

DEPARTMENT OF DEVELOPMENTAL SERVICES

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September 13, 2018

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: INSTRUCTIONS FOR REQUESTING HEALTH AND SAFETY WAIVER EXEMPTIONS

This letter supersedes the January 6, 2017, correspondence sent to regional center Executive Directors, which provided instructions for submitting Health and Safety (H&S) Waiver Exemption requests to the Department of Developmental Services (Department). Welfare & Institutions (W&I) Code sections 4681.6, 4648.4(b), 4681.5, 4684.55, 4689.8, 4691.6 and 4691.9 authorize the Department to approve exemptions to rate freezes for the purpose of mitigating risks to consumer health and safety.

Budget Trailer Bill, Assembly Bill 107 (Chapter 18, Statutes of 2017), required the Department to convene a stakeholder workgroup to consider simplified processes for providers seeking H&S rate adjustments. The Department conducted stakeholder meetings in Northern and Southern California that consisted of representatives, as specified in the Budget Trailer Bill. These stakeholder meetings provided the Department with valuable input and recommendations for improving and streamlining the H&S waiver exemption process, including the development of a standardized waiver request template for use by regional centers and service providers.

In response to the recommendation for a standardized waiver request template, the Department will be utilizing a new template format. Instructions for the template are included as Enclosure 1. The template is Enclosure 2. Understanding that this is a new tool and adjustments may be needed, the Department encourages regional centers and vendors to provide input and recommendations for improvement, within 90 days from the date on this letter.

The purpose of this correspondence is to provide a detailed description of the information the Department must receive to consider an exemption request in the timeliest manner possible. The following documentation must be submitted to the Department:

“Building Partnerships, Supporting Choices”

- Completed H&S Waiver Request Template;
- A copy of the vendor's original request to the regional center;
- A detailed description of existing services and why those services are inadequate to mitigate specific risks to the health and safety; and,
- A complete and accurate written request signed by the regional center Executive Director that justifies the need for a rate increase to protect the consumer(s) health or safety. The regional center must thoroughly review financial information provided by a vendor, to support the request, prior to submitting to the Department.

The following should be noted when preparing H&S Waiver Exemption requests:

- Regional centers must thoroughly examine each consumer's needs, prior to submitting a request, to ensure that risks to the consumer's health and safety exist and cannot be mitigated in any other way.
- Regional centers must thoroughly review vendors' requests for enhanced rates before submitting them to the Department. Prior to submitting a request, the regional center must consider alternative services, including staffing augmentation specific to risk mitigation for a consumer, or group of consumers, that might be provided through another vendor or under another service option. If alternative vendors or services are available and are consistent with the particular needs of the consumer and family, as identified in the Individual Program Plan, and consistent with W&I Code section 4648(a)(6), regional centers should choose this plan of action in lieu of pursuing a H&S.
- While the Department recognizes the challenges the provider may be facing, the H&S waiver exemption process is not a mechanism for making a provider's business viable. Requests must be directly linked to the health and safety of the consumers receiving services and the Department cannot approve requests that fail to establish this basis.

- The Department does not require a separate request letter for each consumer when the same vendor serves and the request applies to multiple consumers; instead, a regional center seeking a waiver for more than one consumer with a uniform enhanced rate should submit one request and include information about each consumer.
- The Department is not obligated to issue approvals for retroactive effective dates; therefore, regional centers are encouraged to submit requests as soon as possible after the need becomes known. Submission by email is required.
- Requests must be submitted to the Department no later than 30 days after the regional center receives the request from the provider. If the regional center does not have all necessary information for the H&S request within 30 days, the regional center must notify the Department of the missing information and the expected date the information will be received by the regional center from the provider.

Approval of a Health and Safety Waiver prior to service delivery

The Department will accept and approve H&S Waiver requests prior to an individual receiving the service to enable the service provider to establish the identified service and/or staffing to support the needs of the individual. The regional center shall submit the request as soon as the need is identified, but no less than 15 days prior to the date when the individual will begin receiving the service, unless it is an emergency. Once submitted, the Department will review the request and respond to the regional center within five working days.

Following are examples of situations that may require the type of review and approval described above:

- Transition from a developmental center to the community;
- Transition from an Institution for Mental Diseases (or other facility ineligible for Federal Financial Participation) to the community; and,
- Transition from an out-of-state placement back to California.

Expedited Exemption Requests

The Department will expedite its review of an exemption request when there is an immediate need to increase the rate of a service to mitigate risk to a consumer's health or safety. Regional centers should contact the Department to discuss these situations as soon as they become aware that a health and safety exemption may be needed to accommodate a consumer's transition to the community, or to prevent admission to a more restrictive setting, or to prevent the loss of services and supports when no other alternative service option is available. Once submitted, the Department will review the request and respond to the regional center within five working days.

Following are examples of situations that may require an expedited exemption request for an individual:

- Risk of admission to a state-operated acute setting;
- Risk of admission to an Institution for Mental Diseases (or other facility ineligible for Federal Financial Participation);
- Risk of an out-of-state placement;
- Risk of admission to a more restrictive setting due to a crisis situation, such as admission to a Mental Health Psychiatric Hospital; or,
- A situation in which, absent a rate increase, a vendor cannot serve an individual and either the consumer's or others' health or safety will most likely be at risk.

Provisional Rates

- When the individual's community service needs or the costs associated with providing services in an existing or new service setting are not completely known, a provisional rate may be established.
- The regional center may not have access to all of the information required by the H&S Waiver Request Template, thus the Department will work with the regional center to establish a provisional rate to expedite the approval of a health and safety exemption and to facilitate transition to the new living arrangement.

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- If the Department grants an exemption approval with a provisional rate and a permanent rate is established later, if the provisional rate was higher than the permanent rate, the service provider will not be required to repay the difference between the provisional and permanent rates.

All H&S waiver exemption requests should be sent to: RCBhealthandsafety@dds.ca.gov and brian.winfield@dds.ca.gov. The Department will acknowledge receipt of each H&S exemption request via email. It is the regional center's responsibility to monitor the necessity for increases in rates on an ongoing basis, based upon the services and supports required by the consumers in question, and to notify the Department if the need for the exemption changes.

If you have any questions regarding these guidelines, please contact Rapone Anderson, Regional Center Branch Manager, at (916) 654-3722, or by email, at rapone.anderson@dds.ca.gov.

Sincerely,

Original signed by

BRIAN WINFIELD
Deputy Director
Community Services Division

Enclosures

cc: Regional Center Administrators
Regional Center Chief Counselors
Regional Center Community Services Directors
Association of Regional Center Agencies
Rapone Anderson, Department of Developmental Services