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WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 4.5. SERVICES FOR THE DEVELOPMENTALLY DISABLED [4500 - 4885] (*Division 4.5 added by Stats. 1977, Ch. 1252.*)

CHAPTER 7. Appeal Procedure [4700 - 4731] (*Chapter 7 repealed and added by Stats. 1982, Ch. 506, Sec. 2.*)

ARTICLE 2. General Provisions [4705 - 4708] (*Article 2 added by Stats. 1982, Ch. 506, Sec. 2.*)

4705. Every regional center or state-operated facility shall, as a condition of continued receipt of state funds, have an appeals procedure for resolving conflicts between the regional center or state-operated facility and recipients of, or applicants for, service. The State Department of Developmental Services shall promulgate regulations to implement this chapter, which shall be binding on every regional center or state-operated facility.

(a) (1) Any public or private agency receiving state funds for the purpose of serving persons with developmental disabilities not otherwise subject to the provisions of this chapter shall, as a condition of continued receipt of state funds, adopt and periodically review a written internal grievance procedure.

(b) An agency that employs an appeals procedure mandated by any other statute shall be considered to have an approved procedure for purposes of this chapter.

(c) (1) The regional center's and the state-operated facility's appeals procedures for informal meetings, mediations, and fair hearings shall be stated in writing, in English and any other language that may be appropriate to the preferred language of the applicants and recipients served by the regional center or the state-operated facility.

(2) All recipients and applicants, and persons having legal responsibility for recipients or applicants, shall be informed verbally of, and shall be notified in writing in their preferred language of, the regional center's or the state-operated facility's appeals procedures for informal meetings, mediations, and fair hearings when they apply for service, when they are denied service, when notice of service modification is given pursuant to Section 4710, and upon request.

(d) If, in the opinion of any person, the rights or interests of a claimant who has not personally authorized a representative will not be properly protected or advocated, the State Council on Developmental Disabilities and the clients' right advocate assigned to the regional center or state-operated facility shall be notified, and the State Council on Developmental Disabilities may appoint a person or agency as representative, pursuant to subdivision (a) of Section 4541, to assist the claimant in the mediation and fair hearing procedure. The appointment shall be in writing to the authorized representative and a copy of the appointment shall be immediately mailed to the regional center director or the state-operated facility director.

(e) This section shall become operative on March 1, 2023.

(*Repealed (in Sec. 31) and added by Stats. 2022, Ch. 49, Sec. 32. (SB 188) Effective June 30, 2022. Operative March 1, 2023, by its own provisions.*)

4705.5. (a) Unless the claimant is themselves an attorney licensed to practice law in California, or unless the claimant will have an attorney licensed to practice law in California in attendance, a regional center attorney or department attorney shall not attend an informal meeting, mediation, or fair hearing described in this chapter. The claimant shall notify the regional center and the hearing office at least 5 days prior to mediation, and 15 days prior to a fair hearing, that the claimant will have an attorney in attendance. However, the hearing officer may notify the parties in advance of a hearing that the hearing officer is allowing the attendance of an attorney in the interest of justice.

(b) This section shall become operative on October 1, 2022.

(*Added by Stats. 2022, Ch. 49, Sec. 33. (SB 188) Effective June 30, 2022. Operative October 1, 2022, by its own provisions.*)

4706. (a) Except as provided in subdivision (b) to the extent permitted by federal law, all issues concerning the rights of persons with developmental disabilities to receive services under this division shall be decided under this chapter, including those issues

related to fair hearings, granted by the Medicaid home and community-services waiver to the State Department of Health Care Services.

(b) Whenever a fair hearing under this chapter involves services provided under the Medicaid home and community-based services waiver, the State Department of Health Care Services shall retain the right, as provided in Section 4712.5, to review and modify any decision reached under this chapter.

(Amended by Stats. 2022, Ch. 49, Sec. 34. (SB 188) Effective June 30, 2022.)

4707. (a) The following appeals processes shall be available for resolving conflicts between regional centers or state-operated facilities and recipients of, or applicants for, services under this chapter.

(1) An informal meeting held by the regional center or state-operated facility to resolve the issue or issues as provided for in Sections 4710.6 to 4710.9, inclusive.

(2) Mediation as provided for in Section 4711.5.

(3) A fair hearing as provided for in Sections 4711 and 4712.

(b) When filing an appeal, a claimant may initially request one or more parts of the appeals processes identified in subdivision (a). The claimant may subsequently amend their request to select parts of the appeals process not previously selected. However, that request shall constitute a waiver of the rights of a Medicaid home and community-based services waiver participant to receive a fair hearing decision within 90 days of the date that the appeal request form is received by the department or the agency it designates to receive the appeal request form.

(c) If a recipient's request for an appeal is postmarked or received by the department, or by another agency designated by the department to receive the appeal request, no later than 30 days after receipt of the notice of the proposed action and no later than the effective date of the action sent pursuant to subdivision (a) of Section 4710, current services shall continue for the length of time specified in Section 4715, and the recipient shall be afforded an opportunity for an informal meeting, a mediation, and a fair hearing.

(d) If a recipient or applicant's request for appeal is postmarked or received by the department, or by another agency designated by the department to receive the appeal request, 60 days after receipt of the notice of proposed action pursuant to subdivisions (a), (b), and (d) of Section 4710, they shall be afforded an opportunity for an informal meeting, a mediation, and a fair hearing.

(e) A claimant may request a continuance of any part of the appeals process. If granted, the continuance shall constitute a waiver of the Medicaid home and community-based services waiver participant's right to receive a fair hearing decision within 90 days of the date the appeal request form is received by the department or by the agency designated by the department to receive the appeal request form. The extension of time for the final decision resulting from the continuance shall be only as long as the time period of the continuance.

(f) This section shall become operative on March 1, 2023.

(Repealed (in Sec. 35) and added by Stats. 2022, Ch. 49, Sec. 36. (SB 188) Effective June 30, 2022. Operative March 1, 2023, by its own provisions.)

4708. (a) (1) The department shall create, with input from stakeholders, standard appeals process information packets. There shall be one information packet related to appeals under the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and another information packet related to appeals under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)). The appeals process information packets shall include all information required by this chapter and by Section 52161 and Sections 52170 to 52174, inclusive, of Title 17 of the California Code of Regulations, and shall include the appeal request form.

(2) The appeals process information packets shall be translated to provide language access, as required by state and federal law, and shall be available in alternative formats and alternative modes of communication as required by state and federal law.

(3) The appeals process information packets shall be made available by regional centers and state-operated facilities to recipients and applicants at each regularly scheduled planning meeting and with all notices of action required by Section 4710. Upon request, the department and the regional center shall provide the information packet to applicants, recipients, and authorized representatives. The department and regional centers shall post a link to the standard appeals process information packets on their internet websites within 60 days of the department making the information packets available.

(b) The standard appeals process information packets required by this section shall be completed by the department, including translations and alternative formats, and following consultation with stakeholders, on or before March 1, 2023.

(Added by Stats. 2022, Ch. 49, Sec. 37. (SB 188) Effective June 30, 2022.)

