

State of California  
Department of Developmental Services

**Addendum to the Initial Statement of Reasons for  
Participant-Directed Services**

**BACKGROUND**

On October 8, 2021, the Department of Developmental Services (Department or DDS) published proposed regulations regarding Participant-Directed Services. (See OAL File No. Z-2021-0924-01.) The Department also issued an Initial Statement of Reasons (ISOR) regarding these proposed regulations. These and other rulemaking documents pertaining to this rulemaking are available for review on the Department's website at <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/participant-directed-services/>. The 45-Day Notice for the public comment period for the proposed regulations opened on October 8, 2021 and closed on November 22, 2021.

The Department reviewed all comments received during the 45-Day public comment period. The Department modified its proposed regulations in response to the public comments received and to clarify the originally proposed regulations. The Department posted, emailed, and mailed a 15-Day Notice of Modified Text and attached the modified regulations displaying the changes made to the original proposed regulations. The 15-Day comment period opened on February 28, 2022 and closed on March 15, 2022.

On April 22, 2022, the Department filed the final rulemaking documents with the Office of Administrative Law. After OAL's review, the Department withdrew the final rulemaking package to make further clarifications to the regulation text through a Second 15-Day Notice and Comment period and to add this Addendum to the ISOR (Addendum) to the rulemaking record.

This Addendum corrects inconsistencies between the text of the proposed regulations and the description of those regulations in the Initial Statement of Reasons, as well as incorrect statements published on October 8, 2021, and an incorrect description of additional modifications proposed in the First 15-Day Notice of Modified Text released on February 28, 2022. This Addendum provides further explanations for the Department's modifications and the reasons for these modifications in the "Necessity" section below. This Addendum also updates the section from the original ISOR entitled "Economic Impacts

Second 15-Day Comment Period: June 29, 2022 to July 14, 2022

Assessment" on page 10. Finally, this Addendum provides additional evidence and explains why the proposed regulations will have no significant adverse economic impact.

## **CORRECTIONS**

On page 4 of the ISOR, Adopt Section 58886(e)(6)(A)2.-4., had typographical errors in the Specific Purpose description. The errors are shown below in ~~strikeout~~ and the corrections are shown in underline.

### **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~~ vendor 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.

On page 6 of the ISOR, Adopt Section 58886(e)(7)(A)2.-4., had typographical errors in the Specific Purpose description. The errors are shown below in ~~strikeout~~ and the corrections are shown in underline.

### **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~~7)(A)2. through 4., and specifies that the ~~regional center~~ vendor 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.

On page 8 of the ISOR, Adopt Section 58888(a)(7), there are inconsistencies between the ISOR's Specific Purpose description and the text of the proposed regulations. The text of the proposed regulations was correct. The errors are shown below in ~~strikeout~~ and the corrections are shown in underline.

**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 rate for the new service code for Participant-Directed Independent Living Individual. The rate methodology established is the current state minimum wage plus ~~711%~~, and to that number add 221% for fringe benefits per consumer per hour. The ~~711%~~ is the percent difference between the Bureau of Labor and Statistics median wage for the specific classification and the State minimum wage. The 221% for fringe benefits includes 6.2% for Social Security, 1.45% for Medicare, 0.80% for Federal Unemployment, 4.40% for State Unemployment, and 89.15% for Worker's Compensation.

On page 8 of the ISOR, Adopt Section 58888(a)(8), there are inconsistencies between the ISOR's Specific Purpose description and the text of the proposed regulations. The text of the proposed regulations was correct. The errors are shown below in ~~strikeout~~ and the corrections are shown in underline.

**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 rate for the new service code for Participant-Directed Supported Employment. The rate methodology established is the current state minimum wage plus ~~756%~~, and to that number add 221% for fringe benefits per consumer per hour. The ~~756%~~ is the percent difference between the Bureau of Labor and Statistics median wage for the specific classification and the State minimum wage. The 221% for fringe benefits includes 6.2% for Social Security, 1.45% for Medicare, 0.80% for Federal Unemployment, 4.40% for State Unemployment, and 89.15% for Worker's Compensation.

