

# RIGHTS UNDER THE LANTERMAN ACT

## *Disagreements with Regional Centers and Developmental Centers*

### Chapter 12

This chapter explains how to handle disagreements with the regional centers and developmental centers, including:

Notice Requirements for Changes in your Services or Supports

- Procedures and Deadlines for Fair Hearings
- Compliance Complaints
- Disputes with Providers of Services and Supports



## **Chapter 12: Disagreements with Regional Centers and Developmental Centers**

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# Chapter 12

## Disagreements with Regional Centers and Developmental Centers

*This chapter explains how to handle disagreements with the regional centers and developmental centers, including:*

- *Notice Requirements for Changes in your Services or Supports*
- *Procedures and Deadlines for Hearings*
- *Compliance Complaints*
- *Disputes with Providers of Services and Supports*

*We explain what the law says and important things you should know about the regional center system. This information is based on a state law called the Lanterman Act. We also give you the exact section of this state law where the information is found. You may have to refer to the law to get the services you need. When you see § 4512(a), for example, it means that information comes from the Lanterman Act, section (§) 4512, part a.*

*If you want to read the Lanterman Act, go to:*

<http://www.dds.ca.gov/Statutes/LantermanAct.cfm>

### **1. What if I disagree with a regional center or developmental center decision?**

If a regional center or developmental center makes a decision that affects your eligibility or services, you can ask them to change it. This process is called an appeal.<sup>1</sup>

You can appeal a decision that says:

- You are not eligible for services, or
- You no longer need a service.

You can also appeal a decision that:

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<sup>1</sup> §§ 4710.5(a), 4710. All references in this manual are to the Lanterman Act, unless it says otherwise. The § symbol means “section.”

- Changes a service,
- Gives you less of a service, or
- Does not allow you to get a service that you need.

To appeal, you must follow certain rules. This chapter only talks about regional center appeals. But the rules for developmental center appeals are the same.

## **2. Do the 2009 changes to the Lanterman Act affect my due process and hearing rights?**

No. Because of the state's budget problems, many changes to the Lanterman Act were passed into law in 2009. The changes do not change your due process rights.

If your regional center wants to change your services due to the budget cuts, it must either hold an IPP meeting and reach agreement with you about the change or give you a written notice. Many of the new laws have an exemption (or exception) process. An exemption allows the regional center to grant an exception to the new law under specific circumstances. If you think you meet an exemption, remember to additionally write "I meet an exemption" on your fair hearing request.<sup>2</sup>

If your regional center calls and asks you to agree to a change in your services, make sure you ask it to put it in writing (in a notice of action) before you agree to any change. This way you can make sure you understand the proposed change, and can then decide whether you agree or want to appeal the regional center's decision.<sup>3</sup>

Before deciding about the proposed change, you can also ask to discuss the issue in a formal IPP meeting. Some regional centers consider a phone call as counting as an IPP meeting for purposes of changing your IPP services. You do not have to agree to anything over the phone. You can insist on receiving the proposed change in writing and/or having a formal, face-to-face IPP meeting.

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<sup>2</sup> See below for more information on filling out fair hearing requests.

<sup>3</sup> See below for information on relevant timelines.

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.

Some of the changes under the new law are changes that affect all regional center consumers. 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. However, you can get a hearing if the law is not being correctly applied to you or if you meet an exemption.

Before your IPP meeting and before appealing a notice of action, learn about the new law. You can get Disability Rights California's factsheets on the new law on our website, [www.disabilityrightscalifornia.org](http://www.disabilityrightscalifornia.org). The website has the changes to the law listed by topic.

### **3. Are there deadlines for appeals?**

Yes. There are deadlines for every step of the appeal process.

If the regional center gives you notice that it has made a decision to stop or change one of your services, you have **10 days** to appeal if you want the service to continue until your appeal is decided.<sup>4</sup>

If you wait more than 10 days to file the appeal, you can still file an appeal for a fair hearing, but the service will stop or change during your appeal. You must do this within **30 days**.<sup>5</sup>

Question 9 explains how to keep your services during your appeal.

Please see a chart with the deadlines for appeals in Supplement S.

### **4. When does the regional center have to give me notice in writing?**

The regional center must give you *written* notice if:

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<sup>4</sup> § 4715. Services that continue until the appeal is decided are called "aid paid pending" the result of the appeal process.

<sup>5</sup> § 4710.5(a).

- You ask for regional center services and the regional center decides you do not have a developmental disability and are not eligible for services.<sup>6</sup>
- You are receiving regional center services and the regional center decides you are not eligible for services anymore.<sup>7</sup>
- The regional center says it will not provide a service that you ask for.<sup>8</sup> (They have **5 working days** to send you notice by certified mail.)<sup>9</sup>
- The regional center wants to stop or change a service in your IPP, and you do not agree.<sup>10</sup> The regional center must give you notice at least **30 days** before they change the services in your IPP.<sup>11</sup>
- The regional center says it does not have the money to give you services.<sup>12</sup>
- You say you disagree with all or part of your IPP when you sign it.<sup>13</sup>

It is **illegal** for the regional center to deny or change a service without giving you written notice. Ask the regional center to send you written notice. You can appeal even if the regional center refuses to send you notice. Questions 11 and 40 explain what to do if the regional center does not give you notice. You can also file a complaint (called a Section 4731 Complaint) with the director of the regional center.<sup>14</sup>

If you live in a state developmental center (DC), notify the director of your DC.<sup>15</sup>

See Supplement X for a sample complaint.

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<sup>6</sup> § 4710(e).

<sup>7</sup> § 4710(a)(2).

<sup>8</sup> § 4710(b).

<sup>9</sup> § 4710(b).

<sup>10</sup> § 4710(a)(1).

<sup>11</sup> § 4710(a)(1). See Question 7 below for exceptions to this rule.

<sup>12</sup> § 4710(c).

