Home and Community-Based Waivers for Children: Focus on Institutional Deeming

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About the National Health Law Program

- National non-profit law firm committed to improving health care access, equity, and quality for underserved individuals and families State & Local Partners:
  - Disability rights advocates – 50 states + DC
  - Poverty & legal aid advocates – 50 states + DC
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Disabilty Rights California

- **DRC** is a nonprofit organization founded in 1978 that defends, advances, and strengthens the rights and opportunities of people with disabilities.
- **www.disabilityrightsca.org**

Disability Rights California

What we will cover today

- Introductions and housekeeping 10-10:05
- What are the three Medi-Cal Waivers serving children? 10:05-10:15
- Home and Community-Based Alternatives (HCBA) Waiver, HCBS-DD Waiver, and Self Determination Program Waiver 10:15-10:45
  - Eligibility
  - Institutional Deeming
  - Common Issues
  - Aging out of institutional deeming
  - Which waiver?
  - Questions 10:45-11

What are Waivers?

- A Medicaid waiver is a written approval from the federal government that allows states to differ from the rules of the state plan. The state is allowed to "waive" some of the requirements of the federal program. This means that they can test and develop how to deliver services in their state-based program in a way that differs from federal guidelines
- What does this mean in practice?
  - Waitlists/Caps
  - Geographic Limitations
  - Institutional Deeming (Spousal Impoverishment protections/waiver of Parent-Child Deeming)

California Waivers

- Home and Community Based Alternatives Waiver (HCBA)
  - Individuals of any age who meet a nursing facility level of care or higher
- Home and Community Based Services Developmental Disability Waiver (HCBS-DD, Regional Center clients only)
- Self Determination Program Waiver (SDP, Regional Center clients only)
  - Regional Center consumers of any age who meet an intermediate level of care
- Individuals cannot be enrolled in two waivers at once.

What is the difference between the three waivers? HCBA Waiver

- The HCBA Waiver serves people of any age with significant physical disabilities and medical complexity.
- To be eligible, individuals must meet a nursing-facility level of care or higher.
- People who benefit from the HCBA Waiver include medically complex children, adults with complex conditions, and people who are ventilator or technology dependent. Participants receive care management from a Waiver Agency, who coordinates Waiver and Medi-Cal State Plan services.

What is the difference between the three waivers? HCBS-DD Waiver

- The HCBS-DD Waiver is operated through the Department of Developmental Services and delivered through the 21 Regional Centers.
- Only Regional Center consumers can be on the HCBS-DD Waiver, and individuals must meet an Intermediate Care Facility level of care.
- It funds the community supports Regional Centers arrange, such as respite, day programs, supported living, and behavioral services. The HCBS-DD Waiver does not pay for private duty nursing.

What is the difference between the three waivers? SDP Waiver

- The Self-Determination Program (SDP) Waiver is the other Waiver serving Regional Center consumers with developmental disabilities of any age.
- Through the SDP, participants have an individualized budget which is used to meet the goals in their Individual Program Plan (IPP). Participants develop a person-centered plan and individualized budget with their Regional Center.
- **https://www.dhcs.ca.gov/wp-content/uploads/2025/10/HCBS-DD-vs-HCBA-Waiver-Comparison-Flier.pdf**

What is Institutional Deeming?

- Eligibility rule that allows Medi-Cal to treat a child as if they are in an institution, so parents' income and resources are not considered in the child's financial eligibility.
- Enables medically complex children and children with Intellectual and Developmental Disabilities (I/DD) to get Medi-Cal services

How to apply for institutional deeming through the HCBA Waiver

- Submit an application to the Waiver Agency that serves their geographic location.
- Be eligible for Medi-Cal if they are in an institution and/or meet the level of care (LOC) criteria for the HCBA Waiver;
- Be under the age of 18 (upon turning 18-years old, applicants should apply for Medi-Cal directly);
- Have a valid Social Security Number; and
- Be ineligible for Medi-Cal because of their family's income (or other source of income).

How to apply for institutional deeming through the Regional Center Waivers?

- Regional Centers have designated Medi-Cal/waiver staff who evaluate consumers for the HCBS-DD and Self Determination Waivers.
- If a child needs institutional deeming to access Medi-Cal, typically their Service Coordinator will refer them to the Medi-Cal/waiver staff to determine eligibility.
- Regional Center submits form to the county and the county then starts a Medi-Cal application for the child by mailing a letter and an application packet to the parents to complete

Which Medi-Cal program is a child who is receiving institutional deeming enrolled in?

