

CHILDREN'S BENEFITS ACCESS GUIDE ADDENDUM

DRLC

Disability Rights Legal Center

www.disabilityrightslegalcenter.org



L.A. Care

HEALTH PLAN®

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HOW TO USE THE CHILDREN'S BENEFITS ACCESS GUIDE ADDENDUM

This Addendum is intended to serve as a companion to the Children's Benefits Access Guide (the Guide), published in February 2011 by the Disability Rights Legal Center (DRLC) and available as a free online resource and download at www.disabilityrightslegalcenter.org/about/childrensbenefitsaccessproject/. The Children's Benefits Access Guide aims to provide information to low-income families of children with disabilities who reside in Los Angeles County and the professionals that work with them about available health care benefits and the agencies that are responsible to provide them.

This Addendum provides selected updates to the Children's Benefits Access Guide to highlight some of the many developments in the areas of health care benefits that potentially impact children with disabilities. The Addendum does not provide a comprehensive update to the whole Guide, which was current as of the date of publication only. It simply intends to alert the reader to some of the changes that have taken place in the time since the Guide was published.¹

This document, like the Guide itself, does not intend to be a substitute for legal advice and does not constitute legal advice.

This document is organized to follow the chapters in the Children's Benefits Access Guide. Each numbered item or update identifies the chapter as well as the corresponding page number in the Guide. It then briefly describes a change or new development as well as references that the reader can access for further information.

In the Guide itself, there are icons, such as this one,  that alert the reader to a corresponding update in the Addendum. Readers can link to the Addendum through the Children's Benefits Access Guide.

While the Children's Benefits Access Project has officially concluded, the DRLC continues to be interested in any feedback that you have about the Guide and its use. Please consider participating in the post-implementation survey on our website so that we can continue to evaluate the Guide's role as a resource. Please contact us if you have any questions or feedback that you wish to bring to our attention at drlc@lls.edu. We are hopeful that this will be a useful resource for you.

¹ The DRLC would like to acknowledge Disability Rights California for their informative fact sheets regarding many of these developments.

INTRODUCTION TO MEDI-CAL

1. How the Affordable Care Act Impacts Children

(Guide, page 11)

Effective Currently:

- Children can remain on their parents' health plan coverage until age 26 if the plan offers coverage for children.
- Children under the age of 19 who have a pre-existing condition cannot be denied health insurance coverage because of their health condition when they apply for private child-only insurance. (Private insurers are now required to offer children's coverage under all policies.)
- **Parent's Note:** Please note that California's Medi-Cal and Healthy Families programs cannot deny coverage because of a child's health status.

Effective in 2014:

- Foster youth who are aging out of the system but were in foster care as of their 18th birthday must receive Medi-Cal health insurance coverage until they reach age 26. Currently, former foster youth in California are eligible for Medi-Cal until they turn age 21.

SOURCES:

Did You Know? Children with Pre-Existing Conditions Have Health Care Options in Cal., The 100% Campaign (Mar. 2011),

 http://100percentcampaign.org/publications/?_c=1037otwtmr75ngj (click "Download" hyperlink just below article title).

Healthcare.gov (last visited 11/29/11)

 www.healthcare.gov/law/features/choices/young-adult-coverage/index.html

Officials Urge Parents to Take Advantage of New Children's Coverage Law, California Healthline, (January 27, 2011)

Patrick M. Tigue, How the Affordable Care Act Helps Youth Aging Out of Foster Care, The Community Catalyst Blog (Aug. 17, 2011, 9:30 AM),

 <http://blog.communitycatalyst.org/index.php/2011/08/17/how-the-affordable-care-act-helps-youth-aging-out-of-foster-care/>

 www.healthreform.gov/newsroom/new-patients-bill-of-rights.html (June 22, 2010)

2. 2011 State Budget Cuts to Medi-Cal

(Guide, page 13)

State budget cuts approved by the California legislature in March 2011 that could impact Medi-Cal beneficiaries include proposed mandatory co-payments for prescription medications and visits to doctors, clinics, emergency rooms and hospital stays. Because the health reform law requires that states maintain the stability of the Medi-Cal program, California had to seek approval from the federal Centers for Medicare and Medicaid Services (CMS) in order to make these changes to Medi-Cal. The state's waiver request to impose co-payments is pending. On October 27, 2011, DHCS announced CMS approval of reductions in Medi-Cal provider reimbursement rates, though reductions to physician and clinic services for children were not approved.

