



California's protection and advocacy system
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#7: Fact Sheet on California's Budget Cuts to Developmental Disability Services & Programs – July 28, 2009

Services and Due Process under the HCBS Waiver

The changes included in the Budget Trailer Bill may affect you less if you get Medicaid Home and Community Based Services (HCBS) Waiver services. This is often called the "DD Waiver."¹ This is because services covered under the DD Waiver are Medi-Cal services subject to the rules that apply to other Medi-Cal services.

Who Is Covered under the DD Waiver?

The HCBS DD Waiver rules apply to regional center consumers who get DD Waiver services. Regional center consumers are eligible for the DD Waiver if they meet the following:

- Eligible for Medi-Cal. This includes individuals who qualify for Medi-Cal under institutional deeming. This means the income and resources of a parent or spouse are not counted in determining the Medi-Cal eligibility of a consumer.²
- Disability is severe enough to qualify for placement in one of the medical facilities serving persons with developmental disabilities (ICF/DD, ICF/DDH and ICF/DDN).³

¹ Go here for a copy of the DD HCBS Waiver: <http://www.dhcs.ca.gov/services/medi-cal/Documents/DDRenewalApp2006TO2011.pdf> Each regional center also has a copy of the DD HCBS Waiver for you to review.

² Remember the income of the child counts. For example, Social Security dependent benefits or 2/3's of child support counts as income in determining eligibility.

³ You do not actually have to live in a medical facility. You just have to qualify for services in a medical facility.

Once you qualify for DD Waiver services, you must receive at least one DD Waiver service over the course of a year to continue to qualify for the DD Waiver.

If you do not know if you are covered under the DD Waiver, ask your Service Coordinator or look on your copy of your last IPP.⁴

What Services Are Covered under the DD Waiver?

Attached is a list of the services covered under the DD Waiver. The list is taken from Chapter 13 of our “Rights Under The Lanterman Act” manual.⁵

What Are Your Rights under the DD Waiver?

First, the DD Waiver defines the scope of waiver services. The Waiver takes precedence over any conflicting language in the Lanterman Act. For example, regional centers cannot refuse to provide some waiver services based on the regional center purchase of service policies, or because it is something the regional center says it does not cover.

Second, the State has to ensure that the health and welfare of regional center clients receiving services under the DD Waiver is protected.⁶ For example, the regional center cannot take away a DD Waiver funded service that you need in order to stay safely in the community.

Third, if you are under the age of 21 years , the federal EPSDT medical necessity standard applies in deciding whether or not you need a certain Medi-Cal funded service, including DD Waiver services.⁷ Services are covered when “necessary to correct or ameliorate defects and physical and mental illnesses or conditions.”⁸ This standard is broader than the one applicable to adults and means that if you are under 21, you qualify for more services funded by Medi-Cal than do adults.

⁴ Your IPP should say “Medi-Cal Waiver” on the front page if you are receiving any DD Waiver services.

⁵ Go here for a copy of Chapter 13 about the HCBS Waiver for regional center clients: <http://www.disabilityrightsca.org/pubs/506301Ch13.pdf> Or call our 800 number and we will send you a copy of Chapter 13.

⁶ 42 U.S.C. § 1396n (c) (2) (A). This standard is an added element in the medical necessity standard and determination.

⁷ This does not apply to waiver services that are only available through a waiver. It only applies to waiver services that could be available through regular Medi-Cal.

⁸ Cal. Code Regs., tit. 22 § 51340 (e) (3) (A). Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services federal medical necessity standard also at 42 U.S.C. § 1396d (r) (5).

What Will Happen If the Regional Center Wants to Change Your Services?

If your regional center wants to change your services, it must either hold an IPP meeting and reach agreement with you about the change or give you a written notice. For example, if you attend an IPP meeting,⁹ and if your child is under age 21 and needs behavior services, you can both explain how those services meet the Lanterman Act criteria and also explain how your child needs those services to “correct his/her condition.” (EPSDT standard)

If after the IPP meeting, you do not agree with the decision to change your service, the regional center must give you a written notice of its decision. The notice must be given 30 days before the change begins.¹⁰ The notice must give you the following information:

- the action the regional center is taking;
- the basic facts about why the regional center is making its decision;
- the reason for the action;
- the effective date; and
- the specific law, regulation or policy that supports the action.¹¹

If you are already receiving the service and you disagree with the regional center’s decision and want to continue to receive it, you must request a fair hearing within 10 days of receiving the notice.¹² Otherwise, the request must be made within 30 days.¹³ If you think you meet the need for a service under the DD Waiver, remember to put something like this in your fair hearing request: “I also want my right to this service under the DD Waiver to be determined.”

For more important information on how to appeal decisions by the regional center, read our fact sheet, Due Process and Hearing Rights.

⁹ Usually, decisions about the services you need must be decided by an IPP team. Welfare & Institutions Code Section 4646.4(a)-(c). However, the law says if a regional center wants to reduce, end or change a service in your IPP without your consent, it has to give you a 30 day notice first. Welfare & Institutions Code Section 4710.

¹⁰ Welfare & Institutions Code Section 4710

¹¹ Welfare & Institutions Code Section 4701. The information must also be in the language you understand.

¹² Welfare & Institutions Code Section 4715

¹³ Welfare & Institutions Code Section 4710.5 (a)

What about Fair Hearings?

Disputes about Waiver eligibility or services under the Waiver are handled through the regular Lanterman Act fair hearing procedures. The Administrative Law Judge (ALJ) will first look to see if the matter can be resolved favorably for the consumer under the Lanterman Act. If not, the ALJ will then look at rights under the Waiver and the State and Federal Medi-Cal/Medicaid program. Be certain to ask the ALJ to do this if you are at hearing.

This law is difficult to understand and apply. Please contact your Clients' Rights Advocate if you have any questions.