



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

Regional Center Due Process and Hearing Rights

Does the Law Change My Due Process and Hearing Rights?

There are many changes to the Lanterman Act because of the state's budget problems. Most of the changes take effect on July 28, 2009, when the new state budget was passed. The changes do not change your due process rights. The changes make it important that you properly state your issue if you go to due process hearing.

What Should You Do if the Regional Center Stops a Specific Service for Everyone?

Some of the changes under the new law are changes that affect all recipients. For example, there is a list of suspended services. Therefore, the state may not permit a fair hearing if what you want to do is disagree with the change. Remember, you can get a hearing if the law is not being correctly applied to you or if you meet an exemption.

What Should You Do 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.¹ Before your IPP meeting, learn about the new law. You can get Disability Rights California's factsheets on the new law on its website, www.disabilityrightsca.org. The website has the changes to the law listed by topic.

Many of the New Laws:

- Have service standards. These standards say when services can be provided or the amount of service that can be provided.
- Have an exemption (exception) process. An exemption allows the regional center to grant an exception to the new law under specific circumstances.

At the IPP meeting, you should ask the regional center why it wants to change your service. If it is due to a change in the law, you should tell the IPP team exactly how you or your child meets the service standards or exemption requirements. The regional center should explain the new standards to you and tell you about any exemption.

Written Notice of Action Required to Be Given By the Regional Center

If you and your regional center do not agree on a change, the regional center must give you a notice 30 days before the change begins.² 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.³

Filing for Hearing

If you are already receiving the service and you disagree with the regional center's decision and want to continue to receive the service, you must

¹ 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.

² Welfare & Institutions Code Section 4710

³ Welfare & Institutions Code Section 4701. The information must also be in the language you understand.

request a fair hearing within 10 days of receiving the notice.⁴ Otherwise, the request must be made within 30 days.⁵

Forms for Filing for Hearing

- DDS Forms, such as the Lanterman Fair Hearing Request (#1805), can be found at http://www.dds.ca.gov/complaints/complt_fh.cfm.

To initiate a regional center fair hearing, complete a fair hearing form and send it to your regional center director or file the form directly with the Office of Administrative Hearings and send a copy to the regional center director. If you think you meet an exemption, remember to additionally put “I meet an exemption,” into your fair hearing request.

Once You Request a Hearing, the Hearing Steps Are:

- **Regional Center Response** - The regional center must tell you when the hearing request was received. If it has not already done so, the regional center must send you a notice with your due process hearing rights.
- **Voluntary Informal Meeting** - If you request or agree to an informal meeting with the regional center, the regional center and you must agree to a time for the meeting. The regional center must send you a written notice that confirms the agreed upon date, time, and place for a voluntary informal meeting. This notice must also tell you that you can decline an informal meeting.
- **Mediation** - The next step in the appeal process is mediation which you have to request in order for it to be scheduled. We recommend mediation because having an independent, trained mediator makes it more likely to get a fair agreement. However, either you or the regional center can “waive” mediation (decide not to mediate). The regional center has 5 working days to accept or decline mediation after receiving the written request for mediation from you. If you or the regional center decline mediation, you still have a right to a fair hearing without meeting with the regional center informally.
- **Fair Hearing before an Administrative Law Judge** - The hearing must be held within 50 days of when the request for hearing is

⁴ Welfare & Institutions Code Section 4715.

⁵ Welfare & Institutions Code Section 4710.5 (a)

received by the regional center. The Administrative Law Judge (ALJ) may allow a delay or continuance, if either you or the regional center asks, and if there is a good reason.

- **Exchanging Evidence** - At least 5 days before the hearing, you and the regional center must give each other copies of any documents and reports that you each intend to use at the hearing. You must also exchange a list of witnesses you intend to call and what you expect them to talk about. At the hearing, the ALJ can decide whether to allow a witness who was not on the list or a document that was not given to the other party before the hearing. Before the hearing, make copies of the documents you want to present to the ALJ. You should bring the original document, if it is available, and two copies to the hearing.
- **Fair Hearing Decision** - The fair hearing decision must be issued within 10 working days of the last day of the hearing but no later than 80 days from the hearing request.
- **Appeal Of Unfavorable Fair Hearing Decision** - If you disagree with the hearing decision, you have 90 days to file a Writ of Administrative Mandamus in Superior Court.

Your Rights During the Hearing Process

In all of the above hearing steps, you have a right to:

- See your regional center records;
- Be present and give evidence by speaking or writing.
- Have your own family, friends, therapists or doctors be present and speak on your behalf.
- Have a lawyer or advocate present.
- Have an interpreter if your primary language is other than English.

Prepare for Your Hearing

- Gather information that shows that you need the services that the regional center wants to change. Make sure the information you use is accurate and explains your needs in detail. Also, find people who are willing to go to your hearing and tell the judge why you need the services. Make sure these people know your needs.
- At the hearing, you can argue that you have the right to have your needs met to fulfill your IPP goals and objectives or explain why you meet an exception or exemption to the law.

For additional information about the IPP process, Due Process and your rights, visit www.disabilityrightsca.org/pubs/506301index.htm and read Disability Rights California's publication, *The Rights Under the Lanterman Act*.

What Should You Do if Your Early Start Services Are Cut?

Due process for Early Start children differs in some respects from due process for children over three who are regional center consumers. Please see our Fact Sheet on Early Start Services to learn your due process rights under Early Start.

For additional information about Early Start and your rights, visit http://disabilityrightsca.org/pubs/505201.htm#_Toc122231456 and read the Chapter 12 of Disability Rights California's *Special Education: Rights and Responsibilities* manual.

What Should You Do if You Receive Regional Center Services through the Medicaid Home & Community Based Waiver (HCBS)?

Many consumers of regional center services receive those services through the HCBS Waiver, which is often called the DD Waiver. If you receive your services through this waiver, you have additional due process protections. To learn those additional protections, read our fact sheet, *Services and Due Process under the HCBS Waiver*.

If you have any questions, call:

- Your local Area Board;
- Disability Rights California, Toll Free: 1-800-776-5746; TTY (800) 719-5798; or
- Office of Clients' Rights Advocacy, (north) 1-800-390-7032; (south) 1-866-833-6712, TTY 877-669-6023