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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 Appeal Procedure [4700 - 4731] (*Chapter 7 repealed and added by Stats. 1982, Ch. 506, Sec. 2.*)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 1. Definitions [4700 - 4702] (*Article 1 repealed and added by Stats. 2022, Ch. 49, Sec. 30.*)

4700. Unless the context otherwise requires, the definitions set forth in this article govern the construction of this chapter.
(*Repealed and added by Stats. 2022, Ch. 49, Sec. 30. (SB 188) Effective June 30, 2022.*)

4701. (a) "Adequate notice" means a written notice using the form prescribed by the department. The notice shall be in plain, clear, and nontechnical language. The notice shall be provided in the language preferred by the recipient or applicant receiving the notice, and, if appropriate, the authorized representative. The notice shall be sent to the recipient or applicant and, if appropriate, their authorized representative, as specified in Section 4710. The notice shall provide the following information:

- (1) The action that the regional center or state-operated facility proposes to take, including a statement of the facts upon which the regional center or state-operated facility is relying.
- (2) The reason or reasons for that action.
- (3) The effective date of that action.
- (4) The specific provision or provisions of law, regulation, or policy supporting the action.
- (5) Information on availability of advocacy assistance, including referral to the clients' rights advocates specified in Sections 4433 and 4433.5, the State Council on Developmental Disabilities, publicly funded legal services organizations, and other advocacy organizations, including the agency designated as the protection and advocacy system as required under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. Sec. 6000 et seq.) and as provided in Division 4.7 (commencing with Section 4900).
- (6) A statement indicating whether the recipient is a participant in the Medicaid home and community-based services waiver.
- (7) Information about how to file an appeal with the department, unless the department has designated another agency to receive appeal requests, and the contact information for the department.
- (8) Information about the following rights that are available at all steps in the appeals process:
 - (A) To have an interpreter provide interpretation in the preferred language of the applicant or recipient and, if appropriate, the preferred language of the authorized representative.
 - (B) Access to records, including all records maintained in the individual's regional center or state-operated facility file, pursuant to Article 5 (commencing with Section 4725).
- (9) Information about the following rights if a fair hearing is requested:
 - (A) The opportunity to attend and participate in all proceedings and to present written and oral evidence.
 - (B) The opportunity to examine and cross-examine witnesses.

(C) The right to appear in person with counsel or other representatives of their own choosing.

(D) The fair hearing shall be completed and a final administrative decision rendered within 90 days of the date the hearing request form is received by the department unless the fair hearing request has been withdrawn or the time period has been extended in accordance with this chapter.

(E) The right to request the disqualification of the hearing officer by filing an affidavit or making an objection on the record as specified in subdivision (g) of Section 4712. The information required by this subparagraph shall be included in the notice required by this paragraph no later than October 1, 2022.

(10) Information about the appeals process and timelines, including when current services are continued during the appeals process, and when a claimant can request a continuance.

(11) (A) Whether or not the individual is eligible for an exemption or exception to the action the regional center proposes to take as specified in subparagraph (D) of paragraph (6) of subdivision (a) of Section 4648, subdivision (d) of Section 4648.35, subdivision (d) of Section 4659, subdivision (i) of Section 4689, and subdivisions (a) and (d) of Section 4689.05, subdivision (b) of Section 95004 of the Government Code, and paragraph (3) of subdivision (e) of Section 95020 of the Government Code.

(B) The specific law supporting any of the above-specified exemptions or exceptions.

(b) "Appeal request form" means a form prescribed by the department that includes the name, address, contact information, and birth date of the claimant, date of the appeal request, the name of the regional center that provides services to the claimant or where an applicant has applied for services, the reason an appeal is requested, and the name, address, and relationship to the claimant of the authorized representative, if any. The appeal request form shall also indicate whether the claimant or their authorized representative is requesting an informal meeting, a mediation, or a fair hearing, or any combination of these options. A copy of the appointment of the authorized representative, by the claimant or the State Council on Developmental Disabilities if any, shall also be included. The form shall provide information about how to file an appeal and contact information for filing the appeal request form with the department unless the department has designated a different agency to receive the form.

