TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE OF PROPOSED RULEMAKING

Habilitation Transfer

The Department of Developmental Services (DDS) proposes to amend Title 17, California Code of Regulations, Division 2, Chapter 3, Subchapter 2 by amending sections 54302, 54310, 54320, 54370 and adopting section 54351.
Subchapter 21 by adopting sections 58800, 58801, 58810, 58811, 58812; 58820, 58821, 58822, 58830, 58831; 58832, 58833, 58834, 58840, 58841, 58842, 58850, 58851, 58860, 58861, 58862, 58863, 58864, 58870, 58871, 58872, 58873, 58874, 58875, 58876, 58877, 58878, 58879, 58880, 58881, and 58882.

Written Comment Period

Any interested persons, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of DDS. The written comment period closes at 5:00 p.m. on 12-13-2004. Please submit any written comments to the DDS contact persons designated below by 5:00 p.m. on 12-13-2004. Both oral and written comments will be received at the public hearing.

Public Hearing

One public hearing is scheduled. The public hearing to receive oral and written comments is scheduled for 9:30 a.m. on 12-16-2004. This hearing will be held at The Department of Developmental Services, 1600 Ninth Street, Room 360, Sacramento, California. DDS requests that persons who make oral comments at the public hearing submit a written copy of their testimony at that hearing. The hearing location has wheelchair access.

Authority and Reference

Authority: AB 1753 (Chapter 226), 2003-04 Budget Bill

References: Sections 4850, 4850.1, 4850.2, 4852, 4853, 4854, 4854.1, 4855, 4856, 4857, 4857.1, 4858, 4859, 4860, 4861, 4862, 4863, 4864, 4865, 4866 and 4867 Welfare and Institutions Code.

Informative Digest/Policy Statement Overview

Under the proposed regulations the Department of Developmental Services and, by contract, the regional centers, will assume all functions and responsibilities of the Department of Rehabilitation with respect to the administration of the Habilitation Services Program (HSP) beginning July 1, 2004.

California Code of Regulations (CCR)
Title 17. Public Health - Division 2
Health and Welfare Agency
Department of Developmental Services
Chapter 3: Community Services

SubChapter 2: Vendorization

Chapter 3: Community Services, SubChapter 2: Vendorization
Article 2. Vendorization Process

Section 54302 – Definitions.

Subsection 54302 (a)(1) and (13) is being added, as appropriate, in the Title 17 subchapter on vendorization to include "accreditation" and "CARF" as definitions. The requirement for habilitation service vendors to become accredited through CARF- The Rehabilitation Accreditation Commission is needed to maintain the work service standards unique to habilitation service providers as established during the twenty-three years of accreditation reviews while the Habilitation Services Program was under the administration of the Department of Rehabilitation.

Subsection 54302 (a)(14) is added to Title 17 subchapter on vendorization for the purpose of defining "certification" since habilitation service vendors are required to apply for and receive certification as a condition of vendorization. The process of certifying habilitation service vendors as conducted by the Department of Rehabilitation provides regional centers some assurance that the vendor meets the minimal requirements to deliver work activity and/or supported employment during the interim period between initial vendorization and CARF accreditation.

Subsection 54302 (a)(34), (69), (70) and (80) are added to include the definitions for "Habilitation Services," "Supported Employment," "Supported Employment Program" and "Work Activity" in the appropriate Title 17 subchapter on vendorization. Changes were also made to references in section 54302 to correct the numbering sequence caused by the added definitions.

Section 54310 – Vendor Application Requirements.

Subsection 54310(a)(10)(G) is added for the purpose of specifying for new vendors the requirement for providing the vendoring regional center with a program design. Subsection 54310(d) is added for the purpose of grand-fathering in habilitation service providers who on June 30, 2004 are providing habilitation services funded by the Department of Rehabilitation. Subsection 54310(e) and (f) is added for the purpose of specifying the conditions of and procedures for regional center vendorization. This is needed to make a clear distinction between work activity and/or supported employment services, as

defined in Welfare and Institutions Code, Section 4861(d), and other regional center day program service categories. Changes were also made to references in section 54310 to correct the lettering and numbering sequence caused by the added definitions.

