

SUBCOMMITTEE NO. 3

Agenda

Senator Richard Pan, M.D., Chair
Senator Melissa Hurtado
Vacancy



INFORMATIONAL HEARING

“Update: Rate Study and Reform in the Developmental Services System”

Wednesday, January 22, 2020

9 am

State Capitol - Room 4203

Consultant: Renita Polk

- I. OPENING REMARKS – SENATOR RICHARD PAN, M.D., CHAIR**
- II. RATE STUDY HISTORY**
Sonja Petek, Legislative Analyst’s Office
- III. OVERVIEW OF RATE STUDY METHODOLOGY**
Nancy Bargmann, Director, Department of Developmental Services
Stephen Pawlowski, Burns and Associates
- IV. SERVICE PROVIDERS**
Michele Rogers, Ph.D., Executive Director, Early Learning Institute
Lori Anderson, President and CEO, United Cerebral Palsy of Los Angeles, Ventura, and Santa Barbara Counties
Kevin Rath, Executive Director, Manos Home Care
- V. OVERVIEW OF RESPONSE TO PUBLIC COMMENTS AND NEXT STEPS**
Nancy Bargmann, Director, Department of Developmental Services
Stephen Pawlowski, Burns and Associates
Jay Kapoor, Department of Finance
Brent Houser, Department of Finance
- VI. PUBLIC COMMENT**
- VII. CONCLUDING REMARKS – SENATOR RICHARD PAN, M.D., CHAIR**

Informational Hearing

Update: Rate Study and Reform in the Developmental Services System

BACKGROUND

INTRODUCTION

In California, the Lanterman Developmental Disabilities Services Act entitles persons with a developmental disability, as defined in law, access to services and supports. California has a uniquely designed community-based system of services and supports for persons with developmental disabilities. The Department of Developmental Services (DDS) oversees delivery of a variety of services to more than 330,000 children and adults. Home and community-based services (HCBS) are primarily delivered through 21 nonprofit Regional Centers (RCs) that, in turn, contract with several thousand nonprofit and for-profit service providers (vendors). RCs coordinate the delivery of more than 150 services to support people with developmental disabilities. RCs conduct outreach, assessment and intake activities; determine, through an individualized planning process, services and supports necessary to meet the needs of each person and, when appropriate, their family; and secure those identified services and supports for the consumer.

Over the years, since its enactment, the Lanterman Act has been amended to give consumers and families a stronger voice in determining the services and supports they receive through a person-centered planning process, and has introduced new models of service delivery, including supported living services, supported employment services, and self-determination (in which consumers and families receive a set budget and directly control expenditures on services and supports of their choosing). Additionally, new residential models have been developed to provide more intensive medical and behavioral supports in a home-setting.

2015-16 EXTRAORDINARY SESSION

In response to concerns about the sustainability of the system that serves individuals with developmental disabilities, as well as other concerns, Governor Edmund G. Brown, Jr. called for the Legislature to convene an extraordinary session. In June 2015, Governor Brown issued a proclamation calling for, amongst other provisions, “Sufficient funding to provide additional rate increases for providers of Medi-Cal and developmental disability services.” The Governor also called for the legislature to “consider and act upon legislation necessary to establish mechanisms so that any additional rate increases expand access to services; and increase oversight and the effective management of services provided to consumers with developmental disabilities...”

Ultimately, the California Legislature passed AB 1 X2 (Thurmond, Beall, Bonta, Cannella, and Maienschein), Chapter 3, Statutes of 2015-16 Second Extraordinary Session. The legislation appropriated additional funding for vendor rate increases and RC operations, required RCs to provide specified information to the DDS, and focused on addressing disparities within the system. \$244.9 million (General Fund) was appropriated for DDS vendor rate increases. Including federal funds, rates were increased by more than \$400 million in total. The legislation targeted these

increases to a number of areas, including direct care workers, agency administrative expenses, and targeted increases for supportive and independent living services, respite, supported employment, and transportation. AB 1 X2 also required the DDS to submit a rate study to the appropriate committees of the Legislature “addressing the sustainability, quality, and transparency of community-based services...”

OVERVIEW - CURRENT RATE SYSTEM

The state’s system for establishing payment rates for the services delivered by providers is complex, encompassing several different methodologies depending on the service provided. Rates are often inconsistent, with providers delivering the same service in the same area being paid different rates. Service providers, consumers, and other stakeholders have all expressed confusion and disillusionment with the current rate-setting system. Further, between 2003 and 2015, these payment rates were subject to various reductions, freezes, and other constraints, particularly during economic downturns. These changes are detailed in the table below.

