

Date of Hearing: April 14, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 1568 (Wood) – As Amended April 12, 2023

SUBJECT: Developmental services: independent living skills services: rates

SUMMARY: Requires Department of Developmental Services (DDS) to revise and implement a rate setting process for independent living services and specifies services that must be offered. Specifically, **this bill**:

- 1) Requires all regional centers providing independent living skills services to have all of the following functional skills training components and stipulates that the services cannot be conducted in a center-based environment:
 - a) Cooking;
 - b) Cleaning;
 - c) Shopping in natural environments;
 - d) Menu planning;
 - e) Meal preparation;
 - f) Money management, including check cashing and purchasing activities;
 - g) Use of public transportation in natural environments;
 - h) Personal health and hygiene;
 - i) Self-advocacy training;
 - j) Independent recreation and participation in natural environments;
 - k) Use of medical and dental services, and other community resources;
 - l) Community resource awareness, such as police, fire, or emergency help; and,
 - m) Home and community safety.
- 2) Permits independent living skills services to also provide the support necessary for a consumer to maintain a self-sustaining, independent living situation in the community.
- 3) Requires DDS, by April 1, 2024, to revise and implement an equitable and cost-effective ratesetting procedure for state payment for independent living skills services, in accordance with all of the following:
 - a) Independent living skills services shall not be categorized as a community-based day program or adult day program.

- b) The ratesetting procedure must include each specific allowable service, activity, and provider's administrative cost in the overall independent living skills services rate, as determined by the department, and reflect the reasonable cost of independent living skills services.
- c) Reasonable costs shall be determined biennially by the department, subject to audit at the discretion of the department.
- d) In determining reasonable costs, the department shall rely on the most up-to-date United States Bureau of Labor Statistics's State Occupational Employment and Wage Estimates for California, and shall assume that the job function of an independent living skills services instructor is comprised of all of the following positions:
 - i) Thirty percent of the job function as a rehabilitation counselor (United States Bureau of Labor Statistics, Standard Occupational Classification code 21-1015).
 - ii) Thirty percent of the job function as a social and human service assistant (United States Bureau of Labor Statistics, Standard Occupational Classification code 21-1093).
 - iii) Twenty percent of the job function as a tutor (United States Bureau of Labor Statistics, Standard Occupational Classification code 25-3041).
 - iv) Twenty percent of the job function as a teacher and instructor (United States Bureau of Labor Statistics, Standard Occupational Classification code 25-3099).
- 4) The revised ratesetting procedure as described in 3) must be implemented according to the rate increase schedule pursuant to Welfare and Institutions Code Section (WIC) 4519. Further, upon implementation of the revised ratesetting procedure as describe in 3), the rate increase scheduled for January 1, 2023, pursuant to WIC 4519.10, must be immediately applied to the revised independent living skills services rate.
- 5) Exempts the revision and implementation of rating setting as described in 3) from Administrative Regulations and Rulemaking rules described in Government Code Section (GOV) 11340 *et seq.*
- 6) Removes "independent living programs" from legislative intent language stating the "Legislature intends ratesetting procedures be developed for all community-based day programs..."

EXISTING LAW:

- 1) Establishes an entitlement to services for individuals with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (WIC 4500 *et seq.*)
- 2) Makes regional centers responsible for expanding opportunities for the full and equal participation of persons with developmental disabilities in their local communities through, activities including:
 - a) Outreach to, and training and education of, representatives of community service agencies and programs, businesses, and community activity providers regarding the provision and expansion of opportunities for participation by regional center consumers.

