

State of California
Department of Developmental Services

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

Participant-Directed Services

GENERAL

The Initial Statement of Reasons for Rulemaking (ISOR), released **Friday, October 8, 2021**, is incorporated by reference herein. The ISOR, which is incorporated by reference herein, contained a description of the rationale for the proposed amendments. On **Friday, October 8, 2021**, all references relied upon and identified in the ISOR were made available to the public.

The Department of Developmental Services (Department) added three additional services to the list of participant-directed services; independent living service, personal assistant and supported employment.

Additionally, the rate regulations for in-home respite worker, voucher or participant-directed respite worker – family member, respite facility and participant-directed community-based training service are being amended to describe the rate calculation methodology. These rates have changed over the years and by removing the rate and stating the rate calculation methodology, the Department will not need to amend the regulations each time there are changes to the rate.

MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS

Under Government Code sections 11346.5, subdivision (a)(5), The Department has determined that the amendments to the regulation do not impose a mandate on any local agency or school district.

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

CONSIDERATION OF ALTERNATIVES

During the written comment period, the Department invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. The Department determined 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 than the action taken by the Department.

FIRST 15-DAY MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

On, February 28, 2022, the Department released the First 15-Day Notice to address feedback received during the 45-day comment period. A recommendation was made to add additional information to the definition of service code 458, Participant-Directed Supported Employment in Section 58886(e)(8). Specifically, the commenter suggested to add specificity to the job discovery component of the service. The Department agreed with the suggestion and made clarifying modifications.

Summary of the First 15-Day Notice and Modified Text

The First 15-Day Notice and Modified Text include clarifications and corrections to the definition of service code 458, Participant-Directed Supported Employment.

Amend Section 58886(e)(8)

Specific Purpose

This regulatory action amended title 17, division 2, chapter 3, subchapter 22, article 2, Section 58886(e)(8) to clearly define the service code 458, for Participant-Directed Supported Employment.

Rationale for Necessity

The proposed modification is necessary to clarify and add specificity to the job discovery component of the Participant-Directed Supported Employment service code.

SECOND 15-DAY MODIFICATIONS

On, June 29, 2022, the Department released a Second 15-Day Notice to address feedback received from the Office of Administrative Law after filing the final regulations for approval. The Department prepared an Addendum to the Initial Statement of Reasons (Addendum) and further modifications to the regulation text (Second 15-Day Modified Text). Both of which were developed in response to comments received by the Office of Administrative Law regarding the rulemaking for proposed amendments to the Participant-Directed Services regulations.

Summary of the Second 15-Day Notice and Modified Text

The Second 15-Day Notice and Modified Text includes corrections on page two to the first 15-Day Notice of Modified Text. An addendum to the Initial Statement of Reasons that include additions and/or clarifications to the Modified Text was also made available for public review and comment. The addendum addressed corrections and/or clarifications as described below:

- On page 4 of the ISOR, Adopt Section 58886(e)(6)(A)2.-4., had typographical errors in the Specific Purpose description.
- On page 6 of the ISOR, Adopt Section 58886(e)(7)(A)2.-4., had typographical errors in the Specific Purpose description.
- On page 8 of the ISOR, Adopt Section 58888(a)(7)-(8), there were inconsistencies between the ISOR's Specific Purpose description and the text of the proposed regulations. The text of the proposed regulations was correct.
- 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.
- 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 was stricken because it was incorrect, and the language was not meant to be proposed for addition to the text in this rulemaking.
- On page 9 of the ISOR, Amend Section 58888(b)(2), the Rationale for Necessity included an incorrect statement. The statement was incorrect because the Department was 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.
- 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. The addendum also includes the Economic Impacts Assessment.

Amend Section 57310(b)(3)

Specific Purpose

This regulatory action amended title 17, division 2, chapter 3, subchapter 22, article 2, Section 57310(b)(3) to remove the originally proposed text "the respite worker wage adjustment authorized in Welfare and Institutions Code, Section 4691.5". In its place the Department added the rate calculation methodology,

including the amount of "\$0.81" authorized in section 4690.2 of Welfare and Institutions Code.

Rationale for Necessity

This correction was necessary to clarify the rate calculation methodology. The amount of \$.81 was derived by the Department by taking the difference between the minimum wage that was effective July 1, 1998 (\$4.25) and the new salary and wages (\$5.06) indicated in Welfare and Institutions Code Section 4690.2(b)(2), whereby the difference is \$.81.

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

Specific Purpose

This regulatory action amended the originally proposed regulation text in title 17, division 2, chapter 3, subchapter 22, article 2, Section 57332(c)(3)(A), to remove the originally proposed text "the respite worker wage adjustment authorized in Welfare and Institutions Code, Section 4691.5". The rate calculation methodology was added, including the amount of "\$0.81" authorized in section 4690.2 of Welfare and Institutions Code.

