

Date of Hearing: March 10, 2020

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 2024 (Holden) – As Introduced January 29, 2020

SUBJECT: Developmental disabilities: provider rates

SUMMARY: Increases the provider rates for providers of various services and supports to persons with developmental disabilities by 3.33% for each \$1 increase in the state minimum wage, or by a prorated percentage for an increase that is not a whole number. Specifically, **this bill:**

- 1) Increases the rates in effect for providers of the following services: residential services, vouchered community-based training services, supported living services, nonresidential service providers for services for which rates are determined through negotiation between the regional center and the provider, supported employment services provided to consumers receiving individualized services, and supported employment services provided to consumers receiving group services by 3.33% for each \$1 increase in the state minimum wage, or by a prorated percentage for an increase that is not a whole number, based on the rates in effect on December 31 prior to the effective date of an increase in the state minimum wage.
- 2) Increases the rates in effect for nonresidential services purchased by regional centers; family member-provided respite services and out-of-home respite services; and, community-based day program, work activity program, and in-home respite services agency providers by 3.33% for each \$1 increase in the state minimum wage, or by a prorated percentage for an increase that is not a whole number, based on the rates in effect on December 31 prior to the effective date of an increase in the state minimum wage. Additionally, prohibits the rate increase to apply to those services for which rates are determined by entities other than the department or are usual and customary.

EXISTING LAW:

- 1) Establishes an entitlement to services for individuals with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welfare Institutions Code [WIC] Section 4500 *et seq.*)
- 2) Grants all individuals with developmental disabilities, among all other rights and responsibilities established for any individual by the United States Constitution and laws and the California Constitution and laws, the right to treatment and habilitation services and supports in the least restrictive environment. (WIC 4502)
- 3) Establishes a system of 21 nonprofit regional centers throughout the state to identify needs and coordinate services for eligible individuals with developmental disabilities and requires the Department of Developmental Services (DDS) to contract with regional centers to provide case management services and arrange for or purchase services that meet the needs of individuals with developmental disabilities, as defined. (WIC 4620 *et seq.*)
- 4) Creates a process by which regional centers may “vendorize” service providers, thereby providing a path to contract for services with that provider and ensuring maximum flexibility

and availability of appropriate services and support for persons with developmental disabilities. (WIC 4648)

- 5) Establishes the Fair Labor Standards Act and sets the federal minimum wage at \$7.25 an hour. (29 U.S.C. Chapter 8)
- 6) Requires an employer to comply with the more restrictive requirement when state and federal minimum wage laws differ. (Labor Code [LAB] Section 1182.12)
- 7) Allows local jurisdictions to adopt local minimum wage ordinances that are higher than the federal minimum wage provided for in the Fair Labor Standards Act. (29 U.S.C. Chapter 8)
- 8) Raises the statewide minimum wage to \$15 an hour by January 1, 2022, using a phased in implementation method over several years and based on the number of employees employed by a business, and for each year thereafter, increases the minimum wage up to 3.5% for inflation as measured by the national Consumer Price Index. (LAB 1182.12)
- 9) Allows regional centers to negotiate a rate adjustment with residential service providers that are otherwise restricted for the sole purpose of adjusting payroll costs associated with the minimum wage increase as established by Labor Code Section 1182.12. (WIC 4681.6(b))
- 10) Prohibits the rate for vouchered community-based training services to exceed \$14.99 an hour. (WIC 4688.21)
- 11) Requires the Director of Developmental Services to establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment for nonresidential services purchased by regional centers. (WIC 4690)
- 12) Allows DDS to approve rate adjustments for a work activity program that demonstrates that the rate adjustment is necessary to pay employees who were being compensated at a wage less than the minimum wage established by Labor Code Section 1182.12, as specified (WIC 4691.6 (f))
- 13) Allows community-based day and in-home respite services agency providers with temporary rates set by DDS to seek unanticipated rate adjustments from DDS due to the impacts of the increased minimum wage as established by Labor Code Section 1182.12. (WIC 4691.6 (g))
- 14) Allows regional centers to negotiate a rate adjustment with nonresidential service providers for the sole purpose of adjusting payroll costs associated with the minimum wage increase as established by Labor Code Section 1182.12. (WIC 4691.9(b))
- 15) Establishes the hourly rate for supported employment services provided to consumers receiving individualized services and for group services (regardless of the number of consumers served in the group) at \$36.57. (WIC 4860)

