

**State of California
DEPARTMENT OF DEVELOPMENTAL SERVICES**

INITIAL STATEMENT OF REASONS

**Proposed Amendments to the Regulation for
Participant Directed Services**

INTRODUCTION AND BACKGROUND

As the result of the COVID 19 public health emergency, the Department of Developmental Services identified additional instances where consumers will need flexibility when receiving services and supports to ensure the health, welfare and safety of regional center consumers and the general population. Participant Directed Service provides consumers the option to exercise more authority over how, and by whom, services are provided. The Department proposes amendments to regulations to add personal assistant, independent living services and supported employment as additional available Participant Directed Services, as well as the rate methodology for these three new services.

In addition, the Department proposes updates to the rate methodology for certain other participant-directed services. The rates for these services may often need to be changed and by removing the rate in the description, the Department will not need to amend the regulations each time there are changes to the rate in statute.

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

DESCRIPTION OF THE PROBLEM THAT THE PROPOSAL IS INTENDED TO ADDRESS

Due to the COVID-19 pandemic some services have had to be discontinued or closed leaving a gap in services for consumers. There also may be concerns related to exposure to COVID-19 preventing consumers' ability to access services. By adding additional services to the list of Participant-Directed Services, consumers can choose someone they are familiar with to provide services which increases the chances for consumers to obtain services.

Participant direction provides consumers the option to exercise more authority over how, and by whom, services are provided. Currently, consumers can coordinate respite, day care, transportation, nursing, and day services through participant direction. With participant direction, consumers have employer authority and responsibilities including choosing, scheduling and supervising workers. The intent of proposed regulations is to provide consumers, regional centers, and service providers the greatest flexibility to support consumers and their families.

SPECIFIC PURPOSE AND RATIONALE FOR EACH ADOPTION, AMENDMENT, OR REPEAL

Amend Section 57310(b)(1)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 3, section 57310(b)(1) to update the title of the Department of Health Care Services.

Rationale for Necessity

This amendment is necessary to ensure the Department name is accurate and up to date.

Amend Section 57310(b)(3)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 3, section 57310(b)(3) to remove the outdated rate for family member respite services and add language that specifies the new rate to be the current minimum wage, plus the respite worker wage adjustment authorized by Welfare and Institutions Code section 4691.5, and to that number add fringe benefits of 21%, which is broken down as 6.2% for Social Security, 1.45% for Medicare, 0,80% for Federal Unemployment, 4.40% for State Unemployment, and 8.15% for Worker's Compensation.

Rationale for Necessity

This amendment is necessary to ensure the rate for family member respite service is current. By removing the specific rate from this section, the Department will not need to update regulations each time there is a rate change as the new language will state the rate methodology.

Amend Section 57332(c)(3)(A)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 5, section 57332(c)(3)(A) to remove the outdated rate for in-home respite worker and add language that specifies the methodology for how the rate is calculated. The rate will include the current minimum wage plus the respite worker wage adjustment authorized in statute, Welfare and Institutions Code section 4691.5. and to that number add fringe benefits of 21%, which is broken down as 6.2% for Social Security, 1.45% for Medicare, 0,80% for Federal Unemployment, 4.40% for State Unemployment, and 8.15% for Worker's Compensation.

Rationale for Necessity

This amendment is necessary to ensure the rate for in-home respite workers is current. By removing the specific rate from this section, the Department will not need to update regulations each time there is a rate change as the new language will state the rate methodology.

Amend Section 57332(c)(9)(A)2.a.

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 5, section 57332(c)(9)(A)2.a. to remove the outdated reimbursement rate for vendors classified as a respite facility and add language that specifies the methodology for how the rate is calculated. The rate will include the current minimum wage plus the respite worker wage adjustment authorized in statute, Welfare and Institutions code section 4691.5. and to that number add fringe benefits of 21%, which is broken down as 6.2% for Social Security, 1.45% for Medicare, 0.80% for Federal Unemployment, 4.40% for State Unemployment, and 8.15% for Worker's Compensation.

Rationale for Necessity

This amendment is necessary to ensure the reimbursement rate for vendors classified as a respite facility is current. By removing the specific rate from this section, the Department will not need to update regulations each time there is a rate change as the new language will state the rate methodology.

