

RIGHTS UNDER THE LANTERMAN ACT

The Medi-Cal Developmental Disability Waiver

Chapter 13

This chapter explains:

- What the Medi-Cal Developmental Disability (DD) Waiver is,
- Who is eligible for the DD Waiver, and
- The services provided under the DD Waiver



Chapter 13: The Medi-Cal Developmental Disability Waiver

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Chapter 13

The Medi-Cal Developmental Disability Waiver

This chapter gives you answers to the most common questions about the Medi-Cal Home and Community Based Services and Developmental Disability (DD) Waiver. We explain what the DD Waiver is, who is eligible for the DD Waiver, and what services are available under the DD Waiver.

Most of the information in this chapter is based on a state law called the Lanterman Act. We give you the exact section of this state law where the information is found. You may have to refer to the law to get the services you need. When you see § 4512(a), for example, it means that information comes from the Lanterman Act, section (§) 4512, part a.

If you want to read the Lanterman Act, go to:

<http://www.dds.ca.gov/Statutes/LantermanAct.cfm>

This chapter also gives you information about the federal Medicaid program. You may have to refer to the federal law to get the services you need. Citations that look like this: 42 U.S.C. § refer to the federal law you may need to mention.

1. What is the DD Waiver?

The DD Waiver is the short name for the Medi-Cal Home and Community Based Services Developmental Disability Waiver. The DD Waiver can pay for many home and community-based services that you may need, such as:

- Supported living services so you can live in your own home,
- Supported employment services so you can work, and
- Respite service for family members and other caregivers.

If your Individual Program Plan (IPP) lists services like these, the services that you receive may be paid for through the DD Waiver. (See *Question 18 below for a list of other DD Waiver services.*)

There are several kinds of waivers, but the DD Waiver is the most important waiver for people with developmental disabilities. It is used to pay for services that are provided by the regional centers. It is called a “waiver” because it lets the state waive some federal rules that usually apply to the Medi-Cal

program. For example, federal rules say that a Medi-Cal service available to *one* Medi-Cal recipient must be available to *all* Medi-Cal recipients.

With the DD Waiver, people with developmental disabilities can get *extra* services if they:

- Are regional center consumers, and
- Would qualify for services in an intermediate care facility for people with developmental disabilities (ICF/DD).

The federal government has historically reimbursed states for part of the cost to care for people with disabilities who live in institutions. Congress authorized Home and Community-Based Services (HCBS) waivers to allow people to get Medi-Cal to pay for community services instead of institutional care.

The federal rules allow Medi-Cal waivers because people with disabilities are better off when they live at home and are integrated in the community, instead of living in an institution. The waivers help keep people with disabilities out of institutions.

To read the DD Waiver, you can:

- Look for it at Disability Rights California's website:
www.disabilityrightsca.org,
- Ask to see your regional center's copy of the DD Waiver, or
- Look for it at the Department of Health Services web site:
www.dhcs.ca.gov/services/medi-cal/Pages/Medi-Cal%20Waivers.aspx.

Remember: Even if the DD Waiver does not cover the services you need, you still have the right to get the services that are listed in your IPP.

2. Does Medi-Cal pay for my regional center services?

If you are eligible, Medi-Cal *may* pay for some of your regional center services. Medi-Cal is a public program that provides health care services to Californians who are low-income or have disabilities.

Unlike Medicare and most private health insurance plans, Medi-Cal covers:

- Long-term care in institutions, and

- Some community alternatives to institutionalization, such as In-Home Supportive Services (IHSS) and the services mentioned below in Question 18.

Even if you are eligible for Medi-Cal, it may not cover all of the services you need. But if a service you need is not covered by Medi-Cal, you still have the right to get that service.

Important! Your IPP should list all of the services you need; not just services that Medi-Cal will pay for.

To learn more about what and who Medi-Cal covers, see Disability Rights California Publication 5360.01, *Medi-Cal Overview* at: www.disabilityrightsca.org/issues/health.pubs.html.

