

DEPARTMENT OF DEVELOPMENTAL SERVICES

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March 21, 2023

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: POSITION STATEMENTS AND EXCHANGE OF EVIDENCE IN THE
APPEAL PROCESS

The State's Budget Trailer Bill for developmental services, SB 188 (Chapter 49, Statutes of 2022), amended Section 4712(d) of the Welfare and Institutions Code, effective March 1, 2023. This section is about position statements and exchange of evidence within the appeals process, in advance of hearings. Section 84 of SB 188 also provides authority for implementation of specific provisions pursuant to written directives from the Department of Developmental Services (Department).

Section 4712(d)(1) requires regional centers to prepare a position statement and provide it to the hearing office and the claimant two business days prior to the hearing. The position statement shall summarize the facts of the case and set forth the justification for the regional center's action, a list of witnesses that it intends to call and the subject of their testimony, and copies of all documentary evidence intended to be used.

The position statement must be in the preferred language of the claimant or their authorized representative. If the regional center cannot provide a translated version two business days before the hearing, the regional center shall notify the claimant and the hearing office, provide a copy of the position statement in English, and apply for a continuance of the hearing. The continuance request must include evidence of the regional center's efforts to translate the position statement. Unless the claimant wants to proceed, the hearing officer shall continue the hearing for no more than ten (10) days or less to obtain the translated position statement. The translated copy must be provided two business days before the new hearing date.

Section 4712(d)(2) requires a claimant that is not an attorney nor represented by an attorney to provide a list of witnesses intended to be called and their relationship to the claimant, and a copy of any professional assessments or reports they intend to use at the hearing, to the hearing office and regional center two business days prior to hearing. At or before the hearing the claimant also must provide all other intended documentary evidence.

Section 4712(d)(3) requires a claimant who is represented by or is an attorney, to prepare a position statement and provide it to the regional center and the hearing office two business days prior to hearing. The position statement must summarize the facts of the case and set forth the justification for the claimant's position and include a list of

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witnesses intended to be called, general subject matter of their testimony, and all documentary evidence intended to be used.

The Department is piloting template position statements with interested regional centers. This pilot will take place through August 31, 2023. If the pilot is successful, template position statements for Eligibility Termination, Eligibility Denial, Service Reduction, Service Termination, and Service Denial will be made available to all regional centers. Translated templates also would be available.

If you would like your regional center to participate in the pilot or if you have any questions about this directive, please contact the Department's Office of Community Appeals and Resolutions at (833) 421-0061 or email at CommunityResolutions@dds.ca.gov.

Sincerely,

Original Signed by:

PETE CERVINKA
Chief, Data Analytics and Strategy

cc: Regional Center Administrators
Regional Center Community Services Directors
Regional Center Directors of Consumer Services
Regional Center Fair Hearing Coordinators
Association of Regional Center Agencies
Nancy Bargmann, Department of Developmental Services
Carla Castañeda, Department of Developmental Services
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