Chapter 3: Community Services, SubChapter 2: Vendorization
Article 3. Habilitation Services.

Section 54351 (a), (b), (c) and (d) (1), (2) and (3) – Habilitation Services.

This section is being proposed to distinguish habilitation service program elements for the purpose of providing single service category billing account code controls. Subsections (a), (b) and (c) is needed to provide distinct classifying descriptions of Supported Employment Program Group and Individual services and Work Activity Program services.

Section 54370 (b) (1) – Termination of Vendorization for Noncompliance.

This section has been changed for the purpose of adding "accreditation" and "certification" as a vendorization requirement that habilitation vendors must keep up to date if they wish to avoid termination of vendorization.

California Code of Regulations (CCR)
Title 17. Public Health - Division 2
Health and Welfare Agency
Department of Developmental Services
Chapter 3: Community Services

SubChapter 21: Habilitation Services Program

ARTICLE 1. DEFINITIONS.

Section 58800. Meaning of Words.

This section has been adopted to specify that words shall have their usual meaning unless the context or a definition clearly indicates a different meaning.

Section 58801(a) (1) through (11), (b), (c) and (d) (1) (A) through (G) and (2) through (37) - Definitions

This section has been proposed for the purpose of identifying words used in this Subchapter that have meanings specified in Title 17, Chapter 3, Subchapter 2, Sections 54302, 54505 and 57210. Subsection (d) (1) through (37) has been adopted to specify the definitions of words used in this Subchapter not otherwise defined in Title 17. the terms listed under subsection (d) (1), (5), (7), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (29), (30), (31), (32), (33), (34),

(35), and (37) are included to clarify programmatic terms, e.g., service types, service outcomes, service planning documents and service operational measures. The definition of the term "consumer" listed under subsection (d) (2) is included to clarify that because Habilitation services provide consumers with the opportunity to earn money, they must meet the minimum age requirements for working in their communities. The definition of the term "Vocational Rehabilitation (VR)" listed under subsection (d) (36) is included to emphasize the integral and role of VR services in the Habilitation service model. The terms listed under subsection (d) (3), (4), (6), (8), (9), (10), (11), (23), (24), (25), (26), (27) and (28) are included because they clarify terms related to the expense reporting requirement by vendors as part of the rate setting methodology.

ARTICLE 2: GENERAL REQUIREMENTS FOR ALL HABILITATION SERVICES

Section 58810. (a), (b), (c), (d) and (e) – General Vendorization Requirements for Habilitation Services

Subsection (a) has been proposed to specify general regional center vendorization requirements for purchase of Habilitation services. Subsection (b) is proposed in order to provide vendor status for Habilitation service providers doing business prior to July 1, 2004, as specified in Section 4857.1 of the Welfare and Institutions Code. Subsection (c) proposes to specify the responsibility of regional centers to ensure that accreditation and/or certification has been completed prior to vendorization of Habilitation programs. Subsection (d) proposes to specify the regional center and department's role in providing information, technical assistance and/or consultation to new vendors. Subsection (e) is proposed to specify the general requirements for Habilitation service providers to meet accreditation and vendorization timelines for obtaining accreditation following the effective date of vendorization by the regional center. In addition, this proposal ensures that vendoring regional centers receive copies of accreditation reports in a timely fashion, as these reports will constitute an important component of the regional centers' quality assurance monitoring of Habilitation services vendors.

Section 58811. (a), (b) and (c) – Program Design Requirements for Habilitation Services

This section is added to for the purpose of specifying for new vendors the requirement for providing the vendoring regional center with a program design. Subsection (a) is needed to clarify the general program design elements that are required to be included in the program design. Subsection (b) is needed to specify additional information to be included in the program design related to the vendor's knowledge of work service programming, e.g., specific work activities it will provide, description of services provided when consumers are not engaged in work, excluding the lunch period, resources available for contract procurement

and procedures for conducting time studies. Subsection (c) is needed to specify the vendor's responsibilities when modifications are made to the program design.