SOURCES:

California's 2011-12 State Budget and its Potential Impact on Kids,

Posting of Children Now,  info@childrennow.org, to Listserv (July 22, 2011, 10:01 PST) (on file with author).

Budget Cuts at the Poor, Western Center on Law and Poverty (July 1, 2011),

 <http://www.wclp.org/Resources/WCLPContent/tabid/1088/smId/3613/ArticleID/831/t/Budget-Cuts-at-the-Poor-/Default.aspx>.

Cal. Awaiting Fed. Approval of Medi-Cal Cuts, Cal. Healthline (June 27, 2011)

 <http://www.californiahealthline.org/articles/2011/6/27/california-awaiting-federal-approval-of-medical-cuts.aspx>.

3. Mandatory Enrollment in Medi-Cal Managed Care

(Guide, page 15)

Certain categories of individuals who are Medi-Cal eligible will not be mandatorily enrolled into managed care and will still be able to choose between fee for service Medi-Cal and Medi-Cal managed care, including:

- Children who receive foster care or adoption assistance benefits
 - Dual eligibles-people with Medicare and Medi-Cal coverage
 - People who have other health coverage (private)
 - Residents in long term care facilities
 - People who have Medi-Cal with a share of cost
 - Children eligible for CCS (with a disability based aid code)
- **Parent's Note:** Beneficiaries can request a medical exemption to stay on fee for service Medi-Cal, for example if they are receiving ongoing care from a non-plan participation provider.

SOURCES:

Mandatory Enrollment of Seniors and Persons with Disabilities in Medi-Cal Managed Care (May 17, 2011, Pub. #5495.01),



www.disabilityrightsca.org/pubs/549501.pdf

4. California Children's Services' (CCS) Demonstration Pilots

(Guide, page 15)

Under California's Bridge to Reform Waiver, California can test four new models for delivering health care for children eligible for California Children's Services (CCS). Depending on their success, these pilots may result in changes to the CCS program. Los Angeles County is participating in one demonstration pilot.

The four pilot models for care delivery include: (1) an Enhanced Primary Care Case Management (EPCCM) Program; (2) a provider-based Accountable Care Organization (ACO); (3) a Specialty Health Care Plan (SHCP); and (4) utilization of existing Medi-Cal Managed Care Plans (MMCP).

More information on the pilot projects may be found here:

 http://www.dhcs.ca.gov/provgovpart/rfa_rfp/Pages/OMCPccsDemoRFPHome.aspx

SOURCES:

Changes in Medi-Cal & CCS: The 1115 Waiver, Support for Families of Children With Disabilities,

 <http://www.supportforfamilies.org/legislative/1115%20Waiver.html> (last visited Oct. 25, 2011).

CCS Demonstration Projects Request for Proposal Download Page, Cal. Dep't of Health Care Services,

 http://www.dhcs.ca.gov/provgovpart/rfa_rfp/Pages/OMCPccsDemoRFPDNL.D.aspx (last visited Oct. 25, 2011).

5. Health-E-App Available for Users to Apply for Children's Coverage

(Guide, page 18)

Families can use the online tool Health-E-App to apply for health coverage under Medi-Cal and Healthy Families for their children. This tool is available at www.healtheapp.net. The California Healthcare Foundation developed Health-E-App in partnership with the Managed Risk Medical Insurance Board and the Department of Health Care Services.