3. Am I eligible for DD Waiver services?

You are eligible for DD Waiver services if you:

- Meet California's definition of *developmental disability*,
- Are a regional center consumer,¹
- Get Medi-Cal or would be eligible for Medi-Cal if your spouse's or parents' (if you are under age 18) income or resources were not counted, (See *Question 9 below*.) and
- Qualify for care in a Medi-Cal funded intermediate care facility (ICF)² for people with developmental disabilities.

You do not have to *be* in an intermediate care facility (ICF) to be eligible for the DD Waiver — you just have to *need* the care and have needs that qualify you for services in an ICF. (See *Chapter 7, Question 28*.)

4. Do all regional center consumers qualify for DD Waiver services?

No. Some regional center consumers do not qualify for DD Waiver services because:

¹ Welf. & Inst. Code § 45 12(a), from the DD Waiver at page 2, Para. 4.d (5-1-2006). See Chapter 2 for more information on regional center eligibility. You must be a regional center consumer to get DD Waiver services. If you applied for regional center services in the past and were denied, but did not appeal, you may be able to reapply for regional center services. If you qualify for regional center services, you could also get DD Waiver services.

² The state regulations that apply to ICFs are: Cal. Code Reg. Title 22 § 51543 - 51343.2.

- Their needs do not match those required to qualify for ICF services.³
- Their income is too high to qualify for Medi-Cal.

Remember: Even if you are not eligible for DD Waiver services, you can still receive the services listed in your IPP or IFSP. (See Chapter 4.)

5. If I am eligible and apply for the DD Waiver, am I guaranteed to receive the waiver?

You may be eligible for Medi-Cal waiver services *if* a waiver slot is available.⁴ There are many slots⁵, and more are added each year. For example, there are 75,000 DD Waiver slots for 2006/07. There will be 95,000 slots for 2010/11.

6. How do I apply for DD Waiver services?

You may not need to apply. The regional center usually identifies people who are eligible for a DD Waiver. The regional center does this because the federal government will pay for half of your DD Waiver services.

But, if your regional center does not identify you for DD Waiver services, you have the right to apply on your own. Make certain there is a service covered under the DD waivers in your IPP or IFSP.

Send a letter to your regional center asking to be identified as eligible for the DD Waiver for the services you need. And, make sure that the DD Waiver services you need are included in your IPP or IFSP. (See Chapter 4.) The regional center will send you a letter to let you know if you are eligible for DD Waiver services.

7. Is it a good idea to get DD Waiver services if I am eligible?

Yes. If you qualify for DD Waiver services, you will benefit in these ways:

The DD Waiver services you receive cannot be limited. Regional centers cannot limit the waiver services that they make available. This is because

³ It is possible that individuals who need a higher level of care than that provided at an ICF could qualify for DD Waiver services.

⁴ Lewis v. New Mexico Dept. of Health 275 F. Supp. 2d 1319, 1345 (D. N.M. 2003) (“Once the State sets up its waiver program, it is obligated to implement the waiver program as it has fashioned them”); Makin v. Hawaii 114 F.Supp.2d 1017 (1999).

⁵ Because Lanterman Act services are an entitlement, if you want to live in the community, you should be given that opportunity even if a waiver slot is available. (See Chapter 1.)

Medi-Cal services available in one part of the state must be available in every part of the state. This is called the “statewideness” requirement.⁶

Regional centers cannot use Purchase of Service (POS) guidelines to limit the amount or kind of services you receive under the DD waiver.

Each regional center has POS guidelines, but the POS guidelines cannot control the amount or kinds of services that you receive. You have the right to get the services and supports that you need and that are listed in your Individual Program Plan (IPP). Your IPP, *not POS guidelines*, specifies the services you can get under both the DD Waiver and the Lanterman Act.⁷

Consumers who receive DD Waiver services get their IPP or IFSP reviewed every year. Under the Lanterman Act, you have a right to a new IPP every *three* years, or whenever you ask for one. (See *Chapter 4*.)