FISCAL EFFECT: Unknown

COMMENTS:

Developmental Services: The Lanterman Act guides the provision of services and supports for Californians with developmental disabilities. Each individual (referred to as “consumer”) under

the Act is legally entitled to treatment and habilitation services and supports in the least restrictive environment. The Lanterman Act established that individuals with developmental disabilities and their families have a right to receive the necessary supports and services required to live independently in the community. The term “developmental disability” is defined as a disability that originates before a person reaches 18 years of age, is expected to continue indefinitely, and is a significant disability for those individuals; such disabilities include, among others: intellectual disability, epilepsy, autism, and cerebral palsy. Other developmental disabilities are those disabling conditions similar to an intellectual disability that require care and management similar to that required by individuals with intellectual disabilities, but does not include conditions that are solely psychiatric or physical in nature. DDS currently serves 347,355 consumers.

Regional center vendors: DDS contracts with 21 regional centers, which are private nonprofit entities whose primary purpose is to connect consumers with services in the community. While regional centers do not directly provide services to individuals and their families, they are charged with providing information and coordinating the delivery of services to consumers, such as residential placements, supported living services, respite care, transportation, day treatment programs, work support programs, and various social and therapeutic services and activities. Because regional centers do not directly provide services, their primary objective is to contract with and supply funding to vendors in the surrounding area to provide services to regional center consumers. Before a vendor can provide services to a consumer, the vendor must undergo the “vendorization” process, in which the provider applies for contracts that enable them to serve individuals in the community. The vendorization process enables regional centers to verify that an applicant meets specific requirements and standards prior to the provision of services to consumers. While the vendorization process makes a provider eligible to provide services paid for by regional centers, there is no guarantee that a regional center will refer customers to any given vendor. It is also possible for a vendor to be vendorized by more than one regional center, which allows vendors to serve consumers in multiple catchment areas.

State minimum wage: SB 3 (Leno), Chapter 4, Statutes of 2016, increased the California state minimum wage over the course of several years, depending on the size of a business. For businesses with 26 or more employees, the minimum wage increased to \$10.50/hour in 2017, to \$11/hour in 2018, and will continue to increase one dollar for every year thereafter until \$15/hour is reached in 2022. For businesses with 25 or fewer employees, these increases will be delayed by one year, meaning that the minimum wage will not reach \$15/hour for smaller businesses until 2023. After the minimum wage reaches \$15/hour it will be annually adjusted per a calculation specified in state law. Current law also requires businesses to comply with the stricter standard in the event that there is a discrepancy in minimum wage rates. For example, federal minimum wage is currently \$7.25/hour, however as of January 1, 2020, California’s minimum wage is \$13.00/hour; as such, employers in California are required to comply with the California minimum wage as it is more a stringent standard.

Under federal law, local entities, both cities and counties, are allowed to enact local minimum wage ordinances in an effort to address higher costs of living in certain areas. For example, starting January 1, 2019, state minimum wage was \$12.00/hour, however on July 1, 2019, San Francisco’s minimum wage ordinance required employees be paid at least \$16.50/hour. In a similar attempt to offset high costs of living, the city of Los Angeles raised the minimum wage to \$14.25/hour on July 1, 2019, and the city of San Jose raised the local minimum wage to \$15.00/hour on January 1, 2019.

Regional Center rates: Because regional centers do not provide services directly to consumers, they are tasked with purchasing services from providers. The rates at which services are purchased vary depending on the type of service and the type of provider; a large portion of rates are set by DDS or are negotiated between a regional center and the provider. These rates are established based on a variety of factors, including historical cost statements, rate schedules, statutes, or regulations. Over time rate-setting methodologies have proven to be complex and attempts to control budgetary increases have resulted in rate restrictions and freezes.

Beginning in 2003-04, community-based day programs, in-home respite, supported living services, and transportation services provided by vendors were subjected to rate freezes. By 2008-09, all vendors with rates negotiated with regional centers were subjected to rate freezes. Additionally, beginning in 2008-09, median rates were implemented and an upper limit was placed on new service providers. Median rates prevented regional centers from negotiating rates that exceeded the statewide median rate or the regional center median rate for the service, whichever is lower. Between 2009 and 2011, provider payment reductions were implemented such that all vendors, with the exception of supported employment providers, experienced a reduction. Funding for provider payments was restored by 2013-14.

