration status).[22] As always, applicants are entitled to a "reasonable opportunity period" while they diligently search for citizenship and immigration status verification, during which counties must process their application and activate Medi-Cal if determined eligible (regardless of immigration proof).[23]
  - Applicants who are experiencing homelessness simply need to write that on their Medi-Cal application, and it will be sufficient to establish residency.[24]
- **Continuous eligibility:** Medi-Cal terminations must be delayed during and after disasters when a beneficiary is unable to provide required documentation.[25] And counties may even reinstate Medi-Cal eligibility for survivors while they process signed affidavits or locate required documentation.[26]
- **MAGI excluded income:**
  - Charitable payments are exempt gift income.[27]
  - Insurance payments in "federal declared disaster areas are exempt."[28]
  - Federal and state disaster payments (such as FEMA) are exempt.[29]
- **Non-MAGI excluded income and resources:**
  - Disaster assistance funds from federal, state, or local government agencies, or disaster assistance organizations [not defined, but presumably inclusive of charities and nonprofits], are permanently exempt from income and property counting. Interest earned on these funds is also exempt.[30]
  - Insurance payments (including funds received for the purchase of temporary housing) or in-kind replacement received from any source for purposes of repairing or replacing exempt property that is lost or damaged is exempt property in the month of receipt and for nine months from the date of receipt.[31] Counties may extend the exemption period for a total of 18 months if survivors show "good cause for why repair or replacement was not possible" – which is often the case when recovering from a disaster.[32] The exemption period can be extended for up to 30 total months for survivors of presidentially-declared disasters.[33]
  - Any cash that is not used to repair, replace, or contract for replacement or repair of exempt property may be countable property starting the month after the exemption period ends.[34]
- **Medi-Cal monthly premiums:** DHCS will suspend collection of monthly premiums for the Medi-Cal Access Program (MCAP), Medi-Cal Access Infant Program (MCAIP), and Optional Targeted Low Income Children Program (OTLICP).[35] Counties must not discontinue beneficiaries for failure to pay monthly premiums during a disaster.[36] Also, you may want to advocate that counties suspend premium collections and related discontinuances during a reasonable recovery period.
- **Inter-county transfers (ICTs):** For survivors displaced to a different county, no new Medi-Cal application is required. Instead, Medi-Cal beneficiaries can request an inter-county transfer if their permanent residence has changed.[37] Survivors who are displaced only temporarily can notify their Medi-Cal eligibility worker of their new address, and enroll in health plans in their temporary county of residence.[38] For health plan enrollments and disenrollments, beneficiaries may contact the DHCS Medi-Cal Managed Care Ombudsman at (888) 452-8609. Counties should assist beneficiaries with health plan changes, if needed.[39]

Covered California

- A declared state of emergency in California gives affected individuals a special enrollment period (SEP) lasting for 60 days after the conclusion of the disaster to enroll in Covered California.[40] Attestation is sufficient. No documentation is required to trigger the SEP.[41]
- Tax filers may seek a hardship exemption from Covered California ("due to fire, flood, or other natural or human-caused disaster") to avoid the reinstated individual mandate penalty for no coverage.[42]

Health Plan Enrollment

Survivors may need to change their managed care plan enrollments, sometimes because disasters cause displacement. Fortunately, Medi-Cal, Medicare, and Covered California plan enrollees should be able to change their plan enrollment after disasters.

- **Medi-Cal managed care plans:** For expedited enrollment/disenrollment requests, contact the DHCS Medi-Cal Managed Care Division Ombudsman at (888) 452-8609.
- **Medi-Cal inter-county transfers (ICTs):** As described above, survivors should be disenrolled from out-of-county plans and allowed to enroll in managed care plans operating in beneficiaries' new counties of residence (even if they are only temporarily displaced).
- **Medicare managed care plans:** Medicare beneficiaries may change their Medicare Advantage Plans and Part D Plans during a Special Enrollment Period that lasts up until at least 60 days after the date FEMA designates as the end of the disaster's incident period.[43]
- **Covered California plans:** The declared state of emergency that creates a qualifying life event for a special enrollment period for affected individuals includes the right to change plans.[44]

For resources about non-health disaster recovery topics, Morrison & Foerster LLP (MoFo) publishes and updates its "Helping Handbook" following most major California disasters. Western Center is available to support your health care advocacy during and after disasters. Please contact David and Jen so we can help!

