FINAL STATEMENT OF REASONS

Description of the Public Problem, Administrative Requirement or Other Condition or Circumstance the Regulations are Intended to Address

Pursuant to AB 1753 (Chapter 226), 2003-04 Budget Bill, administrative responsibility for the Habilitation Services Program (HSP) is transferred from the Department of Rehabilitation (DOR) to the Department of Developmental Services (DDS) effective July 1, 2004. The DDS and, by contract, the regional centers, will assume all functions and responsibilities of the DOR with respect to the administration of the Habilitation Services Program (HSP) beginning July 1, 2004.

Under State statute (Welfare and Institutions Code, Section 19350, et al,) DOR has had administrative responsibility for providing work services to regional center consumers since 1980. In response to growing pressure over the years from consumers and their families who were unable to qualify for or access Habilitation services, the Department encouraged regional centers to provide employment services under existing day program categories to meet the demand. Today there is no longer a clear programmatic distinction between habilitation services provided through DOR's Habilitation program and many of the adult employment services funded by regional centers. This lack of programmatic differentiation also extends to service criteria used by both agencies. Based on regulatory language, both departments can fund employment services for regional center consumers that lead to paid work in an integrated community setting and services can be provided in group or individual situations. The transfer of the HSP to DDS, requires the promulgation of these regulations in order to delineate all the necessary functions and responsibilities for the Department and regional centers with respect to the administration of the Habilitation Services Program. In addition, these proposed regulations integrating HSP into the regional center service delivery system are developed with the intention of providing programmatic efficiencies that will stabilize the budget-building process for day program services and to provide the necessary employment service distinctions for capturing additional federal funds under the Medicaid Waiver program.

The Department convened meeting with representatives' form the California Rehabilitation Association (CRA), the Association of Regional Center Agencies (ARCA) and the Department of Rehabilitation (DOR), as well as, solicited input from other stakeholder organizations regarding development of the regulations.

PUPOSE AND NECESSITY

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 2: Vendorization

Article 2. Vendorization Process
Section 54302 – Definitions.

Section 54302(a)(1)

Specific Purpose:

This proposal is being adopted to define the term "Accreditation."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of this term in order to establish CARF as a vehicle from which the Department can ensure that providers of Habilitation services seeking vendorization will be in compliance with specific standards and criteria that enhance service quality and promote the program objectives set forth in Sections 4851 and 4856 of the Welfare and Institutions Code.

Section 54302(a)(2)

Specific Purpose:

This numerical amendment is being adopted to accommodate the addition of new terms relating to the Habilitation Services Program and for purposes of expediency, this statement of "Specific Purpose" is applicable to all succeeding corrections to lettering and/or numbering sequence caused by the added terms included in Section 54302.

Rationale for Necessity:

This definition is necessary to accommodate new Habilitation Services Program amendments to Section 54302 of Title 17, and which required reassigning the order of numbers to the existing terms. Changes were also made to references in section 54302 to correct the lettering and numbering sequence caused by the added definitions. This statement of "Rationale for Necessity" is also applicable to all succeeding changes to correct lettering and/or numbering sequences caused by the addition of new terms included in Section 54302.

Section 54302(a)(13)

Specific Purpose:

This section is being adopted to define the term "CARF."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of “CARF” for the purpose of establishing consistency of meaning with the term referenced in Welfare and Institutions Code, Section 4851 and Title 17, Section 54302(a)(1).

Section 54302(a)(14)

Specific Purpose:

This section is being adopted to define the term “Certification.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of “Certification” as 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.

Section 54302(a)(34)

Specific Purpose:

This section is being adopted to define the term “Habilitation Services.”

Rationale for Necessity:

This section is necessary to make clear that the term “Habilitation Services” as used throughout these regulations shall have the same meaning as defined in Section 4851(a) of the Welfare and Institutions Code.

Section 54302(a)(69)

Specific Purpose:

This section is being adopted to define the term “Supported Employment.”

Rationale for Necessity:

This section is necessary to make clear that the term “Supported Employment” as used throughout these regulations shall have the same meaning as defined in Section 4851(n) of the Welfare and Institutions Code. This definition is intended to be consistent with supported employment services as provided by the Department of Rehabilitation (DOR) for purposes of enhancing coordination between the Department and DOR by agreeing to a common understanding of the service outcome for consumers receiving supported employment services.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to clarify the term “supported employment” includes the assistance of a job coach.

Section 54302(a)(70)

Specific Purpose:

This section is being adopted to define the term “Supported Employment Program.”

Rationale for Necessity:

This section is necessary to make clear that the term “Supported Employment Program” as used throughout these regulations shall have the same meaning as defined in Section 4851(j) of the Welfare and Institutions Code. This definition is needed to closely align the meaning of this term with the supported employment services provided by the Department of Rehabilitation (DOR) for purposes of enhancing coordination of supported employment services for consumers that utilize both agencies to achieve their vocational goal.

Section 54302(a)(80)

Specific Purpose:

This section is being adopted to define the term “Work Activity Program.”

Rationale for Necessity:

This section is necessary to make clear that the term “Work Activity Program” as used throughout throughout these regulations shall have the meaning comparable to the term defined in Section 4851(e) of the Welfare and Institutions Code.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to further enhance the coordination between the Department and DOR by agreeing to a common understanding of the service outcome for consumers receiving Work Activity Program services.

In response to testimony received during the first 15-day comment period, this section is further amended to more closely match the term as defined in Welfare and Institutions Code Section 4851(e).

Section 54310 – Vendor Application Requirements.

Section 54310(a)(9)(G)

Specific Purpose:

This section is being amended to include the requirement that a copy of the Habilitation Services Program (HSP) program design be included as part of the information provided to the vendoring regional center for Habilitation service providers seeking vendorization.

Rationale for Necessity:

This amendment is needed to set forth policies and procedures for program elements required to be included in the Habilitation vendor's program design. In seeking to differentiate Habilitation services from other regional center funded day programs, it is essential to require Habilitation service providers to spell-out employment related information, e.g., plans for coordinating referrals to vocational rehabilitation. Information provided in the program design, e.g., a service provider's employment philosophy and description of innovative work settings in the program design, will provide regional center service coordinators and consumers the information needed to find vendors who can help meet their IPP work goals.

Section 54310(d)

Specific Purpose:

This section is being adopted to clarify the vendorization status of Habilitation service providers engaged in providing work activity or supported employment services to consumers prior to July 1, 2004.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4857.1. This section establishes the Department's authority to provide for a smooth administrative transition for Habilitation service providers doing business prior to July 1, 2004, from a centralized statewide model to a localized regional center model. This section will ensure that Habilitation services purchased by regional centers beginning July 1, 2004, are provided by vendors who have previously been determined, through a formal accreditation review, to be competent in providing paid work opportunities for consumers and who are knowledgeable in the federal/state requirements for paying wages that are below the prevailing minimum wage scale.

Section 54310(e)

Specific Purpose:

This section is being adopted to clarify the vendorization requirements for Habilitation vendors seeking vendorization on or after July 1, 2004 and who are not providing Habilitation services prior to that date or who seek vendorization as Habilitation Services provider in a new location.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4857.1. This section sets forth the conditions under which a new facility will be vendorized for purposes of providing Habilitation services. This section also provides the necessary regulatory linkage to the vendorization requirements applicable to Habilitation service providers contained in Subchapter 2, Vendorization, Chapter 3 of Title 17.

Section 54310(f) [Renumbered to Section 54310(e)(1).]

Specific Purpose:

This section is being adopted to clarify the type of information that Habilitation vendors seeking vendorization on or after July 1, 2004 and who are not providing Habilitation services prior to that date or who seek vendorization as Habilitation Services provider in a new location shall provide to Habilitation vendors.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4857.1. This section is needed to assure the vendoring regional center that applicants for Habilitation service provider vendorization are, or will be, in compliance with accreditation requirements as specified in section 58810.

Final Modification:

Following the first 15-day renotice, this section is being renumbered to Sections 54310(e)(1), and (e)(1)(A) and (B) correct a numbering error.

Sections 54310(g) and (h) [Renumbered from Sections 54310(d) and (e).] [Renumbered to Sections 54310(f) and (g).]

Specific Purpose:

This section is being amended to correct the lettering and numbering sequence caused by the addition of new Habilitation Services Program (HSP) requirements.

Rationale for Necessity:

This amendment is needed to correct the lettering and numbering sequence caused by the added HSP vendorization requirements.

Final Modification:

Following the first 15-day renotice, these sections are being renumbered to Sections 54310(f) and (g) to correct a numbering error.

Section 54320 – Regional Center Review of Vendor Application.

Section 54320(a)

Specific Purpose:

This section is being amended to include references to Sections 54310(d) and 54310 (e) as part of the regional center's vendor application review responsibility.

Rationale for Necessity:

This proposal is necessary to incorporate the Habilitation services Program vendorization requirements applicable to all service providers seeking regional center vendorization.

Final Modification:

In response to testimony received during the 45-day comment period, Section 54320(a)(3) is being amended to include required accreditation documentation as applicable to Habilitation Service providers. This amendment is necessary to make specific the requirements of Welfare and Institutions Code Section 4857.1 by requiring the vendoring regional center to ensure that applicants for Habilitation service provider vendorization are, or will be, in compliance with accreditation requirements as specified in Section 58810.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 2: Vendorization

Article 3. Vendor Numbers and Service Codes
Section 54340 – Vendor Identification Numbers, Service Codes, and Subcodes.

Section 54340(a)(1) (Post-Hearing Modification)

Specific Purpose:

In response to testimony received during the first 15-day renotice, this section is being amended to specify how vendor identification numbers are to be assigned for supported employment programs – group, supported employment programs – individual, and work activity programs.

Rationale for Necessity:

This amendment is necessary to clarify the manner in which vendor identification numbers are to be assigned.

Section 54351 – Habilitation Services

Section 54351(a)

Specific Purpose:

This section is being adopted to add a service code and service description for “Supported Employment Program – Group Services”

Rationale for Necessity:

This provision is necessary as part of the Department's fiscal responsibility to assign a three-digit number code for Group Services provided by a Supported Employment Program for the purpose of providing single service category billing account code controls. A brief description of the service is also needed to provide the attributes that classify a vendor eligible to bill the regional center for Supported Employment Program Group services. This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 and 4966.

Section 54351(b)

Specific Purpose:

This section is being adopted to add a service code and service description for "Supported Employment Program – Individual Services"

Rationale for Necessity:

This provision is necessary as part of the Department's fiscal responsibility to assign a three-digit number code for Individual Services provided by a Supported Employment Program for the purpose of providing single service category billing account code controls. A brief description of the service is also needed to provide the attributes that classify a vendor eligible to bill the regional center for Supported Employment Program Group services. This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 and 4966.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to remove the word "provides" which was a typographical error.

Section 54351(c)

Specific Purpose:

This section is being adopted to add a service code and service description for a "Work Activity Program "

Rationale for Necessity:

This provision is necessary as part of the Department's fiscal responsibility to assign a three-digit number code for services provided by a Work Activity Program for the purpose of providing single service category billing account code controls. A brief description of the service is also needed to provide the attributes that classify a vendor eligible to bill the regional center for Supported Employment Program Group services. This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 and 4966.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 2: Vendorization

Article 4. Vendor Compliance and Prohibitions
Section 54370 – Termination of Vendorization for Noncompliance.

Section 54370(b) [Renumbered to Section 54370(a)]

Specific Purpose:

This section been amended for the purpose of adding “accreditation” and “certification” in the list of conditions that if allowed to lapse would be subject to termination of vendorization.

Rationale for Necessity:

This provision is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856 by establishing the Department’s authority to terminate vendorization based on absence of current accreditation and/or certification status.

Final Modification:

Following the first 15-day renotice, the word “certificate” is being added because it was inadvertently deleted in the original emergency filing.

Following the second 15-day renotice, this section is renumbered to 54370(a) to correct a typographic error.

Section 54370(c) through (i) (Post-Hearing Modification)

Final Modification:

Final Modification:

Following the second 15-day renotice, these sections are being renumbered to Sections 54370(b) through (h) to correct a numbering error.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 1. Definitions.

Section 58800. Meaning of Words.

Specific Purpose:

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

Rationale for Necessity:

This provision is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4857.1, 4859(a), 4860(b) and 4866. This provision is needed to make clear that the words used are understood by those persons directly affected by them and thereby, contribute to the intent of the regulations as required by the "necessity" and "consistency" standards of the Administrative Procedures Act, Government Code Sections 11349(a) and (d).

Section 58801. Definitions.

Section 58801(a) (Post-Hearing Modification)

Specific Purpose:

A new Section 58801(a) is being adopted to provide a cross-reference to the definition for "Service Provider".

Rationale for Necessity:

This section is adopted in response to testimony received during the first 15-day renotice and is necessary to provide clarity. Existing Sections 58801(a) through (d) are renumbered to Sections 58801(b) through (e) to allow for this new section.

Section 58801(a) [Renumbered to Section 58801(b).]

Specific Purpose:

This section clarifies that the words as used in this subchapter have meanings as defined in Title 17 Section 54302.

Rationale for Necessity:

Definitions of key terms used in the regulations are necessary to clarify the meaning and to assure regulatory consistency with Title 17, Section 54302.

Final Modification:

In response to testimony received during the first 15-day renotice, a cross-reference to the definition of "Management Organization" is added for clarity at Section 58801(b)(7). Sections 58801(a)(7) through (11) are renumbered to Sections 58801(b)(8) through (12) to allow for the addition of new cross-referenced definitions.

Section 58801(b) [Renumbered to Section 58801(c).]

Specific Purpose:

This section clarifies that the word “regional center” as used in this subchapter has meaning as defined in Title 17 Section 54505.

Rationale for Necessity:

Definitions of key terms used in the regulations are necessary to clarify the meaning and to assure regulatory consistency with Title 17, Section 54505.

Section 58801(c) [Renumbered to Section 58801(d).]

Specific Purpose:

This section clarifies that the word “Cost-of-Living Adjustment” as used in this subchapter has meaning as defined in Title 17 Section 57210.

Rationale for Necessity:

Definitions of key terms used in the regulations are necessary to clarify the meaning and to assure regulatory consistency with Title 17, Section 57210.

Section 58801(d) [Renumbered to Section 58801(e).]

Specific Purpose:

This section is being amended to include definitions from the Department of Rehabilitation Rate Setting Manual related to the setting of rates for Work Activity Programs. The numerical amendments are being adopted to accommodate the addition of new terms relating to the Habilitation Services Program and for purposes of expediency, this statement of “Specific Purpose” is applicable to all succeeding corrections to lettering and/or numbering sequences caused by the added terms included in Section 58801(e).

Rationale for Necessity:

These definitions are necessary to accommodate new Habilitation Services Program amendments to Section 58801(e) of Title 17, which required reassigning the order of numbers to the existing terms in the emergency regulations. Changes are also made to references in Section 58801(e) to correct the lettering and numbering sequence caused by the added definitions. This statement of “Rationale for Necessity” is also applicable to all succeeding changes to correct lettering and/or numbering sequences caused by the addition of new terms included in Section 58801(e).

Section 58801(d)(1) [Renumbered to Section 58801(e)(1).]

Specific Purpose:

This section is being adopted to define the term “Allowable supported employment services.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for the activities common to the development of work skills leading to supported employment. The adoption of this amendment is needed to make clear to all parties, the scope of services that would be considered appropriate to achieve the highest vocational outcome for the consumer as noted in the IPP and specified in the Individual Habilitation Service Plan (IHSP). The adoption of this provision establishes the primacy of supported employment as the preferred outcome when a consumer chooses habilitation services in the context of the IPP process.

Section 58801(d)(2) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to define the term “Audit, Desk”.

Rationale for Necessity:

This definition is necessary to provide clear and concise definition for the term “Audit, Desk” as used in these regulations.

Section 58801(d)(3) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to define the term “Audit, Independent”.

Rationale for Necessity:

This definition is necessary to provide clear and concise definition for the term “Audit, Independent” in order to establish specific criteria for the purpose of this SubChapter.

Section 58801(d)(4) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to define the term “Audit, Review”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Audit, Review” as utilized in this Subchapter.

Section 58801(d)(5) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to define the term “Common Area”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Common Area” in order to establish the criteria used to allocate space with a providers’ facility.

Section 58801(d)(2)

Specific Purpose:

This section is being adopted to define the term “Consumer.”

Rationale for Necessity:

This definition is necessary to provide clear and concise definition for the term “consumer” as used in these regulations.

Final Modification:

The definition is amended in response to testimony to add clarification to distinguish the specific utilization of the term in this Subchapter.

In response to testimony received during the first 15-day renotice, this definition is deleted and replaced for clarity with an amended definition of “Consumer Habilitation Services (consumer)” in renumbered Section 58801(e)(6).