- b) Developing a community resources list.
 - c) Providing assistance to case managers and family members on expanding community integration options for consumers in the areas of work, recreation, social, community service, education, and public services.
 - d) Developing and facilitating the use of innovative methods of contracting with community members to provide support in natural environments to regional center consumers.
 - e) Development and facilitating the use of natural supports to enhance community participation.
 - f) Providing technical assistance to, and coordinating with, community support facilitators who will be used to provide supports to individual consumers for community participation, as needed.
 - g) Providing sources of information relevant to individuals in making informed choices about employment options. This information may include, but need not be limited to, work incentive programs for persons with developmental disabilities, access and retention of needed benefits, interactions of earned income, asset building, or other financial changes on benefits, employment programs and protections, taxpayer requirements and responsibilities, training opportunities, and information and services available through other agencies, organizations, or on the Internet. (WIC 4688(b))
- 3) Requires regional centers to provide independent living skills services to an adult consumer, consistent with their individual program plan, that provide the consumer with functional skills training that enables themselves to acquire or maintain skills to live independently in their own home, or to achieve greater independence while living in the home of a parent, family member, or other person. (WIC 4688.05)
 - 4) Directs the Department of Health Care Services (DHCS) and DDS to jointly seek a federal Centers for Medicare and Medicaid Services' (CMS) approved 1915(i) state plan amendment to expand federal financial participation for services to persons with developmental disabilities provided by regional centers pursuant to the Lanterman Act. (WIC 4688.5)
 - 5) Requires DDS to implement a rate increase for service providers that equals one-quarter of the difference between current rates and the fully-funded rate model for each provider. (WIC 4519.10)
 - 6) Suspends existing and new assessments and reassessments, and collections of the annual family program fee from July 1, 2022, until June 30, 2023. (WIC 4785)
 - 7) Establishes the Administrative Regulations and Rulemaking Act. (GOV 11340 *esq.*)
 - 8) States legislative intent that community-based day programs be planned and provided as part of a continuum of services to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. The Legislature further intends that standards be developed to ensure high-

quality services, and that equitable ratesetting procedures based upon those standards be established, maintained, and revised, as necessary. The Legislature intends that ratesetting procedures be developed for all community-based day programs, which include adult development centers, activity centers, infant day programs, behavior management programs, social recreational programs, and independent living programs. (WIC 4691(a))

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Lanterman Developmental Disabilities Services Act.* California's Lanterman Act was originally passed in 1969. The Lanterman Act provides entitlement to services and supports for individuals ages three and older who have a qualifying developmental disability. Qualifying disabilities include autism, epilepsy, cerebral palsy, intellectual disabilities, and other conditions closely related to intellectual disabilities that require similar treatment. To qualify, an individual must have a disability that is substantial that began before the age of 18 and is expected to be life-long. There are no income-related eligibility criteria. As of December 2022, DDS serves about 330,000 Lanterman-eligible individuals and another 2,900 children ages three and four who are provisionally eligible.

Developmental Services Task Force. In an effort to meet statutory requirements to close developmental centers and move toward deinstitutionalization of persons living with developmental disabilities, a task force was formed and then eventually morphed into the current Developmental Services Task Force that currently still meets regularly. There are 157 task force members, which include self-advocates, family members, advocacy organizations, regional center representatives, community service providers, labor organizations and legislative leaders. 42 of these members serve on the Task Force while the other 115 serve on the five workgroups. The five workgroups are: Community Resources, Oversight, Accountability and Transparency, Safety Net, Serve Access and Equity, System and Fiscal Reform. The Task Force is charged to develop recommendations to strengthen the community services system considering a growing and aging population, resource constraints, and new state and federal laws and regulations.

Developmental Services Rate Reforms. In 2015, the state requested a study to begin rate reform discussions and understand the best way to modernize an outdated rate structure. The study was performed by Burns and Associates and published in March 2019. At the request of the Legislature, the Legislative Analyst's Office (LAO) followed up in May 2019 outlining policy options based on the Burns and Associates report. The LAO noted in their report to the Legislature outlining policy options, "...anything less than full implementation of the proposed rate models has risks." The LAO offered a staged approach which put services in four categories: residential, employment, respite, and independent living services, or combine the staged approach with pilot programs. The LAO also noted that a full implementation was not feasible in one fiscal year. As such, the Legislature adopted a five-year phased in approach in the 2021-22 Budget, and then a four-year accelerated plan was adopted in the 2022-23 Budget. This year, the Governor's budget proposal includes \$1.2 billion dollars to have full implementation by July 1, 2024.

The California Community Network and LAO both separately note that the Burns and Associates rate reform model might need adjustments to consider the reality of the differences between Independent Living Services and Supported Living Services. The rate reform model

uses the Bureau of Labor Statistics to make job assumptions on wages. The model uses the same occupations of home health aides, psychiatric aides, personal care aides, and recreation workers to set wage assumptions for both independent living services wages and supported living services wages. Public comment was made to DDS expressing this concern and as a result DDS made an adjustment to the rate model. According to DDS in their Responses to Public Comment Report posted in January 2020, “The mix of occupations for Independent Living (Service Code 520) and Independent Living Specialist (Service Code 635) was revised to reduce the use of the personal care aide occupation, producing a base rate model wage assumption of \$15.00 per hour; the mix of occupations for Community-Based Day Programs was revised to reduce the use of the personal care aide occupation, producing a base rate model wage assumption of \$15.00 per hour; and the wage level for line staff in Community Care Facilities at level 5 and above was increased by 10 percent.”