<sup>13</sup> § 4646(g) When consumers or representatives do “not agree with all components of the plan, they may indicate that disagreement on the plan.” This includes any disagreement with a decision at an IPP meeting to place you in the Secured Treatment Area at Porterville Developmental Center.

<sup>14</sup> Filing an appeal on time is more important. File a Section 4731 Complaint with your fair hearing appeal if you have enough time.

<sup>15</sup> § 4731(b).

See Supplement U for a “Fair Hearing Request” form.

See Supplement V for a “Notice of Proposed Action” form.<sup>16</sup>

## 5. What must the regional center include in the notice?

The regional center notice must tell you what they plan to do and which laws allow them to make that decision. This information helps you decide if you should appeal, and it helps you prepare for your hearing.

The notice must say:

- What the regional center will do.
- Why they are doing it.
- When they are doing it.
- The law, rule, or policy that the regional center claims lets them do it.
- How and where to file an appeal.
- Deadlines for filing an appeal.
- What happens in the appeal process.
- How to review your regional center records to help prepare your case.
- Where to get advocacy help.

If you want your services to continue, you must ask (in writing) for an appeal within **10 days**.<sup>17</sup>

The regional center notice must be clear and in a language you understand.

## 6. What if I do not speak English?

All regional center notices must be in a language that you (or your authorized representative) can understand.<sup>18</sup> For example, if you only speak Spanish, the notice **must** be in Spanish.

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<sup>16</sup> You can see and print these forms online at:  
[www.dds.cahwnet.gov/forms/forms\\_main.cfm](http://www.dds.cahwnet.gov/forms/forms_main.cfm).

<sup>17</sup> § 4715.

<sup>18</sup> § 4701(n).

If you do not read English well, send your service coordinator a letter saying that you need to get notices in your primary language. You may write the letter in your own language. Ask your service coordinator to put the letter in your regional center file.

See Supplement T for a sample letter.

The Department of Developmental Services has the following forms in other languages:

**Fair Hearing Process Brochure** — This tells you about your right to appeal and explains fair hearing procedures.

**Notice of Action** — This notice tells you about an action the regional center wants to take that affects your services. It also tells you about your right to appeal, **and** gives you contact information for OCRA, the Area Board, and Disability Rights California.

**Notification of Resolution** — Use this form if you resolve your issues and do not need a hearing.

**Fair Hearing Request** — Use this form when you want to have an informal meeting, mediation, or a fair hearing. (See Supplements U, V, and W.)

You can find these forms in Arabic, Armenian, Cambodian, Chinese, Farsi, Hmong, Korean, Russian, Spanish, Tagalog, and Vietnamese at:

[www.dds.ca.gov/complaints/complt\\_fh.cfm](http://www.dds.ca.gov/complaints/complt_fh.cfm).

## 7. What should I do if I get a Notice of Action?

Ask for an appeal immediately to protect your rights. If you did not appeal in time because you did not understand the notice, call your service coordinator immediately. Ask for written notice in a language that you can understand. The deadlines do not start until you get notice in a language you understand.<sup>19</sup>

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<sup>19</sup> **Disability Rights California** does not know of any court case that discusses the effect of an inadequate notice on when you can appeal under the Lanterman Act. But this issue has been addressed in other administrative systems: *Morales v. McMahon* (1990) 223 Cal.App.3d 184 (adequate notice required before time to appeal starts to run) and *Reynolds v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 726 (statute of limitations tolled until the legally required notices are given). See also Item 99-12-01A

If you get notice that uses a language you do not understand, you can file a complaint, called a Section 4731 Complaint.

See Supplement X and Questions 11 and 40.

## **8. Does the regional center have to give me notice before it changes my services to protect my health and safety?**

No. If the regional center needs to change your services to protect your health and safety, they do not have to tell you in advance. The regional center has **10 days** to give you notice after they make the change.<sup>20</sup> The deadline for you to appeal starts when you receive the notice, not when your services change.

In all other situations, the regional center must give you notice 30 days before it changes or stops your services.

See Question 3.

## **9. What are common notice problems?**

Notice problems are common. Sometimes the regional center tells you at an IPP meeting that they decided to change a service, but they do not send you written notice. Other times, the written notice they send is not complete.

Here is an example of incomplete notice:

“You have been determined to be ineligible for regional center services because you do not have a developmental disability as defined in Welfare and Institutions Code section 4512(a).”

This example does not give you the information you need. It does not tell you what the law says (most people do not know what Welfare and Institutions Code section 4512(a) says). It does not say why you do not have a developmental disability or what documents the regional center used to make its decision.

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from the State Hearings Division Notes from the Training Bureau concerning the consequences of sending a notice in English to someone who does not read English, [www.dss.cahwnet.gov/shd/ViewNotesb\\_1649.htm](http://www.dss.cahwnet.gov/shd/ViewNotesb_1649.htm).

<sup>20</sup> § 4710(f).

Even if your notice is incomplete, ask for an appeal as soon as possible. This protects your right to appeal and may allow you to continue your services during your appeal.

When you appeal, you can say that you did not get “adequate notice.” You can also file a Section 4731 Complaint.

See Supplement X and Questions 11 and 40.

## **10. Can I still get my current services during my appeal?**

Yes. You have the right to continue the services that the regional center wants to change while you wait for your appeal. This very important right is called “aid paid pending.” But, you must ask for your appeal within 10 days of getting the notice.<sup>21</sup> If you wait more than 10 days, you will not still get your current services during your appeal.

## **11. Is there a time limit on the services in my IPP?**

All of the services in your IPP are meant to be reviewed periodically.<sup>22</sup> This means that you and your regional center must review your service needs at scheduled times. It does not mean that your services “expire”. Some regional centers put time limits in your IPP and stop services on that day without notice. This violates your right to notice and appeal.