Remember to list all the services you need in your IPP!⁸

Children who get Medi-Cal under the DD Waiver have extra protections.

If a child no longer qualifies for DD Waiver services, Medi-Cal must reevaluate (called redetermination) to see if the child is eligible for Medi-Cal under a different program before Medi-Cal ends the child’s Medi-Cal eligibility.⁹

Children are also protected by Medi-Cal’s Continuing Eligibility for Children provisions. This means Medi-Cal must continue with no-cost Medi-Cal coverage for up to 12 months after the child is found to be no longer eligible for any coverage under Medi-Cal.¹⁰

Consumers who are eligible for DD Waiver services have an extra vehicle exemption. Medi-Cal usually allows beneficiaries to not count one of

⁶ 42 U.S.C. § 1396a(a)(1) (statewideness requirement); DDS Program Advisory PSB 99-1, March 31, 1999, which addressed the prior DD Waiver freeze which continued services for those eligible for DD Waiver services as of December 4, 1997, but barred new admissions to the DD Waiver.

⁷ Williams v. Macomber 226 Cal.App.3d 225, 233 (1990).

⁸ You are reviewed annually to see if you are still someone who would qualify for ICF/DD services. DD Waiver, page D-2 (5-1-2006). Annual IPP renewal is required. Pages E-1 through E-2 (5-1-2006).

⁹ Welf. & Inst. Code § 14005.37(d).

¹⁰ Welf. & Inst. Code § 14005.25; DHS ACWLD Nos. 01-01, 01-40, 02-14, 02-20.

their vehicles as an asset. But beneficiaries who qualify for the DD Waiver get an extra vehicle exemption. A vehicle that has been modified to accommodate your physical or medical needs is allowed, in addition to any other vehicle exemption allowed by Medi-Cal.¹¹

8. Is it better for some people not to be on the DD Waiver?

Yes. If you are a regional center consumer involved in a lawsuit because of an injury, you may not want to be covered under the DD Waiver.

Any Medi-Cal services you receive for your injury and recovery may be subtracted from the money you may win from your lawsuit.¹² Coverage under the DD Waiver *may* reduce the amount of money you receive from your lawsuit. Talk to your lawyer and your regional center service coordinator.

9. What if my family's income is too high to qualify for Medi-Cal?

The main purpose of the DD Waiver is to help keep you out of an institution and in the community. So, even if your family income is too high, you may be eligible for Medi-Cal because they will not count your parents' or spouse's income or resources.

Medi-Cal is allowed to determine your eligibility using "institutional deeming." This means Medi-Cal will evaluate you for eligibility as if you lived in an institution, and not with your parents or spouse.

Medi-Cal is allowed to use institutional deeming to determine your Medi-Cal eligibility, because people on DD Waivers are already qualified to receive services in an ICF/DD (intermediate care facility.)

This is how the process works:

- The regional center determines that you qualify for DD Waiver services, but you are not eligible for Medi-Cal because of your parents' or spouse's income or resources.

¹¹ DD Waiver, Appendix C-3, page C-11 (May 1, 2006); DHS ACWDLF No. 01-67.

¹² California agrees with Disability Right California's opinion that the costs of Early Intervention services (Individuals with Disabilities Education Act Part C) are not recoverable.

- The regional center writes a letter to the county waiver contact person asking if you are eligible for Medi-Cal without counting your parents' or spouse's income.¹³
- The county waiver contact person uses institutional deeming to look at your application, and will decide if you are eligible for no-cost or share-of-cost Medi-Cal. *(See Question 12 below.)*
- If you are eligible, you will qualify for Medi-Cal under a special code.

Regular Medi-Cal services must be used before you may ask for Medi-Cal waiver services.

You must get a “determination” that what you need is not covered under the regular Medi-Cal program before you can get Medi-Cal Waiver services.¹⁴

10. Can my child still receive Medi-Cal if she receives child support?

Maybe. With institutional deeming, Medi-Cal can evaluate your child's eligibility without counting your income.

