

DEPARTMENT OF DEVELOPMENTAL SERVICES

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March 2, 2023

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: SUMMARY OF CHANGES TO THE APPEALS PROCESS

The State's Budget Trailer Bill for developmental services, SB 188 (Chapter 49, Statutes of 2022) amended Sections 4700 et seq. of the Welfare and Institutions Code (WIC). These amendments made significant updates to the appeal process for eligibility and service decisions by regional centers. Specifically, SB 188 standardizes the appeals process across regional centers, provides consistent education and information, is intended to improve the experiences of individuals and families using the appeal process, and enhances data collection and transparency. Each of these changes take effect on different dates: July 1, 2022, October 1, 2022, or March 1, 2023. The summary of these updates and their corresponding effective dates are provided below.

A standard information packet specific to the appeal process, as well as numerous new forms, are available in multiple languages on the Department's website for the Lanterman Act appeal process. The website continues to be updated with additional languages and material: <https://www.dds.ca.gov/general/appeals-complaints-comments/fair-hearings-complaint-process/>.

Effective July 1, 2022:

Definition of Interpreter - WIC 4701(i) requires an interpreter to be an individual who can interpret effectively, accurately, and impartially.

Final Hearing Decision Implementation Delays – WIC 4713.5 requires the regional center to implement a hearing decision as soon as practical, and not later than 30 days following the final hearing decision. If there are specific exceptional circumstances that make it impossible for the regional center to implement a hearing decision within 30 days, the regional center must notify the claimant, their authorized representative, if applicable, and the Department of Developmental Services (Department). The individual, or authorized representative, may request assistance from the Department. This procedure is described in an early March 2023 [directive](#). Details and the online form are available in the "Delayed Implementation of Hearing Decisions Requirements" section of the Department's Lanterman Act appeal process website, above.

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Office of Administrative Hearings Advisory Committee - WIC Section 4717 requires that the hearing office and the Department create an advisory committee composed of various specified stakeholders. The committee shall meet semiannually and issue non-binding recommendations to the hearing office for improvements to hearing and mediation operations. More information about the committee is provided in the committee's section of the Department's Lanterman Act appeal process website at the link on the first page of this summary.

Effective October 1, 2022:

Attendance of Attorneys in the Appeal Process – WIC 4705.5(a) limits when a regional center attorney licensed to practice in California can attend an informal meeting, mediation, and hearing, as described in the [directive](#) dated September 20, 2022.

Notification of the Right to Request Disqualification of a Hearing Officer – WIC 4701(a)(9)(E) requires a regional center to include, within the existing written list of consumer rights in a notice of action, also the existing right of a claimant or their authorized representative to request the disqualification of a hearing officer. This change was effective October 1, 2022.

Changes Impacting the Individual Program Plan (IPP) Process - WIC 4646.4(a)(5) and 4710(b) describe changes to the IPP template and other IPP requirements, including consideration of information from consumers, preferred language and method of delivery for notices of action, and the acknowledgment that regional center staff discussed the complaint process with the consumer and, if appropriate, their authorized representative. The [directive](#) dated December 28, 2022 described these changes.

Effective March 1, 2023:

Lanterman Appeal Process Informational Packet – WIC 4708 requires the regional center to make the appeal process information packets, prepared by the Department with input from stakeholders, about each of the Early Start and Lanterman Act appeals processes available: (1) at each regularly scheduled planning meeting, (2) upon request of the consumer, their authorized representative, or family, and (3) with all notices of action. It further requires each regional center to post a link to the appeal process information packets on its Internet site within 60 days of the Department making the informational packets available. This packet is available now on the Department's Lanterman Act appeal process website at the link on the first page of this summary, and additional languages are being added as their translations are completed.

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Standard Notice of Action Form – WIC 4701 requires the Department to update the notice of action form. This updated form is available in the Forms section of the Department's Lanterman Act appeal process website at the link on the first page of this summary.

Mutual Consent – WIC 4701(k) requires regional centers to provide a notice of action unless there is written evidence or a good faith belief, followed by a good faith belief letter, that there was mutual consent for a regional center's proposal to reduce, terminate, or change a service. Mutual consent and its required documentation are described in an early March 2023 [directive](#). The Good Faith Belief template letter is available in the Forms section of the Department's Lanterman Act appeal process website at the link on the first page of this summary.