Some regional centers put time limits on services in forms called “purchase of service authorization”. This is an internal document. It has no control over services you have a right to.

If possible, do not agree to have time limits in your IPP. If there is an expiration date in your IPP, that is not notice. Disability Rights California believes the regional center still cannot stop or change a service without giving you a notice of action that tells you about your right to appeal.<sup>23</sup>

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<sup>21</sup> § 4715.

<sup>22</sup> § 4646.5(a)(6).

<sup>23</sup> One Administrative Law Judge says that the “regional center cannot avoid the requirement that ‘services that are being provided pursuant to a recipient’s individual program plan shall be continued during the appeal procedure.’ The fact that the IPP expressly limited the period during which regional center agreed to provide the service does not change the fact that the service was ‘being provided pursuant to...[the]

You must have an IPP meeting before your current IPP expires to discuss your services. The IPP meeting must take place early enough so that the regional center can send you notice at least 30 days before it wants to change a service.<sup>24</sup>

Keep track of your IPP and services. Ask the regional center for a meeting to discuss if services you still need are the services in your IPP. If you cannot agree at your IPP meeting, the regional center must give you written notice. After you get the notice, you have **10 days** to ask for an appeal if you want your services to continue until the appeal is over.<sup>25</sup>

If you agree to end a service, the regional center does not have to give you written notice.

## **12. What if the regional center's notice is late or does not have the required information?**

If the regional center refuses to provide a service or changes a service without giving you notice, you can appeal. You do not need a notice to appeal.

Ask for an appeal as soon as possible. This protects your right to appeal and your right to continue services during the appeal. Your letter should say that you did not receive "adequate notice."

See Supplement S for time lines for appeals.

Remember: It is important to ask for your appeal right away so your services can continue. Later, you can file a complaint (called a Section 4731 Complaint) about the problems with the notice.

See Question 40 and Supplement X for more on Section 4731 Complaints.

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recipient's individual program plan.' An express limit can trigger a periodic or early review of whether a consumer is entitled to have a service continue, but it cannot nullify the aid-paid-pending requirement. When a consumer appeals a reduction or change in service, the aid-paid-pending requirement entitles the consumer to have the service continue pending a resolution of the dispute." See OAH Case No. N-2005090555, p. 8. Although administrative hearing decisions do not have precedential effect, the decision's reasoning and analysis can be, as here, persuasive.

<sup>24</sup> § 4710.

<sup>25</sup> § 4715.

### **13. Who can appeal the regional center's decision?**

These people can ask for an appeal:

- You, if you are applying for or receiving services and supports.
- Your legal guardian, conservator, or representative.
- Your parent, guardian, or other person with legal custody if you are a minor.<sup>26</sup>

### **14. How do I file an appeal?**

When the regional center sends you its notice of action, they must also give you the appeal forms.<sup>27</sup> If you ask to appeal in person, the person you ask must give you the appeal forms. That person must ask you if you want help filling out the form, and if you do, they must help you.<sup>28</sup>

It is a crime for a regional center employee to refuse to give you the appeal forms or refuse to help you fill them out.<sup>29</sup> If the regional center will not give you written notice, you can still appeal using the "Fair Hearing Request" form. You can write on the Fair Hearing Request form that the regional center refused to give you the form or to help you.

See Supplement V for a *Fair Hearing Request* form.

See Questions 3 and 11.

### **15. What are my rights in the appeal process?**

You have a right to:

- Be at all meetings that are part of the appeal.
- Present written or spoken evidence.
- Have witnesses testify for you.
- Cross-examine the regional center's witnesses.
- Speak for yourself at the hearing.

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<sup>26</sup> § 4703.

<sup>27</sup> § 4710.5(b).

<sup>28</sup> § 4710.5(c).

<sup>29</sup> § 4710.5(c).

- Have an advocate, lawyer, or someone else represent you.
- See the regional center's records about you and your case.
- Have an interpreter.<sup>30</sup>

The regional center must give you a written explanation of your rights. They should also give you written information about where to get advocacy help, such as from your Area Board, Clients' Rights Advocate and Disability Rights California.<sup>31</sup>

## **16. Can someone help me appeal?**

Yes. If anyone thinks that your rights or interests will not be protected during your appeal, they should tell your Clients' Rights Advocate and Area Board. The Area Board can appoint someone to help you in your appeal. Your authorized representative and the regional center must get copies of the appointment.<sup>32</sup>

See Chapter 5, Questions 7-8 for more information on Area Boards.

## **17. Can the Clients' Rights Advocate help me appeal?**

Yes. The CRA's job is to help protect your legal rights, your right to services and your human rights. This includes helping you in appeals against the regional center and other agencies.<sup>33</sup>

But, CRAs can only take on a limited number of cases. Before they decide to take your case, the CRA looks at:

- if you can represent yourself,

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<sup>30</sup> § 4701(f)(1)-(5).

<sup>31</sup> § 4701(g).

<sup>32</sup> § 4705(e).

<sup>33</sup> See § 4433(d)(1). See also Cal. Code Regs., tit. 17, § 50540, which allows you or your representative to file a complaint with the Clients' Rights Advocate (CRA) if you believe that any of your rights have been abused, punitively withheld, or improperly denied. The CRA must investigate your complaint within 10 working days of receiving it, and send you a proposed resolution in writing. If you are not satisfied with the CRA's proposed resolution, notify the CRA. Within 5 working days, the CRA must refer you to the director of the state hospital or the regional center for your service area. If the director of the state hospital or regional center does not resolve your complaint to your satisfaction within 10 working days, the director must refer you to the Department of Developmental Services' clients' rights officer for a final administrative decision.

- if you have other resources available,
- if you have a strong case, and
- if the CRA is available.

Even if the CRA cannot take your case, they can talk with you about your case.