Medi-Cal will count the child support as income to the child, but because your child has a disability, they may only count 2/3 of the support as countable income.¹⁵ The child's share of cost will be based on his/her countable income over \$600 per month.

11. What are In-Home Supportive Services?

In-Home Supportive Services (IHSS). IHSS is available for people who are blind or have a disability and need special care to stay out of an institution.¹⁶

¹³ The procedures are explained in Department of Health Care Services All County Welfare Directors Letters (ACWDLs) Nos. 00-08 (February 29, 2000), 00-59 (December 10, 2001) ACWLD No. 00-59, ACWDL No. 01-24 (April 2001) include the latest list of county contracts. These letters are available on the DHS website at www.dhs.ca.gov/mcs/mcpd/meb.acls.

¹⁴ DD Waiver, page 3, Paragraph 4.d 5-1-2006.

¹⁵ Your child will have no share of cost if child support is not more than \$920 a month. If the child support is more than that, you may want to refer your family law attorney to this publication: www.nls.org/ssifmaty.htm.

¹⁶ Information about when a parent may be the paid provider of IHSS is included in Disability Rights California's IHSS Fair Hearing and Self-Assessment Packet (Publication 5013.01), available by calling Disability Rights California or OCRA or from our website under publications and IHSS. Also see the regulations in DSS MPP 30-763.45, available at www.cahwnet.gov/shd/default.htm.

A special waiver, called IHSS Independence Plus, or IPW for short, allows Medi-Cal to pay the child's parent or spouse to provide personal care services or protective supervision for the child at home.

The IPW says that the income received by a parent for providing services under the IPW is not counted for Medi-Cal eligibility for the parent or any other family member.¹⁷

See Chapter 6 for more information about IHSS.

12. What is the Nursing Facility Waiver?

The Nursing Facility Waiver is another type of home and community-based services waiver. To be eligible for a Nursing Facility Waiver, you must qualify for services from a nursing facility or a sub-acute nursing facility. You may qualify for services under the Nursing Facility Waiver or the DD Waiver. But you can only be under one home and community-based services waiver at a time.

Exception: You can be on the IPW waiver described above, and a home and community-based services waiver.¹⁸

State law says that the regional center must use generic resources, such as Medi-Cal, to implement your IPP. The regional center may put you on the DD Waiver or the Nursing Facility Waiver to have you access generic resources.¹⁹

13. Will I lose my eligibility for DD Waiver services if I am not getting DD Waiver services now?

You do not have to get DD Waiver services all the time to continue to be eligible. For example, you may have qualified for DD Waiver services, but do not need them every month. You would still be eligible.

But to remain eligible, you **must** receive at least one DD Waiver service once a year. Even if you only use one DD Waiver service (such as a week of respite service at a summer camp) you would still be eligible.

¹⁷ DDS Program Advisory PSB 00-4 (July 10, 2000) included with DHS ACWLD No. 00-59.

¹⁸ DD Waiver Introduction Page 4, Paragraph 4.3 (5-1-2006).

¹⁹ Welf. & Inst. Code § 4648(a)(8).

If you are getting services through Medi-Cal, your IPP or IFSP must be reviewed each year. Your IPP or IFSP must list all Medi-Cal services (including DD Waiver services) that you receive.

Important! If you do not receive any DD Waiver services for a whole year, and your next IPP or IFSP does not list any waiver services, your eligibility for DD Waiver services would end. Medi-Cal will send you a *Notice of Action*. If you disagree, you will have an opportunity to appeal.

14. What do I do if the regional center refuses to give me a service available under a waiver?

If you are receiving DD Waiver services and the regional center decides that you are no longer eligible for a DD Waiver service, you have the right to appeal. If you think you meet the criteria for a service under the DD Waiver, remember to point that out in your fair hearing request. For example, on your fair hearing request form you can write: "I also want my right to this service under the DD Waiver to be determined."

The regional center will have to prove that your health has improved to the point that you no longer qualify for ICF/DD services or that you are not eligible for waiver services.