Amend Section 58886(a)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, and adopt new subsection 58886(a) to add 3 new services to the list of Participant-Directed Services.

Rationale for Necessity

This amendment is necessary to specify the new services that will be added to the list of Participant-Directed Services.

Adopt Section 58886(e)(6)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, and adopt new subsection 58886(e)(6) to add an additional service and service code that provides the consumer with personal assistance and support entitled "Participant-Directed Personal Assistance – Service Code 456."

Rationale for Necessity

This adoption is necessary to allow for additional services on the list of Participant-Directed Services and to provide consumers, regional centers and service providers the greatest flexibility to support consumers and their families. This adoption will also provide more 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.

Adopt Section 58886(e)(6)(A)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(6)(A) to add the general requirements for a regional center to classify a vendor as a participant-directed personal assistance service.

Rationale for Necessity

This adoption is necessary in order to specify the general requirements that a regional center needs in order to classify a vendor as a participant-directed personal assistance service.

Adopt Section 58886(e)(6)(A)1.

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(6)(A)1. to specify the general requirements for a regional center to classify a vendor as a participant-directed personal assistance service must be an adult consumer, family member, or conservator.

Rationale for Necessity

This adoption is necessary to ensure that the individual that is being vendored can meet the requirements necessary to complete the vendor application pursuant to Title 17, Section 54310, as well as being consistent with the other services listed in this section and the requirements to provide those services.

Adopt Section 58886(e)(6)(A)2.-4.

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(6)(A)2. through 4. and specifies that the regional center must select an individual who is at least 18 years of age and possesses the skill, training, or experience necessary to provide the personal assistance service in accordance with the IPP. The vendor shall be responsible for ensuring that the individual selected will possess the skill, training, or education necessary to provide the service. In addition, the vendor is responsible for ensuring that the individual is familiar with the consumer's daily routines and needs and is trained in any specialized supports necessary for the consumer.

Rationale for Necessity

This adoption is necessary to ensure that the consumers who are receiving the participant-directed personal assistance service are receiving the provision of effective, quality of care, and are cared for in a safe, and therapeutically appropriate manner that promotes their well-being and ensures that their rights are preserved.

Adopt Section 58886(e)(7)

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(7) to add an additional service and service code for an independent living service that assists the adult consumer in the development of skills required for living independently in the community and is entitled "Participant-Directed Independent Living Services – Service Code 457."

Rationale for Necessity

This adoption is necessary to allow for additional services on the list of participant directed services and to provide consumers, regional centers and service providers the greatest flexibility to support consumers and their families. This adoption will also allow families and consumers 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.

Adopt Section 58886(e)(7)(A)

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(7)(A) to add the general requirements for a regional center to classify a vendor as a participant-directed independent living service.

Rationale for Necessity

This adoption is necessary in order to establish the general requirements that a regional center needs in order to classify a vendor as a participant-directed independent living service.

Adopt Section 58886(e)(7)(A)1.

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(7)(A)1. to specify the general requirements for a regional center to classify a vendor as a participant-directed independent living service must be an adult consumer, family member, or conservator.

Rationale for Necessity

This adoption is necessary to ensure that the individual that is being vendored can meet the requirements necessary to complete the vendor application pursuant to title 17, Section 54310, so that the consumers who are receiving the participant-directed personal assistance service are receiving the provision of effective, quality of care, and are cared for in a safe, and therapeutically appropriate manner that promotes their well-being and ensures that their rights are preserved.

Adopt Section 58886(e)(7)(A)2.- 4.

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(6)(A)2. through 4. and specifies that the regional center must select an individual who is at least 18 years of age and possesses the skill, training, or experience necessary to provide the independent living service for adults in accordance with the IPP. The vendor shall be responsible for ensuring that the individual will possess the skill, training, or education necessary to provide the service. In addition, the vendor is responsible for ensuring that the individual is familiar with the consumer's daily routines and needs and is trained in any specialized supports necessary for the consumer.

Rationale for Necessity

This adoption is necessary to ensure that the consumers who are receiving the independent living service are receiving the provision of effective, quality of care, and are cared for in a safe, and therapeutically appropriate manner that promotes their well-being and ensures that their rights are preserved.