### **18. Does the Clients' Rights Advocate work for the regional center?**

No. There is a Clients' Rights Advocate (CRA) at every regional center. But, CRAs do not work for the regional centers, even if their office is there.<sup>34</sup>

The Office of Clients' Rights Advocacy (OCRA) is a statewide office run by Disability Rights California, through a contract with the California Department of Developmental Services (DDS). OCRA employs a Clients' Rights Advocate (CRA) at each regional center.

### **19. Who can help me if I live in a Developmental Center?**

There is a CRA at every Developmental Center (DC). There is also a Volunteer Advocacy Services Coordinator at every DC. The Volunteer Advocacy Services Coordinator and volunteers can help you at IPP meetings and when community placement is being considered. If you do not have a representative, the Area Board can appoint a representative for you.

CRAs at developmental centers are not employees of the developmental center. DDS contracts with the State Council on Developmental Disabilities so that the Area Boards provide clients' rights advocacy services to people who live in Developmental Centers (DCs).

CRAs also can investigate any suspected abuse, unreasonable denial, or withholding of rights. CRAs make sure the laws are being followed in licensed facilities.<sup>35</sup>

See Chapter 1, Question 4 for more on CRAs.

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<sup>34</sup> § 4433.

<sup>35</sup> § 4433(d)(2).

See Supplement BB for a list of Clients' Rights Advocates and Volunteer Advocacy Service Coordinators at DCs.

## 20. Do I have the right to see my regional center records?

Yes. If you ask to see your records, the regional center has **3 working days** to show them to you.<sup>36</sup> You have a right to see all the records in your regional center file, even records from outside agencies or people.<sup>37</sup> If you ask for assistance, the regional center must help you understand your records.<sup>38</sup>

It is important for you to review your file and ask for copies of the records you need before your hearing.

## 21. What are the steps in the appeal process?

1. **Ask for a Hearing** – You can ask for a hearing in person, over the phone or in writing.
2. **Regional Center Response** – The regional center must send you a notice that acknowledges your request for a hearing.<sup>39</sup> If you did not receive a notice from the regional center, they must send you one with all the information required for an “adequate notice.”<sup>40</sup>
3. **Fair Hearing Request Form** – When you notify the regional center that you want to ask for a fair hearing, the regional center must give you a fair hearing request form. If you need help filling out the form, the regional center must help you.<sup>41</sup>

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<sup>36</sup> §§ 4726, 4728. The law says that you have the right to access your files before the voluntary informal meeting. See § 4710.7(d).

<sup>37</sup> “Record” means any piece of information that a service agency has that is directly related to a person who has, or is believed to have, a developmental disability. It includes handwritten information, printed materials, tapes, film, microfilm, or other information. § 4725(b). Disability Rights California believes that you should have access to these materials if you are requesting access to records under § 4514 and if you are trying to decide if you want to ask for a fair hearing.

<sup>38</sup> § 4728.

<sup>39</sup> §§ 4710.6(a)-(c).

<sup>40</sup> §§ 4710.6(a)-(c). Also, see questions 3 through 8 above.

<sup>41</sup> § 4710.5(b) & (c).

4. **Informal Meeting** – If you want to have an informal meeting, you must agree with the regional center on a time for the meeting.<sup>42</sup> The regional center must send you a written notice to confirm the date, time, and place of your informal meeting. The notice must also say that you can refuse to have an informal meeting.<sup>43</sup>
5. **Mediation** – Mediation is when an independent, trained professional, called a mediator, helps you come to an agreement that is fair and acceptable for you and the regional center. We recommend mediation. Both you and the regional center can decide not to mediate. If you ask for mediation in writing, the regional center has **5 working days** to decide if they want mediation.<sup>44</sup> Even if you choose not to have mediation, you still have a right to a fair hearing. It is your choice.<sup>45</sup>
6. **Fair Hearing** – You have a right to a hearing before an Administrative Law Judge (ALJ) no more than **50 days** after the regional center receives your request for hearing.<sup>46</sup> If you or the regional center asks, and has a good reason, the ALJ may let the hearing be later. (See Question 26.)
7. **Fair Hearing Decision** – The judge must make a decision no more than 10 working days after your hearing ends. This cannot be more than 80 days after you ask for a hearing.<sup>47</sup> If the hearing is about rights or services under the Medi-Cal Home and Community Based Waiver, the Department of Health Services reviews the decision. They can accept the judge’s decision or make a new decision. They have to do this no more than 90 days after you ask for a hearing.<sup>48</sup> See Chapter 13 for information on the DD Waiver.

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<sup>42</sup> § 4710.6(a).

<sup>43</sup> § 4710.6(b).

<sup>44</sup> § 4711.5(a).

<sup>45</sup> § 4710.9(b).

<sup>46</sup> § 4712(a).

<sup>47</sup> § 4712.5(a).

<sup>48</sup> § 4712.5(c).

**8. Appeal a Fair Hearing Decision** – If you disagree with the hearing decision, you have 90 days to file a Writ of Administrative Mandamus in superior court.<sup>49</sup>

## **22. What happens at an informal meeting?**

An informal meeting is a meeting between you and the regional center director. You do not have to have an informal meeting if you do not want to. Your representative can be there, if you have one.<sup>50</sup> In the meeting, you try to solve your dispute with the regional center. If you cannot come to an agreement, you still can better understand the dispute and try to agree on some points.

After the meeting, the regional center has **5 working days** to send you a written decision.<sup>51</sup> The decision must list every issue in the appeal and make a decision on each one. It also must state the facts, laws, regulations and policies the regional center used to make its decision. It also must tell you how to appeal the decision.<sup>52</sup>

If you agree with the informal decision, you can withdraw your request for a hearing. Get the form “Notification of Resolution” from the regional center. The decision goes into effect 10 days after the regional center gets your “Notification of Resolution.”<sup>53</sup>

See Supplement W for the Notification of Resolution form.