Section 58801(d)(7) (Post-Hearing Modification) [Renumbered to Section 58801(e)(6).]

Specific Purpose:

This section is being adopted to define the term “Consumer, Habilitation Services”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Consumer, Habilitation Services”.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to clarify the specific utilization of “consumer” in this Subchapter.

Section 58801(d)(8) (Post-Hearing Modification) [Renumbered to Section 58801(e)(7).]

Specific Purpose:

This section is being adopted to define the term “Consumer, Other”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Consumer, Other” to establish criteria for calculating costs related to services for different populations of consumers.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to replace the term “consumer” with “individual” for clarity.

Section 58801(d)(9) (Post-Hearing Modification) [Renumbered to Section 58801(e)(8).]

Specific Purpose:

This section is being adopted to define the term “Consumer, Vocational Rehabilitation”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Consumer, Vocational Rehabilitation” to establish criteria for calculating costs related to services for different populations of consumers.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to replace the term “consumer” with “individual” for clarity.

Section 58801(d)(10) (Post-Hearing Modification) [Renumbered to Section 58801(e)(9).]

Specific Purpose:

This section is being adopted to define the term “Consumer Productivity Rate”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Consumer Productivity Rate” as used in the calculations for establishing Work Activity Program rates.

Section 58801(d)(11) (Post-Hearing Modification) [Renumbered to Section 58801(e)(10).]

Specific Purpose:

This section is being adopted to define the term “Consumer Stipend”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Consumer Stipend” and to differentiate this term from “Consumer Subsidy”.

Section 58801(d)(12) (Post-Hearing Modification) [Renumbered to Section 58801(e)(11).]

Specific Purpose:

This section is being adopted to define the term “Consumer Subsidy”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Consumer Subsidy” and to differentiate this term from “Consumer Stipend”.

Section 58801(d)(12) (Post-Hearing Modification) [Renumbered to Section 58801(e)(12).]

Specific Purpose:

This section is being adopted to define the term “Consumer Wage”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Consumer Wage” and to specify the regulatory authority of wage determination.

Section 58801(d)(3) [Renumbered to Section 58801(e)(13).]

Specific Purpose:

This section is being adopted to define the term “Cost Center.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for this term. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Section 58801(d)(15) (Post-Hearing Modification) [Renumbered to Section 58801(e)(14).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Administration”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Administration”. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Section 58801(d)(16) (Post-Hearing Modification) [Renumbered to Section 58801(e)(15).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Fund Raising”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Fund Raising”. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Section 58801(d)(17) (Post-Hearing Modification) [Renumbered to Section 58801(e)(16).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Non-Program Activities”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Non-Program Activities”. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to add the term “non-habilitation programs” for clarity.

Section 58801(d)(18) (Post-Hearing Modification) [Renumbered to Section 58801(e)(17).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Other Vendored Programs”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Other Vendored Programs”. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to delete “Vendored Programs” from the defined term for clarity.

Section 58801(d)(19) (Post-Hearing Modification) [Renumbered to Section 58801(e)(18).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Production”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Production”. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to correct a grammatical error.

Section 58801(d)(20) (Post-Hearing Modification) [Renumbered to Section 58801(e)(21).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Service Programs”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Service Programs”. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to clarify that this definition is for Work Activity Programs (WAP). The definition is further amended to deleted references to services that are now obsolete.

Section 58801(d)(21) (Post-Hearing Modification) [Renumbered to Section 58801(e)(19).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Stores (or other business operations)”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Stores (or other business operations)”. As used in preparation of the Cost Statement [see (e)(22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to delete “(or other business operations)” from the defined term and to replace “receiving services” with “trained for employment” for clarity.

Section 58801(d)(22) (Post-Hearing Modification) [Renumbered to Section 58801(e)(20).]

Specific Purpose:

This section is being adopted to define the term “Cost Center, Transportation”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Cost Center, Transportation”. As used in preparation of the Cost Statement [see (e) (22) below] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to clarify that this definition is for transportation between the consumer’s place of residence and their habilitation services program.

Section 58801(d)(4) [Renumbered to Section 58801(e)(22).]

Specific Purpose:

This section is being adopted to define the term “Cost Statement.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition ~~for~~ of this term to avoid confusion on which form is to be completed by Work Activity Programs (WAP) service providers for the establishment of the daily rate. The requirement that WAPs use this specific form establishes the Department’s intention to apply fair and equitable ratesetting procedures by requiring all WAP vendors to submit the same cost statement information using the same cost statement forms and applying ratesetting policies and procedures in the same manner.

Section 58801(d)(24) (Post-Hearing Modification) [Renumbered to Section 58801(e)(23).]

Specific Purpose:

This section is being adopted to define the term “Direct Production Expense”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Direct Production Expense”. As used in preparation of the Cost Statement [see (e) (22) above] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

This definition is amended to correct a grammatical error.

Section 58801(d)(25) (Post-Hearing Modification) [Renumbered to Section 58801(e)(24).]

Specific Purpose:

This section is being adopted to define the term “Direct Production Labor”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Direct Production Labor”. As used in preparation of the Cost Statement [see (e) (22) above] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to correct a grammatical error and to replace “non-client” with “non-consumer” to maintain consistency with terminology used in these regulations. This definition is further amended to delete “taxes, and fringe benefits” to clarify that these are not included in “Direct Production Labor”.

Section 58801(d)(26) (Post-Hearing Modification) [Renumbered to Section 58801(e)(25).]

Specific Purpose:

This section is being adopted to define the term “DOR”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “DOR" as used in these regulations.

Section 58801(d)(5) [Renumbered to Section 58801(e)(26).]

Specific Purpose:

This section is being adopted to define the term “Extended services.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for of this term by drawing a distinction between intensive supported employment services provided by the DOR’s vocational rehabilitation (VR) program and the long-term follow-up services provided by the regional center following the transition from the VR program. This section helps differentiate services that are the responsibility of the regional center after a consumer has been stable on

the job and intensive supported employment services from VR are no longer needed. By having this distinction, the coordination of service funding between VR supported employment and regional center funded extended services facilitates payment coordination between the agencies and, thereby, helps to avoid duplication of payment.

Section 58801(d)(28) (Post-Hearing Modification) [Renumbered to Section 58801(e)(27).]

Specific Purpose:

This section is being adopted to define the term “Facility”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Facility”.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended for clarity. This definition is further amended to delete the vendor number assignment requirements to eliminate duplication since those requirements already exist in Section 54340.

Section 58801(d)(29) (Post-Hearing Modification) [Renumbered to Section 58801(e)(28).]

Specific Purpose:

This section is being adopted to define the term “Fee-For-Service”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Fee-For-Service”. As used in preparation of the Cost Statement [see (e) (22) above] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has the usual and customary meaning under generally accepted accounting standards for completing forms that allow for separating out revenues and business expenses.

Section 58801(d)(6) [Renumbered to Section 58801(e)(29).]

Specific Purpose:

This section is being adopted to define the term “Fiscal Year.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition ~~for~~ of this term in order to establish for vendors that fiscal year cost statement data submitted to the Department for the purposes of establishing the maximum daily rate for work activity program (WAP) services shall be a vendor determined consecutive 12-month period.

Section 58801(d)(31) (Post-Hearing Modification) [Renumbered to Section 58801(e)(30).]

Specific Purpose:

This section is being adopted to define the term “Government Source”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Government Source” in order to specify specific sources of public funds.

Section 58801(d)(7) [Renumbered to Section 58801(e)(31).]

Specific Purpose:

This section is being adopted to define the term “Group Services.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for what service type is meant by the term. This clarification is needed in order to ensure that payments for group services by regional centers and the DOR are consistent based on a common understanding of the type and scope of services being purchased.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended for consistency with Welfare and Institutions Code Section 4851(r).

In response to testimony received during the first 15-day renotice, this definition is further amended to delete the job coach to consumer ratio to eliminate duplication since those ratios already exist in Section 58830.

Section 58801(d)(8) [Renumbered to Section 58801(e)(32).]

Specific Purpose:

This section is being adopted to define the term “Historical period.”

Rationale for Necessity:

This definition is necessary to establish a clear and concise definition for the period of time that allowable costs for operation of a WAP reported in the Cost Statement shall be used for calculating WAP rates.

Section 58801(d)(9) [Renumbered to Section 58801(e)(33).]

Specific Purpose:

This section is being adopted to define the term “Holding Company.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of this term in order to clarify the prohibition on including certain expenses on the cost statement that would have the effect of artificially inflating a WAP's daily rate. One such area of expenses is related to entities that, because of their affiliation with a WAP, can result in additional expenses to be incurred by the vendor had the affiliation not existed. Therefore, the proposed WAP rate setting methodology excludes some expenses in the cost statement for the purposes of establishing a historical rate. This includes expense for payments made to a holding company by a subsidiary vendor for items, e.g., occupancy, equipment and vehicles that exceed the expense that would have been incurred by the vendor if the holding company did not exist.

Section 58801(d)(10) [Renumbered to Section 58801(e)(34).]

Specific Purpose:

This section is being adopted to define the term "Income."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for the term "income" that is in accordance with generally accepted accounting principles when vendors report revenue on the cost statement (Form DS 1956) for purposes of establishing WAP daily payment rates. Under the proposed rate setting methodology, the Department will not reduce the rate of payment resulting from income unless that income is considered a recovery. Recoveries are defined primarily as funds from government sources provided to offset indirect expenses by reimbursing a facility directly for expenses incurred or by direct payment (generally for staff) of such expenses.

Section 58801(d)(11) [Renumbered to Section 58801(e)(35).]

Specific Purpose:

This section is being adopted to define the term "Indirect Expenses."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for the term "Indirect Expenses" in accordance with generally accepted accounting principles. Welfare and Institutions Code, Section 4859 requires that rate setting regulations be equitable and cost-effective. By requiring vendors to identify costs that are frequently referred to as overhead expenses and general and administrative expenses or operating expenses that cannot be assigned to a specific service or project, it allows for the establishment of rates that are comparable across different WAP service providers.

Section 58801(d)(12) [Renumbered to Section 58801(e)(36).]

Specific Purpose:

This section is being adopted to define the term "Individual Habilitation Service Plan (IHSP)."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for the term “Individual Habilitation Service Plan (IHSP)” in order to ensure that all parties involved in planning and providing habilitation services for consumers understand the official name, purpose, entity responsible for development of the employment planning document and its link to the consumer’s IPP, as specified in Welfare and Institutions Code, Section 4851 (c).

Section 58801(d)(13) [Renumbered to Section 58801(e)(37).]

Specific Purpose:

This section is being adopted to define the term “Individualized Plan for Employment (IPE).”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition ~~for~~ of this term in order to distinguish between the IHSP above and the planning document used by the Department of Rehabilitation’s (DOR) vocational rehabilitation program. This definition has been developed in conjunction with the DOR in order to effect a smooth transition of services whenever consumers demonstrate they can benefit from services provided by the respective agencies.

Section 58801(d)(14) [Renumbered to Section 58801(e)(38).]

Specific Purpose:

This section is being adopted to define the term “Individualized Services.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition ~~for~~ of this term by making specific the type and scope of service being provided, including limitations related to the location where the services are provided. This section, as specified in Welfare and Institutions Code, Section 4851 (s), is needed in order to ensure that payments made for individualized services by either regional centers and/or the DOR, are based on a common understanding of the type and scope of services being purchased.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended to add language that clarifies that the requirement for this service to decrease over time as specifically implemented by Department of Rehabilitation.

In response to testimony received during the first 15-day renotice, this definition is further amended for consistency with Welfare and Institutions Code Section 4851(s).

Section 58801(d)(15) [Renumbered to Section 58801(e)(39).]

Specific Purpose:

This section is being adopted to define the term “Integrated work.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for the term “Integrated work” in order to make clear that the preferred outcome for consumers receiving supported employment services is to be employed in a community setting ~~setting.~~ This provision is needed to clearly establish a programmatic distinction by contrasting this more specific employment outcome for habilitation programs with the more generalized outcomes for day programs.

Section 58801(d)(16) [Renumbered to Section 58801(e)(40).]

Specific Purpose:

This section is being adopted to define the term “Intensive Services.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition ~~for~~ of this term in order to differentiate services provided under the authority of the Department of Rehabilitation that are needed to help consumers achieve job stabilization in their supported employment placement before they are transitioned to Habilitation funded extended services. The definition allows two agencies to coordinate the necessary resources needed to assist an individual achieve a successful supported employment placement. The amended definition clarifies the transient nature of this service as provided by Department of Rehabilitation and removes specific Code of Federal Regulation citations to avoid a possible incorrect future reference.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended to clarify the transient nature of this service as provided by Department of Rehabilitation and to remove specific Code of Federal Regulation citations to avoid a possible incorrect future reference.

In response to testimony received during the first 15-day renotice, this definition is further amended to clarify that only individualized services decrease to stabilization and to add “except as noted in Section 58842,” which specifies that when Department of Rehabilitation is under the Order of Selection and Regional Center consumers are denied this service through Department of Rehabilitation.

Section 58801(d)(17) [Renumbered to Section 58801(e)(41).]

Specific Purpose:

This section is being adopted to define the term “Intervention.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “intervention” in order to establish that this term is specific to job coaching services that are provided as needed to

maintain a consumer's supported employment job placement as specified under Welfare and Institutions Code, Section 4851 (q) (6). By limiting this support service to situations where the consumer is in jeopardy of losing his or her supported employment placement, it avoids an interpretation that is so expansive as to hinder any regional center effort to control cost.

Section 58801(d)(18) [Renumbered to Section 58801(e)(42).]

Specific Purpose:

This section is being adopted to define the term "Job Coaching."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition to a term that is specific to supported employment services provided to individuals or group of individuals by a person skilled in providing employment-related services as specified in the consumers IPP and for which a fee is paid. This definition is also necessary to assure statutory consistency with "job coaching" as applied in Welfare and Institutions Code, Sections 4851 (r) and (s) and 4860 (a) through (c).

Section 58801(d)(44) (Post-Hearing Modification) [Renumbered to Section 58801(e)(43).]

Specific Purpose:

This section is being adopted to define the term "Non-Consumer Production Worker".

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for the term "Non-Consumer Production Worker". As used in preparation of the Cost Statement [see (d) (23) above] for the establishment of the maximum daily rate for work activity program (WAP) services, this term has a specific meaning and establishes the accounting standards for completing forms that allow for separating out revenues and business expenses.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to replace "service provider" with "Work Activity Program" for clarity.

Section 58801(d)(19) [Renumbered to Section 58801(e)(44).]

Specific Purpose:

This section is being adopted to define the term "Order of Selection."

Rationale for Necessity:

This definition is needed to provide a clear and concise definition for this term by clarifying the conditions under which regional centers can fund services that are normally the responsibility

of the Department of Rehabilitation (DOR). Defining this term provides the regional centers and the Department, as well as, DOR the necessary criteria to allow regional centers to fund timely services that are necessary for a successful supported employment placement. This term establishes those situations when the state's vocational rehabilitation agency due to fiscal shortfalls is unable to provide vocational rehabilitation services to all eligible applicants and invokes order of selection criteria to set priorities for accepting applicants.

Section 58801(d)(46) (Post-Hearing Modification) [Renumbered to Section 58801(e)(45).]

Specific Purpose:

This section is being adopted to define the term "Payment Year".

Rationale for Necessity:

This definition is needed to provide a clear and concise definition for this term by clarifying the specific time span utilized to complete the Cost Statement [see (e) (22) above] for the establishment of the maximum daily rate for work activity program (WAP) services.

Section 58801(d)(20) [Renumbered to Section 58801(e)(46).]

Specific Purpose:

This section is being adopted to define the term "Percentage of Intervention."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition on the standard for making a determination for continuation of job coaching services or that job placement stabilization has been achieved. This definition establishes a formula that is simple to document and is understable by all concerned including the consumer, regional center service coordinator, vendor and the vocational rehabilitation counselor.

Section 58801(d)(48) (Post-Hearing Modification) [Renumbered to Section 58801(e)(47).]

Specific Purpose:

This section is being adopted to define the term "Private Source".

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition in order to differentiate this source form government sources.

Section 58801(d)(49) (Post-Hearing Modification) [Renumbered to Section 58801(e)(48).]

Specific Purpose:

This section is being adopted to define the term "Production Consumer".

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition and to specify the distinction of consumers employed by Work Activity Programs.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to replace “service provider” with “Work Activity Program” for clarity.

Section 58801(d)(50) (Post-Hearing Modification) [Renumbered to Section 58801(e)(49).]

Specific Purpose:

This section is being adopted to define the term “Production Workday”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition to distinguish between the Program Day as defined in Section 58801(e)(52).