Fiscal Year	Adjustment
2003-04	↓ Rate freezes for a number of services, including community-based day programs, supported living, and transportation
2004-05	↓ Rates for work activity programs were frozen
2006-07	↑ Rate increases to account for rising statewide minimum wage ↑ Three percent increases for a number of services with rates set by DDS or through negotiation with RCs ↑ Targeted 3.86 percent wage enhancement for certain services provided in integrated settings ↑ 24 percent increase for supported employment
2007-08	↑ Rate increases to account for rising statewide minimum wage
2008-09	↓ Rate freezes for all services with negotiated rates ↓ Implementation of statewide median rates that set limit on negotiated rates for new providers ↓ 10 percent reduction for supported employment
2009-10	↓ Three percent reduction for all services except supported employment and usual and customary rates
2010-11	↓ 1.25 percent reduction for all services except supported employment and usual and customary rates
2011-12	Institution of updated statewide median rates
2012-13	↑ Restoration of three percent reduction
2013-14	↑ Restoration of 1.25 percent reduction
2014-15	↑ Rate increases to account for rising statewide minimum wage ↑ 5.82 percent increase for in-home respite, supported living, and personal assistance due to change in federal overtime rules
2016-17	↑ Rate increases for various services including supported and independent living, respite, transportation, and supported employment (AB 1 X2)
2019-20	↑ *Rate increases for various services

*For specific increases in 2019-20 Budget Act, see page 8.

The methodology to establish rates for services is based on the type of service vendors have been approved to provide. Below is an explanation of the various rate setting methodologies and the applicable services for each methodology.

- DDS-set rates. Some service rates are set by DDS either through cost statements, rate schedules, by statute, or by regulation. Service rates covered by this methodology include community-based day programs, community care facilities, in-home respite, supported employment, work activity programs, and infant development programs.
- Rates established by Medi-Cal¹. If a service is also provided under the Medi-Cal program, then the RC may pay no more than the rate established by Medi-Cal for the same service. This methodology primarily applies to medical service providers, such as nurses, home health aides, and therapists.
- Usual and customary rates. Many services funded by RCs are from providers whose business includes serving people other than those with developmental disabilities. In instances where at least 30 percent of a provider's customers are not RC consumers or their families, then the rate the regional center may pay for the service is the rate the provider regularly charges the general public. Examples of services with usual and customary rates include day care, diaper services, and public transportation providers. Note that the majority of service providers mostly serve RC clients.
- Rates established by the California Department of Social Services (DSS). This category includes out-of-home respite services that are provided in facilities with rates established by the DSS.
- Rates set by regional center mileage reimbursement. Some transportation services have rates that can be set based on what the RC reimburses its own employees for travel.
- Rates set through negotiation between the regional center and the provider. If none of the other methods for establishing a service rate apply, then the service rate is determined through negotiation between the RC and the provider. Examples of services subject to negotiated rates include supported living, specialized residential facilities, and behavior analysts.

For some services, multiple methodologies may be applicable. In these instances, the rate is based on the provider's already established rate or the rate established by DDS. Otherwise, the rate is established through negotiation between the RC and provider. As is evident by the various methodologies listed above, the current rate-setting system is complex and at times confusing.

RATE STUDY

During the 2015-16 Extraordinary Session, legislation was passed that required DDS to submit a rate study addressing the sustainability, quality, and transparency of community-based services for

¹ Note that rates set by Medi-Cal were not included in the rate study.

individuals with developmental disabilities to the Legislature. The Legislature approved \$3 million (General Fund) for the study, and DDS contracted with Burns & Associates, Inc. to conduct the study. The study was submitted to the Legislature on March 15, 2019.

W&IC Section 4519.8

On or before March 1, 2019, the Department shall submit a rate study to the appropriate fiscal and policy committees of the Legislature, addressing the sustainability, quality, and transparency of community-based services for individuals with developmental disabilities. The Department shall consult with stakeholders, through the developmental services task force process, in developing the study. The study shall include, but not be limited to, all of the following:

(a) An assessment of the effectiveness of the methods used to pay each category of community service provider. This assessment shall include consideration of the following factors for each category of service provider:

(1) Whether the current method of rate-setting for a service category provides an adequate supply of providers in that category, including, but not limited to, whether there is a sufficient supply of providers to enable consumers throughout the state to have a choice of providers, depending upon the nature of the service.