Generally, vendors are able to request exemptions or changes to rates and current law does allow DDS to approve exemptions to rate freezes for the purpose of mitigating risks to consumer health and safety. However, without explicit statutory authority, DDS may not adjust service provider rates.

While SB 3 (Leno) did provide DDS and regional centers the statutory authority to adjust rates to meet increases in the state minimum wage, SB 3 did not provide explicit statutory authority for DDS and regional centers to adjust rates for providers that operate in locations with a local minimum wage. Therefore, vendors in areas with a local minimum wage that is higher than the state minimum wage are ineligible for rate adjustments due to local minimum wage increases or state minimum wage increases. However, vendors providing the same service in another part of the state who are not subject to a local minimum wage requirement, can seek an adjustment for their minimum wage workers.

Special Session legislation: In June 2015, Governor Brown convened a special legislative session to examine health and human services issues, including sufficient funding for and rate increases for community service providers serving individuals with disabilities. The Governor later signed into law AB 2x1 (Thurmond), Chapter 3, Statutes of 2016, which directly appropriated \$287 million General Fund for various increases to regional centers and community service providers for 2016-17. According to the LAO, approximately 60% of the funding was allocated for salary and/or benefit increases for eligible staff and are subject to extensive reporting requirements to ensure program accountability and determine allocation of funds. The legislation also requires DDS to submit a rate study to the Legislature no later than March 2019 addressing the sustainability, quality, and transparency of community-based services for individuals with developmental disabilities.

DDS Rate Study: DDS contracted with health policy consultants, Burns and Associates to conduct the three-year service provider rate study. As required by statute, DDS submitted the rate study to the Legislature in draft form in March 2019 and in final form in January 2020. The rate models in the study recommended similar rates for similar services. The rate study models allow for adjustments based on regional and other cost differences and reflect rate levels

necessary to meet service needs. According to Burns and Associates, DDS spending would increase by \$1.8 billion in total fund if the rate models were fully implemented.

Need for this bill: The rate-setting methodology for providers of various services and supports to persons with developmental disabilities varies widely across the different provider services. Because of the complicated methodology and current laws restricting most rate adjustments, many vendors are unable to increase wages for their minimum wage workers consistent with changes in cost of living and labor costs.

According to the author's office, "Our State has both a statutory and a moral commitment to provide for the basic needs of our developmentally disabled residents. We must remain attentive to the capacity of our local community services organizations to truly meet the needs of people. When the Legislature acted to increase the State's minimum wage for many hard-working Californian's, we did not intend to cause an undeserved economic burden to fall on the organizations that serve our most vulnerable children and adults. But that is what has happened. I, like many elected officials, have learned of the loss of program capacities and even potential closures resulting from increased labor costs with no corresponding rate adjustments. Now that we are aware of these unintended consequences we have the opportunity, and I would add the responsibility to correct this problem. [This bill] provides the right solution. It creates a uniform adjustment process when the state minimum wage is adjusted."

PRIOR LEGISLATION:

AB 279 (Holden) of 2018, would have provided DDS and regional centers with the statutory authority to adjust rates for providers who operate in regions where the local minimum wage is higher than the minimum wage provided for in state law. AB 279 was held on the Senate Appropriations suspense file.

AB2x1 (Thurmond), Chapter 3, Statutes of 2016, appropriated, among other things, \$287 million General Fund for increases to regional centers and community service providers in 2016-17, and imposed reporting requirements to ensure proper allocation of funds and program accountability.

SB 3 (Leno), Chapter 4, Statutes of 2016, among other things, incrementally increased the state minimum wage each year to \$15 by 2022 for employers with over 25 employees and by 2023 for employers with 25 or fewer employees, after which it required an annual adjustment of the minimum wage per a specified formula.

REGISTERED SUPPORT / OPPOSITION:

Support

LA Coalition (Sponsor)
Association of Regional Center Agencies
California Disability Services Association
Hope House for The Multiple-handicapped, INC.
The Adult Skills Center
Tierra Del Sol Foundation
United Cerebral Palsy of Los Angeles, Ventura and Santa Barbara Counties
Valley Village

Opposition

None on file

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