---

[1] *See* 42 C.F.R. § 423.124(a); *see also* **CMS Prescription Drug Benefit Manual**, Chapter 5: Benefits and Beneficiary Protections (section 50.12).
[2] *See* Welf. & Inst. Code §§ 14133.37(b) (fee-for-service), 14185(a)(2) (Medi-Cal managed care).
[3] *See* Welf. & Inst. Code § 14133.37(a).
[4] *See* Welf. & Inst. Code §14185(a)(1).
[5] *See* Health & Saf. Code § 1368.7(a) (DMHC-regulated plans); Ins. Code § 10112.95 (DOI-regulated plans).
[6] *See* Health & Saf. Code § 1368.7(b); Ins. Code § 10112.95 (b).
[7] For example, see **Provider Bulletin Volume 35, Number 24** (July 2019), "Disaster Assistance to Members and Dental Offices."
[8] *See* 42 U.S.C. §§ 5174(a), (e)(1); 44 C.F.R. §§ 206.119(b)(1), (c)(3); *see also* FEMA's **Individual Assistance Program and Policy Guide** (IAPPG) Chapter 3, Section IV. FEMA updates its IAPPG no less than every three years, and last did so in March 2019. Disaster legal services advocates report several errors in this version, so it is best to always cross reference IAPPG content with federal law and regulation.
[9] 44 C.F.R. § 206.119(c)(3).
[10] *See* 42 U.S.C. § 5174(h). During the 2018 California wildfires, the maximum individual award was $34,900. *See* Federal Register, **Vol. 83, No. 204** (October 22, 2018), Docket ID FEMA–2018–0001.
[11] *See* **FEMA Memo** (March 2019), Policy Changes to the Individuals and Households Program resulting from the Disaster Recovery Reform Act of 2018, Section 1212.
[12] *See* IAPPG (March 2019) at pp. 134, 140-143.
[13] *See* Emergency Medical Treatment & Labor Act (EMTALA), 42 U.S.C. § 1395dd.
[14] *See* 42 C.F.R. § 438.206(b)(4).
[15] *See* Welf. & Inst. Code § 14197. For more information on Medi-Cal managed care timely access requirements, see NHeLP's "**Network Adequacy Rules for Medi-Cal Managed Care Plans**" (revised May 7, 2018).
[16] *See* 42 C.F.R. § 422.100(m); *see also* **CMS Medicare Managed Care Manual**, Chapter 4: Benefits and Beneficiary Protections (Section 150).
[17] *See* Health & Saf. Code § 1368.7(a) (DMHC-regulated plans); Ins. Code § 10112.95 (DOI-regulated plans).
[18] *See* Health & Saf. Code § 1368.7(b); Ins. Code § 10112.95(b).
[19] *See* 28 C.C.R. § 1300.67.2.2(c)(5). For a consumer-friendly flyer, see DMHC's **Timely Access to Care fact sheet**.
[20] *See* **ACWDL 19-01** at p. 2.
[21] *See* **ACWDL 19-01** at p. 2.

[22] *See* **ACWDL 15-36**; **MEDIL 17-16**; 22 C.C.R. § 50167(c). For applicants who lack capacity, county eligibility workers may complete and sign an affidavit on behalf of the applicant. *See* 22 C.C.R. § 50163(a)(3); **ACWDL 19-01** at p. 2.
[23] *See* ACWDLs **19-01** at p. 2 and **09-27** at p. 3.
[24] *See* **MEDIL 17-16**.
[25] *See* **ACWDL 19-01** at p. 3.
[26] *See* **ACWDL 19-01** at p. 3.
[27] *See* **ACWDL 15-36** at p. 2.
[28] *See* **ACWDL 15-36** at p. 3.
[29] *See* **ACWDL 15-36** at p. 3.
[30] *See* 22 C.C.R. §§ 50481, 50535.5; **ACWDL 92-08**.
[31] *See* **Medi-Cal Eligibility Procedures Manual Article 9M-1**.
[32] *See* **ACWDL 19-01** at p. 4.
[33] *See* **ACWDL 19-01** at p. 5.
[34] *See* **Medi-Cal Eligibility Procedures Manual Article 9M-1**.
[35] *See* **ACWDL 19-01** at p. 4.
[36] *See* **ACWDL 19-01** at p. 4.
[37] *See* **ACWDL 19-01** at p. 5; **ACWDL 18-02**.
[38] *See* **ACWDL 18-02** at p. 7; **MEDIL 15-32**.
[39] *See* **ACWDL 18-02** at p. 4.
[40] Consumers qualify for the SEP under the "exceptional circumstances" qualifying life event. *See* 10 C.C.R. § 6504(a)(11)(D).
[41] *See* **Covered California, "Acceptable Documents."** *See also* 10 C.C.R. § 6504(d). Self-attestation is currently permissible for all special enrollment qualifying events, though enrollees may later be subject to a verification audit. *See id.*
[42] *See* 10 C.C.R. § 6914(c)(4)(F). California is reinstating the individual mandate to have health coverage starting January 1, 2020.
[43] *See* **CMS Memo** (August 9, 2018), "Emergency and Major Disaster Declarations by the Federal Emergency Management Agency (FEMA) – Special Enrollment Periods (SEPs), Termination of Coverage, and Payment Deadline Flexibilities, Effective August 9, 2018."
[44] *See* 10 C.C.R. § 6504(a)(11)(D).

Western Center on Law & Poverty
3701 Wilshire Blvd., Suite 208
Los Angeles, CA 90010