

State of California
Department of Developmental Services

UPDATED INFORMATIVE DIGEST
Participant-Directed Services

Sections Affected: Proposed 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 proposed amendments to the following sections:

Section 57310(b)(3) - Remove the rate and add the rate calculation methodology.

Section 57332(c)(3)(A) and (c)(9)(A) – Remove the rate and add the rate calculation methodology.

Section 58888(a)(5) - Remove the rate and add the rate calculation methodology..

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

Description of the Regulatory Action

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. 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.

On October 8, 2021, the Department released for public review and comment the Notice of Public Comment Period (45-Day Notice) and the Initial Statement of Reasons for Rulemaking (ISOR) for proposed amendments to the participant-directed services regulation. The proposed amendments added participant-directed service codes to offer flexibility and to improve support to 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 in-home respite worker, respite facility, voucher or participant-directed respite worker – family member, and participant-directed community-based training service are being amended to state the methodology for calculating the rate. The Financial Management Service Fiscal/Employer Agent (FMS FE/A) and Co-Employer rates were also updated to reflect the most current rate.

The 45-Day Notice contains an informative digest of the proposed action and policy statement overview which contains a description of the rationale for each amendment. On October 8, 2021, all references relied upon and identified in the ISOR were made available to the public. None of the background information or other sections of the Informative Digest have changed since the publication of the 45-Day Notice. During the 45-Day comment period, the Department received six (6) written comments.

In light of the comments received, the Department made appropriate conforming modifications to the originally proposed text with the changes clearly indicated available to the public for at least 15 days. The Notice of Public Availability of Modified Text (15-Day Notice) and Proposed 15-Day Modified Text were released to all commenters, stakeholders and interested parties and posted to the Department's website at <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/participant-directed-services/>

During the First 15-Day comment period, one written comment was submitted. Staff subsequently prepared written responses to the written comments received during the 45-Day and 15-Day comment period, as set forth in the Final Statement of Reasons (FSOR). On April 22, 2022, the Department adopted the regulatory amendments after addressing all appropriate modifications and submitted the final regulations to the Office of Administrative Law.

On June 3, 2022, the Department withdrew the final regulation package in response to feedback from the Office of Administrative Law. On June 29, 2022,

the Department released for public review and comment the Second 15-Day Notice of Public Availability of Modified Text and Addendum to the Initial Statement of Reasons (ISOR) Added to the Participant-Directed Services Rulemaking File (Second 15-Day Notice), Second 15-Day Modified Text, and an Addendum to the ISOR (Addendum) for a Second 15-Day Comment Period. The Second 15-Day public comment period was from June 29, 2022 through July 14, 2022.

The Addendum included the following:

1. Correction on page 2 of the First 15-Day Notice of Modified Text released on February 28, 2022;
2. Corrections to inconsistencies between the text of the originally proposed regulations and the description of those regulations in the ISOR;
3. Corrections to statements in the ISOR, published on October 8, 2021;
4. Corrections to the description of modifications proposed in the First 15-Day Notice of Modified Text released on February 28, 2022; and
5. Further explanations for the Department's modifications and the reasons for the modifications;
6. Update to the Economic Impacts Assessment on page 10 of the ISOR; and
7. Additional evidence and an explanation for why the regulations will have no significant adverse economic impact.

The Second 15-Day Modified Text corrected typographical errors in the originally proposed regulation text and First 15-Day Modified text, as well as made changes to the rate calculation methodology, including the amount of the minimum wage plus "\$0.81" in Sections 57310(b)(3), 57332(c)(3)(A) and 57332(c)(9)(A)2.a.

During the Second 15-Day Notice comment period, one written comment was submitted; the comment received was previously submitted during the 45-Day and First 15-Day Notice comments periods.

Furthermore, during our Second 15-Day comment period, Senate Bill (SB) 188 was enacted on June 30, 2022, and among other things, amended Welfare and Institutions Code Section 4688.21(c)(7), to allow for the rate for vouchered community-based training service to be the most recent rate posted on the department's public internet website.