Final Modification:

This definition is amended to correct a typographical error.

Section 58801(d)(51) (Post-Hearing Modification) [Renumbered to Section 58801(e)(50).]

Specific Purpose:

This section is being adopted to define the term “Production Work Hour”.

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for “Production Work Hour” within the context of a consumer attendance at a Work Activity Program.

Section 58801(d)(21) [Renumbered to Section 58801(e)(51).]

Specific Purpose:

This section is being adopted to define the term “Productivity Rate.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition for this term so that whenever consumers are paid sub-minimum wages based on productivity vendors must ensure that the level of payment conforms to federal industrial standards and procedures. This is needed to ensure that all vendors compensate consumers working in their programs in a fair and equitable manner as established under federal law.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended to add clarification of the specific regulatory authority governing the establishment of consumer productivity rates and the habilitation service to which this definition is applicable.

Section 58801(d)(22) [Renumbered to Section 58801(e)(52).]

Specific Purpose:

This section is being adopted to define the term "Program day."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the length of time a consumer is scheduled to attend WAP services. This is also needed to establish a statewide baseline for vendorization purposes and for making adjustments to the daily rate for vendors and/or individual consumers who make changes to the length of their program day.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended to correct a typographical error and to add the correct definition for "Program Day" in place of the definition for "Productivity Rate", which was added in error.

In response to testimony received during the first 15-day renotice, this definition is further amended for clarity by specifying that the "Program Day" is established by the vendor in the approved program design.

Section 58801(d)(23) [Renumbered to Section 58801(e)(53).]

Specific Purpose:

This section is being adopted to define the term "Program Expansion."

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of what constitutes allowable program expansion costs for purposes of making adjustments to vendors' rates. Without this definition, the Department and vendors would be subject to disputes on what constitutes a program expansion that would justify an adjustment to vendor rates when these costs are incurred by the vendor.

Section 58801(d)(55) (Post-Hearing Modification) [Renumbered to Section 58801(e)(54).]

Specific Purpose:

This section is being adopted to define the term "Rate".

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of the method of payment applicable to habilitation services.

Section (d)(24) [Renumbered to Section 58801(e)(55).]

Specific Purpose:

This section is being adopted to define the term “Rate, Base.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the policies and procedures relating to the conditions under which the Department will adjust base rates for WAPs.

Section 58801(d)(57) (Post-Hearing Modification) [Renumbered to Section 58801(e)(56).]

Specific Purpose:

This section is being adopted to define the term “Rate, Gross”.

Rationale for Necessity:

This definition is necessary in order to provide a clear distinction between several rate terms utilized in these regulations.

Section 58801(d)(25) [Renumbered to Section 58801(e)(57).]

Specific Purpose:

This section is being adopted to define the term “Rate, Historical.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the time period that is established by vendors during which allowable costs are collected and used in setting WAP rates. A vendor is required to establish an historical period in order to receive a rate based on reasonable cost, in accordance with the policies and procedures outlined in this Subchapter.

Section 58801(d)(59) (Post-Hearing Modification) [Renumbered to Section 58801(e)(58).]

Specific Purpose:

This section is being adopted to define the term “Rate, Interim”.

Rationale for Necessity:

This definition is necessary in order to provide a clear distinction between several rate terms utilized in these regulations.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to provide consistency with Welfare and Institutions Code Section 4861(b).

Section 58801(d)(26) [Renumbered to Section 58801(e)(59).]

Specific Purpose:

This section is being adopted to define the term “Rate, Adjustment.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the term as used in the general policy for adjusting 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 that would justify a rate adjustment.

Section 58801 (d)(61) (Post-Hearing Modification) [Renumbered to Section 58801(e)(60).]

Specific Purpose:

This section is being adopted to define the term “Rate Correction”.

Rationale for Necessity:

This definition is necessary in order to provide a clear distinction between several rate terms utilized in these regulations.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to provide a clear distinction between “Rate Correction” and “Rate Revision”.

Section 58801(d)(27) [Renumbered to Section 58801(e)(61).]

Specific Purpose:

This section is being adopted to define the term “Rate Revision.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of rate adjustments that increase or decrease a vendor’s rate and that are not the consequences of costs incurred in the historical period but are as a consequence of an audit by the Department or the regional center. This definition is needed to address situations such as State-approved COLAs, as well

as, cost associated with disasters, such as, floods and earthquakes where the vendor can prove that the costs were incurred.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to provide a clear distinction between “Rate Revision” and “Rate Correction”.

Section 58801(d)(63) (Post-Hearing Modification) [Renumbered to Section 58801(e)(62).]

Specific Purpose:

This section is being adopted to define the term “Reconciliation”.

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of the process and content to report reconciliations.

Final Modification:

This definition is amended to specify the updated title, revision date, and form number of the Work Activity Program Cost Statement (Form DS 1950) [Rev 3/05].

Section 58801(d)(64) (Post-Hearing Modification) [Renumbered to Section 58801(e)(63).]

Specific Purpose:

This section is being adopted to define the term “ Recoveries”.

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of funds which are categorized as recoveries.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended for clarity.

Section 58801(d)(65) (Post-Hearing Modification) [Renumbered to Section 58801(e)(64).]

Specific Purpose:

This section is being adopted to define the term “Revenue”.

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of the income and support considered to be revenue as used in these regulations.

Section 58801(d)(28) [Renumbered to Section 58801(e)(65).]

Specific Purpose:

This section is being adopted to define the term “Service Delivery Staff.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the type of WAP staff whose numbers have an impact on rate adjustments due to a change in staff-to-consumer ratio. By specifying the types of staff participating in a WAP, it establishes the basis for justifying an increase or decrease in rate adjustments either due to loss of subsidized staff or when WAPs staffing levels drop below the historical ratio for which the rate was established.

Section 58801(d)(67) (Post-Hearing Modification) [Renumbered to Section 58801(e)(66).]

Specific Purpose:

This section is being adopted to define the term “Shipping and Receiving”.

Rationale for Necessity:

This definition is necessary in order to provide a clear definition of the Shipping and Receiving expenses that are allocated to production costs.

Section 58801(d)(29) [Renumbered to Section 58801(e)(67).]

Specific Purpose:

This section is being adopted to define the term “Stabilization.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of this term in order to achieve a common understanding of the criteria for making a determination that a consumer has achieved a level of job stability to warrant transition from DOR funded intensive job coaching services to regional center funded long term services. This is needed to enhance clarity of service responsibility between two agencies when consumers are eligible for service funding under both DDS criteria and vocational rehabilitation criteria.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to clarify to what the stabilization percentages relate.

Section 58801(d)(69) (Post-Hearing Modification) [Renumbered to Section 58801(e)(68).]

Specific Purpose:

This section is being adopted to define the term “Staff-To-Consumer Ratio”.

Rationale for Necessity:

This definition is necessary to provide a clear definition of the ratio of staff-to-consumer that is used in the Work Activity Program.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended for clarity by adding the phrase “reported on the cost statement”.

Section 58801(d)(30) [Renumbered to Section 58801(e)(69).]

Specific Purpose:

This section is being adopted to define the term “Staggered Work Schedule.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of this term in order to allow for an individual consumer or groups’ work schedule to vary so as to allow for individualization in work schedules. By allowing for differences in individual work hours, the Department and/or regional centers are providing vendors the flexibility needed to find job placements in their communities where both the employer and/or the worker’s needs can be accommodated.

Section 58801(d)(71) (Post-Hearing Modification) [Renumbered to Section 58801(e)(70).]

Specific Purpose:

This section is being adopted to define the term “State”.

Rationale for Necessity:

This definition is necessary in order to provide a clear definition of the term “State”.

Section 58801(d)(72) (Post-Hearing Modification) [Renumbered to Section 58801(e)(71).]

Specific Purpose:

This section is being adopted to define the term “Subsidy”.

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of revenues that are categorized as subsidies.

Final Modification:

In response to testimony received during the first 15-day renotice, this definition is amended to clarify the distinction between “recovery” and “subsidy”.

Section 58801(d)(31) [Renumbered to Section 58801(e)(72).]

Specific Purpose:

This section is being adopted to define the term “Supported Employment Intake.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the allowable supported employment services that could be provided by regional centers in the event that the DOR establishes an order of selection priority system because it is unable to provide services to all eligible applicants. Without this definition regional centers would not know be able to judge if all the components of this service were delivered when the time came to make payment for the service.

Section 58801(d)(32) [Renumbered to Section 58801(e)(73).]

Specific Purpose:

This section is being adopted to define the term “Supported Employment Placement.”

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the allowable supported employment services related to job placement services that could be provided by regional centers in the event that the DOR establishes an order of selection priority system because it is unable to provide services to all eligible applicants. Without this definition regional centers would not know what to look for in determining ~~that~~ whether the supported employment service delivered by the vendor ~~and~~ resulted in the employment of an individual with a developmental disability by an employer in the community.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended for consistency with Welfare and Institutions Code Section 4851(p).

Section 58801(d)(33) [Renumbered to Section 58801(e)(74).]

Specific Purpose:

This section is being adopted to define the term “Supported Employment Retention.”

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of a term that is used for determining the period of time needed to establish that an individual has been stabilized on his or her job. Without this definition, regional centers and supported employment vendors would differ on the length of time needed to establish that retention services have been completed in those situations where regional centers are responsible for payment because DOR is unable to provide services to all eligible applicants.

Section 58801(d)(34) [Renumbered to Section 58801(e)(75).]

Specific Purpose:

This section is being adopted to define the term "Supportive Habilitation Services."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of the allowable non-paid services that can be provided by a WAP. Without this definition, WAPs and regional centers are likely to disagree on the types of services that are likely to benefit an individual's overall vocational development. The term's definition provides a sufficient scope of supportive services to address all potential employment deficits, including the opportunity for WAPs to add other related activities by including them in the program design and getting approval by the regional center.

Section 58801(d)(35) [Renumbered to Section 58801(e)(76).]

Specific Purpose:

This section is being adopted to define the term "Temporary Transfer."

Rationale for Necessity:

This definition is needed to provide a clear and concise definition of the limitations for temporarily transferring consumers into a WAP from a supported employment placement or vice versa. Without this term and definition, consumers in a supported employment placement would not be able to continue earning money when anticipated or unanticipated circumstances interrupt attendance at their regular work site. In addition, WAP consumers would miss out on the opportunity to work in an integrated job setting should a temporary opening in a supported employment group become available.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended to replace the word "calendar" with "consecutive" in each instance for clarity.

Section 58801(d)(78) [Renumbered to Section 58801(e)(77).]

Specific Purpose:

This section is being adopted to define the term "Vocational Rehabilitation Program (VR)."

Rationale for Necessity:

This definition is necessary to provide a clear and concise definition of services provided by the Department of Rehabilitation's VR services program and its connection to the overall vocational service delivery system for regional center consumers. This term is used extensively in this Subchapter because it is an important generic source of employment related resources and is central to achieving community-integrated employment for consumers. This term is also needed because it is used to clarify service responsibilities between DOR and regional centers, thereby, improving the coordination of billing between the agencies in order to avoid duplication of payment.

Final Modification:

In response to testimony received during the 45-day comment period, this definition is amended to clarify the administering department and to make the terminology consistent with governing Federal regulations.

In response to testimony received during the first 15-day renotice, this definition is further amended to add the phrase "opportunities and achieve employment" for clarity.

Section 58801(d)(37) [Renumbered to Section 58801(e)(78).]

Specific Purpose:

This proposal is being adopted to define the term "Work Adjustment Services."

Rationale for Necessity:

This definition is necessary in order to provide a clear and concise definition of the allowable non-paid services that can be provided by a WAP. Without this definition, WAPs and regional centers are likely to disagree on the types of services that are likely to benefit an individual's overall vocational development. The term's definition provides traditionally recognized work adjustment services that address many on-the-job and off-the-job skills intended to improve a consumer's employability and job performance. This definition also makes clear to vendors that, when possible, adjustment services should prepare consumers for referral to the VR program.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 2. General Provisions for Habilitation Services.

Section 58810. Regional Center Responsibilities.

Section 58810(a)

Specific Purpose:

This section is being adopted to specify the general regional center vendorization requirements for Habilitation service providers.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4857.1. This section makes clear that regional centers are required to purchase Habilitation services from providers who are vendored either as a work activity program (WAP) or a supported employment program (SEP). This provision is needed to distinguish Habilitation services as a distinct employment service category when compared to traditional day programs. This distinction is important in order to ensure that consumers seeking paid work in their communities are referred to service providers knowledgeable in federal and state rules pursuant to the payment of sub-minimum wages.

Section 58810(b)

Specific Purpose:

This section is being adopted to clarify the vendorization status of Habilitation service providers engaged in providing work activity or supported employment services to consumers prior to July 1, 2004.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4857.1. This section establishes the Department's authority to provide for a smooth administrative transition for Habilitation service providers doing business prior to July 1, 2004, from a centralized statewide model to a localized regional center model. This section will ensure that Habilitation services purchased by regional centers beginning July 1, 2004, are provided by vendors who have previously been determined, through a formal accreditation review, to be competent in providing paid work opportunities for consumers and who are knowledgeable in the federal/state requirements for paying wages that are below the prevailing minimum wage scale.

Section 58810(c)

Specific Purpose:

This section is being adopted to clarify the vendorization requirements for Habilitation vendors seeking vendorization on or after July 1, 2004 and who are not providing Habilitation services prior to that date.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4857.1. This section sets forth the conditions under which a new facility will be vendorized for purposes of providing Habilitation services. This section also provides the necessary regulatory linkage to the vendorization requirements applicable to Habilitation service providers contained in Subchapter 2, Vendorization, Chapter 3 of Title 17.

Section 58810(d)

Specific Purpose:

This section is being adopted to specify the existing sections of Title 17 applicable to the vendorization of Habilitation services providers.

Rationale for Necessity:

This section is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4857.1. This section sets forth the conditions under which a new facility will be vendorized for purposes of providing Habilitation services. This section also provides the necessary regulatory linkage to the vendorization requirements applicable to Habilitation service providers contained in Subchapter 2, Vendorization, Chapter 3 of Title 17.

Section 58810(e)

Specific Purpose:

This section is being adopted to clarify the type of information that regional centers shall provide to Habilitation vendors.

Rationale for Necessity:

This section is needed to specify the responsibilities for regional centers to provide copies of all pertinent regulations, statutes and other information related to the provision of Habilitation services. This section would assure that new, developing and existing Habilitation service providers have the rules and service standards needed to be in compliance with state laws and regulations, as well as, to be able to provide Habilitation services of high quality.

Section 58810(f)

Specific Purpose:

This section is being adopted to clarify the time frame for achieving accreditation compliance and to clarify the requirement for submitting copies of accreditation reports to the vendoring regional center and the Department.

Rationale for Necessity:

This section is needed to set forth the policies and procedures related to accreditation with which new Habilitation vendors must comply. This provision also establishes the Department's authority to specify the timelines for Habilitation service providers to be in compliance with accreditation and vendorization standards following the effective date of vendorization by the regional center. This proposal ensures that vendoring regional centers and DDS 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.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to correct an error that could allow for a lapse of certification pending accreditation. This section is further amended to clarify the criteria for requesting certification by Department of Rehabilitation and adds Department of Rehabilitation to the reporting requirement.

In response to testimony received during the first 15-day renotice, this section is further amended for clarity and consistency with the requirements of Welfare and Institutions Code Section 4851, which require CARF accreditation or certification according to guidelines established by the Department of Rehabilitation.

Section 58811. Program Design Requirements for Habilitation Services.

Section 58811 (Post-Hearing Modification)

Specific Purpose:

In response to testimony received during the first 15-day renotice, this section is reformatted to clarify the Program Design requirements that apply to both Supported Employment and Work Activity Program, and then lists the additional requirements for Work Activity Programs. This statement of "Specific Purpose" is applicable to all succeeding corrections to lettering and/or numbering sequence caused by the amendments to Section 58811.

Rationale for Necessity:

The emergency regulations lacked clarity as to the requirements specific to Supported Employment, Work Activity Program, and both. This statement of "Rationale for Necessity" is applicable to all succeeding corrections to lettering and/or numbering sequence caused by the added terms included in Section 54302.

Section 58811(a)

Specific Purpose:

This section is being adopted to specify program design requirements for Habilitation service providers.