An appeal about a DD Waiver service is similar to an appeal under the Lanterman Act. You may have claims under both the Lanterman Act and the DD Waiver. If this happens, an Administrative Law Judge (called ALJ for short) will consider your claims under the Lanterman Act first. If the ALJ agrees with you on your Lanterman Act claims, the appeal stops there, and you will get the services or supports you asked for.²⁰

If the ALJ does not agree with you, the ALJ will consider your DD Waiver and Medi-Cal claims separately.

The deadline to file an appeal about DD Waiver services is **30** days; the deadline for Medi-Cal appeals is **90** days

To learn more about appeals, see Chapter 12.

15. Are DD Waiver hearings and Medi-Cal hearings the same?

²⁰ If the regional center is found responsible for providing the service under the Lanterman Act, the regional center would have the authority to conclude that the service is also coverable under the DD Waiver.

They are similar, but not the same. DD Waiver hearings and regular Medi-Cal hearings both use an Administrative Law Judge (called ALJ for short) to decide your case.

But the ALJ for DD Waiver hearings works for the Office of Administrative Hearings (OAH); the ALJ for Medi-Cal hearings works for the State Hearing Division of the Department of Social Services.

16. Are DD Waiver hearings and Lanterman Act hearings the same?

They are the same in most ways. But if an appeal under the Lanterman Act also includes DD Waiver claims, federal law adds these two requirements:²¹

- The judge must make a decision within **90** days of the postmark date on your request for a hearing, or the date your hearing request was received. If you agree, the judge can take more time.²²
- The Director of Health Care Services, or someone the Director appoints, has a right to make the final decision. The ALJ will propose a decision about your DD Waiver claims to the Director. The Director (or the appointee) can:
 - Accept the ALJ’s decision,
 - Make a different decision (called “alternated” decision),²³ or
 - Let the ALJs make final decisions in certain kinds of cases.²⁴

17. What if the regional center says I am not eligible for the DD Waiver?

If the regional center says you are not eligible, or no longer eligible, for the DD Waiver, you can appeal. At the appeal, the regional center will have to prove that your health has improved to the point that you no longer qualify for ICF services.

See Chapter 12 to learn more about appeals.

18. What services does the DD Waiver cover?

²¹ 42 C.F.R. §§ 431.200-.250. This means that you agree in writing to extend the deadlines.

²² 42 C.F.R. § 431.244(f).

²³ 42 C.F.R. § 431.200-431.10(e). Welf. & Inst. Code § 4712.5(c).

²⁴ This is the same procedure followed with respect to Medi-Cal hearings conducted by the State Hearing Division of the Department of Social Services. Welf. & Inst. Code § 4712.7. Go to the DSS State Hearing Division web site at <http://www.cdss.ca.gov/shd/PG1159.htm>.

The DD Waiver covers many services, including:

- 1. Case Management:** Note: Case management under this waiver is provided through the Targeted Case Management benefit contained in California's Medicaid State Plan.
- 2. Homemaker:** Services consisting of general household activities when the individual **regularly** responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.
- 3. Home Health Aide Services:** Through a home health agency (defined in 42 C.F.R. § 440.70).
- 4. Respite Care:** Intermittent or regularly scheduled temporary non-medical care and supervision provided in the consumer's own home or in an approved out-of-home location.

Respite care will be provided in the following location(s):

- a. Individual's home or place of residence
 - b. Family member's home
 - c. Licensed respite care facility
 - d. Adult Family Homes
 - e. Certified Family Homes
 - f. Adult Day Care Facility
 - g. Community Recreational Setting (i.e. YMCA, sports club, community parks program)
 - h. Camping Services
 - i. Licensed Family Day Care
 - j. Child Day Care Facility
 - k. Licensed Preschool
 - l. Voucher Respite Care
- 5. Habilitation:** Services designed to assist individuals in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings.