If you disagree with the informal decision, you can try mediation or have a fair hearing.<sup>54</sup>

## **23. What if I do not speak English?**

The informal meeting is in English. If you do not speak English the regional center must provide and pay for an interpreter.<sup>55</sup>

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<sup>49</sup> § 4712.5(a).

<sup>50</sup> § 4710.7.

<sup>51</sup> § 4710.7(b).

<sup>52</sup> § 4710.7(c).

<sup>53</sup> § 4710.9(a).

<sup>54</sup> § 4710.9(b).

<sup>55</sup> § 4710.8(c).

They must also provide an interpreter if someone who goes to the meeting with you (like a parent or guardian) does not speak English. The interpreter must be able to translate competently and be acceptable to the person who needs the interpreter and to the regional center director.

## 24. What is mediation?

Mediation is part of the regional center appeal process.<sup>56</sup> DDS currently hires mediators through the Office of Administrative Hearings (OAH) who are trained in mediation skills. The trained mediators hold meetings with you and the regional center to try and agree on some or all of your issues. These meetings are called mediations. You (or the regional center) can say that you do not want mediation. If that happens, you will have a hearing.<sup>57</sup> If you and the regional center agree to mediation, it must take place no more than **30 days** after the regional center receives your appeal request.<sup>58</sup>

Mediators are trained to help people look at new or different solutions to an issue. They sit down with you and the regional center to try to solve your disagreement. Sometimes mediators meet separately with you and the regional center, and also meet with both of you together. Mediators do not make decisions in the case. They cannot force you to do anything.

Many disputes are settled in mediation. When you go to mediation, be as prepared as possible:

- Understand what all of the documents in your case say, and
- Know what your witnesses might say at your hearing.

This makes it easier to decide the type of agreements you might want to make in mediation. Even if you do not come to an agreement in mediation, you will have already done some of the preparation for a hearing.

If you and the regional center are able to come to an agreement in mediation, you should cancel (withdraw) your request for a hearing. Get the form "Notification of Resolution" from the regional center. The decision

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<sup>56</sup> § 4707.

<sup>57</sup> §§ 4710.9(b); 4711.5(b).

<sup>58</sup> § 4711.5(c)(2). If you choose mediation, you may have to agree to extend the deadline for the hearing and the hearing decision.

goes into effect 10 days after the regional center receives your Notification of Resolution.”<sup>59</sup>

See Supplement W for the Notification of Resolution form.

See Chapter 5.

## **25. Who should try mediation?**

Everyone should seriously consider mediation. Mediation is a good idea because it gives you and the regional center another chance to reach an agreement. However, it does take some time. Other than that, you have nothing to lose. The mediator is independent, and will try to help you reach an agreement. Even if mediation does not work for you, you will have more information about the regional center’s case. That information can be helpful in your fair hearing.

If you think there is no hope for an agreement, you can decide NOT to mediate. (This is called waiving mediation.) But, many people who think there is no hope for agreement end up reaching an agreement in mediation.

If you (or the regional center) waive mediation, make sure you are prepared for your hearing. Your hearing may be scheduled sooner than if you go to mediation.

## **26. What if mediation fails or we do not mediate?**

The next step is a hearing with an Administrative Law Judge (ALJ).<sup>60</sup> An ALJ is sometimes called a hearing officer. DDS contracts with the state Office of Administrative Hearings (OAH) to hold the hearings. OAH hires the ALJs who hold your hearing.

## **27. When will the hearing take place? Can I postpone my hearing?**

You must have a hearing no more than **50 days** after the regional center receives your appeal. If you try mediation, your hearing may be later. You

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<sup>59</sup> § 4711.7(a).

<sup>60</sup> §§ 4710.9(b); 4711.7(b).

(and the regional center) can ask the judge to postpone the hearing for a good reason. This is called asking for a “continuance.”<sup>61</sup>

You can ask to postpone the hearing if:

- A close relative (like your spouse, parent, child, etc.) dies. Or if your authorized representative, legal guardian or conservator dies.<sup>62</sup>
- You are sick or your authorized representative is sick.<sup>63</sup>
- There is an emergency. For example, if your representative has to go to court, or has a scheduling conflict beyond his/her control.<sup>64</sup>
- Your evidence or witnesses are unavailable, and not having the witnesses or evidence would badly hurt your case.<sup>65</sup>

## 28. Where will the hearing take place?

Your hearing should be at a time and place that is convenient for you. You and the regional center must agree on the location for your fair hearing.<sup>66</sup> Most hearings are at the regional center. You can ask to have the hearing at the Office of Administrative Hearings<sup>67</sup> or somewhere else.<sup>68</sup>

## 29. Do I have to tell the regional center what documents and witnesses I will use at the hearing?

Yes. At least **5 calendar days** before the hearing, you and the regional center must exchange lists of witnesses and copies of the documents you

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<sup>61</sup> § 4712.

<sup>62</sup> § 4712(a)(1).

<sup>63</sup> § 4712(a)(2).

<sup>64</sup> § 4712(a)(3).

<sup>65</sup> § 4712(a)(4).

<sup>66</sup> § 4712(e).

<sup>67</sup> OAH has offices in Sacramento, Oakland, downtown Los Angeles, and San Diego. OAH also has special education offices in Van Nuys and Irvine. Some people involved in appeals say that using an OAH office feels more “neutral” than using the regional center offices.

<sup>68</sup> If you need your doctor to testify at the hearing but cannot afford to pay him or her, or your doctor cannot afford to be away from his or her patients, think about scheduling the hearing where the doctor is – with the doctor’s permission of course – so your doctor can pop in to testify between seeing patients.

want to use in the hearing.<sup>69</sup> That means both you and the regional center should have the documents and witness list 5 days before the hearing. The witness list must include a short description of what each witness will testify about. The judge will not let you present witnesses and documents if you do not tell the regional center about them 5 days before the hearing.

