

DEPARTMENT OF DEVELOPMENTAL SERVICES

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January 6, 2017

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: INSTRUCTIONS FOR REQUESTING HEALTH AND SAFETY WAIVER
EXEMPTIONS

This letter supersedes the October 23, 2007, and July 7, 2016, correspondence sent to all Regional Center Executive Directors, that provided instructions for submitting Health and Safety Waiver Exemption requests. Welfare and Institutions Code (WIC) sections 4648.4(b), 4681.6, 4684.55, 4689.8, 4691.6 and 4691.9 authorize the Department of Developmental Services (Department) to approve exemptions to rate freezes for the purpose of mitigating risks to consumer health and safety.

The purpose of this correspondence is to provide a detailed description of the information the Department must receive to process an exemption request in the timeliest manner possible. The following information, along with detailed rate information must be submitted with **all** exemption requests:

- Consumer name(s) and UCI number(s).
- Vendor name, address, and vendor number.
- Service code and type.
- The current rate the vendor receives from the regional center, and unit of rate (e.g., \$25 per day or \$10 per hour).
- The proposed enhanced rate, unit of rate, and itemized documentation to support the new rate.
- An estimate of the fiscal impact of the rate increase for both the current and subsequent fiscal year.
- A proposed effective date for the enhanced rate, and an end date, if any.

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- A detailed description of the health and safety risk **per individual consumer**, including what changes have occurred, if any, that have placed each consumer's health and safety at risk.
- A detailed description of existing services, and why they are inadequate to mitigate specific risks to health and safety.
- A detailed description of the enhancement of services needed to mitigate that risk.
- An analysis of the cost-effectiveness of the enhancement.
- Information as to the availability of alternative, comparable, local resources to meet the needs of the impacted consumers.
- Detailed verification that alternative services (i.e., 1:1 staffing support, or an alternate vendor) have been considered, but that such alternatives do not exist and/or are inappropriate.
- Documentation to support how approval of the request is necessary to protect the consumer's health and safety.
- The signature of the requesting regional center's Executive Director, or a statement signed by the Executive Director that he/she concurs with the information contained in the request.
- EXCEPTION: When an individual is preparing to transition from a developmental center to the community, and 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. In these cases, the regional center may not have access to all of the information required (above). The Department will work with the regional center to establish a rate to expedite the approval of a health and safety exemption and to facilitate transition to the community. 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.

The following should also be noted when preparing a Health and Safety Waiver Exemption request:

- Regional centers must thoroughly review vendors' requests for enhanced rates before submitting them to the Department. Prior to submitting a request, regional centers 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 code. If alternative vendors or services are available and their use feasible, regional centers should choose this plan of action in lieu of pursuing a Health and Safety Exemption, whenever possible.
- Regional centers must thoroughly examine each consumer's needs prior to submitting a request, to ensure that risks to health and safety exist and cannot be mitigated in any other way.
- Only payroll and benefits costs that increase due to the enhanced rate, can be included in the requested rate.
- Supported Living Service (SLS) providers (service code 896) with a separately vendored administrative service (service code 894 – SLS Vendor Administration) must not include administrative costs within their rates for direct care services, if this would result in a duplication of administrative costs.
- The Department may request supportive documentation (i.e., a consumer's Individual Program Plan [IPP], a provider's existing program design and/or a program design that has been revised to accommodate a consumer's health and safety needs) to validate the health and safety risk(s) and need for a waiver. Submittal of IPPs and program design(s) with the initial request may expedite processing.
- For requests related to local municipal minimum wage increases, the Department will accept requests 60 days from the date the minimum wage increase went into effect, or the date the consumer began receiving services. For minimum wage increases that went into effect on July 1, 2016, the Department will accept requests 60 days from the date of this letter. Please attach a copy of the respective minimum wage ordinance.

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- Health and Safety exemptions are not a mechanism for making a provider's business viable. Instead, these requests must be directly linked to the health and safety of the consumers receiving services, without regard to the sustainability of the businesses that provide those services. Requests that fail to establish a basis in health and safety cannot be approved.
- The Department does not require a separate request letter per consumer when multiple consumers are served by the same vendor; instead, a regional center seeking waivers for a group of consumers with a uniform enhanced rate should be included in a single request letter.
- Submission by email is preferred.
- 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 consumer(s) in question.

The following should be noted when preparing a Health and Safety Waiver Exemption request for an enhanced rate for a **1:1 service ratio**:

- Please provide a budget analysis that includes actual staff wages and associated employer costs, for both the current and proposed rates. Enclosed is a tool you may use for 1:1 service ratios only, where:
 - The 1:1 rate is too low to support a new local minimum wage, plus applicable employer costs; or,
 - The 1:1 rate is not sufficient to ensure the health and safety of the consumer(s). This may apply to requests not related to local minimum wage increases.

For ratios greater than 1:1, rate adjustments need to be calculated manually. Please note, the Department will not approve increases to administrative costs associated with local minimum wage increases.

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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

Attachment

cc: Regional Center Administrators
Regional Center Chief Counselors
Regional Center Community Services Directors
Eileen Richey, Association of Regional Center Agencies
Rapone Anderson, Department of Developmental Services
Jim Knight, Department of Developmental Services
Jean Johnson, Department of Developmental Services