

CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE OF PUBLIC COMMENT PERIOD FOR PROPOSED AMENDMENTS TO THE Participant Directed Services Regulation

The Department of Developmental Services (DDS or the Department) proposes amendments of the Participant Directed regulation after considering all comments, objections, and recommendations.

PUBLIC HEARING

A public hearing is not currently scheduled; however, any interested person may request the Department to conduct a public hearing. A public hearing will be held if any interested person, or their duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice **no later than November 8, 2021**, fifteen (15) days prior to the close of the 45-day comment period, which is November 22, 2021. If a request for public hearing is received by November 8, 2021, the time, date, and location of the public hearing will be provided by separate notice.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any interested person or his or her representative may present comments relevant to the proposed action to the Department by personal delivery, postal mail service, or email submittal as described in detail below. The public comment period for this regulatory action will begin on October 8, 2021. For any written comment to be considered, it must be received by the Department **no later than November 22, 2021**, the close of the 45-day comment period.

Comments sent to persons and/or addresses other than that specified, or received after the date and time specified above, may be included in the record of this proposed regulatory action, but may not be summarized or responded to regardless of the manner of transmission.

For consideration, any written comments shall be submitted as follows:

On the Department's Internet Web site via electronic submittal, or by United States Postal Service or personal delivery to:

Department of Developmental Services
RE: **Participant Directed Services**
Legislation, Regulations & Public Affairs
1215 O Street, M.S. 9-10
Sacramento, CA 95814; or

Electronic Submittal: <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>

“Please note: Public comments should not include any personal or medical information, as your written and oral comments, and attachments become part of the public record and can be released to the public upon request under the California Public Records Act (Gov. Code, § 6250 et seq.).”

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW
(PURSUANT TO GOVERNMENT CODE SECTION 11346.5 subd. (a)(3))

Currently, the regional center offers services using the Participant-Directed model to allow the adult consumer and/or family member to procure their own services such as community-based training service, day care, nursing, respite, and/or transportation services. Participant-Directed services lets the consumer or family choose who to hire, schedule when the person works, and supervise the work. Consumers who choose to participate in Participant-Directed services work with a vendored Financial Management Service (FMS) agency to hire and pay staff and comply with employment laws.

Adding the proposed Participant-Directed service codes will offer flexibility to support consumers and their families by offering more control over how and by whom some Individual Program Plan (IPP) services are provided.

Additionally, the rate regulations for the in-home respite worker, participant-directed respite worker, and participant directed community-based training service are being amended to state the rate’s authority. These rates have changed over the years and by removing the rate and stating the authority the Department will not need to amend the regulations each time there are changes to the rate.

Financial Management Service Fiscal/Employer Agent (FMS FE/A) and Co-Employer rates are also being updated to reflect to most current rate.

Sections Affected: The Department proposes amendments to the California Code of Regulations, Title 17, Sections 58886 and 58888 to add three new service codes for Participant-Directed services for eligible participants.

- Service Code 456 - Personal assistance
- Service Code 457 - Independent living skills
- Service Code 458 - Supported employment

Additionally, the Department proposes amendments to the following sections:

58888(a)(5) - Removing the rate and adding the rate’s authority, Welfare and Institution Code

58888(b)(1)(A)-(C) and (2) amended to reflect the most current FMS FE/A and Co-Employer rates.

Section 57310(b)(3) - Removing the rate and adding the rate’s authority, Welfare and Institution Code

Section 57332(c)(3)(A) and (c)(9)(A) - Removing the rate and adding the rate's authority, Welfare and Institution Code

Existing Laws/Regulations:

The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., was enacted to reduce institutionalization of people with developmental disabilities and prevent their dislocation from their home communities. Under the Lanterman Act, people with developmental disabilities have a right to services and supports in the least restrictive environment.

Government Code section 11152 provides that DDS may adopt and enforce rules and regulations necessary to carry out their respective duties.

Effect of the Proposed Regulatory Action:

Adding the proposed Participant-Directed services will allow consumers the ability to choose workers (e.g. friends, some family members, etc.) to provide personal assistance, independent living skills, and supported employment services which assists in their overall health and wellbeing of the consumer.

The amendments to existing rate regulations are necessary to update outdated rates.

Comparable Federal Regulations:

None.

Policy Statement Overview/ Anticipated Objectives and Benefits of the Proposed Regulatory Action:

The Department proposes to amend Sections 58886 and 58888 of Title 17, to add three new service codes for Participant-Directed services for eligible participants. These new service codes will allow consumers to have more flexibility and choice over the services they receive.