Section 58812. (a), (b), (c), (d) (1) through (3) – General Planning Requirements

This section is proposed to ensure that habilitation service vendors comply with the same requirements applicable to other regional center community service providers in planning services for consumers. This section is needed to meet the intent of Section 4850 (a) of the Welfare and Institutions Code, that habilitation services "should be planned." Subsection (a), (b) and (c) are proposed to specify timeframes for submitting the IHSP and the frequency of the IHSP review. Subsection (d) is needed to ensure that consumers can convene, as necessary, an IPP meeting to review the appropriateness of the placement, the services provided and the development and documentation of the Individual Habilitation Service Plan (IHSP) goals and objectives in the areas of work activity and/or supported employment programs.

ARTICLE 3: STANDARDS FOR WORK ACTIVITY PROGRAMS

Section 58820. (a) (1) - (4), (b), (c) (1) and (2) (A) through (I), (3) (A) through (E) - General Standards for Work Activity Programs

This section is proposed for the purpose of carrying out the objectives set forth in Section 4851 (a) of the Welfare and Institutions Code that states habilitation services provided to consumers are "to prepare and maintain them at their highest level of vocational functioning, or to prepare them for referral to vocational rehabilitation services." Subsection (a) (1) through (4) is adopted to specify the general requirements for Work Activity Program (WAP) services as it relates to compliance with certification and accreditation, as well as, federal and state paid work labor standards. Subsection (b) is needed to assure that consumers receive appropriate amount and variety of work as provided for in the consumer's IPP. Subsection (c) is needed to establish a minimum standard for habilitation service providers must meet so as to assure that consumers have the opportunity to engage in paid work. In addition, this subsection clarifies the type and allowable percentage of time that Habilitation service providers can provide in non-paid-work training, e.g., work adjustment and supportive habilitation services.

Section 58821. (a) (1) and (2) Work Activity Program Day Length

This section is proposed to clarify for purposes of vendorization, the minimum length of the WAP day and the conditions under which an exception be granted that reduces the length of the day used as the historical period for establishing the WAP rate.

Section 58822. (a) (1) through (4), (b) (1) through (3) – Work Activity Program Service Records Requirements

Subsection (a) is proposed to specify the minimal documentation needed to link services provided by WAP to billing documents sent to regional centers. Subsection (b) is proposed to establish timeframes for reporting consumer specific WAP data in order to determine WAP compliance with quantity of paid work standards, as well as, to measure consumer service planning outcomes. This is needed by the department to make statewide WAP service outcomes information available for program assessment purposes and, if needed, for dissemination to government and/or stakeholder groups.

ARTICLE 4: STANDARDS FOR SUPPORTED EMPLOYMENT PROGRAMS

Section 58830. (a), (b), (1) through (7), (c), (d) (1), (2) (A) and (B), (e) (1) through (3) and (f) - General Standards for Supported Employment Programs.

This section is proposed to specify the general requirements for Supported Employment Program (SEP) services. Subsection (a) is needed to ensure that SEP support services identified in the IHSP are linked to the IPP. Subsection (b) is proposed in order to distinguish allowable supported employment services that can be provided by the vendor, including specific services that must have regional center approval. Subsection (c) is needed to clarify the two categories of service available under the SEP. Subsection (d) is needed to clarify the limitations for job coaching in groups, including, the maximum job coach-to-consumer ratio for groups and the minimum ratio in combination with funding from the Department of Rehabilitation and when consumers are temporarily absent from the group. Subsection (e) is needed to clarify the limitations for job coaching in individualized placements and to emphasize that individualized services are expected decrease over time as the consumer becomes familiar with his or her job duties. Subsection (f) is proposed to ensure that vendors who place consumers in integrated work settings comply with federal and state sub-minimum wage standards whenever consumers are paid less than minimum wage.

Section 58831. (a), (1) through (7), (b) (1) through (5), (c) (1) (A) and (B), (2) (A) through (M) (i) and (ii)- Supported Employment Program Record Requirements.