This bill prohibits independent living skills services from being categorized as a community-based day program or adult day program. The bill also revises wage reimbursement for an independent living instructor to reflect higher paid jobs – teacher, rehabilitation counselor, and a social and human services coordinator from the current model that uses personal care aide, home health aide, psychiatric aide, and recreation worker.

Supported Living Services (SLS) versus Independent Living Services (ILS). SLS allow eligible adults to live in their own home including: assisting with daily living activities, maintaining a clean and safe home, obtaining appropriate medical services, finding appropriate house mates, accessing community resources and participating in community life. SLS can be funded through the regional center and/or In-Home Support Services and can be supervised by the individuals themselves. SLS may include assistance with the following:

- Selecting a home;
- Moving into a home;
- Choosing personal attendants;
- Choosing housemates;
- Acquiring household furnishings;
- Participating in daily living activities;
- Preparing for emergencies;
- Participating in community life; and,
- Managing personal financial affairs.

ILS provide skills training to clients who live independently in the community. Skills that are typically taught include, budgeting, scheduling health appointments, healthy meal planning and cooking, house cleaning, learning public transportation routes, personal health and hygiene, and other independent living skills. ILS services are funded through the regional center and delivered

in a non-licensed home or apartment. ILS services mostly focus on basic self-help activities that may include any of the following:

- Money management;
- Shopping;
- Meal preparation;
- Health/medical care;
- Laundry;
- Advocacy; and,
- Psycho-social support.

The 2021 United States Bureau of Labor Statistics' State Occupational Employment and Wage Estimates for California are as follows:

Job Classification	Mean Hourly Wage
Personal Care Aide and Home Health Aide	\$14.07
Psychiatric Aide,	\$16.65
Recreation Worker	\$22.66
Teacher and Instructor	\$ 62,200/ annual (no hourly provided)
Tutor	\$ 20.09
Rehabilitation Counselor	\$21.51
Social And Human Services Coordinator	\$19.45

Author's Statement: According to the Author, "While most DDS service provider rates are being raised to reflect the Burns Rate Study, and to reflect current provider costs more accurately, the ILS misclassification means higher skilled instructors are being left behind, receiving a fraction of the pay their skill level warrants and that would have been addressed if not for the misclassification. The ability to live independently is of vital importance to people of all ages and abilities. If this situation is not rectified, we are not honoring our responsibility to the I/DD community by allowing them to live their lives as independently as possible."

Need for this bill: Rate reform for developmental services has been an important topic the last few years. By July 2024, California is set to implement the rate reform that was signed into law

originally in 2021-22 budget. Within this rate reform, rates were set for ILS that may not match up with how ILS work in practice.

This bill tries to address rate reform through increasing rates for ILS by changing the wage rate calculated based on higher-paying jobs that might reflect the duties of an ILS provider more accurately. This bill also attempts to differentiate between ILS community-based services from ILS.

Equity Implications: Individuals living with developmental disabilities face challenges in day-to-day life that sometimes requires institutional care, but there are many instances where living independently at home is possible, preferred, and better for the individual. Historically, institutionalization has been prioritized despite opposition to these policy choices. As noted, California is working to bring equity and independence to a group of individuals that have the potential to thrive if given the right tools. This bill prioritizes providers that are able to teach these skills and ultimately help encourage individuals to live and age in the place of their choosing.

RELATED AND PRIOR LEGISLATION:

AB 1 X2 (Thurmond), Chapter 3, Statutes of 2016, required DDS to conduct a rate study that considered the sustainability, quality, and transparency of services and the effectiveness of payment methodologies in supporting an adequate supply of providers and incentivizing outcomes for consumers.

AB 136 (Committee on Budget), Chapter 76, Statute of 2021, specified the timeline for implementation of the rate models proposed in the rate study.

AB 1957 (Wilson), Chapter 314, Statutes of 2022, required DDS and regional centers to report additional data for individuals with developmental disabilities.

REGISTERED SUPPORT / OPPOSITION:

Support

California Community Living Network (Sponsor)
Association of Regional Center Agencies
California State Council on Developmental Disabilities
Community Interface Services
Disability Rights California
Disability Voices United
PathPoint

Opposition

None on file

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