Rationale for Necessity:

This section is needed to set forth policies and procedures for program elements required to be included in the Habilitation vendor's program design. In seeking to differentiate Habilitation services from other regional center funded day programs, it is essential to require Habilitation service providers to spell-out employment related information, e.g., plans for coordinating referrals to vocational rehabilitation. Information provided in the program design, e.g., a service provider's employment philosophy and description of innovative work settings in the program design, will provide regional center service coordinators and consumers the information needed to find vendors who can help meet their IPP work goals.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to clarify the requirements applicable to both Supported Employment and Work Activity Programs. Section 58811(c), which specifies requirements for reporting changes in program elements, is renumbered to Section 58811(a)(9) because the requirements are applicable to both Supported Employment and Work Activity Programs.

In response to testimony received during the first 15-day renotice, this section is further amended for clarity by adding cross-references to the pertinent Supported Employment and Work Activity Program standard requirements. Elements pertinent only to Work Activity Programs are relocated to Section 58811(c).

Section 58811(b)

Specific Purpose:

This section is being adopted to specify program design requirements for Work Activity Programs (WAPs).

Rationale for Necessity:

This section is needed to establish the Department's authority to specify the information needed in a WAP's program design that is in addition to the general program design information requirements. This information is needed to clarify that the vendor meets the expectations for delivering work activity programming. It provides key information on paid work activities and non-paid-work activities when consumers are not engaged in work and the resources available for contract procurement and procedures for conducting time studies, so regional centers' can determine a WAP's ability to meet the IPP goals of consumer's seeking to have some earning.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is renumbered to Section 58811(c). Requirements pertaining to both Work Activity Programs and Supported Employment are relocated to Section 58811(a).

Section 58811(c)

Specific Purpose:

This section is being adopted to specify conditions that require Habilitation vendors to submit a revised program design.

Rationale for Necessity:

This section is needed to specify the vendor's responsibilities when modifications are made to the program design. Without this requirement, regional center service coordinators would be unaware of changes in a vendor's programming, thereby, causing unnecessary costs to the regional center and delay in a consumer's ability to meet his or her employment outcome.

Final Modification:

In response to testimony received during the 45-day comment period, this section is renumbered to Section 58811(a)(9) to clarify that these requirements apply to both Supported Employment and Work Activity Programs.

In response to testimony received during the first 15-day renotice, this section is renumbered to Section 58811(b) to clarify that although this is a requirement of both Work Activity Programs and Supported Employment, this requirement is not an element of the program design.

Section 58811(d) (Post-Hearing Modification)

Specific Purpose:

In response to testimony received during the first 15-day renotice, this section is adopted to specify the program design requirements that are unique to Supported Employment.

Rationale for Necessity:

This adoption is necessary to maintain the formatting of the section where program design requirements that are only pertinent to either Work Activity Programs or Supported Employment are listed separately.

Section 58812. General Planning Requirements.

Section 58812(a)

Specific Purpose:

This section is being adopted to specify the requirements for developing service plans for consumers by Habilitation service vendors.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4851 and 4854. This section establishes the Department's authority to specify time frames for submitting the Individual Habilitation Service Plan. Without this requirement, delays could occur in the development of the IHSP and, thereby, prevent timely assessments of the service objectives. This could also cause costly delays in identifying problems that would routinely be corrected had the IHSP been prepared in a timely fashion.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to revise the reporting requirement from 120 to 90 days, which correlates to the length of the evaluation period.

Section 58812(b)

Specific Purpose:

This section is being adopted to specify the time frame for updating the Individual Habilitation Service Plan (IHSP).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4851 and 4854. This section establishes the Department's authority to specify a time frame for updating the IHSP and submitting it to the regional center for review. The use of a consumer's birth date to determine when IHSPs are updated also brings this review requirement in conformity with current regional center review requirements and practice.

Section 58812(c)

Specific Purpose:

This section is being adopted to specify when IHSP objectives must be reviewed for progress and participants that must be included in the review.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4851 and 4854. This section establishes the Department's authority to specify the time frame for reviewing progress on each IHSP objective and documentation of any progress associated with the review. This is needed to prevent major time gaps between assessments and updates of IHSP objectives among vendors and to ensure consumers' objectives continue to be relevant to their vocational capabilities.

Section 58812(d)

Specific Purpose:

This section is being adopted to specify conditions under which a consumer receiving Habilitation services would require an IPP team meeting.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4851 and 4854. This section establishes the Department's authority to ensure that reviews are conducted by the Habilitation services vendor regarding 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. The requirement for convening an IPP meeting at specific stages of service delivery increases chances that regional center service coordinators in conjunction with Habilitation vendors will be able to make timely modifications to the service plan, in order to keep the plan on course.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 3. Standards for Work Activity Programs

Section 58820. General Standards for Work Activity Programs.

Section 58820(a)

Specific Purpose:

This section is being adopted to specify the program criteria for Work Activity Programs (WAPs) with respect to policies, procedures and standards for delivery of work services.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Sections 4851, 4854 and 4857 of the Welfare and Institutions Code. Reference to CARF, state and federal labor laws and regulations are needed to establish the basis for conducting productivity studies to ensure that hourly or piecework wages are in conformity with federal and state law.

Section 58820(b)

Specific Purpose:

This section is being adopted to assure that consumers receive appropriate amount and variety of work as provided for in the consumer's IPP.

Rationale for Necessity:

This section is needed to ensure that WAP services are provided in ways that fulfill the intent of Sections 4501,4646, 4750, 4751, 4850 and 4851 of the Welfare and Institutions Code. The statement "to attain his or her highest feasible level of functioning" is included to reinforce the intention of the Department to provide Habilitation services consistent with the meaning of Habilitation services as specified in Section 4851 of the Welfare and Institutions Code.

Section 58820(c)

Specific Purpose:

This section is being adopted to establish a standard policy on the percentage of the total time Work Activity Program (WAP) consumers receive services.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4850.2, 4853 and 4854. This section is needed to establish a minimum level of paid work that must be available to consumers participating in WAPs. In

addition to the paid work standards, this section would provide clarification on the percentage of time Habilitation service providers can provide ~~in~~ non-paid-work training, e.g., work adjustment and supportive habilitation services. Having such a standard for WAP service providers would assure that consumers have the opportunity to experience a sufficient number of hours of paid work opportunities, and where appropriate, work adjustment and/or supportive services to achieve their highest level of vocational functioning.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to correct an error, which would result in restricting the amount of time, work adjustment and supportive habilitation services can be provided to 25 percent.
In response to testimony received during the first 15-day renotice, this section is amended to clarify that the aggregate percentage of the total time consumers average in program participation time over any six-month period shall be no more than 50 percent when combining work adjustment services and supportive habilitation services and to list components of both services.

Section 58821. Work Activity Program Day Length.

Section 58821(a)

Specific Purpose:

This section is being adopted to clarify for purposes of vendorization, the minimum length of the WAP day.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4862. This section is needed to clarify for purposes of vendorization and billing, the minimum length of the WAP day and the conditions under which an exception could be granted that reduces the length of the day used as the historical period for establishing the WAP rate. Without this provision, WAPs would be free to modify the length of the program day resulting in, among other problems, uncertainty in providing scheduled transportation services for consumers to and from WAPs, as well as, causing potential audit exceptions following state audit reviews.

Section 58822. Work Activity Program Service Records Requirements.

Section 58822(a)

Specific Purpose:

This section is being adopted to specify the minimum requirements for Work Activity Program (WAP) service provider record maintenance.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section establishes the Department's authority to clarify the WAP responsibilities for maintaining service record documentation consistent with the service provider record maintenance requirements of Title 17, Section 50604. This provision establishes the authority of access to essential documents by the Department and regional centers in order to exercise the oversight responsibilities pursuant to Section 4856 of the Welfare and Institutions Code. This requirement would provide the necessary data to link services provided by WAP to billing documents sent to regional centers.

Section 58822(b)

Specific Purpose:

This section is being adopted to specify the content and time frames for submitting consumer service data to the billing regional center and the Department.

Rationale for Necessity:

This section is needed to establish the Department's authority to specify the content and to set time frames for reporting consumer specific WAP data in order to determine WAP compliance with paid work standards, as well as, to measure consumer work proficiency and earnings pursuant to Section 4854 of the Welfare and Institutions Code. This is also needed by the Department to make statewide WAP service outcomes information available for program quality assurances purposes and, if needed, for dissemination to government and/or stakeholder groups.

Final Modification:

The section is amended to specify the latest revision date of the revised DS 1971 form.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 4. Standards for Supported Employment Programs

Section 58830. General Standards for Supported Employment Programs.

Section 58830(a)

Specific Purpose:

This section is being adopted to specify that relationship of Supported Employment Program (SEP) support services as identified in the Individual Habilitation Services Plan (IHSP) and the Individual Program Plan (IPP).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4854. This section makes clear to vendors, regional centers and consumers alike, that SEP support services, like all other regional center support services, are to be provided as necessary to attain a consumer's paid work objective in an integrated community.

Section 58830(b)

Specific Purpose:

This section is being adopted to distinguish allowable supported employment services that can be provided by the vendor, including specific services that must have regional center approval.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section establishes the Department's authority to specify the types of allowable supported employment services to help the consumer succeed in his or her job placement. Without this provision, regional centers could encounter service-funding disputes between consumers and/or their legal representatives and vendors because of differences of opinion in the types of services needed to help a consumer make the most of his or her supported employment placement.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to specify the billing methodology for travel costs associated with job coaching services.

In response to testimony received during the first 15-day renotice, this section is amended to correct a grammatical error.

Section 58830(c)

Specific Purpose:

This section is being adopted to clarify the two categories of service available under the Supported Employment Program (SEP).

Rationale for Necessity:

This section is needed to establish the Department's authority to limit supported employment services to two designated service categories. Without this provision, regional centers could be subject to funding many un-proven supported employment service models, thereby, reducing resources currently available to fund existing models with demonstrated outcomes.

Final Modification:

The amendment deletes the word “proposed” due to the enactment of the Trailer Bill to the Budget Act Fiscal Year 2004-05.

Section 58830(d)

Specific Purpose:

This section is being adopted to clarify the limitations for job coaching in groups.

Rationale for Necessity:

This section is needed to establish the Department’s authority to specify the limits for services provided in a group, 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. This proposal interprets and makes specific the requirements of Welfare and Institutions Code Sections 4851 (r) and 4860 (b).

Section 58830(e)

Specific Purpose:

This section is being adopted to clarify the limitations for job coaching in individualized placements.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851(s). This section establishes the Department’s authority to clarify the limitations for job coaching in individualized placements and to emphasize that individualized services are expected to decrease over time as the consumer becomes familiar with his or her job duties.

Section 58830(f)

Specific Purpose:

This section is being adopted to ensure that vendors providing supported employment services comply with federal and state sub-minimum wage standards.

Rationale for Necessity:

This section is needed to ensure that vendors who provide supported employment services for consumers whose productivity permits vendors to pay below minimum wage comply with federal and state sub-minimum wage standards. This provision protects the consumer from exploitation by requiring vendors to pay low productivity workers based on time-studied job tasks. It will also allow vendors to continue enrolling consumers at all skill levels because they can pay at a rate commensurate with their productivity and thus protect against losing money on contract-jobs.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to correct a typographical error.

Section 58831. Supported Employment Program Records Requirements.

Section 58831(a)

Specific Purpose:

This section is being adopted to specify the minimum documentation required by Supported Employment Program (SEP) vendors.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4850 and 4857. This section clarifies SEP responsibilities for maintaining service record documentation. This requirement would provide the necessary data to link services provided by SEPs to billing documents sent to regional centers.

Section 58831(b)

Specific Purpose:

This section is being adopted to specify the content and time frames for Supported Employment Program (SEP) vendors as required when submitting consumer service data to the billing regional center and the Department.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4854. This section establishes the Department's authority to specify the content requirements and time frames for reporting consumer specific SEP data to the billing regional center and the Department. This information will provide individual and group placement measures of consumer work proficiency and earnings and allow regional centers and the Department to compare consumer employment success over time, as well as, between programs across the state. This is also needed by the department to make statewide SEP service outcomes information available for program quality assurances purposes and, if needed, for dissemination to government and/or stakeholder groups.

Final Modification:

The section is amended to specify the latest revision date of the revised DS 1972 form. This section is further amended to correct the numbering sequence.

Section 58831(c)

Specific Purpose:

This section is being adopted to specify the minimum documentation required by Supported Employment Program (SEP) group placement vendors.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4854 and 4854.1. This section establishes the Department's authority 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 an individual consumer participating in the group. This provision 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.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to add the Department of Rehabilitation to the list of billing entities; to specify the latest revision date of the revised DS 1964 form; and to correct the data required on the DS 1964 (1/05) by clarifying the required data for submission, required backup documentation and adding the data elements, Consumer Name, UCI Code and Authorizing Code, omitted during the development of the emergency regulations.

In response to testimony received during the first 15-day renotice, this section is further amended to correct the terminology used in the data elements and to make grammatical changes to errors.

Section 58832. Supported Employment Group Formation and Change Requirements.

Section 58832(a)

Specific Purpose:

This section is being adopted to specify the methodology for establishing new Supported Employment Program (SEP) groups.

Rationale for Necessity:

This section is needed to establish the Department's authority to set forth the procedures and forms SEPs are required to submit to the vendoring regional center and DDS in order to get approval for new supported employment groups. This provision also allows the Department, in conjunction with regional centers, to key-in the necessary identifiers into the system-wide billing and tracking database.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to specify the latest revision date of the revised DS 1962 form.

Section 58832(b)

Specific Purpose:

This section is being adopted to specify what factors will be consider in approving request for a new Supported Employment Program (SEP) group.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851. This section establishes the Department's authority to specify for SEP group service providers what factors will be taken into consideration by the Department, in consultation with the regional center, in approving or disapproving requests for a new group. Without the delineation of the factors that will impact decisions on requests for new groups, the Department and/or regional centers would ~~be~~ not have a reference source to base disapprovals of new groups in the event of a challenge.

Section 58832(c)

Specific Purpose:

This section is being adopted to specify the conditions under which a vendor may be permitted to change an existing Supported Employment Program (SEP) group.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851. This section establishes the Department's authority to specify the conditions under which a vendor may be permitted to change an existing group and the DDS form, including the information that must be provided to the Department and vendoring regional center prior to approval. This provision provides regional centers the flexibility to address unanticipated changes to existing groups that are understood to typically occur in traditional worksites.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to specify the latest revision date of the revised DS 1963 form.

Section 58832(d)

Specific Purpose:

This section is being adopted to make clear that approvals for any proposed change to an existing Supported Employment Program (SEP) must receive approval prior to implementation of the change.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851. This section is needed in order to avoid potential billing and/or service disputes between vendors and regional centers by making clear that approval for any proposed change to an existing SEP must be secured prior to implementation of the change.

Section 58833. Temporary Transfers Between Work Activity and Supported Employment Programs.

Section 58833(a)

Specific Purpose:

This section is being adopted to clarify policies and procedures when consumers temporarily transfer between work activity programs (WAPs) and supported employment placements.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851 to maintain Habilitation service consumers at their highest level of vocational functioning. This section establishes the Department's authority to set forth the conditions and limits for approvals when consumers temporarily transfer into either a WAP or SEP, including the IPP documentation needed to explain the reasons for the transfer and/or conditions for extension of time limits. This provision is intended to address employment or earnings interruptions for WAP and/or SEP consumers by allowing them to transfer temporarily into another Habilitation program during periods when circumstances prevent them from continuing in their existing placement.

Section 58833(b)

Specific Purpose:

This section is being adopted to clarify purchase of service authorization policies for temporary transfers.

Rationale for Necessity:

This section is needed to establish the Department's authority to allow regional centers to approve temporary transfers under emergency conditions and to authorize the purchase of service, when appropriate, consistent with existing emergency authorization provisions pursuant to Title 17 Section 50612.

Section 58833(c)

Specific Purpose:

This section is being adopted to specify the conditions under which extensions beyond the 60-day limit would be granted.

Rationale for Necessity:

This section is needed to establish the Department's authority to specify the three conditions under which extensions beyond the 60-day limit could be granted. This provision would provide some assurance to consumers and vendors alike that those unanticipated events, e.g., natural disasters, would likely allow for an extension of a temporary transfer placement.

Section 58834. Additional Requirements for Supported Employment Programs.

Section 58834(a)

Specific Purpose:

This section is being adopted to address situations when additional supported employment supervision could be authorized.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4854.1. by ensuring regional center and Department of Rehabilitation coordination regarding approval of job-coaching supervision for consumers during the lunch period. This provision provides for coordinated funding when the Department of Rehabilitation has determined that a SEP consumer that is being transferred to Habilitation funding, requires the continuation of lunchtime supervision.

Section 58834(b)

Specific Purpose:

This section is being adopted to clarify conditions when an increase in supported employment services could be authorized.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851(s). This section establishes the Department's authority to allow regional centers the flexibility to authorize supported employment services above the stabilization level, as specified in the IPP. This provision is necessary to address unexpected worksite changes that can destabilize a consumer's placement and therefore, call for additional support and/or job coaching to help restore stability for the consumer.