This section is proposed to specify the minimum documentation required by SEP vendors. Subsection (a) is needed in order to link individual and group services provided by supported employment programs (SEP) to billing documents sent to regional centers. Subsection (b) is needed to gather the necessary work related outcome data on SEP individualized placements that will allow regional centers and the Department to compare consumer employment success over time, as

well as, between programs across the state. Subsection (c) is needed to specify the minimum documentation required by SEP group placement vendors that will provide regional center case managers information on any behavioral problems that may impact the progress and/or stability of the SEP group or individual consumer. This subsection is also needed to specify the minimum information needed on the monthly group tracking form that must be provided by the job coach to support the service hours billed to the regional center.

Section 58832. (a), (b) (1) through (4), (c) (1) through (3), and (d) – Supported Employment Group Formation and Change Requirements.

This section is proposed to specify the methodology for establishing new SEP groups. Subsection (a) is proposed to establish the procedure and form needed by the regional center and DDS in order to approve new supported employment groups. Subsection (b) is needed in order for SEP group service providers to know what information must be included in the request form for a new group in order to be considered for approval by the Department, in consultation with the regional center. Subsection (c) is needed to specify the conditions under which a vendor may be permitted to change an existing group and the DDS form and information that must be provided to the Department and vendoring regional center prior to approval. Sub section (d) is needed to in order to avoid potential billing disputes by making clear that approval for any proposed group change must be secured prior to implementation of the change.

Section 58833. (a) (1) through (3), (b), (c) (1) through (3) – Temporary Transfers Between Work Activity and Supported Employment Programs.

This section is proposed to set forth billing and payment policies and procedures for authorizing payments when consumers temporarily transfer into a WAP from a supported employment placement or vice versa. Subsection (a) is needed to specify the conditions and limits for approvals of temporary transfers. Subsection (b) is needed to provide consistency with existing Title 17 emergency authorization provisions. Subsection (c) is needed to specify the conditions under which extensions beyond the 60-day limit would be granted.

Section 58834. (a), (b) (1) through (3) – Additional Requirements for Supported Employment Programs.

Subsection (a) is proposed in order to ensure regional center and Department of Rehabilitation coordination regarding approval of job-coaching supervision for consumers during the lunch period. Subsection (b) is needed to allow flexibility in the level of supported employment services provided by specifying the conditions under which increased job coaching can be approved.

ARTICLE 5. COORDINATION OF SERVICES WITH THE DEPARTMENT OF REHABILITATION.

Section 58840. (a) (1) through (3) and (b) (1) through (3) - Referrals to the Department of Rehabilitation.

This section is proposed in order to improve service coordination between the Department of Rehabilitation (DOR) and regional centers by specifying procedures for regional centers making referrals to DOR's vocational rehabilitation (VR) services program. Subsections (a) is needed to make specific the steps needed and forms required by regional centers when referring WAP consumers to DOR pursuant to Section 4858 of the Welfare and Institutions Code. Subsection (b) is needed to identify the conditions that are appropriate for referring existing SEP consumers for VR services.

Section 58841. (a) and (b) (1) (A) through (C) and (2) – Transition to Habilitation Services Upon Achievement of Stabilization.

This section is proposed in order to improve service coordination between the Department of Rehabilitation (DOR) and regional centers by specifying procedures for transitioning consumers to regional center-funded extended services. Subsection (a) is needed to ensure that regional centers monitor the progress of consumers receiving VR services. Subsection (b) is needed to assure timely transition to from VR to the HSP by making certain there is no disagreement on what constitutes stabilization for a consumer receiving supported employment services from the DOR and when regional centers will begin funding extended services.

Section 58842. (a) and (b) – Denial of Services Pursuant to Order of Selection Criteria

This section is proposed in order to clarify circumstances under which the regional center is authorized to provide generic VR services. This section is needed in order to prevent consumers from losing employment opportunities due to the Department of Rehabilitation's inability to provide services to all eligible applicants for VR services. Subsection (a) and (b) is needed to specify the service categories that can be authorized by regional centers during the time that DOR's "order of selection" status prevents them for providing these services.