SOURCES:

Online App Helps Families Apply for Children's Coverage, Cal. Healthline (Sep. 6, 2011),

 <http://www.californiahealthline.org/articles/2011/9/6/online-app-helps-families-apply-for-childrens-coverage.aspx>.

Health-e-App (last visited Oct. 26, 2011),



<http://www.healthapp.net/>

INTRODUCTION TO REGIONAL CENTERS AND THE LANTERMAN ACT

6. Use of Term “Intellectual Disability” in Federal Law

(Guide, page 36)

Please note that Rosa’s Law (signed by President Obama on October 6, 2010) mandates that certain federal laws, such as the Individuals with Disabilities Education Act (IDEA), that use the term “mental retardation” replace it with the term “intellectual disability” and replace the term “mentally retarded individuals” with “individuals with intellectual disabilities”. This law does not mandate that the states make these changes.

SOURCE:

Rosa’s Law, Pub. L. No. 111-256, § 2781, 124 Stat. 2643 (2010).

7. Annual Family Program Fee Imposed on Certain Families Who Receive Regional Center Services

(Guide, page 39)

Certain parents or caregivers of minor children who receive regional center services under the Lanterman Act or Early Intervention Services Act, whose adjusted gross family income is at or above 400 percent of the federal poverty level, will be required to pay an Annual Family Program Fee, under limited circumstances. This new annual fee is only assessed to families who meet certain financial criteria, and does not apply if the child who receives regional center services is Medi-Cal eligible. Additionally, a regional center may grant certain exemptions to the fee if the parents demonstrate certain circumstances, such as, if the family requires the exemption from the fee in order to maintain their child at home. Although this fee requirement became effective July 1, 2011, it is not assessed until the initial development, next scheduled review or modification of an IPP or IFSP, but no later than June 30, 2012. Please see Disability Rights California for more information about the Annual Program Fee, including rights of appeal at




www.disabilityrightscalifornia.org/pubs/506301Ch04SupportingFactSheets.pdf

SOURCES:

Cal. Welf. & Inst. Code § 4785 (Deering 2011).

Annual Family Program Fee, Disability Rights Cal. (Aug. 3, 2011),

 www.disabilityrightsca.org/pubs/506301Ch04SupportingFactSheets.pdf.

8. Consumers Required to Provide Health Benefit Cards

(Guide, pages 40 and 56)

Beginning in July 2011, regional center consumers, or where appropriate the parent, legal guardian or conservator of a consumer, who have health benefit cards because they are eligible to receive health benefits through private insurance, Medi-Cal, Medicare, or other sources, must provide copies to the regional center at certain key times. These include: the time of assessment or the time of development, modification or scheduled review of an IPP, or at the time of intake and assessment but no later than the IFSP meeting. If a consumer has no such benefits, the regional center may not use that fact to negatively impact the benefits that may be available to the consumer through the regional center.

SOURCES:

Cal. Welf. & Inst. Code §§ 4643(c), 4646.4 (Deering 2011).

Cal. Gov't Code § 95020(f) (Deering 2011).

Use of Generic Services and Private Insurance and the Requirement to Provide Copies of Health Benefit Cards, Disability Rights

Cal. (2011 Fact Sheet)  <http://www.disabilityrightsca.org/pubs/F05401.pdf>

9. Competency Evaluations and Juvenile Court Proceedings

(Guide, page 41)

During a juvenile court proceeding, a child or youth that is suspected of having a developmental disability by his counsel or by the court shall be referred by the court to the regional center for an eligibility assessment under CA Welfare & Institutions Code section 4512. The regional center will determine the child or youth's eligibility for services under the Lanterman Act and will include its finding in a report that it provides the juvenile court.

If the court determines, based on the report, that a child or youth is not competent to participate in court proceedings, it may order services to help him become competent. If eligible, the services may include those offered by the regional center. This section does not impact an individual's right to obtain his own private assessment regarding his eligibility for regional center services or his competency. In fact, if the individual or his family members disagree with the assessment, an independent assessment may be necessary.