(2) A comparison of the estimated fiscal effects of alternative rate methodologies for each service provider category.

(3) How different rate methodologies can incentivize outcomes for consumers.

(b) An evaluation of the number and type of service codes for regional center services, including, but not limited to, recommendations for simplifying and making service codes more reflective of the level and types of services provided.

Development of Rate Models. The development of the rate models began with a detailed review of service requirements. With Burns & Associates assistance, DDS undertook a comprehensive review of service definitions. This process also included a review of California-specific laws – such as labor related requirements – that impact providers’ costs. From this review, DDS is compiling a list of potential statutory and regulatory changes that would be needed should the rate models be implemented. The rate models are built on detailed assumptions regarding a number of factors, including the wages, benefits, and productivity of the direct care worker; the agency’s program operation and administrative costs; staffing ratios and staffing levels, attendance/absence factors, travel-related expenses, facility costs, and program supplies. Providers’ costs generally reflect current rates rather than market-based conditions. For this reason, other data sources are used. These sources include California-specific, cross-industry wage data from the U.S. Department of Labor’s Bureau of Labor Statistics, several sources that provide estimates of health insurance costs, and the Internal Revenue Services’ mileage rate. Further, various analyses were undertaken to understand regional variability in costs associated with wages, travel, and real estate.

The draft rate models developed as a result of the rate study are intended to reflect assumptions on five key cost drivers: (1) the wage for the direct care worker, (2) the benefits package for the direct care worker, (3) the ‘productivity’ of the direct care worker (that is, the ratio of their billable hours to their work hours), (4) program operation costs, and (5) agency administration. Other cost drivers vary by service or location and may include staffing ratios, mileage, supervision, and facility costs. Key assumptions that broadly affect the draft rate models include state minimum wage requirements, a comprehensive benefits package for direct care workers, and the rate for administrative costs.

For each service and rate variant, a ‘base’ rate model is established. Then, to account for differences in wage, travel, and real estate costs across California, a draft rate model is established for each RC by applying a ‘multiplier’ for these three cost factors, as applicable, that reflects the cost in that RC in relation to the statewide value.

Stakeholder Engagement. The DDS and Burns & Associates engaged with the department’s Developmental Services task force to gather input for the study. The DDS also conducted stakeholder meetings throughout the state to further engage the community. Surveys for both service providers and consumers and their families were also administered to inform the study. The provider survey was distributed on May 15, 2018, and was conducted to gather data from providers regarding the manner in which they deliver services and their costs. 1,100 organizations out of 4,500 vendors responded to the survey. The DDS distributed the consumer and family survey on October 3, 2018, and received over 1,700 responses.

Public Comment Process. DDS began briefing sessions on the release of the rate study on February 25, 2019. Comments on the rate models were accepted up to April 5, 2019. At the time of the rate study’s release, DDS and Burns & Associates expressed intent to review the provided comments and make modifications to the draft rate models as appropriate. The DDS requested parties wishing to provide comment share comments with a rates workgroup representative. The rates workgroup members were expected to aggregate comments and submit a consolidated response. Trailer bill language in the 2019-20 Budget required the DDS to post a summary of public comments and departmental responses to the rate study by October 1, 2019. That summary and the departmental responses were made available on January 10, 2020, with the release of the 2020-21 Governor’s Budget. More information on those responses are detailed below.

Stakeholder Response. Upon release of the rate study on March 15, 2019, numerous stakeholders provided comment in public meetings and hearings, as well as in writing. Many acknowledged the significant amount of work that went into developing the rate models, and commended how the models established a framework for estimating costs of services, allowed for rates that vary based on staff qualifications and other differences, and recommended professionalizing the direct care workforce. Conversely, providers expressed concerns about some of the assumptions used by Burns & Associates, and that the implementation of the rate models as developed would eliminate some services categories, collapse some services into a few categories, and create a homogenization of different programs. Others wondered how the rate models would incorporate various policy initiatives (such as Employment First and Self-Determination).