(c) "Applicant" means a person who has applied for services from a regional center, or on whose behalf services have been applied for.

(d) (1) "Authorized representative" means any conservator, or legal guardian, parent, or person having legal custody of a minor claimant, who acts for or represents the claimant or a person or agency appointed pursuant to subdivision (a) of Section 4541 or subdivision (d) of Section 4705 and authorized in writing by the claimant or by the legal guardian, conservator, or parent or person having legal custody of a minor claimant to act for or represent the claimant under this chapter.

(2) "Authorized representative" also means any responsible adult appointed by a court order made pursuant to subdivision (j) of Section 319, subdivision (a) of Section 361, or subdivision (b) of Section 726 who the court determines is an appropriate representative for the minor, and who does not have a conflict of interest, as defined in subdivision (i) of Section 7579.5 of the Government Code, including, but not limited to, a foster parent, caregiver, or court-appointed special advocate.

(e) "Business days" means any day other than a Saturday, Sunday, or any other day that is an observed state or federal holiday.

(f) "Claimant" means an applicant for or recipient of services who has filed an appeal.

(g) "Days" means calendar days.

(h) "Hearing office" means the state agency that the department has designated to provide mediation and administrative hearing services.

(i) "Interpreter" means an individual who is able to interpret effectively, accurately, and impartially, both receptively and expressively.

(j) "Medicaid home and community-based services waiver participant" means an individual deemed eligible and receiving services through a Medicaid home and community-based services waiver program.

(k) "Mutual consent" means that the recipient or, if appropriate, their authorized representative, agrees with a regional center's or state operated facility's proposal to reduce, terminate, or change the services specified in an individual program plan or to deny the initiation of a service or support requested for inclusion in the individual program plan and that agreement is affirmatively documented, subsequent to the regional center's proposal or denial, in a signed individual program plan, a signed list of services pursuant to subdivision (g) of Section 4646, or other written communication from a recipient or authorized representative affirmatively agreeing to all or part of the regional center's or state-approved facility's proposal or denial.

(1) In the absence of written documentation, if the regional center or state-operated facility has a good faith belief that an agreement exists, it shall, within five business days of the agreement, send a letter confirming the agreement to the recipient and, if appropriate, their authorized representative, if any, by standard mail, certified mail, or email at their preference as indicated in their individual program plan. The letter shall include at least all of the following:

(A) The factual basis for the regional center's or state-operated facility's good faith belief that an agreement exists to reduce, terminate, or change the services specified in an individual program plan or to deny the initiation of a service or support requested for inclusion in the individual program plan.

(B) The action the service agency intends to take.

(C) The reason or reasons for that action.

(D) The availability of an appeals process if the applicant, recipient, or authorized representative disagrees with the decision and a link to the department's internet website with information about the appeals process.

(E) Information about how to express disagreement with the decision and how to obtain additional information about the appeals process.

(F) An appeal request form as described in subdivision (b).

(2) If the regional center is informed that the recipient or, if appropriate, their authorized representative, disagrees with its decision, the regional center shall immediately send adequate notice as defined in subdivision (a).

(3) This subdivision shall become operative on March 1, 2023.

(l) "Persons who have the right to request an appeal" means an applicant, recipient, and those individuals defined in subdivision (d).

(m) "Preferred language" means the language chosen by the applicant or recipient, and if applicable, the authorized representative.

(n) "Recipient" means a person with a developmental disability who receives services from a regional center or a state-operated facility.

(o) "Services" means the type and amount of services and services components set forth in the recipient's individual program plan pursuant to Section 4646, and provided by a regional center or by the department at a state-operated facility.

(Repealed and added by Stats. 2022, Ch. 49, Sec. 30. (SB 188) Effective June 30, 2022.)

4702. Each regional center and each vendor that contracts with a regional center to provide services to recipients shall conspicuously post on its internet web, if any, links to the department's internet website page that provides a description of the appeals process set forth in this chapter and department contact information for providing information and education to recipients and applicants about the appeals process, including the notice of proposed action, timelines, options for resolving disagreements, and rights during the appeals process.

(Repealed and added by Stats. 2022, Ch. 49, Sec. 30. (SB 188) Effective June 30, 2022.)