Article 5. Coordination of Services with the Department of Rehabilitation.

Section 58840. Referrals to the Department of Rehabilitation.

Section 58840(a)

Specific Purpose:

This section is being adopted to establish a process coordinating services between the Department of Rehabilitation (DOR) and regional centers for Work Activity Program (WAP) consumers deemed appropriate for vocational rehabilitation (VR).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4851, 4857 and 4858. This section establishes the Department's authority to specify assessment and referral procedures to the Department of Rehabilitation (DOR) for WAP consumers deemed appropriate for VR services. The requirement for WAPs to conduct annual consumer assessments and the establishment of referral procedures for WAP consumers to VR will minimize disputes between local DOR offices and regional centers regarding appropriateness of a referral for VR services and will ensure consumers receive timely VR services.

Section 58840(b)

Specific Purpose:

This section is being adopted to specify the conditions that are appropriate for referring existing Supported Employment Program (SEP) consumers for VR services.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4851, 4857 and 4858. This section establishes the Department's authority to specify circumstances that may occur while a consumer is participating in a SEP that would trigger a referral for VR services. This provision clarifies for vendors, regional center and DOR that a referral to VR is appropriate when consumers voice their desire for more work opportunities and/or when there is evidence that they are working below their vocational potential and are in need of additional VR services.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to clarify the criteria for referral for Vocational Rehabilitation services provided by Department of Rehabilitation.

In response to testimony received during the first 15-day renotice, this section is further amended to correct a grammatical error.

Section 58841. Transition to Habilitation Services Upon Achievement of Stabilization.

Section 58841(a)

Specific Purpose:

This section is being adopted to require both regional centers and the Department of Rehabilitation (DOR) to maintain communication regarding the progress of consumers receiving VR services.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851(s) by specifying that regional centers monitor the progress of consumers receiving VR supported employment services in order to be prepared for the transition of funding from VR to Habilitation's Supported Employment Program. This provision will improve the chances that a consumer job placement will continue to be stable even after VR discontinues funding job coaching or other supported employment services. Under this proposed seamless transfer of service responsibility, neither the employer nor the consumer would experience any differences in supported employment services, thereby, helping the consumer continue in his or her employment capacity.

Section 58841(b)

Specific Purpose:

This section is being adopted to establish criteria for determining when a consumer receiving vocational rehabilitation (VR) services has reached job stabilization and the timeline for completing a funding transfer from VR to the Habilitation Services Program (HSP) following job stabilization.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4851. This section establishes the Department's authority to provide clear benchmarks on what constitutes job stabilization for a consumer receiving supported employment services from the DOR and to establish the time frame for converting funding from DOR to regional center. As proposed, when a consumer receiving VR supported employment services has been deemed to have reach job stabilization he/she would have these services continued under the HSP. This provision would help reduce disagreements between DOR and regional centers on what constitutes stabilization and when funding should be switched between agencies in order to assure timely and uninterrupted service transition from VR to the HSP.

Section 58842. Denial of Services Pursuant to Order of Selection Criteria

Section 58842

Specific Purpose:

This section is being adopted to clarify circumstances under which the regional center is authorized to provide services that are the responsibility of the Department of Rehabilitation (DOR).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4855. This section sets forth policies and procedures that would allow regional centers to authorize vocational rehabilitation (VR) services when the DOR is under "order of selection". This would prevent consumers from losing employment opportunities in the event the DOR is unable to provide services to all eligible applicants for VR services due to fiscal reasons.

Section 58842(a)

Specific Purpose:

This section is being adopted to specify the vocational rehabilitation (VR) service category that can be authorized by regional centers during periods when DOR is unable to provide services to all eligible applicants.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4855. This section is needed to make specific the service category that can be authorized by regional centers during the time that DOR is under an "order of selection." By specifically identifying a key supported employment service type, it allows regional centers to fund needed services to meet consumers' IPP employment goals without the delay that would occur by being placed on DOR's waiting list for VR services.

Section 58842(b)

Specific Purpose:

This section is being adopted to specify three vocational rehabilitation (VR) service categories that can be authorized by regional centers during periods when DOR is unable to provide services to all eligible applicants.

Rationale for Necessity:

This section is needed to establish the Department's authority to specify the three additional service categories, in addition to the services specified in Section 58842(a) that can be

authorized by regional centers during the time that DOR is unable to provide services to all eligible applicants due to a fiscal shortfall. By specifically identifying ~~a~~ key supported employment service categories, it allows regional centers to pay the fees for intake, placement and retention that are needed help consumers reach their employment objectives without the delay that would occur by being placed on DOR's waiting list for VR services.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 6. Quality Assurance Monitoring and Corrective Actions for Habilitation Services Programs

Section 58850. Monitoring and Evaluation of Habilitation Program Services.

Section 58850(a)

Specific Purpose:

This section is being adopted to specify monitoring and evaluation responsibilities for the Department and regional centers.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to establish the Department's authority to specify areas subject to monitoring and evaluation, e.g., service quality, consumer protections and compliance with CARF accreditation standards. By specifying areas that are subject to monitoring and evaluation by the Department and regional centers, it will help to ensure that the Habilitation services provided to consumers are of the highest quality possible.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to correct the monitoring requirement for regional centers with respect to CARF accreditation. Compliance with the standards is the responsibility of CARF, verification of accreditation is the responsibility of regional center.

In response to testimony received during the first 15-day renotice, this section is further amended for clarity by adding references where "protections" is explained.

Section 58850(b)

Specific Purpose:

This section is being adopted to specify timelines for reviewing Individual Habilitation Services Plans (IHSP), accreditation reports and Work Activity Program (WAP) paid work standards, by the Department in coordination with regional center.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section establishes the minimum time frames for the Department, in coordination with regional centers, to review of IHSPs and CARF accreditation reports, as well as, for review of reports provided by the Department that would determine if the WAP vendor is in compliance with paid work standards specified in Section 58820 (c). By ~~the~~ establishing minimum levels of monitoring and evaluation reviews for IHSPs, it assures that Habilitation services continue to be relevant to the consumers' employment objectives. The requirement that CARF accreditation reports be reviewed as appropriate could provide valuable background information to regional centers on potential service and/or administrative strengths and weaknesses that would influence referral decisions. The provision requiring the review of WAP paid work percentages will ensure that, in the event ~~that~~ a sufficient level paid work is not available to consumers, corrective action can be taken in a timely fashion to reestablish compliance the minimum paid work percentages.

Section 58850(c)

Specific Purpose:

This section is being adopted to specify the minimum frequency for monitoring and evaluating service quality, consumer protections and compliance with CARF reports by the Department and regional centers.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to specify the minimum frequency for monitoring reviews of Habilitation Service Program vendors that would be undertaken by the Department and the vendoring regional center in the areas of service quality, consumer protections and compliance with CARF reports. This provision also establishes that the longest period that could elapse between reviews of these three areas will be three years as it is based on a vendor's accreditation cycle. Although, three years would appear to be a long gap between reviews of service quality and consumer protections, three year accreditations are only given to vendors who have met the highest standards of program administration, including consumer protections and quality of service. All other vendors will be subject to reviews annually or, at minimum, every two years.

Section 58850(d)

Specific Purpose:

This section is being adopted to specify types of documentation that must be made available by Habilitation Services Program (HSP) vendors for inspection and review by the Department and regional centers.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to specify the types of documentation that must be made available by HSP vendors for review and inspection by the Department and regional centers, including, access to specific staff. This provision establishes the authority of access to essential documents and staff, if needed, by the Department and regional centers in order to exercise the oversight responsibilities pursuant to Section 4856 (a) of the Welfare and Institutions Code.

Section 58850(e)

Specific Purpose:

This section is being adopted to specify which agency would have the final say when there is disagreement on a course of action as a result of monitoring and evaluation activities specified under the section.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section 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 and evaluation findings under this section.

Section 58851. Noncompliance Sanctions and Corrective Action Plans.

Section 58851(a)

Specific Purpose:

This section is being adopted to specify that Habilitation Services Programs found to be out of compliance with Work Activity Program (WAP) and /or Supported Employment Program (SEP) will be subject to sanctions.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section establishes the Department's authority to specify that when, as a result of a monitoring or quality assurance review, WAPs and SEPs are found to be out of compliance they will be subject to sanctions. This provision also makes clear the intent of the Department and regional centers to use sanctions in a tailored fashion based on the significance of the noncompliance.

Section 58851(b)

Specific Purpose:

This section is being adopted to specify the timeline for development of a corrective action plan following a determination of noncompliance with Habilitation Services Program (HSP) standards.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to establish timelines for development of a corrective action plan following a noncompliance notification by the Department or regional center. The requirement that WAPs and SEPs develop a corrective action plan within a specified time period assures that Habilitation service deficiencies will be corrected in a timely fashion and, thereby, have minimal negative impact on consumers.

Section 58851(c)

Specific Purpose:

This section is being adopted to specify the types of sanctions that can be taken and actions that can be imposed under each sanction by the Department or regional center following a determination of noncompliance.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to clarify the types of sanctions that can be imposed; the noncompliance violations that would apply in order to trigger such sanctions and the agency responsible for approving the plan of corrective action. This provision is needed to establish that it is a high priority for of the Department and regional centers those HSP vendors maintain compliance with consumers' rights and consumer health and safety requirements as a condition for continued consumer referrals and vendorization.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to delete the phrase "but are not limited to" which erroneously created a broader regulatory authority than that specified in statute.

In response to testimony received during the first 15-day renotice, Section 58851(c) is further amended to clarify that the appropriate sanction is to be selected from the list provided; Section 58851(c)(2)(A) is amended to correct a grammatical error; and Section 58851(c)(3) is amended to clarify that one of the appropriate sanctions is removal of consumers from the habilitation services program.

Section 58851(d)

Specific Purpose:

This section is being adopted to specify the right of appeal for Habilitation Services Program (HSP) sanction under this section.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to clarify for HSP vendors their appeal rights for those circumstances where sanctions result in removal of consumers from their service area and/or there is a termination of vendorization. Inasmuch as these sanctions are regarded as the most serious actions that can taken by the Department and regional centers and would have profound negative implications for the vendor's business operation and result in service dislocation for consumers, it is essential that HSP vendors have recourse to a timely appeal process under existing W&I Code provisions.

Section 58851(e)

Specific Purpose:

This section is being adopted to specify the right of Habilitation Services Program (HSP) vendors to a formal review by the Office of Administrative Hearings when the sanction results in termination of vendorization.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to clarify the right of HSP vendors to a formal review by the Office of Administrative Hearings when the sanction results in termination of vendorization.

Section 58851(f)

Specific Purpose:

This section is being adopted to clarify requirements for Habilitation Services Program (HSP) vendors sanctioned by the Department of Rehabilitation (DOR) prior to July 1, 2004 and under a corrective action plan after the date of transfer from the DOR to DDS.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4856. This section is needed to make clear that HSP vendors who have not completed the corrective actions specified under a plan approved by the DOR pursuant to Section 19254.5 of Title 9, prior to the effective date of HSP transfer shall be required to complete the requirements of the plan after the date of transfer. Without this requirement, violations of HSP standards identified under DOR's monitoring would go uncorrected until the Department and/or the vendoring regional center is able to conduct a quality assurance review or monitoring evaluation. The requirement for HSP vendors to comply with the corrective action plan will also protect consumers who are receiving services from HSP vendors who have been sanctioned for health and safety reasons. Other protections contained in the provision include the requirement for regional centers and/or the

Department to evaluate whether all the corrective steps required in the plan have been completed.

Section 58851(g) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to clarify notification requirements for the Department and regional center if sanctions are imposed.

Rationale for Necessity:

This proposal is necessary to notify Department of Rehabilitation, one of the funding sources for services for vocational services, of the potential impact to the consumers they may be funding or proposing to fund through a specific provider.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 7. Work Activity Program Ratesetting Procedures.

Article 7 (Post-Hearing Modification)

Specific Purpose:

In response to testimony received during the 45-day comment period, this article is being amended to include information contained in the Work Activity Program ratesetting manual included by reference in Title 9 by the Department of Rehabilitation prior to the transfer of administrative responsibility. This manual is entitled:
Habilitation Services Ratesetting Manual
Habilitation Services Program
Department of Rehabilitation
First Adopted: July 1, 1983
Amended in 2002
and henceforth referred to as, “DOR Ratesetting Manual”.
The numerical amendments are being adopted to accommodate the addition of requirements relating to the Habilitation Services Program ratesetting process and for purposes of expediency, this statement of “Specific Purpose” is applicable to all succeeding requirement additions and corrections to lettering and/or numbering sequence caused by the added requirements included in Article 7.

Rationale for Necessity:

This proposal is necessary to include the provisions of the ratesetting manual not included in the emergency regulations. These requirements include comprehensive, concise detailed

requirements for submitting the Cost Statement to the Department for ratesetting purposes. These amendments are also necessary to honor the intent of these regulations and the commitment to stakeholders prior to the transfer of the program from DOR to DDS in July, 2004 to maintain consistency of the Habilitation services program including the rate setting procedures and terminology when possible. The numerical amendments are necessary to accommodate the Habilitation Services Program amendments to Article 7 of Title 17, and which required reassigning the order of numbers to the existing requirements. Changes were also made to references in Section 54302 to correct the lettering and numbering sequence caused by the added definitions. This statement of "Rationale for Necessity" is also applicable to all succeeding requirement additions and changes to correct lettering and/or numbering sequences caused by the addition of requirements included in Article 7.

Section 58860. General Provisions.

Section 58860(a)

Specific Purpose:

This section is being adopted to establish the general ratesetting provisions for Work Activity Programs (WAPS).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section reaffirms that the Department policy and procedures to base WAP rates on allowable cost by specifying that cost for setting WAP rates cannot include expenses from the operation of other day programs. This provision would make clear for the many agencies currently vendored by regional centers for day program services and who are also vendored by the DOR for WAP services that they cannot combine costs associated with those day programs with WAP cost for ratesetting purposes.

Final Modification:

This section is being amended to clarify the requirement of basing staff costs on time study data and that staff costs are to be determined by a semi-annual two-week time study.

In response to testimony received during the first 15-day renotice, this section is further amended to correct a grammatical error.

Section 58860(b) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to specify the Departments intent to establish rates that reflect reasonable costs for allowable habilitation services and associated administrative costs.

Rational for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 by establishing those business related costs which are not to be included in the habilitation services cost.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is further amended to clarify that direct costs related to services are not to be included in the computation of Habilitation Service Costs.

Section 58860(c) (Post-Hearing Modification) [Renumbered from Section 58861(b).]

Specific Purpose:

This section is being adopted to specify how rates will be established for new Work Activity Programs (WAPs).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section establishes the Department's authority to clarify how rates will be established for WAP vendors that are new and who have insufficient historical fiscal and client data to establish rates. The use of a statewide average rate for new WAP vendors, pursuant to Section 4861 of the Welfare and Institutions Code, maintains the Department's ratesetting policies and procedures for establishing rates in a fair and equitable manner.

Final Modification:

Following the first 15-day renotice, this section is relocated from Section 58861(b) to a more appropriate location.

Following the second 15-day renoice, this section is amended to change each instance of client to consumer to be consistent with statutory terminology and definitions in this subchapter.

Section 58860(d) (Post-Hearing Modification) [Renumbered from Section 58879(c).]

Specific Purpose:

This section is being adopted to specify that when an established habilitation service provider has a historical period of costs for Work Activity Program services corresponding to that of service providers already vendorized, the Department is to set rates based on these regulations.

Rationale for Necessity:

This adoption is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 which requires that the Department adopt regulations to establish rates for Work Activity Programs.

Final Modification:

Following the first 15-day renotice, this section is relocated from Section 58879(c) to a more appropriate location and further amended for clarity in response to testimony.

Section 58860(c) (Post-Hearing Modification) [Renumbered to Section 58860(e).]

Specific Purpose:

This section is being adopted to specify that rates are based on allowable costs, not actual costs, in the historical period.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 by specifying that the Department is to establish rates on allowable costs, not actual costs, in the historical period.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is further amended to clarify that reasonable costs are based on the cost containment methods specified in Sections 58871 through 58873 and unnecessary and unclear language is deleted.

In response to testimony received during the second 15-day renotice, this section if further amended to delete an unnecessary cross-reference.

Section 58860(b) [Renumbered to Section 58860(f).]

Specific Purpose:

This section is being adopted to establish the Departments intent to apply ratesetting policies and procedures in an equitable manner.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear the Department's intention to establish rates in an equitable manner and to require all HSP vendors to submit the same cost statement information using the same cost statement forms. This provision will help avoid situations where vendors submit different types of cost statement data on different forms, thereby, causing disproportional rates because of inconsistent cost reporting between vendors.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d).