Adopt Section 58886(e)(8)

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(8) to add an additional service and service code that provides support to individuals with developmental disabilities in employment and is entitled Participant-Directed Supported Employment - Service Code 458.

Rationale for Necessity

This adoption is necessary to allow for additional services on the list of Participant-Directed Services and to provide consumers, regional centers and service providers the greatest flexibility to support consumers and their families. This adoption will also allow consumers and families 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.

Adopt Section 58886(e)(8)(A)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(8)(A) to add the general requirements for a regional center to classify a vendor as a participant-directed supported employment service.

Rationale for Necessity

This adoption is necessary in order to specify the general requirements that a regional center needs in order to classify a vendor as a participant-directed supported employment service.

Adopt Section 58886(e)(8)(A)1.

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(8)(A)1. to specify the general requirements for a regional center to classify a vendor as a participant-directed supported employment service must be an adult consumer, family member, or conservator.

Rationale for Necessity

This adoption is necessary to ensure that the individual that is being vendored can meet the requirements necessary to complete the vendor application pursuant to Title 17, Section 54310, so that the consumers who are receiving the participant-directed personal assistance service are receiving the provision of effective, quality of care, and are cared for in a safe, and therapeutically appropriate manner that promotes their well-being and ensures that their rights are preserved.

Adopt Section 58886(e)(8)(A)2- 4.

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58886(e)(8)(A)2. through 4. and specifies that the regional center must select an individual who is at least 18 years of age and possesses the skill, training, or experience necessary to provide the supported employment program service for adults in accordance with the IPP. The vendor shall be responsible for ensuring that the individual selected will possess the skill, training, or education necessary to provide the service. In addition, the vendor is responsible for ensuring that the person providing supported employment is familiar with the consumer's daily routines and needs and is trained in any specialized supports necessary for the consumer.

Rationale for Necessity

This adoption is necessary to ensure that the consumers who are receiving the supported employment service are receiving the provision of effective, quality of care, and are cared for in a safe, and therapeutically appropriate manner that promotes their well-being and ensures that their rights are preserved.

Amend Section 58888(a)(5)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(a)(5) to remove the rate for the participant-directed community-based training service and replace it with new language that indicates how the rate is established.

Rationale for Necessity

This amendment is necessary because the rate for participant directed community-based training service has changed over the years and is expected to change in the future. By establishing the methodology and removing the rate from this section, the Department will not need to update regulations each time there is a rate change.

Adopt Section 58888(a)(6)

Specific Purpose

This regulatory action would adopt title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(a)(6) to add language which gives the methodology for establishing the new rates for the new service codes for Participant-Directed Personal Assistant. The rate methodology established is the current state minimum wage plus 7%, and to that number add 21% for fringe benefits. The 7% is the percent difference between the Bureau of Labor and Statistics median wage for the specific classification and the State minimum wage. The 21% for fringe benefits includes 6.2% for Social Security, 1.45% for Medicare, 0,80% for Federal Unemployment, 4.40% for State Unemployment, and 8.15% for Worker's Compensation.

Rationale for Necessity

This adoption is necessary to provide information on how the rate for the new service is calculated by establishing the methodology for the new rate.

Adopt Section 58888(a)(7)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(a)(7) to add language which gives the methodology for establishing the new rates for the new service codes for Participant-Directed Independent Living Individual. The rate methodology established is the current state minimum wage plus 7%, and to that number add 21% for fringe benefits. The 7% is the percent difference between the Bureau of Labor and Statistics median wage for the specific classification and the State minimum wage. The 21% for fringe benefits includes 6.2% for Social Security, 1.45% for Medicare, 0,80% for Federal Unemployment, 4.40% for State Unemployment, and 8.15% for Worker's Compensation.

Rationale for Necessity

This adoption is necessary to provide information on how the rate for the new service is calculated by establishing the methodology for the new rate.

