

DEPARTMENT OF DEVELOPMENTAL SERVICES

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September 28, 2022

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: DEPARTMENT DIRECTIVE 01-092822: EXTENSION OF WAIVERS,
 MODIFICATIONS AND DIRECTIVES DUE TO COVID-19

Pursuant to Governor Gavin Newsom's Proclamation of a State of Emergency dated March 4, 2020, and Governor Newsom's Executive Order N-25-20 issued on March 12, 2020, the Director of the Department of Developmental Services (Department) issued numerous Directives to regional centers waiving or modifying certain requirements of the Lanterman Developmental Disabilities Services Act, the California Early Intervention Services Act, and/or certain provisions of Title 17, Division 2 of the California Code of Regulations. Additionally, the Director of the Department issued several Directives pursuant to Welfare and Institutions (W&I) Code section 4639.6 to protect consumer rights, health, safety, or welfare, or in accordance with W&I Code section 4434.

Any waivers, modifications or directives contained in the following Directives are extended an additional 30 days from the current date of expiration, and specified sections within certain Directives are amended, as follows:

Date Issued	Directive Subject	Current Expiration Date	New Expiration Date
3/12/2020	<p><u>Department Directive on Requirements Waived due to COVID-19</u> <u>Amendments to Directive (in order by most recent amendment)</u></p> <ul style="list-style-type: none"> • <i>Section "Health and Safety Waiver Exemptions" will be deleted from the Directive, effective January 2, 2022, rescinding the delegation provided to regional center Executive Directors. Beginning January 2, 2022, any requests for rate adjustments for residential services and/or supplemental services in residential settings must be submitted to the Department through the standard health and safety waiver exemption process. (Amendment effective 1/2/2022)</i> • <i>The following paragraph under section "Health and Safety Waiver Exemptions" is hereby amended to read: "The Director of the Department delegates to regional center Executive Directors the authority to grant rate adjustments for residential services and/or supplemental services in residential settings, consistent with Welfare and Institutions Code sections 4681.6, 4689.8 and 4691.9, to protect a consumer's health or safety as a result of the outbreak of COVID-19. <u>Effective November 3, 2021, this delegation excludes rate adjustments for supplemental staffing in residential settings under Service Code 109. Regional centers must request the Department's approval for</u></i> 	9/28/2022	10/28/2022

"Building Partnerships, Supporting Choices"

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	<p><u><i>new and ongoing rate adjustments granted under this delegation for Service Code 109, as described in the Department’s August 27, 2021 correspondence, “Health and Safety Waivers due to COVID-19 State of Emergency.”</i></u> The waiver will require supplemental reporting to the Department. Instructions on the required supplemental reporting will be provided in a future directive. This delegation is necessary because the Department finds that high risk health conditions and fear of exposure to COVID-19 may cause consumers to forego activities away from their home resulting in a need for additional residential staffing or supplemental services. (Amendment effective 11/3/2021)</p> <ul style="list-style-type: none"> • For section “Early Start In-Person Meetings”, the waiver of in-person service coordination meeting requirements is hereby rescinded. <u><i>Trailer Bill AB 136</i></u>, effective July 16, 2021, amended Government Code section 95020(c)(1), allowing, until June 30, 2022, individualized family service plan meetings to be held by remote electronic communications when requested by the parent or legal guardian. Please note, <u><i>Trailer Bill SB 188</i></u>, effective June 30, 2022, amended Government Code section 95020(c)(1), extending the above referenced date to June 30, 2023. The waiver of in-person eligibility determination meeting requirements, as provided in this section is extended and remains effective until rescinded. (Amendment effective 7/29/2021) • Effective immediately, section “Early Start Remote Services” is hereby deleted from this Directive. Trailer Bill AB 136 amended Government Code section 95020(d)(5)(A), specifying that early intervention services may be delivered by remote electronic communications. (Amendment effective 7/29/2021) • Effective immediately, section “Lanterman Act In-Person Meetings” is hereby deleted from this Directive. Trailer Bill AB 136 amended Welfare and Institutions Code section 4646(f), allowing, until June 30, 2022, services and supports meetings, including individual program plan meetings, to be held by remote electronic communications when requested by the consumer or, if appropriate, the consumer’s parents, legal guardian, conservator, or authorized representative. Please note, <u><i>Trailer Bill SB 188</i></u>, effective June 30, 2022, amended Welfare and Institutions Code section 4646(f), extending the above referenced date to June 30, 2023. (Amendment effective 7/29/2021) 		

Date Issued	Directive Subject	Current Expiration Date	New Expiration Date
3/18/2020	<p>Department Directive on Requirements Waived due to COVID-19 and Additional Guidance <u>Amendments to Directive (in order by most recent amendment)</u></p> <ul style="list-style-type: none"> • The following sentence under section “Day Program Services” is hereby amended to read: <u>“To protect public health and slow the rate of transmission of COVID-19, services must be provided in alignment with the guidance issued by CDPH on March 16, 2020. Day program services must be provided in accordance with local county public health orders and relevant guidelines issued by the California Department of Social Services and/or California Department of Public Health.”</u> (Amendment effective 5/5/2021) • The following paragraph under section “Day Program Services” is hereby amended to read: <u>“The Department reiterates the March 12, 2020, directive to regional centers, “State of Emergency Statewide,” authorizing regional centers to pay vendors for absences that are a direct result of the COVID-19 outbreak, pursuant to Title 17 section 54326(a)(11). As indicated in the Department’s July 17, 2020, directive, “Providing and Claiming for Nonresidential Services During the State of Emergency,” retention payments to nonresidential providers for consumer absences are authorized through August 31, 2020. The Department will issue a directive outlining the structure for subsequent reimbursement of claims for providing nonresidential services using alternative service delivery approaches during the State of Emergency.”</u> (Amendment effective 8/10/2020) • Effective immediately, section “WIC §4731 Consumers’ Rights Complaints” is hereby deleted from this Directive. The 20-working day requirement for investigating and providing a written proposed resolution to a complainant pursuant to W&I Code section 4731(b) is reinstated. (Amendment effective 7/15/2020) • The following sentence under section “Home and Community-Based Services (HCBS) Self Assessments” is hereby amended to read: <u>“The requested completion date for provider HCBS self-assessment has been extended to June 30, 2020 August 31, 2020.”</u> (Amendment effective 6/8/2020) 	10/4/2022	11/3/2022
3/25/2020	<p>Department Directive 02-032520: Requirements Waived due to COVID-19 <u>Amendments to Directive (in order by most recent amendment)</u></p> <ul style="list-style-type: none"> • Effective immediately, section “Family Cost Participation Program and Annual Family Program Fee” is hereby deleted from this Directive. Trailer Bill SB 188, effective June 30, 2022, amended Welfare and 	10/11/2022	11/10/2022

