



# The Nursing Facility/Acute Hospital Waiver: The Basics

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## **1. What are Home and Community-Based (HCBS) Waivers?**

Home and Community-Based (HCB) Waivers are programs that offer Medi-Cal services to a limited number of people with disabilities to help them live at home instead of in a nursing facility or other Medi-Cal funded institution. People with all types of disabilities are eligible as long as they would qualify for admission to a nursing facility (including an intermediate care facility), subacute facility, or acute hospital. These programs are called “Waivers” because states implement programs that “waive” certain federal Medicaid rules in order to provide different or more services than the state offers to other Medicaid (Medi-Cal) eligible people.

Waivers allow the state to:

- Provide home and community-based services to a limited number of people, rather than all eligible Medi-Cal recipients in the State;
- Offer home and community-based services that are not offered under regular Medi-Cal (Medi-Cal State Plan); and
- Provide Medi-Cal HCB services to people who otherwise would not be eligible because their family or spouse’s income is too high.

There are several different kinds of waiver programs offered by the State of California. These Waivers include:

- Developmental Disabilities (DD) Waiver
- Nursing Facility/Acute Hospital (NF/AH) Waiver
- In-Home Operations (IHO) Waiver

- Assisted Living (ALW) Waiver
- Multi-Purpose Senior Services Program (MSSP)
- AIDS Waiver

Consumers can only be on one HCBS Waiver at a time. For more information about the HCBS Waivers administered by DHCS, go to: <http://www.dhcs.ca.gov/services/medi-cal/Pages/MediCalWaivers.aspx>.

## **2. What is the Nursing Facility/Acute Hospital (NF/AH) Waiver?**

The NF/AH Waiver is administered directly by the Department of Health Care Services (DHCS). The purpose of the NF/AH Waiver is to provide Medi-Cal beneficiaries with long-term medical conditions who meet one of the designated "levels of care" (i.e., nursing facility (including intermediate care facility), subacute, acute hospital) described below, the option of returning to and/or remaining in their homes or home-like community settings in lieu of institutionalization. Note: the current NF/AH Waiver expires on December 31, 2016 and the state has proposed changing the way it administers the Waiver. (The State has requested an extension of the current waiver until March 31, 2017). See [http://www.dhcs.ca.gov/services/ltc/Pages/Nursing-Family-Acute-Hospital-\(NF--AH\)-Waiver-Renewal.aspx](http://www.dhcs.ca.gov/services/ltc/Pages/Nursing-Family-Acute-Hospital-(NF--AH)-Waiver-Renewal.aspx) for more information about the Waiver renewal.

## **3. What services are covered under the NF/AH Waiver?**

The NF/AH Waiver covers a wide range of home care services which include the following:

- Private duty nursing including home health and shared services
- Waiver Personal Care Services (WPCS)
- Case management/coordination
- Habilitation
- Home respite
- Community transition

- Continuous nursing and supportive services
- Environmental accessibility adaptations
- Facility respite, family/caregiver training
- Medical equipment operating expense
- Personal Emergency Response System (PERS) -installation and testing
- Transitional case management for medically fragile and technology dependent individuals of any age

For more information on the NF/AH Waiver program and services, please visit: <http://www.dhcs.ca.gov/services/ltc/Pages/In-HomeOperations.aspx>.

#### **4. How do I qualify to be on the NF/AH Waiver?**

In order to qualify for the NF/AH Waiver, you must be eligible to be admitted to a Medi-Cal funded nursing facility, subacute, or acute hospital. This means that your health condition and your resources are such that you would be found eligible for a Medi-Cal institution. The NF/AH Waiver uses spousal impoverishment rules to determine the eligibility of waiver participants with a community spouse, just as a nursing facility does under federal law. See 42 U.S. Code § 1396r-5. If the Waiver applicant is a child, parental income and resources are not considered even though the child lives in the home. See Medi-Cal Eligibility Procedures Manual (MEPM) at page 19D-7.

In order to apply to be on the Waiver, you will need to complete a Nursing Facility/Acute Hospital (NF/AH) Waiver Application. This application can be found online at: <http://www.dhcs.ca.gov/formsandpubs/publications/Documents/Waiver%20Application%209-2011.pdf>.