Section 58860(c) [Renumbered to Section 58860(g).]

Specific Purpose:

This section is being adopted to establish the Departments intent to apply all ratesetting policies and procedures in the same manner.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is included to make clear to all Habilitation Services Program vendors that the Department is committed to applying all the policies and procedures in a fair and equitable manner.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d).

Section 58860(d) [Renumbered to Section 58860(h).]

Specific Purpose:

This section is being adopted to establish a single cost statement form as the basis for establishing rates.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is included to make clear the Department's intent to establish the Cost Statement as the form that, when completed by Work Activity Program (WAP) vendors, will be the basis for establishing the rate for WAPs.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d).

Section 58860(e) [Renumbered to Section 58860(i).]

Specific Purpose:

This section is being adopted to clarify how income received by a Work Activity Program (WAP) vendor will be taken into account in regards to rates.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that income generated from other sources, e.g., service contracts, shall not result in a reduction in the rate. This provision is needed to avoid creating disincentives for WAPs who seek income-generating contracts that not only provide paid work opportunities for consumers, but also help the long-term financial health of the vendor and/or its umbrella agency.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d) and to amend the cross-references to reflect renumbering that is being done to the referenced sections.

Section 58860(f) [Renumbered to Section 58860(j).]

Specific Purpose:

This section is being adopted to make clear that the rate for Work Activity Program (WAP) services cannot be paid if another fee for the service is paid by another source other than a regional center.

Rationale for Necessity:

This section is needed to establish the Department's authority to specify that the rate for WAP services cannot be paid if another fee for the service is paid by another government or private entity. This provision is needed to avoid circumstances where double billing could occur and result in future unexpected penalties for the vendor following a Department or regional center audit.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d).

Section 58860(g) [Renumbered to Section 58860(k).]

Specific Purpose:

This section is being adopted to specify how Work Activity Programs (WAP) service costs are to be treated in order to establish the historical rate for WAPs.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section reaffirms the legislative intent that rates for WAP services are to be reasonable, and makes clear how a WAP's allowable service costs contained in the Cost Statement will be computed to establish the basis for the historical WAP rate.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). In response to testimony received during the 45-day comment period, this section is further amended to eliminate redundant language.

Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d) and to correct the numbering sequence. In response to testimony received during the first 15-day renotice, this section is amended to clarify the allowable costs upon which the historical rate is based.

Section 58860(h) [Renumbered to Section 58860(l).]

Specific Purpose:

This section is being adopted to specify how cost of living adjustments (COLAs) impact Work Activity Program's (WAP's) daily or hourly rate.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section clarifies that approved COLAs could result in an adjustment of a WAP's daily or hourly rate.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). This section is further amended to clarify the Departement's method for allocating COLAs during the rate setting process.

Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d).

Section 58860(i) [Renumbered to Section 58860(m).]

Specific Purpose:

This section is being adopted to specify how hours and days billed by Work Activity Program's (WAPs) and paid by regional centers during the historical period will be considered for the purpose of rate setting.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that the hours and days billed by WAPs and paid for by regional centers during the historical period shall be considered to be days or hours of attendance for the purpose of rate setting.

Final Modification:

This section is being renumbered to accommodate addition of new Sections 58860(b) and (c). This section is further amended to clarify that the hours billed to either regional centers or any other funding source are to be considered hours or days of attendance for purposes of rate setting.

Following the first 15-day renotice, this section is further renumbered to accommodate addition of new Sections 58860(c) and (d).

Section 58860(l) (Post-Hearing Modification) [Renumbered to Section 58860(n).]

Specific Purpose:

This section is being adopted to establish the Departments intent to maintain an adequate level of habilitation services.

Rationale for Necessity:

This proposal is necessary to make specific the requirements of Welfare and Institutions Code Section 4850. The requirements contained in Article 7 do not impose a new requirement on service providers. The Article 7 requirements were previously required by the DOR Ratesetting Manual. The editing and formatting required of the regulatory process requires the text to be in underline even though Article 7 is not a new requirement.

Final Modification:

Following the first 15-day renotice, this section is renumbered to accommodate addition of new Sections 58860(c) and (d).

Section 58860(m) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to establish the Departments' intent to not reduce the rate of payment resulting from income.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that income generated from other sources, e.g., service contracts, shall not result in a reduction in the rate. This provision is needed to avoid creating disincentives for WAPs who seek income-generating

contracts that not only provide paid work opportunities for consumers, but also help the long-term financial health of the vendor and/or its umbrella agency.

Final Modification:

This section is deleted because it duplicates renumbered Section 58860(g).

Section 58860(n) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to specify the method to be used by service providers in calculating and reporting depreciation.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859.

Final Modification:

This section is relocated to the instructions for the DS 1950 (3/2005), Work Activity Program Cost Statement instructions.

Section 58860(o) (Post-Second 15-Day Renotice Modification) [Renumbered from Section 58861(c).]

Specific Purpose:

This section is being adopted to specify how rates are affected when Work Activity Programs (WAPs) have a change in ownership.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that changes in ownership of a WAP will have no impact on the daily or hourly rate of that vendor.

Final Modification:

Following the first 15-day renotice, this section is relocated from Section 58861(c) to a more appropriate location.

Section 58861. General Ratesetting Requirements for Work Activity Programs.

Section 58861(a)

Specific Purpose:

This section is being adopted to specify the general ratesetting requirements for Work Activity Programs (WAPs).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify the entities that are to receive Work Activity Program's (WAP's) 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 WAP payment year invoices.

Section 58861(b) [Renumbered to Section 58860(g).]

Specific Purpose:

This section is being adopted to specify how rates will be established for new Work Activity Programs (WAPs).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section establishes the Department's authority to clarify how rates will be established for WAP vendors that are new and who have insufficient historical fiscal and client data to establish rates. The use of a statewide average rate for new WAP vendors, pursuant to Section 4861 of the Welfare and Institutions Code, maintains the Department's ratesetting policies and procedures for establishing rates in a fair and equitable manner.

Final Modification:

This section is relocated to Section 58860(g).

Section 58861(c) [Renumbered to Section 58860(o).]

Specific Purpose:

This section is being adopted to specify how rates are affected when Work Activity Programs (WAPs) have a change in ownership.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that changes in ownership of a WAP will have no impact on the daily or hourly rate of that vendor.

Final Modification:

This section is relocated to Section 58860(o).

Section 58861(d)

Specific Purpose:

This section is being adopted to specify how rates for Work Activity Programs (WAPs) vendors who are part of a larger agency are established.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that in addition to notifying large agencies that they are subject to the same cost reporting policies and procedures as individual WAP vendors, costs associated with the management of the agency will be allocated, as appropriate to their Work Activity Programs (WAPs). This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

Following 45-day comment period, this section is amended to replace "agencies" with "Management Organization" for clarity.

In response to testimony received during the first 15-day renotice, this section is being deleted and the requirements for Management Organizations is being added to renumbered Section 58861(b).

Section 58861(e) (Post-Hearing Modification) [Renumbered to Section 58861(b).]

Specific Purpose:

This section is being adopted to specify how rates for Work Activity Programs (WAPs) service providers are established.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify that service providers are to use the methods for reporting cost statement data as specified in this subchapter. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is amended to include the requirements for Management Organizations and renumbered to accommodate deletion of proposed Sections 58861(b), (c), and (d).

Section 58861(f) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to specify how rates for Work Activity Programs (WAPs) vendors who are part of a larger agency are established.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that in addition to notifying large agencies that they are subject to the same cost reporting policies and procedures as individual WAP vendors, costs associated with the management of the agency will be allocated, as appropriate to their Work Activity Programs (WAPs). This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is deleted because it duplicates language in renumbered Section 58861(b)(1).

Section 58861(g) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to require that data provided for agencies be allocated to each vendored service provider.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify that service providers are to use the methods for reporting cost statement data as specified in this subchapter. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify how data submitted by large agencies is to be allocated. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is deleted because it duplicates language in renumbered Section 58861(b)(1).

Section 58861(e) [Renumbered to Section 58861(c).]

Specific Purpose:

This section is being adopted to specify how ratesetting data from Work Activity Programs (WAPs) vendors who are part of another public entity shall be reported.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that WAPs submitting ratesetting data that are part of another entity, e.g., school, hospital, city or county operation shall only report data for the WAP. This provision will help avoid circumstances where there is

a delay in processing of the current payment year invoices of that Work Activity Program due to cost statement data that was not separated out from the expenses of an associated public entity.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is renumbered to accommodate deletion of proposed Sections 58861(b), (c), (d), (f), and (g).

Section 58861(i) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to specify the revenue and expense forms required to be submitted by Work Activity Programs (WAP) to the Department.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make specific the Department forms required to report revenue and expenses by WAP vendors. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

Section 58861(i)(1) is being relocated to a more appropriate location, Section 58864, Required Cost Statement Information, and the remainder of Section 58861(i) is deleted as it duplicates requirements already specified in Sections 58864.

Section 58861(j) (Post-Hearing Modification) [Renumbered to Section 58861(d).]

Specific Purpose:

This section is being adopted to specify that fees for a single Work Activity Program service may be reported as expenses under one habilitation cost center.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make specific how expenses are to be reported. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is renumbered to accommodate deletion of proposed Sections 58861(b), (c), (d), (f), (g), and (i).

Section 58861(k) (Post-Hearing Modification) [Renumbered to Section 58861(e).]

Specific Purpose:

This section is being adopted to specify that fees received separately for certain services are to be reported as expenses under separate cost centers.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make specific how expenses are to be reported. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is renumbered to accommodate deletion of proposed Sections 58861(b), (c), (d), (f), (g), and (i). This section is further amended to correct examples provided for types of "services".

Section 58861(l) (Post-Hearing Modification) [Renumbered to Section 58861(f).]

Specific Purpose:

This section is being adopted to specify that expenses for services not provided as part of the Work Activity Program are to be reported separately from the expenses of Habilitation services.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make specific how expenses are to be reported. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is renumbered to accommodate deletion of proposed Sections 58861(b), (c), (d), (f), (g), and (i). This section is further amended to delete the option of consolidating non-habilitation expenses under one cost center since this option is no longer valid.

Section 58861(m) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to specify that private donations are not to be reported as indirect expenses or recoveries, but as income.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make specific how private donations are to be reported. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

This section is being deleted because it duplicates in large part the requirements in Section 58875. The parenthetical phrase (including private donations or grants restricting the use of the funds for purchase of assets) is being included in Section 58875(b).

Section 58861(n) (Post-Hearing Modification)

Specific Purpose:

This section is being adopted to specify the documentation that is required to be retained for review and audit when reporting staff salaries and wages.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish the documentation required to support reported salaries and wages. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

This section is being relocated to a more appropriate location, Section 58864, Required Cost Statement Information.

Section 58862. Reporting Period for Submission of Information

Section 58862(a)

Specific Purpose:

This section is being adopted to specify the next fiscal year that rates for Work Activity Programs (WAPs) will be established and the fiscal year on which historical cost would be based.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear the next fiscal year for establishing WAP vendor rates pursuant to Section 19356 of the Welfare and Institutions Code. This provision also provides clarification as to the fiscal year period on which historical cost will be reported in the WAP vendors cost statement for the purpose of establishing WAP service rates.

Section 58862(b)

Specific Purpose:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is being adopted to specify the period to be used by Work Activity Program (WAP) vendors as a historical period for the purpose of establishing a WAP service rate.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear for WAP vendors the fiscal year period that is to be used to comprise~~s~~ 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. This provision recognizes that WAP vendor fiscal years may be different from the period used by the State and allows flexibility in the fiscal year period used by WAP vendors when reporting historical cost data.

Section 58863. Required Due Dates for Submission of Information.

Section 58863(a)

Specific Purpose:

This section is being adopted to specify the effective date of timelines for submitting Cost Statement data and other financial statements to the Department and vendoring regional center.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear the effective date for the timeline requirements for submission of Cost Statement data and other financial statements to the Department and vendoring regional center. Inasmuch as, WAP rates will be frozen until Fiscal Year 2006-07, it is important to clearly specify due dates for submitting Cost Statements in order to avoid delays in processing WAP payment invoices in Fiscal Year 2006-07.

Final Modification:

This section is amended to clarify that the time frame specified is the cost statement due date.

Section 58863(b)

Specific Purpose:

This section is being adopted to specify requirements and timelines for submitting independent audits to the Department and regional center.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Sections 4856 and 4859. This section is needed to make clear the requirements and timelines for submitting independent audits to the Department and regional center.

Final Modification:

In response to testimony received during the 45-day comment period, this section is amended to clarify that an independent audit or review report of the historical period is to be submitted to the Department within three months of the cost statement due date.

Section 58863(c)

Specific Purpose:

This section is being adopted to specify the Department's position regarding extensions to the deadline for submitting Cost Statement data.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish the Department's authority to clarify how the Department will handle a request from a vendor for an extension of the deadline for submitting cost statements.

Section 58863(d)

Specific Purpose:

This section is being adopted to specify the timeline for requesting an extension to the deadline for submitting Cost Statement data.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish the Department's authority to clarify timelines for Work Activity Program (WAP) vendors to request an extension to the deadline for submitting Cost Statement data to the Department.

Section 58863(e)

Specific Purpose:

This section is being adopted to specify what actions the Department will take when timelines for submitting cost statements are not met by Work Activity Program (WAP) vendors.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify what actions the Department may take when timelines for submitting cost statements are not met. This provision provides fair warning that the Department could delay the processing of the current payment year invoices of a Work Activity Program that fails to meet the due date for submitting cost statement data.

Section 58864. Required Cost Statement Information.

Section 58864(a)

Specific Purpose:

This section is being adopted to specify the revenue and expense forms required to be submitted by Work Activity Programs (WAP) to the Department.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make specific the Department forms required to report revenue and expenses by WAP vendors. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

Following the 45-day comment period, this section is amended to include forms that had been inadvertently omitted from the emergency filing.

In response to testimony received during the first 15-day renotice, this section is further amended to incorporate revisions made to DS 1950 (3/2005) Work Activity Program Cost Statement and instructions and to incorporate this form by reference. This form is not printed in the California Code of Regulations because it would be cumbersome and impractical. However, this form is readily available from the Department. Also, Section 58861(i)(1) is relocated to this section. A new Section 85564(a)(3) is adopted to establish the requirement that requests for adjustment must be reported using the DS 1950.

Section 58864(b) [Renumbered to Section 58864(a)(2).]

Specific Purpose:

This section is being adopted to specify the form that is to be used to report consumer data by Work Activity Programs (WAP) to the Department.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify the name of the form to be used by the WAP vendor to report consumer survey information to the Department. This

provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

Following the 45-day comment period, this section is amended to update the lastest revision date of DS 1957 (1/05).

In response to testimony receiving during the first 15-day renotice, this section is further amended for clarity and renumbered to accommodate the restructuring of Section 58864(a).

Section 58864(c) (Post-Hearing Modification) [Renumbered to Section 58864(b).]

Specific Purpose:

Following the 45-day comment period, this section is adopted to specify the forms that are included in the DS 1950 (3/2005) and to specify the source documentation that is required to be retained for review and audit.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clearly identify the forms that comprise the DS 1950 (3/2005) and the objective for each form and the source documentation for each form that must be retained. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is amended to include the Staff Survey Report, Form DS 1950 (3/05), Tab A. Further amendments are made to reflect revisions being made to Form DS 1950 (3/2005).

Section 58864(c) [Renumbered to Section 58864(d).]

Specific Purpose:

This section is being adopted to establish the requirement for Work Activity Program (WAP) 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.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make specific to vendors that are required 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. This provision is consistent with the Department's intent to apply ratesetting procedures in a fair and equitable manner.

Final Modification:

Following the first 15-day renotice, this section is renumbered to accommodate renumbering of proposed Sections 58864(b).

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 8. Ratesetting Methodology for Work Activity Programs.
Section 58870. General Provisions.

Section 58870(a)

Specific Purpose:

This section is being adopted to outline the general methodology and sequence of computations for setting Work Activity Program (WAP) rates.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear the sequence for establishing WAP rates, including, applicable policies related to cost containment, setting of historical rate, computing the base rate and for reducing and adjusting the rate. This provision is consistent with the Department's intent to apply the ratesetting methodology in a fair and equitable manner as expressed in Section 58860(b).

Final Modification:

Following the first 15-day renotice, Section 58870(a)(1) is amended to delete the cross-reference to Section 58872 since that section is being incorporated into the already referenced Section 58871. Section 58870(a)(2) is amended to reflect revisions being made to Form DS 1950 (3/2005). Section 58870(a)(5) is amended to delete the cross-references to Sections 58877 and 58877 since those sections are being incorporated into the already referenced Section 58876.