ARTICLE 6: QUALITY ASSURANCE MONITORING AND CORRECTIVE ACTIONS FOR HABILITATION SERVICES PROGRAMS

Section 58850. (a) (1) through (3), (b) (1) through (3), (c), (d) (1) and (2) and (e) – Monitoring and Evaluation of Habilitation Program Services.

This section is proposed in order to specify areas that are subject to quality assurance monitoring by the Department and regional centers to ensure that the Habilitation services provided to consumers are of the highest quality possible.

Subsection (a) is needed in order to outline the general areas subject to monitoring, e.g., service quality, consumer protections and compliance with CARF accreditation standards. Subsection (b) is needed to allow for focused evaluations of IHSP documentation, program specific CARF accreditation reports and WAP compliance with maintaining minimum paid work percentages. Subsection (c) is needed to specify the minimum frequency of monitoring reviews that would be undertaken by the Department and the vendoring regional center. Subsection (d) is needed in order to specify for vendors the types of documentation that must be made available, including, access to specific staff. Subsection (e) is needed to clarify which agency would have the final say when there is disagreement between the Department and regional center on a course of action related to monitoring under this section.

Section 58851. (a), (b), (c) (1) through (4), (c), (d), (e) and (f) – Noncompliance Sanctions and Corrective Action Plans.

This section is proposed to specify the performance criteria that habilitation service vendors must be in compliance with and that will be subject to sanctions for noncompliance, including, actions that can be taken by the Department or regional center for failure to take corrective action. Subsection (a) is needed to establish the regulatory references subject to sanctions for noncompliance. Subsection (b) is needed to establish the timeline for development of a corrective action plan following a noncompliance notification by the Department or regional center. Subsection (c) is needed to specify the types of sanctions that can be imposed; the noncompliance standards that would apply in order to trigger such sanctions; the timeline for developing a corrective action plan; the agency responsible for approving the plan and timelines for submitting the corrective action plan. Subsection (d) is needed to specify sanctions that can be appealed by Habilitation vendors under existing W&I Code provisions. Subsection (e) is needed to specify the right of vendors to a formal review by the Office of Administrative Hearings when the sanction results in termination of vendorization. Subsection (f) is needed to address situations where a corrective action plan due to sanctions imposed on a Habilitation service provider by the DOR under Title 9, Section 19254.5 would overlap the effective date of administrative transfer for the HSP from the DOR to DDS.

ARTICLE 7. WORK ACTIVITY PROGRAM RATESETTING PROCEDURES

Section 58860. (a), (b), (c), (d), (e), (f), (g), (h), and (i) - General Provisions

This section proposes to establish the general ratesetting provisions for WAPs. Subsection (a) is needed to specify that expenses from the operation of other day programs cannot be used as allowable cost for setting WAP rates. Subsections (b), (c) and (d) is needed to make clear the Department's intention to apply fair and equitable ratesetting policies and procedures by requiring all HSP vendors to submit the same cost statement information using the same cost

statement form and establishing this form as the basis for establishing rates. Subsections (e) and (f) are proposed to specify that income generated from other sources, e.g., service contracts, shall not result in a reduction in the rate and that the rate for WAP services cannot be paid if another fee for the service is paid by another government entity. Subsections (g) and (h) are proposed to establish the basis for the historical WAP rate and how COLA(s) could result in adjustment to the rate. Subsection (i) is needed to establish that the hours and days billed during the historical period will be considered to be days or hours of attendance for the purpose of rate setting.

Section 58861. (a), (b), (c), (d) and (e) - General Ratesetting Requirements for Work Activity Programs.

This section is proposed to specify the general ratesetting requirements for WAPs. Subsection (a) is needed to specify the entities that are to receive fiscal and consumer data; the purpose for which the data will be used and what data is subject to audit. In addition, this subsection signals to the vendors that failures to comply with the data policies will result in a delay in processing payment year invoices. Subsections (b), (c), (d) and (e) are proposed to address rate issues for WAP vendors that are new, vendors that have a change in ownership, vendors who are part of a larger agency and vendors that are part of another entity, e.g., school, hospital, city or county operation.