- Follows the Medi-Cal hierarchy:
  - Aged and Disabled Federal Poverty Level (A&D FPL) program if their medical condition meets certain disability criteria.
  - If their condition does not meet the disability requirement, they will then be reviewed under the income limits of the AFDC Medically Needy program.
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If a child has their own income, can they still receive institutional deeming?

- Yes:
  - Derivative benefits (based on a parent's social security retirement disability, or death benefits)
  - Child support.

Example

- Curran receives $1700 per month of Title II Retirement Social Security Disability Insurance (RSDI) benefits based on her father's work record. The A&D FPL program is the most beneficial program for Curran because $1700 is below the income limit for that program and she will not owe a share of cost.

Example

- Curran receives $2100 in child support per month. Child support has special income counting rules. Child support income is countable income. For children with disabilities, one third of the child support payment is disregarded. This means that Curran's countable income is $2100-$700=$1400. Ther is under the monthly limit of $1836, and Curran will not have a share of cost.

Does a child who is receiving institutional deeming need a disability determination?

- Sometimes;
- Best practice: start disability determination at Medi-Cal application
- When the child transitions to adulthood, they will need a disability determination to qualify for any of the Medi-Cal programs that have a disability linkage.

When does Institutional Deeming End?

- Institutional deeming *can* apply until a child turns 21. An individual is a "child" for the purposes of Medi-Cal eligibility if:
  - They are a disabled individual aged 18 through 20 and are living at home with their parents **and are** enrolled in school, college, university, or a course of vocational or technical training to prepare you for gainful employment; or
  - They are 18 years of age or older but under 21 and their parents claim them as a dependent to receive a tax credit or deduction for state or federal income tax purposes.

Example

- Rosa is a 20-year-old who receives institutional deeming through the HCBS-DD Waiver. She is still considered a child because she enrolled in school and is living with her parents. Before she turns 21, she needs to apply for Medi-Cal for herself as an individual to continue to receive Medi-Cal services. After she qualifies for Medi-Cal in her own budget unit, she can continue to receive HCBS-DD Waiver services.

How does institutional deeming affect claiming a child as a tax dependent?

- If they are 18 to 20 and are receiving institutional deeming, that income will still be disregarded.
- However, at age 21, institutional deeming no longer applies **even** if a parent is claiming their child as a tax dependent.
- After a child becomes an adult for Medi-Cal purposes, a parent can continue to claim that child as their dependent on their taxes.
- However, depending on family income it may not be beneficial to continue to claim an adult child as a dependent

Example 1

- Noah is 20 years old and receives institutional deeming through the HCBA Waiver. Noah is being claimed by hus parents as a tax dependent. Noah is getting the maximum number of IHSS hours, as well as 200 hours per month of WPCS.
- Noah is not receiving SSI and does not have a disability determination from the county. Noah's parents have a combined income of $200,000 and they are a family of three people.

Example 1 cont.

- Noah's parents want to continue to claim him as a tax dependent once he becomes an adult. At 21, Noah will be evaluated for Medi-Cal based on the household income of $200,000 for three people. This is because Noah is no longer eligible for institutional deeming.
- The family's income will be too high for Noah to qualify for Medi-Cal. Noah will lose access to IHSS and WPCS through Medi-Cal unless his parents stop claiming him as a tax dependent and he applies for Medi-Cal as an individual in his own Medi-Cal Family Budget Unit (MFBU).

Example 2

- Sean is 17 years old and receives institutional deeming through the HCBA Waiver. Sean is being claimed by his parents as a tax dependent. Sean's parents start the SSI application process, and he begins receiving SSI a month before his 18th birthday. Once Sean is 18, because he is receiving SSI and is eligible for Medi-Cal through that pathway, he no longer needs institutional deeming. His parents can also continue to claim him as their dependent.

Example 3

- Mia is 17 years old and receives institutional deeming through the HCBA Waiver. Mia is being claimed by her parents as a tax dependent. Mia's family does not want to apply for SSI for Mia. Mia can apply for Medi-Cal in her own MFBU once she turns 18. If Mia is eligible for Medi-Cal through a Non-MAGI Medi-Cal pathway like the Medically Needy or ABD FPL program, she will be able to access Medi-Cal.

Example 3 cont.

If Mia does not meet the eligibility criteria for a Non-MAGI Medi-Cal program, she will be evaluated under MAGI using her family's income ($200,000 for a family of three). In that case, she will not be eligible for Medi-Cal, and it would be better for her parents to stop claiming her as a dependent so that their income is not included in her Medi-Cal eligibility evaluation.

Which Waiver?

Questions?

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Resources

- DHCS HCBA Waiver Page
- DDS Waivers
- MEDIL re Institutional Deeming
- Child Support ACWDL 10-07
- Disability Determination Referrals
- IRS rules about dependents

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