Rationale for Necessity

This correction was necessary to clarify the rate calculation methodology. The amount of \$.81 was derived by the Department by taking the difference between the minimum wage that was effective July 1, 1998 (\$4.25) and the new salary and wages (\$5.06) indicated in Welfare and Institutions Code Section 4690.2(b)(2), whereby the difference is \$.81.

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

Specific Purpose

This regulatory action amended the originally proposed regulation text in title 17, division 2, chapter 3, subchapter 22, article 2, Section 57332(c)(9)(A)2.a., to remove the originally proposed text "the respite worker wage adjustment authorized in Welfare and Institutions Code, Section 4691.5". The rate calculation methodology was added, including the amount of "\$0.81." authorized in section 4690.2 of Welfare and Institutions Code.

Rationale for Necessity

This correction was necessary to clarify the rate calculation methodology. The amount of \$.81 was derived by the Department by taking the difference between the minimum wage that was effective July 1, 1998 (\$4.25) and the new salary and wages (\$5.06) indicated in Welfare and Institutions Code Section 4690.2(b)(2), whereby the difference is \$.81.

Amend Section 58886(a)

Specific Purpose

This regulatory action amended title 17, division 2, chapter 3, subchapter 22, article 2, Section 58886(a) to correct ambiguity and clearly reflect that the Department is adding three new services to the list of participant-directed services.

Rationale for Necessity

This modification was necessary to ensure that the regulation is clear and easily understood.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day comment period from October 8, 2021 through November 22, 2021 in response to the notice of proposed rulemaking published on October 8, 2021. Comments during the 45-day comment period warranted substantial changes to the proposed regulation text so an additional 15-day comment period was established. Comments were received during the 15-day comment period from February 28, 2022 through March 15, 2022, in response to the Notice of Public Availability of Modified Text published on February 28, 2022. The "Addendum" and "Second 15-Day Modified Text" have been developed in response to comments received by the Office of Administrative Law regarding the rulemaking for proposed amendments to the Participant-Directed Services regulations. Furthermore, the "Addendum" includes a correction to page 2 of the First 15-Day Notice of Modified Text released on February 28, 2022.

Listed below are the organizations and individuals that provided comments during the 45-day comment period:

Commenter/Affiliation (date of letter)	Comment Letter Code
Bethany Temby (10/14/21)	BT
Diane Elizabeth Walker (10/16/21)	DEW
Reed Kellman, Golden Gate Regional Center (10/18/21)	RKG
Association of Regional Center Agencies (10/26/21)	ARCA
Christina Cannarella and Johnny Hatch	CCJH
Disability Voices United	DVU

Below is a summary of each objection or recommendation made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change.

45-DAY COMMENTS

COMMENTS IN SUPPORT

1. Comment: Adding these services to PDS will provide clients of the regional center more provider options to ensure their health and safety, continue to live in the community in a least restrictive environment, and achieve their IPP goals. (BT)

Agency Response: The Department made no changes based on the received comment. The Department appreciates Bethany Temby's support of the proposed regulations.

2. Comment: These services will be needed and would be a benefit to all consumers. (DEW)

Agency Response: The Department made no changes based on the received comment. The Department appreciates Diane Walker's support of the proposed regulations.

GENERAL COMMENTS ABOUT REGULATIONS

1. Comment: ARCA recommends adding section 58886(e)(7)(A)(5) to read, "Ensures that the individual provides outcomes-based services that can be measured." (ARCA)

Agency Response: It is unnecessary to address out-come based services in this specific section of the regulations because the regulations in general speak to providing outcomes-based services.

2. Comment: ARCA recommends modifying proposed section 58886(a)(8) as follows: Participant- Directed Supported Employment - Service Code 458 is a service that is provided in order to support a consumer in achieving and maintaining competitive integrated employment or self-employment, or supporting in a consumer in job discovery developing a plan for employment through the job discovery process. This service may only be accessed once all other generic services have been exhausted. (ARCA)

Agency Response: The Department agrees with the substance of this comment and revised the language in this section to reflect this clarification.

3. Comment: ARCA requests clarity for what is meant by "job discovery"

Agency Response: The Department agrees with the comment and has revised the regulation text to remove the term “job discovery” and clarified the provision by adding that supporting a consumer in obtaining and maintaining competitive integrated employment, or self-employment may include developing a plan for employment by assessing the consumer’s strengths, weaknesses, skills, and desires for employment.

4. Comment: ARCA recommends adding section 58886(e)(8)(A)(5) to read, “Ensures that the individual selected provides outcomes-based services that are measurable and leads to competitive integrated employment. (ARCA)

Agency Response: It is unnecessary to address out-come based services in this specific section of the regulations because the regulations in general speak to providing outcomes-based services.

5. Comment: Recommendation to streamline the process to receive participant-directed services in general and include a timeline for receiving services within the regulations. Also, for the Department to send a directive to the Regional Center with the timeline and process information. (CCJH)

Agency Response: No action taken. Vendorization regulations in Title 17 were designed to outline and streamline the process and requirements for vendorization.