### **30. How should I choose the documents and witnesses for my hearing?**

First review your regional center file. See Question 19 about how to review your file.

Get copies of these types of documents:

- Documents that support your case.
- Documents that talk about your needs and your background information.
- Documents that support the regional center's position. They will help you figure out how to respond.
- You should also try to get:
- Documents from places other than your regional center file that will help your case (for example, medical records, school records, social security records, etc.).<sup>70</sup>

Think about what arguments the regional center will make. How will you respond? Look at decisions in other hearings with similar issues. You can find them online at

[www.oah.dgs.ca.gov/DDS+Mediation+and+Hearings/search.htm](http://www.oah.dgs.ca.gov/DDS+Mediation+and+Hearings/search.htm).

### **31. What will the fair hearing be like?**

Your fair hearing is not as formal as a hearing in a court. But, it is much more formal than an informal hearing or mediation.

The hearing is recorded on audio tape. The audio tape gives a clear record of what everyone says.<sup>71</sup> An Administrative Law Judge (ALJ) from the

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<sup>69</sup> § 4712(d).

<sup>70</sup> For example, evidence from doctors, physical and occupational therapists, neuropsychologists, medical records, records from the Social Security Administration, special education records from schools, etc.

Office of Administrative Hearings (OAH) is in charge of the hearing. The ALJ listens to the witnesses who give answers to questions from you and the regional center under oath.

At a fair hearing, you have the right to:

- Present written and spoken evidence.
- Call witnesses to present your side of the case. There are two types of witnesses. “Lay witnesses” are people who know the facts that help your case. “Expert witnesses”, like doctors and psychologists, can give an opinion using their special training and experience.
- Have an advocate, lawyer, or other representative in the hearing. They can present your case or help you prepare your case.
- Have an interpreter if you or your witnesses do not speak English.<sup>72</sup>

### **32. What are the steps in the hearing?<sup>73</sup>**

1. **Introduce Documents or Evidence** – The documents you exchanged with the regional center will be introduced into evidence. You can ask the ALJ permission to add evidence or witnesses that you did not send to the regional center in time.<sup>74</sup> The ALJ can say yes or no to your request.<sup>75</sup> Bring 3 copies of your documents: one for the ALJ (evidence), one to show to witnesses, and one for yourself.

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<sup>71</sup> § 4712(k).

<sup>72</sup> §§ 4712(h); 4701(f).

<sup>73</sup> We recommend you visit the Office of Administrative Hearings web site at: [www.oah.dgs.ca.gov/default.htm](http://www.oah.dgs.ca.gov/default.htm). Click on “DDS Mediations and Hearings” on the left side of the webpage. When you are at the DDS part, click on “Lanterman Act Fair Hearings” under “Brochures/Information.” The “Lanterman Act Fair Hearings” explains what will happen at the hearing. You can also find general information about the hearing process and tips for preparing for a hearing at the website for the Oregon Office of Administrative Hearings: [oah.state.or.us/repyourself.cfm](http://oah.state.or.us/repyourself.cfm). See also “The Fair Hearing Process for Consumers Age 3 years and Older” available at DDS’ website: [www.dds.cahwnet.gov/complaints/pdf/FairHearingBrochure11-01.pdf](http://www.dds.cahwnet.gov/complaints/pdf/FairHearingBrochure11-01.pdf).

<sup>74</sup> To minimize the regional center’s argument of prejudice from a surprise document or witness, give the regional center the document and name of witness with a statement about the area of testimony as soon as you can before the hearing. The ALJ is more likely to allow you to introduce a document that you provided 4 days before the hearing rather than a document the regional center first learned about at the hearing.

<sup>75</sup> § 4712(d).

2. **Opening Statements** – After you introduce your documents into evidence, you can make an opening statement. Your opening statement says what your disagreement is about, and what you want the ALJ to order.
3. **Witnesses** – After opening statements, the ALJ listens to the witnesses' testimony. The regional center's witnesses go first.<sup>76</sup> This gives you a chance to hear them explain why they are denying your service. This will help you know how to answer what they say with your witnesses, testimony and evidence. You will have a chance to ask the regional center's witnesses questions. This is called "cross-examination". Then, you can put on your case and ask your witnesses questions. This is called "direct examination". The regional center also gets to ask your witnesses questions.
4. **Closing Statements** – After the witnesses finish testifying, the ALJ can let you and the regional center make closing statements. The closing statement gives you the chance to talk to the ALJ about your evidence, and how it supports your case. You do not have to give a closing statement.
5. **Written Closing Briefs** – During the hearing, you may realize that the ALJ does not have all the information to make an accurate decision. If so, you can ask the ALJ to keep the record open. This lets you give the ALJ more documents after the hearing. You can also ask to keep the record open so you can submit a closing brief. A written closing brief gives the ALJ the information and facts you presented and sets out the law that supports your case. The ALJ can say yes or no to this request.

### **33. Can I force someone to be a witness?**

Yes. Call the Office of Administrative Hearings (OAH) and ask for a subpoena (pronounced "sub-PEE-NA").<sup>77</sup> You should get a subpoena for anyone whose testimony is very important to your case. That way, if that

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<sup>76</sup> § 4712(j).

<sup>77</sup> You can see the OAH hearing calendar, previously issued hearing decisions and forms online at [www.oah.dgs.ca.gov/default.htm](http://www.oah.dgs.ca.gov/default.htm). You can also print a copy of the OAH subpoena form at [www.documents.dgs.ca.gov/oah/forms/oah1-subpoena.pdf](http://www.documents.dgs.ca.gov/oah/forms/oah1-subpoena.pdf).

person cannot come to the hearing you have a good reason to ask for a postponement (continuance). If you want the person to bring certain documents to the hearing, ask OAH for a subpoena duces tecum. The back of the subpoena tells you how to serve the witness. Expert witnesses, like doctors, may charge a fee to testify. If they do, you are the person who has to pay that fee.<sup>78</sup>

### **34. When will I get the Administrative Law Judge's decision?**

After your hearing, the ALJ has **10 days** to write a decision. The decision must be made no more than **80 days** after you requested your appeal.<sup>79</sup>

The ALJ's decision must:

- Be written in simple, everyday language
- Include a summary of the facts
- Include a statement about the evidence the ALJ used to make the decision<sup>80</sup>
- Include a decision on every issue or question that was in the hearing request and presented during the hearing
- State the laws, regulations and policies that support the ALJ's decision.