Section 58862. (a) and (b) - Reporting Period for Submission of Information

This section is proposed to make clear the reporting period for reporting cost statement data by Habilitation vendors. Subsection (a) is needed to specify the next fiscal year for establishing vendor rates pursuant to AB 747 (Chapter 659), FY 2003-04. Subsection (b) is needed to clarify what period comprises previous years cost data for purposes of preparing for an audits by the Department and/or the vendoring regional center and the cutoff month for submitting historical year cost statement data.

Section 58863 (a), (b), (c), (d) and (e) - Required Due Dates for Submission of Information

This section is proposed to specify due dates for the submission of Cost Statement data and other financial statements to the Department and vendoring regional center. Subsection (a) is needed to establish the date Cost Statement data is due to the Department for purposes of setting the rate for Fiscal Year 2006-07. Subsection (b) is needed to establish requirements for submitting independent audits to the Department. Subsection (c) and (d) is needed to clarify how an extension of the deadline for submitting cost statements and timelines for requesting an extension will be handled by the Department. Subsection (e) is

needed to specify what actions the Department will take when timelines for submitting cost statements are not met.

Section 58864. (a) - (c) - Required Cost Statement Information

This section is proposed to specify the revenue and expense forms required by the Department. Subsection (a) is needed to make specific each form required to report revenue and expenses by vendors. Subsection (b) is needed to clarify what is to be included in the consumer survey form and subsection (c) is needed to specify that vendors are to be consistent in their use of headings and/ or titles of services or programs in preparation of all reporting forms submitted to the Department.

ARTICLE 8. RATESETTING METHODOLOGY FOR WORK ACTIVITY PROGRAMS

Section 58870. (a) (1) through (5), (b), and (c) - General Provisions

This section is proposed to outline the general provisions applicable to the methodology for setting WAP rates. Subsection (a) is needed to layout the sequence for establishing WAP rates, including, application policies related to cost containment, setting of historical rate, computing the base rate and for reducing and adjusting the rate. Subsection (b) and (c) are needed to specify conditions on how grant funds used by a vendor during the historical period is treated in the computation the rate.

Section 58871. (a) - Cost Containment - Administrative Costs

This section is proposed in order to establish, for purposes of cost containment, the maximum allowable WAP administrative cost in the historical period.

Section 58872. (a), (b), (c), (d), (e) (1) and (2), (f), (g) and (h) - Cost Containment – Retirement Plan Expenses

This section is proposed to specify the maximum percentage of retirement plan costs that can be allocated in the cost statement. Subsection (a), (b), (c) and (d) is needed to clarify, for purposes of cost containment, what the percentage contributions made by a vendor toward a qualified employee retirement plan is an allowable expenses. Subsection (e), (f) (g) and (h) is needed to provide guidelines for vendors on how to determine the allowable percentage of retirement plan expenses.

Section 58873. (a), (b), (c), (d), (e) (1) through (3), (f) (g) and (h) - Maximum Daily Rate

This section is proposed to establish the basis for setting the maximum daily rate for WAP services. Subsections (a), (b) (c) and (d) is needed to establish the frequency for setting maximum daily rates, including the number of rate maximums during the historical period that are set, the period for which the historical period will be determined and the role of the Department in calculating the gross rate. Subsections (e) (f) and (g) is needed to specify how the number of consumers in a WAP are grouped for purposes of setting gross rates and how the groupings of gross rates are used to compute the mean and standard deviation for establishing maximum allowable rates based on the number of consumers served. Subsection (h) is needed to clarify how the rate will be reduced when a vendor's rate exceeds the maximum established for its number of consumers.