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	<p><i>Institutions Code sections 4783 and 4785, suspending from July 1, 2022 to June 30, 2023, existing assessments, new assessments and reassessments for cost participation under the Family Cost Participation Program and collections associated with the Annual Family Program Fee. (Amendment effective 7/29/2022)</i></p> <ul style="list-style-type: none"> • <i>Effective April 15, 2022, the following paragraph under section “Lanterman Act Eligibility” is hereby amended to read: “If the regional center is reasonably certain the individual is eligible for regional center services, but due to the circumstances the regional center is unable to make a definitive determination, the regional center may determine the individual presumptively eligible. If following reassessment, a regional center later determines that an individual found eligible during the effective period of this directive does not have a developmental disability as defined in the Lanterman Act, the requirement that the regional center show the original finding of eligibility was clearly erroneous is hereby waived. <u>Effective April 15, 2022, regional centers may not determine a new individual presumptively eligible.</u>” (Amendment effective 4/15/2022)</i> • <i>Section “In-Home Respite Workers” will be deleted from this Directive, effective May 31, 2021. (Amendment effective 5/31/2021)</i> • <i>The following paragraph under section “In-Home Respite Workers” is hereby amended to read: “To increase available workforce and support consumers and families at home, the Department waives Title 17 section 56792(e)(3)(A) requirements for in-home respite workers to possess first aid and cardiopulmonary resuscitation training prior to employment when the consumer receiving services does not have chronic or presenting health concerns. <u>Training must be obtained within 30 days of starting work.</u>” (Amendment effective 7/15/2020)</i> 		
4/15/2020	<p><u>Department Directive 01-041520: Requirements Waived due to COVID-19 Amendments to Directive (in order by most recent amendment)</u></p> <ul style="list-style-type: none"> • <i>Section “Residential Facility Payments” will be deleted from this Directive, effective May 1, 2021. (Amendment effective 5/1/2021)</i> • <i>Section “EBSH/CCH Registered Behavior Technician Certification” will be deleted from this Directive, effective January 10, 2021. (Amendment effective 1/10/2021)</i> • <i>The following paragraph under section “Residential Facility Payments” is hereby amended to read: “The Department hereby modifies any requirements of the Lanterman Act or Title 17 regarding payments to a residential facility when a consumer is temporarily</i> 	10/2/2022	11/1/2022

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	<p><i>absent. If the temporary absence from the facility is for the purpose of preventing or minimizing the risk of exposure to COVID-19 and the regional center is in agreement that the absence is related to this purpose, the regional center shall continue to pay the established rate as long as no other consumer occupies the vacancy or until it is determined the consumer will not return to the facility and the facility retains and continues to pay staff during this time. Any claims made for these absences are subject to audit and review. <u>Regional centers shall report to the Department by December 15, 2020, all current approved payments for temporary absences in accordance with this section. The Department will issue a subsequent communication regarding the process and format for reporting.</u> (Amendment effective 12/1/2020)</i></p> <ul style="list-style-type: none"> <i>• The following paragraph under section "Vendor Fiscal Audits" is hereby amended to read: "The requirements of Article III, Section 9, paragraph (c) of the Department's regional center contract are waived for Fiscal Year 2019-20. To the extent feasible, regional centers shall continue to conduct fiscal audits in accordance with this paragraph." (Amendment effective 7/15/2020)</i> <i>• The following sentence under section "Home and Community-Based Services (HCBS) Final Rule Compliance Information" is hereby amended to read: "Regional centers shall post this information on their websites by July 1, 2020 <u>August 31, 2020.</u>" (Amendment effective 6/8/2020)</i> 		

The following Directive is hereby rescinded:

Date Issued	Directive Subject
3/30/2020	<p>Department Directive 01-033020: Additional Participant-Directed Services <i>Effective September 16, 2022, California Code of Regulations, Title 17 section 58886 was amended to add personal assistance, independent living services and supported employment to the list of participant-directed services. Information on the regulatory changes can be found on the Department's website here: Participant-Directed Services Regulations</i></p>

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The following Directive will be rescinded, effective October 3, 2022:

Date Issued	Directive Subject
6/15/2020	Department Directive 01-061520: Extension of Early Start Services

The extension of time for these Directives continues to be necessary to protect public health or safety and to ensure delivery of services. All COVID-19 related directives and guidance issued by the Department can be found at: www.dds.ca.gov/corona-virus-information-and-resources.

If you have questions regarding this Directive, please email DDSC19Directives@dds.ca.gov.

Sincerely,



NANCY BARGMANN
Director

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