Service Code 456 - Personal assistance

Service Code 457 - Independent living skills

Service Code 458 - Supported employment

The proposed regulations will benefit persons with developmental disabilities and their families who choose to participate in the participant-directed services, by allowing them to choose how and by whom their services are provided. This benefits the health and welfare of the clients receiving these services and those who choose to participate in the future.

Amending the rates will benefit stakeholders interested in viewing the rate in regulations. With the proposed amendments, one will know the most recent rate or the statute that authorizes the rate.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations
(Gov. Code, § 11346.5, subd. (a)(3)(D)):

During the process of developing the proposed regulatory action, DDS conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

(Gov. Code, §§ 11346.2, subd. (c), 11346.9)

The proposed regulatory action is not mandated by federal law or regulations.

LOCAL MANDATE (Gov. Code, § 11346.5 subd. (a)(5))

Under Government Code sections 11346.5, subdivision (a)(5), DDS has determined that the proposed regulatory action would not impose a mandate on any local agency or school district that requires reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500).

FISCAL IMPACTS (Gov. Code, § 11346.5, subs. (a)(6)):

The determination of the Department concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Cost to any local agency or school district requiring reimbursement under section 17500 et seq.:

DDS has determined that the proposed regulatory action would not create costs or savings to any local agency or school district.

Cost or savings to any state agency:

DDS has determined that the proposed regulatory action would not create costs or savings to any state agency.

Other non-discretionary costs or savings on local agencies:

DDS has determined that the proposed regulatory action would not create costs or savings to any other nondiscretionary cost or savings to state or local agencies.

Cost or savings in Federal funding to the state:

DDS has determined that the proposed regulatory action would not create costs or savings in federal funding to the state.

HOUSING COSTS (Gov. Code, § 11346.5, subd. (a)(12)):

In accordance with Government Code Section 11346.5, subdivision (a)(12), the Department has made the initial determination that the proposed regulatory action will not have an effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (GOV. CODE, §§ 11346.3(a), 11346.5(a)(7), 11346.5 (a)(8)):

DDS has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA) (Gov. Code, § 11346.5, subd. (a)(10)):

Based on the economic impact assessment, the Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has further determined that the regulation would not significantly affect the creation or elimination of jobs within the state of California, the creation of new businesses or the elimination of existing businesses within the state of California, or the expansion of businesses currently doing business within the state of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed changes will provide opportunities to families and consumers receiving services from a Regional Center by allowing them to customize services in order to meet their individualized needs; have opportunities to further their development and increase their ability to lead integrated and inclusive lives. The Department has also made an initial determination that there are no anticipated benefits to worker safety or the state's environment.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS (Gov. Code, § 11346.5, subd. (a)(9)):

In developing this regulatory proposal, DDS evaluated the potential economic impacts on representative private persons or business. DDS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):

DDS has determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action may affect small businesses because the proposed regulation gives consumers more options for how they will receive services.

ALTERNATIVES STATEMENT (Gov. Code, § 11346.5, subd. (a)(13)):

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

During the written comment period, DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation.

CONTACT PERSONS (Gov. Code, § 11346.5, subd. (a)(14)):

Inquiries concerning the substance of the proposed regulatory action may be directed to the department representative Yasir Ali, Chief, Rates and Fiscal Support Section, at (916) 654-2302 or Ann Stigelmayer, Assistant Chief, Rates and Fiscal Support Section, at (916) 654-1608.

AVAILABILITY OF DOCUMENTS (Gov. Code, § 11346.5, subd. (a)(16)):

The Department has compiled a record for this rulemaking action which includes all the information upon which the proposal is based, including an Initial Statement of Reasons (ISOR) for the proposed regulatory action and the proposed text (the “express terms”) of the regulation.

Copies of the proposed ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the Department’s Web site listed below, or may be obtained upon written request to Sunday Balalis, Regulations Analyst at DDS Office, 1215 O Street, M.S. 1050 Sacramento, California.

Further, the departments representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Sunday Balalis, Regulations Analyst at DDS Office, 1215 O Street, M.S. 1050 Sacramento, California, 95814. The Department has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

HEARING PROCEDURES OR MODIFIED TEXT

If a request for public hearing is received by November 8, 2021, it will be conducted in accordance with the Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340). After the Department holds a public hearing and considers all timely and relevant comments, it may adopt the proposed regulations substantially as described in this notice. If the Department makes

modifications which are sufficiently related to the originally proposed text, with the exception of grammatical changes, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of the contact persons indicated above. The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, Final Statement of Reasons (FSOR) shall be available and copies may be requested from the department contact persons in this notice or may be accessed on the Department's Internet web site listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the Department's web site for this rulemaking at [Emergency and Proposed Regulations:](https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/)
<https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>