SOURCES:

Cal. Welf. & Inst. Code §§, 709, 4512 (Deering 2011).

Admin. Changes to the Lanterman Act, Disability Rights Cal. (Aug. 3, 2011),



<http://www.disabilityrightsca.org/pubs/F05801.pdf>

10. Regional Centers Cannot Fund Certain Services for Consumers Ages 18-22 Eligible for Special Education

(Guide, page 41)

The Lanterman Act now prohibits regional centers from purchasing selected services for consumers ages 18 to 22 who are eligible for special education and related services and have not received a diploma or certificate of completion from high school. These services include: day program, vocational education, work services, independent living program, and mobility training and related transportation services. Generally speaking, this new rule requires that the regional center attempt to obtain this list of services from educational entities if needed, already received by consumers or identified as needed in the IPP. The regional

center will only be exempted from this prohibition and able to fund these services through the IPP process if the school cannot provide appropriate services or there are other extraordinary circumstances.

SOURCE:


Special Education Instead of Adult Services For Consumers Between the Ages of 18-22, Disability Rights Cal. (Aug. 3, 2011),

 <http://www.disabilityrightsca.org/pubs/F05001.pdf/>

11. California Budget Cuts Impacting Regional Center Consumers

(Guide, page 44)

Because the Department of Developmental Services (DDS) had to reduce its budget significantly for the 2011/2012 fiscal year, there are further changes to the types and amounts of services that regional centers can purchase, some of which are noted in this Addendum.

 www.disabilityrightsca.org for fact sheets about these changes, including information about how to appeal decisions by a regional center.

SOURCES:

 Disability Rights California, <http://www.disabilityrightsca.org/> (last visited November 30, 2011).

Regional Center Due Process & Hearing Rights, Disability Rights Cal. (Aug. 18, 2011),

 <http://disabilityrightsca.org/pubs/F02601.pdf>

12. Development of Transportation Access Plan

(Guide, page 44)

Building on changes that became effective through 2009 budget related provisions, effective July 1, 2011, if a regional center consumer is receiving transportation services from the regional center, then the IPP team develops a transportation access plan when all of the following conditions are met:

1. The regional center is purchasing private, specialized transportation services or services from a residential, day or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services;
2. The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services; and,
3. The planning team has determined that such generic transportation services are available and accessible.

The transportation access plan developed by the IPP team must identify services and supports that will assist a consumer to access public transportation such as mobility training and the use of transportation aides.

SOURCES:

Cal. Welf. & Inst. Code § 4646.5 (Deering 2011).

Transportation Services, Disability Rights Cal. (Aug. 3, 2011),

 www.disabilityrightsca.org/pubs/F05101.pdf

13. Regional Center and Changes to the Use of Behavioral Services

(Guide, page 44)

Verification of Services

A parent or guardian of a child under the age of 18 who receives behavioral services will have to sign a standard verification of services form to indicate that the child received behavioral services. The vendor then submits the form to the regional center to receive payment for services provided. The form will include, at a minimum, the following information: the name and title of the

vendor, the vendor identification number, the name of the consumer, the unique client identifier, the location of the service, the date and start/end times of the service, and a description of the service provided.

- **Parent's Note:** The form will instruct a parent or guardian that if they cannot sign the form, they should contact their regional center service coordinator immediately. A failure to sign the form will not be a basis for a change or termination of a consumer's behavioral services.

New Behavioral Services Paraprofessional Position

The Department of Developmental Services shall adopt emergency regulations that address the use of paraprofessionals in group practice that provides behavioral intervention services. The regional center must provide a consumer with a written notice before making any changes to services including changing current behavioral services to include the use of a paraprofessional.

SOURCES:

Maximizing Resources for Behavioral Services, Disability Rights Cal. (Aug. 3, 2011),



<http://www.disabilityrightsca.org/pubs/F05301.pdf>.