Appeal Requests are Sent to the Department – WIC 4701(a)(7) and (b) and 4710.5(d) require appeal requests to be sent to the Department. Prior to March 1, 2023, these requests were sent to a regional center. Appeal requests can be submitted several ways: via the online form linked below in the next paragraph, sent by email to appealrequest@dds.ca.gov, faxed to 916-654-3641, or mailed to:

Office of Community Appeals and Resolutions
Department of Developmental Services
1215 O Street MS 8-20
Sacramento, CA 95814

WIC 4707 also allows claimants to select between informal meeting, mediation, and hearing, and to add to or change their initial request at a later date. Changes to the initially submitted appeal request may be submitted in any of the ways described above. The Department will notify the regional center and Office of Administrative Hearings (OAH), as appropriate, of an appeal request and any changes. A change may result in a continuance to the timeframe for resolution.

Standard Appeal Request Form – WIC 4707 necessitates a standard appeal request form. This form will be used by individuals and, if appropriate, their authorized representative, to request informal meetings, mediation, and/or hearings. The online form, and a downloadable/printable hard copy, are available of the Department's Lanterman Act appeal process website at the link on the first page of this summary.

Timelines for Appeals – WIC 4707, 4710.6, 4512.5(a)(1), 4712 (a)(1), 4713(b), and 4715 define new timelines for the different parts of the appeal process. “Days” means calendar days unless another definition is being used in that section.

- All appeal requests must be postmarked or received by the Department no later than 60 days after the date the notice of action was received. Aid-paid-pending is available if the appeal is postmarked or received by the Department no later than 30 days after the notice of action was received and not later than the effective date provided in the notice of action that services will be reduced, changed, or terminated.
- The regional center has 10 days from the date the appeal request was received by the Department to hold an informal meeting, if requested by the claimant. The regional center shall issue a decision within 5 days of the informal meeting.
- The OAH shall hold a mediation within 30 days of the appeal request being received by the Department, if mediation is requested.
- The OAH must hold the hearing within 50 days of the appeal request being received by the Department, if a hearing is requested. A delegated hearing decision must be issued by OAH within 10 days of concluding the hearing and not more than 80 days from the request. A decision that is not delegated must be issued by the Director within 90 days of receiving the appeal request. Delegation of decisions is discussed on the next page. If a continuance was granted to the claimant, the timelines for issuing a final decision are extended only for as long as the time period of the continuance.
- A claimant may request a continuance of any part of the appeals process. A granted continuance results in a waiver of the claimant’s Medicaid home and community-based services right to decision within 90 days of the date the appeal. A claimant’s first request for a continuance made prior to the start of the hearing shall be granted without a showing of good cause. A claimant may request additional continuances based on a showing of good cause. Regional centers may request a continuance upon a showing of good cause.
- If an initial appeal request is amended by a claimant, that amendment may result in an extension of time for completion of the appeal process.
- A reconsideration request must be based on a mistake of fact or law or a clerical error. Reconsideration requests shall be filed within 15 days of the date of the final hearing decision. OAH or the Director of the Department, as appropriate, shall issue a decision on the reconsideration within 15 days of it being filed. More information about reconsiderations is found on the next page.
- Appeals to superior court must be filed within 180 days of the date of the final hearing decision.

Mandatory Participation in Mediation – WIC 4711.5(g) requires a regional center to participate in at least one mediation session if mediation is requested by a claimant or their authorized representative.

Position Statements and Exchange of Evidence – WIC 4712(d) requires regional centers to prepare a position statement and provide it to the claimant and their authorized representative, if applicable, in their preferred language and using their preferred method of delivery, and to send it electronically to the hearing office at least two business days prior to the hearing.

An unrepresented claimant shall provide a list of witnesses and their relationship to the claimant, and any professional assessments or reports that are going to be used at hearing at least two business days prior to a hearing. A claimant that is represented by, or is themselves, an attorney licensed to practice law in California must prepare and provide a position statement, a witness list and general subject matter of their testimony, and all documentary evidence intended to be used, at least two business days prior to hearing.