On page 9 of the ISOR, Amend Section 58888(b)(1)(A) through (C), the Rationale for Necessity was deficient and should have described how the most current rate was determined. The correction is shown below in underline.

**Amend Section 58888(b)(1)(A) through (C)**

**Rationale for Necessity**

This amendment is necessary to ensure the FMS FE/A and Co-Employer rates reflect the most current rate. The current rate was determined after a rate increase of 1.96% was authorized in Welfare and Institutions Code, Section 4691.11. A provider survey conducted by the Department informed the percentage of the rate increase.

On page 9 of the ISOR, Amend Section 58888(b)(2), the Specific Purpose included the following incorrect statement "The new language will state the rate's authority and refer to Welfare and Institution Code." This language is being stricken below because it is incorrect, and the language is not proposed for addition to the text in this rulemaking. The error is shown below in ~~strikeout~~.

**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.~~

On page 9 of the ISOR, Amend Section 58888(b)(2), the Rationale for Necessity included an incorrect statement. The statement is incorrect because the Department is not proposing that change to the regulation text. Furthermore, the Rationale for Necessity was deficient and should have described how the most current rate was determined. The errors are shown below in ~~strikeout~~ and the corrections are shown in underline.

**Amend Section 58888(b)(2)**

**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.~~ The current rate was determined after a rate increase of 1.96% was authorized in Welfare and

Institutions Code, Section 4691.1. A provider survey conducted by the Department informed the percentage of the rate increase.

On page 10 of the ISOR, the Department only provided conclusions regarding the effect of the proposed regulations on the items listed in Government Code Section 11346.3(b)(1)(A) through (D). The Department failed to also provide an assessment of the effect of the proposed regulations for the items listed in Government Code Section 11346.3(b)(1)(A) through (D). in the ISOR. Below the Department has provided the required explanation. The errors are shown below in ~~strikeout~~ and the corrections are shown in underline.

## **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 regulations 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.

There likely will be creation of jobs within the state given that new services are being added. The vendor (an adult consumer, family member, or conservator) will be able to choose an individual to provide the service necessary to support the consumer, therefore creating a job for the chosen individual. As a result, there will be expansion of businesses currently doing business within the state. There are some benefits of the regulations to the health and welfare of California residents, and no impact on worker safety, and the state's environment. Participant-Directed Services provides consumers the option to exercise more authority over how, and by whom, services are provided. These new services will bring flexibility when receiving services and supports to ensure the health, welfare and safety of regional center consumers.

On pages 11-12 of the ISOR, the Department is providing additional evidence to explain why the proposed regulations will have no significant adverse economic impact.

## 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

While assessing the economic impact of the proposed regulations, the Rates and Fiscal Support Team analyzed the effects regulations could possibly have. Our determination is that there would be no new requirements or fees imposed on businesses and based on our assessment and analysis, outlined above, we agreed that the proposed regulations would not have a significant adverse impact on businesses.

### CORRECTIONS TO THE FIRST 15-DAY NOTICE OF MODIFIED TEXT

On page 2 of the First 15-day Notice of Modified Text, the description of the modifications included a typographical error. The Notice described the changes as follows, “The text of the modified regulatory language is shown below in red double underline to indicate additions, and ~~red double strikethrough~~ to indicate deletions. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions.” The correction to the error is shown below in ~~**double underline bold italics strikethrough**~~.

§58886(e)(8) Participant-Directed Supported Employment - Service Code 458 is a service that is provided in order to support a consumer in ~~getting~~ obtaining and maintaining competitive integrated employment, or self-employment. ~~This may include developing a plan for **obtaining** employment by assessing the consumer's strengths, weaknesses, skills, and desires for employment.~~