Adopt Section 58888(a)(8)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(a)(8) to add language which gives the methodology for establishing the new rates for the new service codes for Participant-Directed Supported Employment. The rate methodology established is the current state minimum wage plus 7%, and to that number add 21% for fringe benefits. The 7% is the percent difference between the Bureau of Labor and Statistics median wage for the specific classification and the State minimum wage. The 21% for fringe benefits includes 6.2% for Social Security, 1.45% for Medicare, 0,80% for Federal Unemployment, 4.40% for State Unemployment, and 8.15% for Worker's Compensation.

Rationale for Necessity

This adoption is necessary to provide information on how the rate for the new service is calculated by establishing the methodology for the new rate.

Amend Section 58888(b)(1)(A)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(b)(1)(B) to reflect the most current rate for one Participant-Directed Service.

Rationale for Necessity

This amendment is necessary to ensure the FMS FE/A and Co-Employer rates reflect the most current rate.

Amend Section 58888(b)(1)(B)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(b)(1)(B) to reflect the most current rate for two or three Participant- Directed Services.

Rationale for Necessity

This amendment is necessary to ensure the FMS FE/A and Co-Employer rates reflect the most current rate of payment.

Amend Section 58888(b)(1)(C)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(b)(1)(C) to reflect the most current rate for four or more Participant- Directed Services.

Rationale for Necessity

This amendment is necessary to ensure the FMS FE/A and Co-Employer rates reflect the most current rate of payment.

Amend Section 58888(b)(2)

Specific Purpose

This regulatory action would amend title 17, division 2, chapter 3, subchapter 22, article 2, section 58888(b)(2) to reflect the most current rate for FMS Co-Employer services. The new language will state the rate's authority and refer to Welfare and Institution Code.

Rationale for Necessity

This amendment is necessary to ensure the rate of payment for vendors classified as a respite facility is current. By establishing the methodology and removing the rate from this section, the Department will not need to update regulations each time there is a rate change.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION, INCLUDING THE BENEFITS OR GOALS PROVIDED IN THE AUTHORIZING STATUTE

With participant direction, consumers have employer authority and responsibilities including choosing, scheduling and supervising workers. Adding the new services to the list of participant directed services provides consumers, regional centers and service providers the greatest flexibility to support consumers and their families.

Updating the rates will benefit stakeholders by providing current information.

ECONOMIC IMPACTS ASSESSMENT

Based on the economic impact analysis, 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. Furthermore, the Department has 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.

Additionally, the proposed amendment does not impose any new impact on worker safety and the state's environment.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATION

The Department has evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department's laws and specifically those statutes and regulations related to participant directed services.

No known statute or regulation conflicts with this proposed regulatory update. The Department determined that no other state regulation addressed the same subject matter and that this proposal was not inconsistent or incompatible with other state regulations. Therefore, the Department has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations.

REASONABLE ALTERNATIVES

Government Code section 11346.2, subdivision (b)(4) requires DDS to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. The Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which it proposes this regulatory action, would be as effective and less

burdensome to affected private persons than the regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or provision of law.

Small Business Alternative

The Department has not identified any reasonable alternatives that would lessen any adverse impact on small business.

STATEMENT OF DETERMINATIONS

Local Mandate Determination

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 Impact Estimate

1. Fiscal Impact on Local Government: The Department is not aware of any cost or savings impacts that a local government agency would necessarily incur in reasonable compliance with the proposed action.
2. Fiscal Impact on State Government: The Department is not aware of any new cost or savings that State government would necessarily incur in reasonable compliance with the proposed action.
3. Fiscal Impact on Federal Funding of State Programs: The Department is not aware of any cost or savings impacts that would necessarily incur in reasonable compliance with the proposed action.
4. Fiscal Impact on Representative Private Persons or Businesses Directly Affected: The Department is not aware of any cost or savings impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
5. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: There are no known costs or savings imposed on local agencies in connection with this proposed regulatory package.

Housing Cost Determination

The Department has determined that the proposed regulations will not have a financial impact on housing

EVIDENCE SUPPORTING FINDINGS OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

DDS has determined that there is no significant statewide adverse economic impact directly affecting businesses because the regulations only directly affect another avenue to get services that are already being provided.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

DDS has made a determination that the proposed regulations are not duplicative or in conflict with federal regulations.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY OR REPORT

[California - May 2020 OEWS State Occupational Employment and Wage Estimates, May 2020](#)