If you need an application in Spanish, please call (916) 552-9105. Completed applications should be sent to: In-Home Operations Branch, 1501 Capitol Avenue, MS 4502, P.O. Box 997437, Sacramento, CA 95899-7437.

## **5. Is there a waitlist to be on the NF/AH Waiver?**

If you qualify for a level of care of Nursing Facility A or B (NF-A or NF-B) and are currently in the community (as opposed to a hospital or institution), then you are placed on a waiting list that is many months long. That means that it is important for you to apply as soon as possible so that you can begin the waiting process.

**However, there is an expedited assessment process to avoid the long waitlist.** If you qualify for a level of care of NF-A or NF-B and you apply while you are in a nursing facility or hospital, then you will be eligible to receive an expedited assessment process and may be able to avoid the waiting list entirely. **It is critical that you apply for the NF/AH Waiver before you are discharged from the nursing facility or hospital.**

There is no waitlist currently if you qualify for the Subacute or Acute Hospital levels of care. Also, when the Waiver is renewed, the waiting list may be eliminated or reduced, as the State is planning on increasing the Waiver slots in the new Waiver. This means more people will be able to participate in the program.

## **6. As a NF/AH Waiver participant, how can I be sure to receive coverage for all of the services I need?**

Until recently, there were individual cost limits for Waiver services. Depending on the level of care that a participant is assigned, the participant would have a budget for services that included Waiver services and some other Medi-Cal services such as In-Home Supportive Services (IHSS). These cost limits frequently prevented NF/AH Waiver participants from being able to receive all of the services their doctor believes are medically necessary. Also, until recently, if IHSS wages went up, then DHCS would reduce the amount of Waiver services a participant could receive, to stay under the cost limit. DHCS amended the Waiver as of November 3, 2016, and now allows for a “second level review” to consider requests for services above the cost limits. In addition, Disability Rights California has brought a federal lawsuit challenging the state’s administration of the cost caps in the NF/AH

Waiver program. If the plaintiffs win the lawsuit, then the cost caps may be eliminated from the program. Check our website for updates on the outcome of this lawsuit, called *Thomas v. Kent*, 14-CV-08013-FMO (AGRx) filed in Los Angeles in federal district court.

## **7. How do I request a “Second Level Review” or services over the cost limits?**

We recommend you take the following steps to get services over the cost limit for your level of care:

1. Consult with your primary care physician to discuss your treatment needs.
2. Ask your primary care physician to write a treatment plan (Plan of Care) detailing the specific Waiver services that you need, based on your medical conditions, to remain safely in your own home. The treatment plan should be very specific about how many hours per day of nursing and/or “direct” (hands-on) attendant care you need (as well as other attendant care for domestic services such as shopping or laundry), as well as any other services like case management or habilitation. **THE PLAN OF TREATMENT SHOULD SAY WHAT YOU NEED REGARDLESS OF THE COST LIMIT FOR YOUR LEVEL OF CARE.**
3. Send the signed treatment plan to your case manager at DHCS In-Home Operations with a cover letter. This cover letter should include a request to be authorized for Waiver services based on your treatment plan.
4. If you are not approved for the requested services, make sure you get a written notice so that you can appeal. You can call Disability Rights California at 1-800-776-5746 for assistance.

## 8. What is the Waiver Renewal?

DHCS is in the process of renewing the Waiver. The Waiver renewal application indicates that DHCS will take a different approach to administering the Waiver, by delegating the authorization for services to local Care Management Agencies. At this time, it is not known how this will affect the cost limits. For more information on the NF/AH Waiver renewal process, please visit:

[http://www.dhcs.ca.gov/services/ltc/Pages/Nursing-Family-Acute-Hospital-\(NF--AH\)-Waiver-Renewal.aspx](http://www.dhcs.ca.gov/services/ltc/Pages/Nursing-Family-Acute-Hospital-(NF--AH)-Waiver-Renewal.aspx)

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For legal assistance call 800-776-5746 or complete a [request for assistance form](#). For all other purposes call 916-504-5800 (Northern CA); 213-213-8000 (Southern CA).

*Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.*