Other Habilitation Service Definitions:

- Day habilitation – services to enable the consumer to attain or maintain maximum functional level.
- Supported employment – individual and group supported employment services as defined in Welf. & Inst. Code § 4851(n), (r), (s) and that pick up once employment is stabilized or services from the State Department of Rehabilitation (DR) are exhausted (18 months maximum) or when needed to supplement State DR services.
- Pre-vocational services that include work activity program services as defined in Welf. & Inst. Code §4851 (e).

6. Environmental Accessibility Adaptations: Physical adaptations to the home may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the individual. (Adaptations which add to the total square footage of the home are excluded from this benefit. May be provided up to 180 days prior to discharge from medical facility.)

7. Skilled Nursing

8. Transportation: This service is offered in addition to help with getting to and from Medi-Cal services under 42 C.F. R. 431.53 and medical transportation services under the Medi-Cal State plan, and shall include transportation aides and such other assistance as is necessary to assure the safe transport of the recipient.

9. Specialized Medical Equipment and Supplies: To include devices, controls, or appliances, specified in the plan of care, which enable recipients to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live.

10. Chore Services: Services needed to maintain the home in a clean, sanitary and safe environment. This service includes heavy household chores, and minor repairs such as those which could be completed by a handyman.

11. Personal Emergency Response Systems (PERS): A 24-hour emergency assistance service which is individually designed to meet the consumer's needs and comes with training. Limited to those individuals who have no caregiver or companion for periods of time, and who would otherwise require extensive routine supervision.

12. Family Training: Training or counseling to families (broadly defined) of consumers served by waiver.

13. Adult Residential Care:

- Adult foster care: The total number of individuals that can be served cannot exceed three. Principle caregiver can live in the home or an adjacent or attached residence.
- Assisted living: 24-hour personalized care with units (dually occupied only when both occupants agree) that can be locked for privacy.
- Supported Living: Supported living services include any individually designed service, or assessment of the need for service, which assists an individual consumer to live in a home that they own or lease and which is not licensed.

a. Other waiver services which are cost-effective and necessary to prevent institutionalization:

- Vehicle Adaptations to vehicles owned by consumer or family (broadly defined) when cost effective and where a written assessment by P.T. or O.T.
- Communication Aides: Human services – facilitators, readers, interpreters, translators.
- Crisis intervention.
- Mobile Crisis Intervention – immediate 24-hour emergency services.
- Crisis Intervention Facility Services – temporary 24-hour residential services.
- Nutritional Consultation.
- Behavior Intervention Services including the development, analysis and tracking of programs.

- **Specialized Therapeutic Services:** Specialized Therapeutic Services are services that provide physical, behavioral/social-emotional health, and or dental health care that have been adapted to accommodate the unique complexities presented by HCBS enrolled individuals, that require more time for communication, diagnoses that involve more complex and time-consuming care because of the developmental disability alone and in combination with comorbid conditions. Scope differs from state plan services because of above factors and support and counseling for family, provider travel, consultation with other health professionals, consumer training.

b. Specialized therapeutic services include:

- Oral Health Services: Diagnostic, Prophylactic, Restorative.
- Services for Maladaptive Behaviors/Social-Emotional Behavior Impairments (MB/SEDI) Due to/Associated with a Developmental Disability: Individual and group interventions and counseling.
- Physical Health Services: Physical Therapy, Occupational Therapy, Speech Therapy, Respiratory Therapy, Diagnostic and Treatment, Physician Services, Nursing Services, Diabetes Self- Management.
- Transition/Set Up Expenses: One-time expenses for transitioning from medical facility to consumer's own home in the community.

For more information on the services covered under the DD Waiver you can:

- Visit Disability Rights California's website: www.disabilityrightsca.org,
- Ask to see your regional center's copy of the DD Waiver, or
- Look for it at the Department of Health Services web site: www.dhcs.ca.gov/services/medi-cal/Pages/Medi-Cal%20Waivers.aspx.

Important! The DD Waiver does not cover the cost of housing or food. But, you may be eligible for other programs like subsidized housing or food stamps.