Cal. Welf. & Inst. Code §§ 4686.3, 4686.31 (Deering 2011)

CALIFORNIA'S EARLY START PROGRAM

14. New Regulations for the Early Intervention Program for Infants and Toddlers with Disabilities

(Guide, page 50)

The Department of Education published final regulations in the Federal Register that govern the Early Intervention Program for Infants and Toddlers with Disabilities, and that will be effective October 28, 2011. These regulations and an analysis of the changes they will make to the program can be found at www.federalregister.gov/articles/2011/09/28/2011-22783/early-intervention-program-for-infants-and-toddlers-with-disabilities.

These regulations may contain changes that are relevant to and may change the current content of the Children's Benefits Access Guide. Note that this Addendum does not include an analysis of these changes.

SOURCES:

20 U.S.C. §§ 1416(e), (f).

Early Intervention Program for Infants & Toddlers with Disabilities, Federal Register, <http://www.federalregister.gov/regulations/1820-AB59/early-intervention-program-for-infants-and-toddlers-with-disabilities> (Last visited Oct. 26, 2011).

15. Changes to the Prevention Program

(Guide, pages 36 and 51)

Effective July 2011, regional centers no longer refer new infants and toddlers to the Prevention Program administered by the local regional center, rather, the regional centers will refer at-risk infant and toddlers to local Family Resource Centers for Prevention Resource and Referral Services. The Family Resource Centers will provide outreach, information, and referral to generic agencies to families of at-risk infants and toddlers.

Infants and toddlers who were in the Prevention Program as of June 2011 will continue to participate in the Prevention Program administered by the regional centers until the earliest of the following dates: (1) the infant or toddler turns thirty six (36) months old, (2) the infant or toddler becomes eligible for Early Start or services under the Lanterman Act, or (3) June 30, 2012.

For more information, see www.mchaccess.org or call 213-749-4261.

SOURCES:

Cal. Welf. & Inst. Code §§ 4435, 4435.1

Early Start – Transfer of the Prevention Program, Disability Rights Cal. (Aug. 3, 2011),

 <http://www.disabilityrightsca.org/pubs/F05701.pdf>.

MENTAL HEALTH BENEFITS FOR CHILDREN

16. Reorganization of Mental Health Service Delivery in California

(Guide, page 68)

Governor Brown's office has called for a reorganization of how mental health services are delivered to Californians. The reorganization aims, among other things, to eliminate the State Department of Mental Health, and to shift funding and managing of mental-health programs, from the state to the counties, with state oversight.

SOURCE:

Sigrid Bathen, *Changes in Mental Health System Spur New Optimism*, Capitol Weekly (Aug. 18, 2011, 12:00 AM PST)

 <http://www.capitolweekly.net/article.php?xid=zxgffie7e8lfmb>

17. Repeal of AB3632

(Guide, pages 80 through 88, 131 and 191)

Assembly Bill 114, signed into law on June 30, 2011, has ended AB3632, the state mandate on county mental health agencies such as DMH to provide mental health services to students with disabilities. Currently, school districts rather than the counties' mental health agencies are responsible for ensuring that students with disabilities receive special education and related services to meet their needs. While this law shifts responsibility to the school districts to provide services, it does not change children's rights to receive mental health services, including residential placement, if they need these services to benefit from their education. Some school districts may continue to contract with the local county mental health agencies to provide services and others may arrange to provide services directly or contract with other entities.

For information about the AB114 Transition of Special Education and Related Services Formerly Provided by County Mental

Health Agencies see  www.cde.ca.gov/sp/se/ac/ab114twg.asp

SOURCES:

Notice to Parents of Special Educ. Students with Mental Health Needs, Disability Rights Cal. (July 8, 2011)

 http://www.disabilityrightsca.org/news/2011_newsaboutus/attachments/2011-07-08-AB3632.pdf.