Section 58870(b)

Specific Purpose:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is being adopted to specify how grant funds used by a Work Activity Program (WAP) vendor during the historical period will be treated in the event the grant funds are terminated prior to the payment year.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify how grant funds used by a vendor during the historical period is treated in the calculation of the WAP rate if the grant funds will be terminated before the payment year. Without this provision, grant funds that are used in the establishment of the historical rate and that terminate prior to the payment year would result in a WAP vendor rate that does not meet the actual costs of the services provided.

Section 58870(c)

Specific Purpose:

This section is being adopted to specify how rates will be established for a Work Activity Program (WAP) vendor dependent on grant funds who has not been in operation long enough to establish a historical period.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify the ratesetting methodology for situations where a vendor dependent on grant funds has not been in operation long enough to establish a historical period. Without this provision, the Department would be required to establish a daily WAP rate without a reasonable amount of time to assess the fiscal impact of the grant on the cost of providing WAP services, and which could result in over payment, or underpayment for services by the vendoring regional center.

Section 58871. Cost Containment - Policies

Final Modification:

This section title is amended to allow for the combination of Sections 58871 and 58872.

Section 58871(a) (Post-Hearing Modification)

Specific Purpose:

This section is adopted to specify that cost containment policies are to be applied to historical period costs.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is also necessary for consistency with the policy of setting rates for WAP services based on reasonable cost pursuant to Section 4859 of the Welfare and Institutions Code.

Section 58871(a) [Renumbered to Section 58871(b).]

Specific Purpose:

This section is being adopted to specify, for purposes of cost containment, the maximum allowable Work Activity Program (WAP) administrative cost in the historical period.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish, for purposes of cost containment, the maximum allowable WAP administrative cost in the historical period. Because there are major differences in how agencies that provide WAP services are structured as business entities, there is significant variance in the administrative expenses reported to the Department. Therefore, consistent with the policy of setting rates for WAP services based on reasonable cost pursuant to Section 4859 of the Welfare and Institutions Code, the Department is obligated to set a limit on the amount of administrative cost that will be allowed. The formula, based on a percentage of the total gross cost of the WAP in the historical period, has proven to be reasonable by the fact that it has been in use by the Department of Rehabilitation in setting WAP rates since 1994.

Final Modification:

Following the 45-day comment period, this section is amended to clarify the procedures required when determining administrative costs.

In response to testimony received during the first 15-day renotice, renumbered Section 58871(b)(2) is deleted because it duplicates requirements in Section 58873. The following sections are renumbered to accommodate this deletion.

Section 58872. Cost Containment - Retirement Plan Expenses.

Section 58872(a) [Renumbered to Section 58871(c)(1).]

Specific Purpose:

This section is being adopted to specify the Department's policy to allow Work Activity Programs (WAPs) to include retirement plan costs as an expense, subject to certain exceptions, conditions and limitations.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to give notice to WAP vendors that a tax on employees and employers that is used to fund the Federal Insurance Contributions Act (FICA) are an allowable cost that can be allocated in the cost statement.

Final Modification:

Following the 45-day comment period, this section is amended by renumbering the existing subsections to allow for combination with Section 58871. This section is further amended by

adding definitions for “Qualified Plan” and “FICA Rate”. This provision is needed to make clear that the words used are understood by those persons directly affected by them.

Section 58872(b) [Renumbered to Section 58871(c)(2).]

Specific Purpose:

This section is being adopted to specify what the percentage of FICA contributions made by a vendor on behalf of a qualified employee is an allowable expense if made in the historical period.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify, for purposes of cost containment, the maximum percentage of expenses allowed for FICA contributions made by a WAP vendor for a qualified employee if the payments were made in the historical period. This provision is proposed to establish certain limitations on the maximum allowance for FICA contributions for purposes of cost containment. Allowing WAPs to expense a portion of these benefits is recognition that WAP programs that contribute to retirement plans not only benefit their program staff but also benefit their consumers because they are likely to have a more stable workforce.

Section 58872(c) [Renumbered to Section 58871(c)(3).]

Specific Purpose:

This section is being adopted to specify how FICA contributions will be calculated in situations when an employee was not covered by FICA in the historical period.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify, for purposes of cost containment, how FICA contributions will be calculated as an expense when a qualified employee was not covered by FICA in the historical period. This provision is proposed to establish certain limitations on the maximum allowance for FICA contributions for purposes of cost containment.

Section 58872(d) [Renumbered to Section 58871(c)(4).]

Specific Purpose:

This section is being adopted to specify the total allowable FICA expenses that cannot be exceeded by Work Activity Programs (WAPs).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify the total allowable FICA

expenses that shall not be exceeded by WAPs. This provision is proposed to establish certain limitations on the maximum allowance for FICA contributions for purposes of cost containment.

Final Modification:

This section is amended to update cross-references which is necessary to reflect the renumbering of referenced sections.

Section 58872(e) [Renumbered to Section 58871(c)(5).]

Specific Purpose:

This section is being adopted to specify the two conditions that will determine the maximum expense that will be allowed for employer contributions to a qualified retirement plan by Work Activity Programs (WAPs).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify for vendors ~~on~~ how to determine limits of the allowable expenses for qualified retirement plan expenses. This provision is proposed to establish certain limitations on the maximum allowance for WAP employer contributions to a qualified retirement plan for purposes of cost containment.

Section 58872(f) [Renumbered to Section 58871(c)(6).]

Specific Purpose:

This section is being adopted to specify how the allowable percentage for indirect expenses for retirement plans will be calculated.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify how the Department will calculate the percentage allowed as retirement plan expenses. This provision is proposed to establish certain limitations on the maximum allowance for WAP employer contributions to a qualified retirement plan for purposes of cost containment.

Section 58872(g) [Renumbered to Section 58871(c)(7).]

Specific Purpose:

This section is being adopted to specify conditions when no adjustment is needed in the retirement plan expense percentage.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify when no adjustment shall be made to the percentage of allowable retirement plan contributions reported as an expense.

This provision is proposed to establish certain limitations on the maximum allowance for WAP employer contributions to a qualified retirement plan for purposes of cost containment.

Section 58872(h) [Renumbered to Section 58871(c)(8).]

Specific Purpose:

This section is being adopted to specify the methodology for deducting the reported amount of non-allowed excess percentage of retirement contribution expenses.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify the deduction methodology for ~~how the amount~~ the excess percentage of allowed expenses ~~will be deducted~~ from the amount reported for retirement.

Section 58872. Program Expansion Policy and Procedure. (Post-Hearing Modification)

Specific Purpose:

In response to testimony received during the 45-day comment period, this section is being added to specify that increased costs are only allowed for program expansion if such costs were approved by the Department. The section further specifies the procedures to be followed to obtain Department approval.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish the circumstances under which program expansion increased are allowable.

Section 58873. Maximum Daily Rate.

Section 58873(a)

Specific Purpose:

This section is being adopted to establish the frequency for setting the maximum daily rate for Work Activity Program (WAP) services.

Rationale for Necessity:

This section is needed to specify the frequency for setting maximum daily rates as required by Section 4859 of the Welfare and Institutions Code.

Section 58873(b)

Specific Purpose:

This section is being adopted to establish three maximum daily rates for Work Activity Program (WAP) services.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to give the Department the authority to set three maximum daily rates in order to approve rates on the basis of the number of consumers served by the vendor. The three maximum rates was based on a study by the Department of Rehabilitation (DOR) of vendors' costs based on the number of clients they serve and determined that the ranges of costs fall into three basic ~~sizescategories~~ .

Section 58873(c)

Specific Purpose:

This section is being adopted to set the frequency that maximum daily rates will be established for Work Activity Program (WAP) services.

Rationale for Necessity:

This section is needed to establish the frequency for establishing maximum daily rates for WAP vendors so as to be consistent with requirements for submitting Cost Statements and the biennial frequency for establishing WAP vendor rates pursuant to Section 19356 of the Welfare and Institutions Code.

Section 58873(d)

Specific Purpose:

This section is being adopted to allow for the calculation of the gross rate as the first step in establishing the maximum daily rate for each vendor group size.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to provide authority for the Department to set maximum daily rates based on the number of consumers served by the WAP.

Section 58873(e)

Specific Purpose:

This section is being adopted to specify the three Work Activity Program (WAP) vendor groupings that will be used to establish the three gross rate categories.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify how the numbers of consumers in a WAP are grouped for purposes of establishing three categories of gross rates.

Section 58873(f)

Specific Purpose:

This section is being adopted to specify how the groupings of gross rates are used to compute the mean and standard deviation for each grouping of gross rates calculated.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to provide authority for the Department to compute the mean and standard deviation for each group category.

Section 58873(g)

Specific Purpose:

This section is being adopted to specify how the mean and standard deviation calculations will be applied for setting the maximum allowable rate for each grouping for the payment year.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify how many standard deviations above the mean will be used to compute the maximum allowable rates based on the number of consumers served.

Section 58873(h)

Specific Purpose:

This section is being adopted to establish the requirement for a rate reduction when a vendor's rate exceeds the maximum established for its group size category.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to provide authority for the Department to reduce a vendors' rate to the maximum daily rate established for the group size when the vender's Cost Statement rate exceeds the maximum daily rate established for the vendor's group size. This provision allows the Department to assign daily rate that is fair and equitable for vendors whose cost exceed the maximum allowable daily rate because it is based on a formula that takes into account the average rates of vendors serving similar numbers of consumers. This provision reaffirms the Department's intent to set rates for WAP services be based on reasonable cost as specified in Section 4859 of the Welfare and Institutions Code.

Final Modification:

Following the first 15-day renotice, this section is amended to update cross-references which is necessary to reflect the renumbering of referenced sections.

Section 58874. Reporting Requirements.

Section 58874(a)

Specific Purpose:

This section is being adopted to clarify, for rate setting purposes, the need for Work Activity Program (WAP) vendors to establish a historical period and the time frame options available to new vendors whose historical period does not cover a full year.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to provide the Department the authority to specify, for purposes of setting WAP rates, the period for which historical costs will be determined, including the historical time period options that can be used for new vendors. This provision sets forth the Department's basic principles regarding the use of historical period cost as the basis to which all cost containment policies and procedures will apply.

Section 58874(b)

Specific Purpose:

This section is being adopted to establish, for purposes of setting the daily rate for Work Activity Programs (WAPs), principles, policies, procedures and instructions for completing the Cost Statement.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify the Department's basic principles behind the ratesetting procedures as it relates to reporting required cost statement information, including the forms required to report the information, and the information that is to be included in the forms.

Final Modification:

Following the 45-day public comment period, this section is amended to clarify that the rate will be determined using the representative cost and consumer data provided in the Cost Statement. Language is also being added to clarify that grant funds that will terminate before the payment year for which the rate is being set will not be applied as a recovery in the computation of rate.

Section 58874(c)

Specific Purpose:

This section is being adopted to clarify actions that will be taken by the Department under circumstances where the Work Activity Program's (WAP) historical period has insufficient data to establish a rate.

Rationale for Necessity:

This section is needed to provide the Department the authority to offer the statewide average rate for new WAPs under situations where the minimum historical period has insufficient data to establish a rate pursuant to Section 4861 of the Welfare and Institutions Code. This provision sets forth the Department's basic principles behind the ratesetting procedures.

Final Modification:

Following the 45-day public comment period, this section is amended to clarify that start-up costs are not to be included in the historical period and that consumer attendance during the historical period reasonably approximates the caseload level that has been anticipated in the service provider's request for vendorization.

Following the second 15-day renotice, this section is amended to correct the cross-referenced to Section 58861(b) which is being renumbered to Section 58860(c).

Section 58874(d)

Specific Purpose:

This section is being adopted 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.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to set forth the Department's requirement that a vendor offering multiple programs identify those programs and report costs separately. This provision ensures that the allowable costs reported can be clearly established to be costs linked with WAP services and not expenses associated with one or more other programs provided by the vendor.

Section 58874(e)

Specific Purpose:

This section is being adopted to specify options to the requirement for independent audit.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to give the Department the authority to

allow Work Activity Program (WAP) vendors the option to submit an independent review using an accountant in lieu of an independent audit and to describe the minimum issues that must be addressed in an independent review if an independent audit is not performed. Because the WAP services rate is based on cost, it is important that the Department verify to the extent possible, that the financial statement used to establish the rate is accurate.

Section 58874(f)

Specific Purpose:

This section is being adopted to establish the requirement for an independent review report that must accompany the financial statements.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify what items must be covered in a report on an independent review, and the procedure to be followed if in fact there are material changes between the review and the unaudited financial statement. Because the WAP services rate is based on cost, it is important that the Department verify to the extent possible, that the financial statement used to establish the rate is accurate.

Section 58874(f)

Specific Purpose:

This section is being adopted to specify what actions are required by the vendor and the Department to reconcile any material changes as a result of a review or audit report.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to specify that the vendor is responsible for reconciling any material changes as the result of an independent review or independent audit report and to give the Department the authority to revise the rate accordingly. This provision provides the necessary instructions for handling the historical period adjustments from independent audits.

Section 58875. Non-Allowable Costs.

Section 58875(a)

Specific Purpose:

This section is being adopted to specify that start-up costs are not allowed to be included as an expense for the purpose of establishing the historical rate for Work Activity Programs (WAPs).

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to provide WAP vendors the necessary

clarification that start-up costs are determined to be an unallowable expense for the purpose of setting WAP service rates. It is necessary to clarify what expenses are not allowed in establishing the historical rate for WAP services in order to avoid confusion and future misunderstanding between vendors and the Department.

Section 58875(b)

Specific Purpose:

This section is being adopted to specify how the value of private donations are to be reported for purposes of reporting all revenue received by the Work Activity Program (WAP) vendor.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify how private donations are to be reported by WAP vendors, including when this form of income can be reported as a direct expense.

Final Modification:

Following the first 15-day renotice, this section is amended to include the non-duplicated language from Section 58861(m) which is being deleted since it in large part duplicates Section 58875(b).

Following the second 15-day renotice, this section is further amended to reflect revisions being made to Form DS 1950 (3/2005).

Section 58875(c)

Specific Purpose:

This section is being adopted to specify the expenses that are deemed not allowable for purposes of establishing a historical rate.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to list those expenses incurred by Work Activity Programs (WAPs), which are not allowable in the computation of the WAP service rate. The purpose of providing an unambiguous detailed list of unallowable expenses is to avoid misunderstanding on what business expenses can be used as the basis for setting the WAP service rate.

Section 58875(d)

Specific Purpose:

This section is being adopted to clarify how unallowable expenses will be reconciled between specific Department cost statement forms.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that expenses deemed to be unallowable do not need to be allocated to cost centers as they will be reconciled prior to the computation of the WAP service rate. A reconciliation of all expense amounts, including unallowable expenses, need to be documented in order to show a clear audit trail for expense amounts.

Final Modification:

Following the 45-day public comment period, this section is amended to reflect revisions being made to Forms DS 1954 (1/05) and DS 1956 (1/05).

Following the second 15-day renotice, this section is further amended to reflect revisions being made which combine Forms DS 1954 (1/05) and DS 1956 (1/05) into Form DS 1950 (3/2005), Work Activity Program Cost Statement as Tabs D and F.

Section 58876. Rate Adjustment and Rate Revision General Provisions

Final Modification:

Following the 45-day comment period, this section title is amended to accommodate the combining of Sections 58876, 58877, and 58878 into one general Section 58876.

Section 58876(a)

Specific Purpose:

This section is being adopted to clarify adjustment of rates when there is a State-approved COLA.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed 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, such as, when there is an approved COLA. 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.

Section 58876(b)

Specific Purpose:

This section is being adopted to specify the basis for when the rate adjustments for Work Activity program (WAP) vendors become effective, including, any exceptions to the effective dates for an adjustment due to disasters, e.g., earthquakes and fires.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to explain the policy for making rate adjustments for WAP vendors who have had 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.

Section 58876(c)

Specific Purpose:

This section is being adopted to specify the basis for prorating the rate adjustments for Work Activity program (WAP) vendors when the adjustment will not take effect until after the beginning of the payment year.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to explain the policy for prorating the rate adjustments for WAP vendors when the basis for the adjustment will not take effect until after the beginning of the payment year. This is necessary to address unique circumstances where the basis for the adjustment would not take until after the start of the payment year in order to be consistent with the Department's policy to develop rates based on reasonable cost of providing WAP services as specified in Section 4859 of the Welfare and Institutions Code.