Changes at the Hearing Office – WIC 4712(i), 4712(b)(2) and (3) require changes at the hearing office:

- The hearing officer is required to conduct the hearing with “engaged neutrality”. Engaged neutrality is a hearing environment that encourages the free and open exchange of information and engages the parties to bring out relevant facts. The hearing officer may question a witness on the record, call a witness to testify at hearing, and hold the record open to allow a party to obtain necessary testimony or documentation.
- Hearing officers are required to participate in training. The Department provided training consistent with the statutory requirements at the end of January and February 2023. This training included how to create an impartial and informal hearing environment, how to assist unrepresented claimants, as appropriate, provided information about disabilities and disability-related communication supports to enable participation in the hearing, and other accommodations.

The Department Director’s Delegation of Final Hearing Decisions – WIC 4712.5 allows the Director of the Department to delegate the authority to adopt final decisions to the hearing office. The delegation must be in writing and may be limited to specified issues and types of cases deemed appropriate by the Director. Issues not delegated to the hearing office are known as “proposed decisions”. The latest delegation memo is posted here: <https://www.dds.ca.gov/wp-content/uploads/2023/02/DDS-Delegation-of-Hearing-Decisions-February-2023.pdf>.

If authority for issuing final decisions is not delegated, then within 10 days of the hearing concluding but not more than 60 days from the date the hearing request was received by the Department, the hearing officer will send a proposed decision, and any translation required, to the Department. Within 30 days the Director may adopt the proposed decision as the final decision or decide the matter on the record and issue a new final decision. If the Director does not act upon a proposed decision within 30 days, the proposed decision automatically becomes the final decision. The parties will receive the final decision, and also any proposed decision, if applicable.

Reconsiderations – WIC 4713 provides that any party to an appeal may apply to the hearing office (or the Director, if the Director issued the final decision), within 15 days of the date of the final hearing decision, seeking a reconsideration to correct a mistake, fact or law, clerical error in the final decision, or the hearing officer's decision to not disqualify himself. The party seeking reconsideration shall state the specific grounds for which the application of reconsideration is made. Notice of the application must be given to the other parties to the proceeding, and to the Department. The other party may provide a written statement supporting or opposing the reconsideration. Within 15 days of receipt of the reconsideration request, the hearing office or the Director responsible for issuing the final hearing decision may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. Any granted further proceedings shall be conducted in the same manner and subject to the same time limits as the original hearing. If a final decision is corrected, the hearing officer or Director shall provide a copy of the corrected final decision to each party and to the Department within five days after the corrected decision is finalized.

Changes to Data Collection - WIC 4714 requires the Department to collect the data described below. Data will be compiled and posted on the Department's website. The Legislature will be notified when it is posted and will be provided an annual copy.

For informal meetings:

- (1) Whether the case was resolved before an informal meeting or through an informal meeting.
- (2) Whether the case was withdrawn and the reason for the withdrawal.
- (3) Whether an informal meeting was declined.
- (4) The issue or issues involved in the case by issue type, as specified by the Department.
- (5) If the case was resolved, the resolution outcome.
- (6) Demographic information for claimants, as identified by the Department.
- (7) A copy of the written decision of the regional center director or designee or state-operated facility director or designee.

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For mediations and hearings:

- (1) Whether the request was resolved before mediation, through mediation, through a hearing, through a reconsideration, or through a different means.
- (2) Whether the request was withdrawn and the reason for the withdrawal.
- (3) The issue or issues involved in the request by issue type, as specified by the Department.
- (4) If the request was resolved, the outcome.
- (5) A copy of the written mediation agreement, the final administrative hearing decision, and the final reconsideration decision, as applicable.
- (6) The average length of time between the filing and resolution of the appeal request.
- (7) Demographic information about claimants, as identified by the department.

If you have any questions regarding this summary, please contact me at the phone number at the top of this summary or at pete.cervinka@dds.ca.gov.

Sincerely,

PETE CERVINKA
Chief, Data Analytics and Strategy

cc: Regional Center Administrators
Regional Center Community Services Directors
Regional Center Directors of Consumer Services
Association of Regional Center Agencies
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