### **35. Is the ALJ's decision final?**

It is the final decision, but if disagreement was about a service under the Medi-Cal Home and Community-Based Waiver program,<sup>81</sup> it is only a "proposed" decision. The Director of Health Services makes the final

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<sup>78</sup> If the doctor or other expert cannot afford to be away from his or her work or patients or you cannot afford the fee, you can ask the OAH for permission for your witness to testify by telephone. This is a common practice in Medi-Cal fair hearings administered by the Department of Social Services' Fair Hearing Division. Send your request to the OAH presiding judge, and send a copy to the regional center. Your request should include your case number. Contact OAH at (916) 341-6990 about where to fax or mail your request. If you run into any problems getting OAH to agree to telephone testimony, contact Disability Rights California or OCRA immediately.

<sup>79</sup> § 4712.5(a).

<sup>80</sup> § 4712.5(b).

<sup>81</sup> See Supplement D. If the ALJ was able to rule in your favor under the Lanterman Act and there were no questions under the Home and Community Based Services Waiver, the ALJ's decision is the final decision.

decision. The director must follow federal Medicaid law.<sup>82</sup> Medicaid law gives you a right to another hearing separate from the regional center fair hearing described in this chapter.

If the Director agrees with the ALJ's decision, you will get a copy of the ALJ's decision with a stamp that says "adopted". If the Director makes a new decision, you will get a copy of it from the Department of Health Care Services along with the ALJ's proposed decision.<sup>83</sup>

You have the right under Medicaid to get a decision on your appeal within **90 days** after you asked for the appeal.

Exception: If you agree to an extension, the appeal process can take longer.<sup>84</sup>

### **36. Can I appeal the ALJ's final decision?**

Yes. If you do not agree with the ALJ's final decision, you can appeal to the superior court for your county. The regional center may also appeal a decision, unless it involves rights under the Medi-Cal waiver. You must ask for the appeal within **90 days** after you get the administrative hearing decision.<sup>85</sup> To do this, you will have to "file" appeal papers in the superior court for your county.

Going to court is complicated. There are many steps and difficult legal terms. You will probably need a lawyer. Your appeal is called a *writ of administrative mandamus* or *mandate*.<sup>86</sup>

In your appeal, you can ask the superior court to order a state agency, like DDS, to set aside its decision or take other actions. You should contact a lawyer for help. Disability Rights California may be able to help you or make suggestions.

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<sup>82</sup> The Director of Health Care Services may also give someone else the authority to make the final decision. § 4712.7. The law says that one single state agency must be in charge of the final decisions for the state. In California, that agency is the Department of Health Care Services. See 42 C.F.R. § 431.10(e).

<sup>83</sup> § 4712.5(d).

<sup>84</sup> 42 C.F.R. § 431.244(f).

<sup>85</sup> § 4712.5(a).

<sup>86</sup> California Code of Civil Procedure § 1094.5

### 37. If I appeal the ALJ's final decision, will I get a new fair hearing?

No. When you appeal an unfavorable ALJ decision to the superior court, the court will only be looking at the record from your administrative hearing.<sup>87</sup> That is why it is important to get all your information into the administrative hearing record. Usually, you cannot give the court new information.<sup>88</sup> The court will only consider two issues:

1. Whether the trial or hearing was fair, and
2. Whether there was a "prejudicial abuse of discretion"?<sup>89</sup> This means, for example, that the ALJ used the wrong legal standards to make the decision. It could also mean that the ALJ made a decision that is not based on the findings, or made findings that are not supported by the evidence.

If the ALJ's decision was not in your favor because you did not have enough evidence, you will not be able to enter new evidence in court.

### 38. Can I still get services during my appeal in superior court?

If the ALJ decided that the regional center can end the service(s) that you were receiving during your appeal, you will continue to get those service for **10 days** after you get the ALJ's decision.<sup>90</sup>

If you do not want your services to end after 10 days, you must file your appeal and ask the court for a "stay" within **10 days**.<sup>91, 92</sup> The court will not give you a stay if it believes it is "against the public interest."<sup>93</sup>

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<sup>87</sup> To ask the superior court to review your hearing, you must file a Petition for a Writ of Administrative Mandamus, Calif. Code Civ. Proc. § 1094.5.

<sup>88</sup> "Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing," the court may allow the evidence to be introduced. Calif. Code Civ. Proc. § 1094.5(f).

<sup>89</sup> Calif. Code Civ. Proc. § 1094.5(b).

<sup>90</sup> § 4715(a)(3).

<sup>91</sup> Calif. Code Civ. Proc. § 1094.5(g).

<sup>92</sup> §§ 4715(a)(3); 4715(c).

<sup>93</sup> "However, no stay shall be imposed or continued if the court is satisfied that it is against the public interest." Calif. Code Civ. Proc. § 1094.5(g).

**39. If I win in superior court, will the regional center have to pay for my lawyer?**

Maybe. No one has ever asked the court to award lawyer's fees for an appeal of an administrative hearing in a regional center matter. But, there are three situations where Disability Rights California believes you have the right to lawyer's fees:

If your case involves rights under the Medi-Cal Waiver, you can ask for lawyer's fees under Welf. & Inst. Code § 10962.