Section 58876(d)

Specific Purpose:

This section is being adopted to specify that the vendor must have incurred the cost in order to establish the basis for a rate adjustment for Work Activity program (WAP) services.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear that WAP vendors must have incurred the cost for which a rate adjustment has been approved.

Section 58876(e)

Specific Purpose:

This section is being adopted to clarify the documentation submitted by the Work Activity program (WAP) vendor for establishing the need for an adjustment will be subject to a review.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish the Department and/or

regional center authority to conduct a review and/or audit of documentation submitted by a WAP for the purpose of a rate adjustment.

Section 58876(f)

Specific Purpose:

This section is being adopted to specify the factors used to determine limits on rate adjustments.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify that rate adjustments could not exceed the approved maximum daily rate for the vendor's group size. This provision reaffirms the Department's intent to set rates for WAP services be based on reasonable cost as specified in Section 4859 of the Welfare and Institutions Code.

Section 58877. Rate Adjustment Due to an Increase in Occupancy Cost.

Final Modification:

Following the 45-day public comment period, this section is being deleted and Section 58877(a) is being renumbered as Section 58876(g) to combine all rate adjustment requirements under one section.

Section 58877(a) [Renumbered as Section 58876(g).]

Specific Purpose:

This section is being adopted to set forth the policy and procedure for requesting and obtaining approval for a rate adjustment due to major occupancy changes.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed in order to outline the policy and procedures for making rate adjustments for changes 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. This provision recognizes that the costs of lease, mortgage interest, etc., related to occupancy of a WAP are a major factor making up the costs of a WAP. As the WAP service rate is based on historical data, it was found necessary to be able to authorize rate adjustments to assist the WAP vendors in these situations.

Final Modification:

Following the 45-day public comment period, renumbered Section 58876(g)(6) is amended to reflect revisions being made to Form DS 1952 (1/05). Following the first 15-day renotice, Section 58876(g)(5) is amended to update cross-references. This amendment is necessary to reflect the renumbering of referenced sections. Following the second 15-day renotice Section

58876(g)(6) is further amended to reflect revisions being made which combine Form DS 1952 (1/05) into Form DS 1950 (3/2005), Work Activity Program Cost Statement as Tab B.

Section 58878. Rate Adjustment Due to a Change in Staff-to-Consumer Ratio.

Final Modification:

Following the 45-day public comment period, this section is being deleted and Sections 58878(a) through (i) are being renumbered as Sections 58876(h) through (p) to combine all rate adjustment requirements under one section.

Section 58878(a) [Renumbered as Section 58876(h).]

Specific Purpose:

This section is being adopted to set forth the basic policies and procedures for requesting and obtaining approval for a rate adjustment for changes in staff-to-consumer ratio.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish the Department's authority to make rate adjustments for WAP vendors who lose necessary subsidized staff or who are currently not staffed at a sufficient level. Costs related to staff are a major cost to a vendor. Therefore, any major reduction in funding to support such costs would severely limit the WAP vendor's ability to serve consumers.

Section 58878(b) [Renumbered as Section 58876(i).]

Specific Purpose:

This section is being adopted to deal with circumstances where an expected loss of staff subsidy does not occur following approval for a rate adjustment.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify what actions will be taken by the Department should an anticipated loss of subsidy for staff not occur after the request for a rate adjustment has been approved.

Section 58878(c) [Renumbered as Section 58876(j).]

Specific Purpose:

This section is being adopted to specify the documentation needed to verify for the Department that staff have been hired, including, level of salary and benefits paid.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to clarify the requirement for providing documentation verifying that staff have been hired and salaries paid following approval and payment of the adjusted rate.

Section 58878(d) [Renumbered as Section 58876(k).]

Specific Purpose:

This section is being adopted to specify the timelines and forms that are to be used to request a rate adjustment due to changes in staff ratio.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish the Departments' authority to require all WAP vendors to use the same form and meet the same timelines for requesting a rate adjustment due to changes in staff-to-consumer ratio. This requirement maintains consistency with the policy and procedures for establishing rates that are equitable.

Section 58878(e) [Renumbered as Section 58876(l).]

Specific Purpose:

This section is being adopted to specify the review procedure that will be taken by the Department to determine if the Work Activity Program (WAP) vendor was in compliance with the required staffing level during the historical period.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear to WAP vendors the documents that will be reviewed by the Department to determine if the WAP vendor met the required staffing ratio during the historical period or if the loss of subsidized staff caused them to fall below the level for that period. This provision is helpful because it provides clarity of purpose on how staff survey and consumer survey forms are used to establish the basis for an adjustment to the rate based on the staff-to-consumer level during the historical period.

Final Modification:

Following the 45-day public comment period, renumbered Section 58876(l) is amended to reflect revisions being made to Forms DS 1951 (1/05), DS 1957 (1/05), and DS 1958 (1/05). Following the second 15-day renotice Section 58876(l) is further amended to reflect revisions being made which combine Forms DS 1951 (1/05) and DS 1957 (1/05) into Form DS 1950 (3/2005), Work Activity Program Cost Statement as Tabs A and G. Forms DS 1957 and DS 1958 (1/05) are combined into Form DS 1950 (3/2005), Work Activity Program Cost Statement as Tab G.

Section 58878(f) [Renumbered as Section 58876(m).]

Specific Purpose:

This section is being adopted to specify what computational procedures will be used in calculating the rate adjustment when a Work Activity program (WAP) vendor was not in compliance with the Department's required staffing ratio.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear to WAP vendors what staff costs and dates are used in the computation of a rate adjustment by the Department to address the loss of subsidized staff during the historical period. This requirement maintains consistency with the policy and procedures for establishing rates that are equitable.

Section 58878(g) [Renumbered as Section 58876(n).]

Specific Purpose:

This section is being adopted to specify the next computational step for adjusting the rate due to a change in staff-to-consumer ratio and the cost statement forms that will be used to complete the calculation.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear to WAP vendors what computational steps the Department uses in computing a rate adjustment to address the loss of subsidized staff during the historical period. This requirement maintains consistency with the policy and procedures for establishing rates that are equitable.

Final Modification:

Following the 45-day public comment period, renumbered Section 58876(n) is amended to reflect revisions being made to Forms DS 1950 (1/05) and DS 1951 (1/05). Following the second 15-day renotice Section 58876(l) is further amended to reflect revisions being made which combine Forms DS 1950 (1/05) and DS 1951 (1/05) into Form DS 1950 (3/2005), Work Activity Program Cost Statement as Tabs H and A. Also, this section is amended to update cross-references. This amendment is necessary to reflect the renumbering of referenced sections.

Section 58878(h) [Renumbered as Section 58876(o).]

Specific Purpose:

This section is being adopted to specify the data that will be in the final step in calculating the rate adjustment due to a change in staff-to-consumer ratio.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to make clear to WAP vendors all the data that goes into the final computational step used by the Department in computing a rate adjustment to address the loss of subsidized staff during the historical period. This requirement maintains consistency with the policy and procedures for establishing rates that are equitable.

Section 58878(i) [Renumbered as Section 58876(p).]

Specific Purpose:

This section is being adopted to explain why no COLA increases that occurred in the year of the adjustment are used in calculating the rate adjustment.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to provide an explanation to WAP vendors the reason that the Department will not add COLA increases when adjustments are made based on a change in staff-to-consumer ratios. This requirement maintains consistency with the principle of reasonable cost and the policy and procedures for establishing rates that are equitable.

Section 58879. Ratesetting Requirements and Procedures for New Service Providers (Post-Hearing Modification)

Section 58879(a) (Post-Hearing Modification)

Specific Purpose:

Following the 45-day public comment period, this section is adopted to specify the requirements for newly vendored service providers who are new providers; those who are already accredited; and to require service providers to have a procedure for accurately measuring consumer productivity.

Rationale for Necessity:

This section is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish ratesetting requirements for newly vendored service providers.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is being deleted because it is a vendorization requirement unrelated to ratesetting for new providers. Section 58879(a)(1) is duplicative of Section 54310(f)(1), Section 58879(a)(2) is duplicative of Section 58810(e), Section 58879(a)(3) is duplicative of Section 58811(a)(8)(J) and are therefore unnecessary.

Section 58879(b) (Post-Hearing Modification)

Specific Purpose:

Following the 45-day public comment period, this section is adopted to specify how the Department is to apply the ratesetting policies when computing a rate.

Rationale for Necessity:

This section is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish how the Department will compute a rate for newly vendored service providers.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is being deleted because a new service provider will be assigned a rate based on statewide average rather than a rate calculated by DDS and therefore this section is unnecessary.

Section 58879(c) (Post-Hearing Modification)

Specific Purpose:

Following the 45-day public comment period, this section is adopted to specify the steps in the ratesetting process for newly vendored service providers.

Rationale for Necessity:

This section is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to establish how the Department will compute a rate for newly vendored service providers.

Final Modification:

In response to testimony received during the first 15-day renotice, this section is being deleted because it is unclear. This section refers to ratesetting for an “established habilitation provider that has a historical period of costs for Work Activity Program services” but that has not “served Habilitation consumers in the historical period”. Since this section is intended to address providers who have historical costs that can be used to establish a rate and not “newly vendored service provider”, the section is being relocated to Section 58860(d).

Section 58879(d) (Post-Hearing Modification)

Specific Purpose:

Following the 45-day public comment period, this section is adopted to specify how the daily rate is set for service providers with insufficient historical period data.

Rationale for Necessity:

This section is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 by establishing how rates are to be set for service providers with insufficient historical period data.

Final Modification:

Following the first 15-day renotice, this section is being deleted because it duplicates renumbered Section 58860(c).

Section 58879(e) (Post-Hearing Modification)

Specific Purpose:

Following the 45-day public comment period, this section is adopted to specify how an exception is granted to the the daily rate ~~is~~ set for service providers with insufficient historical period data ~~is granted~~.

Rationale for Necessity:

This section is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 by establishing under what circumstance exceptions are granted for rates set for service providers with insufficient historical period data.

Final Modification:

Following the first 15-day renotice, this section is being deleted because it is in conflict with Welfare and Institutions Code Section 4861(b) which requires that new work activity programs receive the statewide average rate.

Section 58879(f) (Post-Hearing Modification)

Specific Purpose:

Following the 45-day public comment period, this section is adopted to specify how a new service provider dependent on grant funds may meet vendorization requirements.

Rationale for Necessity:

This section is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859 by establishing how new service providers may become vendorized.
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Final Modification:

Following the first 15-day renotice, this section is being deleted because it is in conflict with Welfare and Institutions Code Section 4861(b) which requires that new work activity programs receive the statewide average rate.

Section 58879. Rate Appeals.

Section 58879(a)

Specific Purpose:

This section is being adopted to clarify the right of appeal for Work Activity Program (WAP) vendors who dispute a Departmental decision affecting its rate.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section is needed to lay out the right of appeal for WAP vendors 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.

Title 17. Public Health
Division 2. Health and Welfare Agency--DDS Regulations
Chapter 3: Community Services
Subchapter 21: Habilitation Services Program

Article 9. Billing and Payment.
Section 58880. Work Activity Programs.

Section 58880(a)

Specific Purpose:

This section is being adopted to clarify how the maximum number of billing days will be established and the Work Activity Program vendor responsibilities for notifying the vendoring regional center of their schedule of their proposed workdays per month.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4850. This section is needed to establish a policy wherein the Department authorizes a maximum number of service days per year based on a five-day work week minus nationally observed holidays. This provision provides flexibility for WAPs that may observe holidays differently by requiring them to submit a schedule of days they will provide services as long as they do not exceed the maximum number of days authorized. In addition, this provision will permit the Department to manage its budget within the amount appropriated by the legislature.

Section 58880(b)

Specific Purpose:

This section is being adopted to clarify how payments for full day and partial day Work Activity Program (WAP) services are billed to the regional center, including, when there are absences due to an official declaration of a state of emergency.

Rationale for Necessity:

This section is needed to establish the Department's authority to clarify the payment rules for full day and partial day WAP services that are billed to the regional center, including, when there are absences due to an official declaration of a state of emergency. Because Habilitation service participants may not always attend a WAP for the full time they are scheduled for services in a day, the Department must have policies explaining when WAPs can bill the regional center for a full or half day of attendance.

Final Modification:

Following the second 15-day renotice, this section is amended for clarity and consistency by replacing the word "client" with "consumer".

Section 58880(c)

Specific Purpose:

This section is being adopted to specify the procedures and conditions that apply when regional centers and/or Work Activity Program (WAP) vendors choose to make or receive payments based on hourly rates.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4863. This section establishes the Department's authority to set forth requirements for billing WAP services to regional centers and for payment of such services by regional centers based on hourly billing.

Section 58880(d)

Specific Purpose:

This section is being adopted to specify the procedures for determining the hours that can be billed for payment to the regional center each month by a Work Activity Program (WAP) vendor approved for hourly billing.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4863. This section establishes the Department's authority to set forth requirements for billing WAP services on an hourly basis to regional centers.

Section 58880(e)

Specific Purpose:

This section is being adopted to specify the documentation on each consumer participating in a Work Activity Program that must be maintained by the WAP vendor.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4859. This section establishes the Department's authority to clarify the WAP responsibilities for maintaining service record documentation consistent with the service provider record maintenance requirements of Title 17, Section 50604. This requirement would provide the necessary data to link services provided by WAP to billing documents sent to regional centers. This section is needed to clarify for the vendor the level of detailed documentation on each consumer receiving WAP services that must be maintained as specified in Section 58822.

Section 58880(f)

Specific Purpose:

This section is being adopted to specify the policy on payment in circumstances where another agency would have responsibility for providing Work Activity Program (WAP) services.

Rationale for Necessity:

This section is needed to interpret and make specific the requirements of Welfare and Institutions Code, Section 4644, that regional center funds shall not be used to supplant funds of any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

Section 58881. Supported Employment Programs.

Section 58881(a)

Specific Purpose:

This section is being adopted to set forth payment requirements for supported employment services.

Rationale for Necessity:

This section is needed to interpret and make specific the requirements for supported employment payment rates specified in Welfare and Institutions Code 4860.

Section 58881(b)

Specific Purpose:

This section is being adopted to set forth documentation requirements to backup supported employment service billings.

Rationale for Necessity:

This proposal is necessary to interpret and make specific the requirements of Welfare and Institutions Code Section 4860. This section makes clear for supported employment vendors the requirement to maintain sufficient documentation to support billing documents sent to regional centers.

Section 58881(c)

Specific Purpose:

This section is being adopted to clarify the circumstances under which payments can be made for job coaching services when consumers in a supported employment group are unable to access their worksite.

Rationale for Necessity:

This section is needed to establish the Department's authority to make uniform the billing and payment for supported employment group services during a declaration of emergency as per regulations specified in Title 17, Section 54326, of the California Code of Regulations General Requirements for Vendors and Regional Centers.

Section 58882. Billing for Temporary Transfers.

Section 58882(a)

Specific Purpose:

This section is being adopted to specify the requirements for regional centers when authorizing temporary transfers between Work Activity Programs (WAPs) and Supported Employment Programs (SEPs).

Rationale for Necessity:

This section is needed to make billing and payment authorizations for temporary transfers between a WAP from a SEP consistent with policies and procedures specified in Title 17, Section 50612, of the California Code of Regulations.

Section 58882(b)

Specific Purpose:

This section is being adopted to specify conditions under which a 60-day temporary transfer can be extended.

Rationale for Necessity:

This section is needed to allow for situations when a consumer is unable to return to his or her job due to unexpected events and, therefore, would justify an extension of the time limit specified in the temporary transfer authorization. This provision would address those unexpected situations that are normal to the world of work and prohibit a consumer from returning to his or her job despite the best estimates that the transfer would not exceed 60-calander day authorization.

Section 58882(c)

Specific Purpose:

This section is being adopted to clarify which program service category will be billed when consumers are receiving services from either a supported employment group or a work activity program as a result of a temporary transfer.

Rationale for Necessity:

This section is needed to clarify which service category would be billed when consumers transfer between supported employment groups and work activity programs.

- The Department considered the alternative of not adopting regulations, and rejected that alternative as it did not provide the safeguards and assurances to the consumer's health and well being that the Department is seeking.

- The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

- The Summary of Comments and Responses filed in Tab J of the Final Rulemaking File is incorporated herein as if fully set forth below.

- The Summary of Comments and Responses filed in Tab M of the Final Rulemaking File is incorporated herein as if fully set forth below.

- The Summary of Comments and Responses filed in Tab P of the Final Rulemaking File is incorporated herein as if fully set forth below.

- There are no alternatives proposed by any parties during the public comment periods other than those comments summarized and responded to in Tabs J, M and P of the Final Rulemaking File.

- The Department has determined that the adopted regulations do not impose any mandate on local agencies or school districts.