Section 58874. (a), (b), (c), (d), (e) (1) through (6), (f) (1) through (4) and (g) - Reporting Requirements

This section proposes to establish reporting requirements in order for WAPs to receive a rate based on reasonable cost. Subsection (a) is needed to specify the requirements for a representative historical period for establishing a WAP's rate. Subsections (b) and (c) is needed to establish the principles, policies, procedures and instructions for completing the Cost Statement and to clarify actions of the Department under circumstances where the minimum historical period has insufficient data to establish a rate. Subsection (d) is needed to specify how expenses for other programs not provided as part of the WAP will be reported and accounted for if those expenses are allowable. Subsections (e), (f) and (g) are needed to specify options to the requirement for independent audit, including, a description of the required documentation that must accompany the independent review report and what actions are required by the vendor to reconcile any material changes as a result of an audit.

Section 58875. (a), (b), (c) (1) through (14) (A) through (L), and (d) - Non-Allowable Costs.

This section is proposed to specify costs that are not allowed in establishing the historical rate for WAPs. Subsections (a) through (c) is needed to detail business expenses that are deemed not allowable for purposes of establishing a historical rate. Subsection (d) is needed to clarify how unallowable expenses will be reconciled between specific Department cost statement forms.

Section 58876. (a), (b), (c), (d), (e) and (f)- Rate Adjustments and Rate Revision General Provisions.

This section is proposed to specify the general policy for adjusting or revising rates for WAPs who have major changes in their costs from the historical period to the payment year. This is necessary because reasonable cost rates are based on a historical period and unique circumstances affecting costs may arise from the historical period to the payment year. Subsections (a) is needed to clarify adjustment of rates when there is a State-approved COLA. Subsection (b) is needed to specify the sequence for adjusting rates and when the adjustments become effective, including, the effective dates for an adjustment due to disasters, e.g., earthquakes and fires. Subsections (c) (d) (e) and (f) is needed to specify how the adjustment will be prorated if the adjustment takes place after the beginning of the payment year, the documentation required for establishing the need for an adjustment and the factors used to determine limits on rate adjustments.

Section 58877. (a) (1) and (2) (A) and (B) (3) through (7) - Rate Adjustment Due to an Increase in Occupancy Cost.

This section is proposed to specify the how rate adjustments due to an increase in occupancy cost are considered. As WAP service rates are based on a historical data, it is necessary to be able to authorize rate adjustments for these costs. Subsections (a) (1) through (7) is needed to specify the general basis for rate adjustments due to increases in occupancy costs, including, the conditions that must be met to get approval for a rate adjustment, the due dates for requesting an adjustment and the forms needed for Department review and approval.

Section 58878. (a) (1) (A) and (B), (b), (c), (d), (e), (f), (g), (h), and (i) - Rate Adjustment Due to a Change in Staff-to-Consumer Ratio

This section is proposed to specify the how rate adjustments due to a change in staff-to-consumer ratio are considered. Costs to WAPs related to increased staff-to consumer ratios are a major expense, therefore, any major reduction in funding to support such costs would severely limit the WAPs ability to serve consumers. Subsections (a) (1) through (7) is needed to specify the general basis and procedures for requesting and obtaining approval for rate adjustments for changes in staff-to-consumer ratio. Subsection (b) is needed to deal with situations where an expected loss of staff subsidy does not occur. Subsection (c) through (h) is needed to specify the documentation needed for requesting a rate adjustment due to a change in staffing and procedures by the Department in computing the rate calculation. Subsection (i) is needed to specify how the Department will treat COLA increases when adjustments are made based on a change in staff-to-consumer ratios.

Section 58879. (a) – Rate Appeal

This section is proposed to lay out the right of appeal for WAPs who dispute a Departmental decision affecting its rate as set forth in Chapter 722, Statutes of 1992, Section 147 and Sections 4691 and 4791(i) of the Welfare and Institutions Code.

ARTICLE 9. BILLING AND PAYMENT

Section 58880 (a), (b), (1), (2), (3), (4), (A), (c), (d), (e), and (f) - Work Activity Programs

This section is proposed to set forth requirements for billing WAP services to regional centers and for payment of such services by regional centers. Subsection (a) is needed to clarify how the maximum number of billing days will be established and the vendor responsibilities for notifying the vendoring regional center of their schedule of their proposed workdays per month. Subsection (b) is needed to clarify how payments for full day and partial day WAP services are billed to the regional center when there are absences due to an official declaration of a state of emergency. Subsection (c) and (d) is needed to specify the procedure when billing and payments are made using hourly billing. Subsection (e) is needed to clarify for the vendor the level of detailed documentation on each consumer that must be maintained. Subsection (f) is needed to clarify payment policy related to circumstances where another agency would have responsibility for providing WAP services.