AB 114 Special Educ. Transition, Cal. Dep't of Educ. (last visited Oct. 26, 2011),

 <http://www.cde.ca.gov/sp/se/ac/ab114twg.asp>

ACCESS TO HEALTH CARE AND RELATED BENEFITS AT SCHOOL

18. Coverage of Behavioral Treatment for Children with Autism

(Guide, page 135)

Blue Shield of California and Anthem Blue Cross have reached agreements with the California Department of Managed Health Care to cover a minimum of six months of applied behavioral analysis (ABA) therapy for children with autism, who meet coverage requirements, whose health care providers deem it “medically necessary” and if provided by or under the supervision of licensed professionals. Previously, insurance companies denied the therapies, contending that they were educational rather than medical in nature, and not subject to their coverage.

Some parents and parent advocates have taken the position that the agreements impose onerous requirements that will continue to lead to denials of coverage for needed treatment for children with autism.

Subsequently, California Governor Jerry Brown signed SB946 into law (October 2011), which mandates private health insurance coverage of behavioral health interventions, such as Applied Behavioral Analysis, and other prescribed intensive early intervention therapy for individuals with autism. It will be in effect beginning July 2012 and will continue for two years as a temporary act or as a bridge to 2014, when the federal government issues minimum coverage standards for healthcare. However, this mandate does not apply to California’s Medi-Cal program.

SOURCES:

Duke Helfand & Alan Zarembo, *Anthem, Blue Shield to Cover Therapy for Autistic Children*, L.A. Times (July 15, 2011),

 <http://articles.latimes.com/2011/jul/15/business/la-fi-autism-treatment-20110715>.

Editorial: Relief for Families Raising Autistic Kids, Sacramento Bee, July 15, 2011, at 16A, *available at*

 http://www.sacbee.com/2011/07/15/3771109/relief-for-families-raising-autistic.html#mi_rss=Editorials.

Wyatt Buchanan, Critics Call State's Autism Settlement a 'Sham', S.F. Chron., July 20, 2011, at C4, *available at*

 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/07/20/BAFV1KCB78.DTL>.

Questions about Costs, Duration of New Autism Mandate Persist in Calif., California Healthline, (October 12, 2011)

19. Administering Medicine in School

(Guide, page 141)

Anti-Seizure Medication

Gov. Jerry Brown signed SB161 into law (October 2011), allowing school districts to provide school employees with voluntary emergency medical training so that in the absence of a school nurse on-site, trained non-medical personnel can, following guidelines, administer anti-seizure medication to students with epilepsy. A parent or guardian of a pupil with epilepsy whose health care provider has prescribed Diastat may request that the pupil's school have one or more of its employees receive voluntary training on administering the emergency anti-seizure medication in the event that the pupil suffers a seizure when a nurse is not available. This law is in effect until January 1, 2017.

Insulin

The California Court of Appeal issued a ruling in June 2010, "that unlicensed school personnel are not authorized by current law to administer prescribed injections of insulin to a diabetic student, even if the student requires such injections pursuant to a Section 504 or IEP plan, absent express statutory permission." The judge said it is up to the legislature to change the current law which allows only children with diabetes, their parents, individuals designated by the parent or a licensed health care

provider to administer insulin. American Nurses Ass'n v. O'Connell, 185 Cal. App. 4th 393 (2010). The California Supreme Court has agreed to hear this case and is expected to rule on the matter before 2012. This issue is being litigated so look for updates on this issue.

SOURCES:

Cal. Educ. Code § 49422 (Deering 2011).

Gov. Brown Signs, Vetoes Slate of Health-Related Bills by Deadline, Cal. Healthline (Oct. 11, 2011),

 <http://www.californiahealthline.org/articles/2011/10/11/gov-brown-signs-vetoes-slate-of-health-related-bills-by-deadline.aspx>.

Am. Nurses Ass'n v. O'Connell, 185 Cal. App. 4th 393 (2010).

2011 Cal. S.B. 161 (Deering 2011).