6. Comment: These services should not be promoted by regional centers as a substitute for Self-Determination. (CCJH)

Agency Response: No action taken. The Department recognizes the PDS services are separate from the Self Determination Program.

7. Comment: These services have operated, under the Department directives, in a flexible, uncomplicated manner. Recommending that the process to receive these services remains the same. (DVU)

Agency Response: No action taken. Refer to agency response # 4.

COMMENTS ABOUT RATE SETTING METHODOLOGY

1. Comment: Golden Gate Regional Center recommends that the Department consider basing the rate for Respite and Personal Assistants on “current state or Local minimum wage at a what higher” Within

California there are a number of local ordinances which establish the minimum wage at wage higher than current California Law, such as the City and County of San Francisco. (RKG)

Agency Response: Current statute does not allow the Department to consider local minimum wage ordinances.

2. Comment: In an effort to ensure widespread availability of these services, ARCA recommends that all references to “state minimum wage” be modified to read “prevailing minimum wage. (ARCA)

Agency Response: Current statute does not allow the Department to consider local minimum wage ordinances.

3. Comment: Recommendation that the rate for participant-directed community-based training service be comparable to the community integrated training service, service code 055. (CCJH)

Agency Response: The rate for Participant-Directed Community-Based training is set in statute Welfare and Institutions Code 4688.219(c)(1) and therefore, can only be updated via a rate increase granted by legislative change.

4. Comment: The commenter requested to make changes to who may provide Participant-Directed Community-Based Training Services. (CCJH)
Agency Response: The Department took no action on this comment as the portion of the regulatory section referenced by the commenter was not included in this rulemaking package.

Listed below are the organizations and individuals that provided comments during the First 15-day comment period:

Commenter/Affiliation (date of letter)	Comment Letter Code
Association of Regional Center Agencies (3/8/22)	ARCA

FIRST 15-DAY COMMENTS

GENERAL COMMENTS ABOUT REGULATIONS

1. Comment: ARCA recommends adding section 58886(e)(7)(A)(5) to read, “Ensures that the individual provides outcomes-based services that can be measured.” (ARCA)

Agency Response: It is unnecessary to address out-come based services in this specific section of the regulations because the regulations in general speak to providing outcomes-based services.

2. Comment: ARCA recommends modifying proposed section 58886(a)(8) to add the phrase "This service may only be accessed once all other generic services have been exhausted." (ARCA)

Agency Response: It is unnecessary to amend the regulation because the services may be accessed if all other generic services have been exhausted.

3. Comment: ARCA recommends adding section 58886(e)(8)(A)(5) to read, "Ensures that the individual selected provides outcomes-based services that are measurable and leads to competitive integrated employment." (ARCA)

Agency Response: It is unnecessary to address out-come based services in this specific section of the regulations, because the regulations in general speak to providing outcomes-based services.

COMMENTS ABOUT RATE SETTING METHODOLOGY

1. Comment: In an effort to ensure widespread availability of these services, ARCA recommends that all references to "state minimum wage" be modified to read "prevailing minimum wage." (ARCA)

Agency Response:

Current statute does not allow the Department to consider local minimum wage ordinances.

Listed below are the organizations and individuals that provided comments during the Second 15-day comment period:

Commenter/Affiliation (date of letter)	Comment Letter Code
Association of Regional Center Agencies (6/30/22)	ARCA

SECOND 15-DAY COMMENTS

1. Comment: ARCA recommends adding section 58886(e)(7)(A)(5) to read, "Ensures that the individual provides outcomes-based services that can be measured." (ARCA)

2. Agency response: This comment was previously made during First 15-Day Notice comment period. It is unnecessary to address out-come based services in this specific section of the regulations because the regulations in general speak to providing outcomes-based services.
3. Comment: ARCA recommends modifying proposed section 58886(a)(8) to add the phrase "Service Code 458 is a service that is provided in order to support a consumer in obtaining and maintaining competitive integrated employment, or self-employment. This may include developing a plan for employment by assessing the consumer's strengths, weaknesses, skills, and desires for employment. This service may only be accessed once all other generic services have been exhausted." (ARCA)

Agency response: This comment was previously made during First 15-Day Notice comment period. It is unnecessary to amend the regulation because the services may be accessed if all other generic services have been exhausted.

4. Comment: ARCA recommends adding section 58886(e)(8)(A)(5) to read, "Ensures that the individual selected provides outcomes-based services that are measurable and leads to competitive integrated employment." (ARCA)

Agency response: This comment was previously made during First 15-Day Notice comment period. It is unnecessary to address out-come based services in this specific section of the regulations, because the regulations in general speak to providing outcomes-based services.

COMMENTS ABOUT RATE SETTING METHODOLOGY

1. Comment: In an effort to ensure widespread availability of these services, ARCA recommends that all references to "state minimum wage" be modified to read "prevailing minimum wage." (ARCA)

Agency response: This comment was previously made during First 15-Day Notice comment period. Current statute does not allow the Department to consider local minimum wage ordinances.