Section 58881. (a), (b), and (c) - Supported Employment Programs

This section is proposed to set forth payment requirements for supported employment services. Subsection (a) is needed to clarify the authority for supported employment payment rates as specified in Welfare and Institutions Code 4860. Subsection (b) and (c) are needed to set forth documentation requirements to support supported employment service billings and to clarify the circumstance when payments can be made for consumers in a supported employment group who are absent due to an official declaration of a state of emergency.

Section 58882 (a), (b) and (c) – Billing for Temporary Transfers

This section is proposed to set forth billing and payment policies and procedures for authorizing payments when consumers temporarily transfer into a WAP from a supported employment placement or vice versa. Subsection (a) is needed to specify the requirements for regional centers when authorizing temporary transfers. Subsection (b) is needed to specify conditions under which a temporary transfer can be extended. Subsection (c) is needed to clarify which service category would be billed when consumers transfer between supported employment groups and work activity programs.

Small Business Determination:

The Department has determined that the proposed regulations will affect small business. The regulations have, therefore, been drafted in plain English.

Local Mandate Determination:

The Department has determined that the proposed regulatory action does not impose: 1) a mandate on local agencies or school districts, 2) significant costs or savings to any state agency, 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, 4) other nondiscretionary costs or savings imposed on local agencies, or 5) costs or savings in federal funding to the state. However, the proposed regulations will allow the Department to maintain federal funding to the State and, thereby, avoid unanticipated cost to the State's General Fund.

Assessment Statement:

The proposed action will not: a) create new jobs within the State of California, b) help in the creation of new businesses within the State of California, nor c) cause the expansion of businesses currently doing business within the State of California. The Department has determined that the proposed regulations will not eliminate jobs with the State of California. The Department has determined that the proposed regulations will not have: a) a significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states, b) a significant potential cost impact on private persons or directly affected businesses, nor c) a significant effect on housing costs.

Cost Impacts on Representative Private Persons or Businesses:

DDS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Alternatives Considered:

DDS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DDS would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affective private persons than the proposed action.

DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearings.

Contact Person:

Comments and inquires concerning the proposed action may be directed to:
Attention: Denyse Curtright, Assistant Chief
Department of Developmental Services
Work Services Section
1600 Ninth Street, Room 340, MS 3-23
Sacramento, California 95814
Email: dcurtrig@dds.ca.gov
Phone: (916) 654-2208
Fax: (916) 654-3020

Inquires regarding the substance of the proposed action may be directed to:
Andrea Fishback
Department of Developmental Services
1600 Ninth Street, Room 340, MS 3-23
Sacramento, California 95814
Email: andrea.fishback@dds.ca.gov
Phone: (916) 653-6599
FAX: (916) 654-3020

Availability of Rulemaking Documents:

DDS has prepared and has copies ready for public review of the exact text of the proposed regulations, and Initial Statement of Reasons for the proposed regulations, and all of the information upon which the proposed regulations are based. Copies of the initial statement of reasons and text of the proposed regulations, along with all other public records, reports, documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact person at the above address. In addition, the text, Initial Statement of Reasons and other materials for this rulemaking may be viewed over the internet at www.dds.ca.gov.

Availability of changed or Modified Text:

After the close of the comment period, DDS may adopt the proposed regulations as described in this notice. If DDS makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before DDS adopts the regulations as revised. If the text is modified, the text may be viewed

over the internet at www.dds.ca.gov. Please send requests for copies of any modified regulations to the contact persons named above.

Final Statement of Reasons:

When the Final Statement of Reasons is available, it may be viewed over the internet at www.dds.ca.gov. Additionally, requests for the Final Statement of Reasons could be made to the contact persons named above.