If your claims were about a violation of your federal right to due process and the regional center acts on behalf of the state ("state actor" for purposes of

42 U.S.C. § 1983), you can ask for lawyer's fees under 42 U.S.C. § 1988.

If you go to court to get the regional center and state to comply with a fair hearing decision, you can ask for lawyer's fees under 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

**40. What if the regional center does not follow the ALJ's decision?**

If you won your appeal and the regional center will not do what the ALJ ordered, they are violating your rights. If the regional center does not make sure that you get a service in your IPP, they are violating your rights.

The regional center or developmental center must give you a copy of the complaint procedure (commonly called 4731 Complaint) when you apply to the regional center or when you are admitted to the developmental center. The complaint procedure must be in a language you understand. You must also get a copy at every IPP meeting.<sup>94</sup>

File a Section 4731 Complaint against the regional center. See Question 40 for more about Section 4731 Complaints.<sup>95</sup>

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<sup>94</sup> § 4731(f).

<sup>95</sup> There is another way you can make the regional center follow the ALJ's decision: You can file a petition for writ of mandate (or a traditional mandamus) with the superior court for your county. (See California Code of Civil Procedure §1085.) That procedure allows you to ask the court to order the director of the regional center and the director of the Department of Developmental Services to follow the ALJ's decision or show up

## 41. What is a “Section 4731 Complaint”?

A “Section 4731 Complaint” is a legal procedure that you may follow if your rights have been violated or denied. You can file a section 4731 Complaint if the regional center does not follow the ALJ’s decision or if they do not make sure you get the services listed in your IPP.

A Section 4731 Complaint is not the same as a fair hearing appeal. You cannot file a complaint to solve a disagreement about the amount of services you get or the types of support in your IPP. A Section 4731 Complaint is only used if the regional center, developmental center, or service provider breaks the law or violates a regulation. For example, the regional center is breaking the law if:

- They do not provide services in your IPP, or
- They do not do what the ALJ decides.

You can file a Section 4731 Complaint against a regional center, developmental center, or a service provider (like community care facilities, day programs, or any transportation services hired by the regional center).<sup>96</sup>

To file your complaint, write to the director of your regional center. You can use Supplement Y at the end of this manual to find the name and address of the director of your regional center. There is also a list of regional center directors at: [www.dds.cahwnet.gov/rc/rclist.cfm](http://www.dds.cahwnet.gov/rc/rclist.cfm).

If you live in a developmental center, write to the director of your DC. To find the name and address of the director of your developmental center, go to: [www.dds.cahwnet.gov/devctrs/InfoAboutDC.cfm](http://www.dds.cahwnet.gov/devctrs/InfoAboutDC.cfm).

Your complaint can be a simple note to the director of the regional center. You can use Supplement X at the end of this manual as a guide. Or you can ask an advocate or lawyer to send them a letter.

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personally in court to explain why not. If you file a Section 4731 complaint and still the decision is not implemented, contact Disability Rights California or OCRA.

<sup>96</sup> § 4731(b).

## **42. What happens after I file my complaint?**

After you file a Section 4731 Complaint, the director of the regional center (or developmental center) must investigate and send you a written proposal to resolve the complaint. The director must do this within **20 working days** of receiving your complaint.<sup>97</sup>

If you do not agree with the director's proposal, write to the Director of the Department of Developmental Services (DDS) within **15 working days** of receiving the regional center director's proposal.<sup>98</sup> If you do not refer your complaint to DDS, the director's proposal goes into effect 20 working days after you get it.<sup>99</sup>

The director of DDS must send you a decision within 45 working days.

## **43. Can I file a Section 4731 Complaint for a group of people?**

Yes. If you complain about a practice that is widespread, you can file your Section 4731 Complaint on behalf of more than one consumer, a group or a class of consumer.<sup>100</sup> For example, if your developmental center never lets residents sign their IPPs, you can file a Section 4731 Complaint on behalf of all the residents of that DC.

## **44. Can I get information about other people's complaints or appeals?**

Yes. DDS publishes the subject and the decision for all of the Section 4731 Complaints filed every year. If you ask for this information, DDS must give it to you.<sup>101</sup>

For every appeal filed under Section 4700, DDS can tell you:<sup>102</sup>

- If the case was resolved through an informal meeting or mediation.
- If the consumer or the regional center refused to have an informal meeting.

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<sup>97</sup> § 4731(b).

<sup>98</sup> § 4731(c).

<sup>99</sup> § 4731(c).

<sup>100</sup> § 4731(c).

<sup>101</sup> § 4731(a).

<sup>102</sup> § 4731(d).

- The issue or issues involved in the case.
- The outcome of the case if there was a fair hearing.

You can also see hearing decisions on the Office of Administrative Hearings' web site, which is:

[www.applications.dgs.ca.gov/oah/ddsSearch/ddsSearch.asp](http://www.applications.dgs.ca.gov/oah/ddsSearch/ddsSearch.asp)

#### **45. What if I have a dispute with a service provider?**

Service providers, such as day programs and community care facilities, cannot get money from the state unless they have a written internal grievance procedure. Ask the service provider for a copy of its grievance procedure if you have a disagreement with a service provider.

If you have been evicted from a residential facility, see Chapter 7, Question 36 to learn more about your rights.

#### **46. Is there anyone else I can complain to about a service provider?**

If you have a problem with a licensed service provider or facility, complain to the licensing agency. The licensing agency is in charge of inspecting and licensing health care facilities to make sure they follow state and federal laws and regulations to protect the health, safety, and personal rights of the people in licensed facilities.

The Department of Health Care Services licenses most health care service providers and facilities, and the Department of Social Services licenses most Community and residential care providers. Each agency has its own complaint procedures. Ask the agency that licenses your service provider for a copy of its complaint procedure for the area where you live.

The service provider can tell you who licenses the facility. You can ask the Area Board or other advocacy organizations for help.