Response to Public Comments. As described above, the DDS released responses to public comments along with the department's budget on January 10, 2020. In total, approximately 3,600 pages of comments were received. The released document summarized and categorized the comments, and contained detailed replies to hundreds of stakeholder comments. Commenters provided feedback on the rate study, as well as issues not within the scope of the study, such as the implementation of the rate models. A sample of shared comments submitted by multiple stakeholders include:

- Rate study does not address requirement to assess whether current rate-setting methods provide an adequate supply of providers.
- No vendor rates should be reduced, and negotiated rates should be grandfathered.
- Some commenters expressed support for standardizing service codes and definitions, while others objected to the proposed consolidations of service codes, concerned that the consolidations may limit options.
- Some commenters expressed support for standardized rates, where all vendors are paid the same rate for providing the same service in the same area. However, others objected to standardized rates, stating that they are not equitable or consumer driven.
- Commenters protested the recommendation that all services be converted to hourly billing, stating that it impairs the ability of vendors to meet individual needs.
- Rates should be tied to quality and outcomes for individuals. Commenters recommended that the DDS should track consumer satisfaction.
- Commenters expressed support for efforts made to differentiate rates by geography, but also objected to various aspects of the regional adjustment factors.
- Commenters objected to the use of Bureau of Labor Statistics data to set wage assumptions, arguing that the data was outdated, among other things.
- Commenters challenged the use of a 12 percent rate for administrative expenses, suggesting that the rate models should include a higher percentage.

Updated Rate Models. Several changes to the original rate models were made in January 2020 which fell into three different categories: technical adjustments, methodological changes, and changes in response to public comments.

In general, these changes related to specific assumptions in rate models for individual services rather than fundamental assumptions that impacted all rate models. Changes were made to many service categories including personal support and training; residential; day, employment, and transportation; and professional. Changes affecting services in multiple categories were also made. Notable changes to the rate models in response to public comments include, but are not limited to the following:

- Incorporation of more current wage, workers' compensation, and mileage rate data published after release of the draft rate models.
- Increased wage assumptions for various services, including Supported Employment, Independent Living, Community-Based Day Programs, and registered behavior technicians.
- Withdrew the methodology to align rates for certain services with Medi-Cal rates and establishing rate models for these services (most notably affecting Specialized Therapeutic Services and certain professionals in Infant Development programs).
- Withdrew the methodology establishing separate short-term and long-term encounter rates for various in-home services.
- Added overtime to rate models for Supported Living and certain residential services.
- Withdrew the methodology to require Respite vendors supporting employer of record models to become financial management services agencies.
- Reduced assumed attendance in day programs from 90 percent to 88 percent.

Fiscal Impact. In total, the estimated cost of fully implementing the study remains at \$1.8 billion total funds. The estimate continues to be based on 2019-20 spending projections. The estimated cost does not account for the rate increases included in the 2019-20 budget or the increases for additional service codes proposed in the 2020-21 budget. Note that all of the rate models mentioned here are proposed, and none have been implemented. However, supplemental rate increases included in the 2019-20 budget and proposed in the 2020-21 budget were determined using input from the rate models.

THE 2019-20 BUDGET ACT

The 2019-20 Budget Act contained several provisions relating to the rate study, and more broadly, fiscal reform within the developmental services system. The budget provided for \$206.7 million (\$125 million General Fund) to provide rate increases of up to 8.2 percent for specified service providers, effective January 1, 2020. Details on specific increases are detailed in the table below.

Service Code	Rate Increase
017 - Crisis Team - Evaluation & Behavior Modification	8.20%
025 - Tutor Services – Group	8.20%
028 - Socialization Training Program	8.20%
048 - Client/Parent Support Behavior Intervention Training	8.20%
055 - Community Integration Training Program	8.20%
062 - Personal Assistance	8.20%
063 - Community Activities Support Services	8.20%
073 - Parent Coordinator Supported Living Prog	6.30%
091 - In-Home/Mobile Day Program	8.20%
093 - Parent-Coordinated Personal Assist Service	8.20%
094 - Creative Arts Program	8.20%
108 - Parenting Support Services	8.20%
109 - Program Support Group-Residential	8.20%
110 - Program Support Group-Day Service	8.20%
111 - Program Support Group-Other Services	8.20%
113 - DSS Licensed-Specialized Residential Facility	8.20%
420 - Voucher Respite	8.20%
465 - Participant-Directed Respite Services	8.20%
475 - Participant Directed Community-Based Training Services/ Adults	8.20%
510 - Adult Development Center	8.20%
515 - Behavior Management Program	8.20%
605 - Adaptive Skills Trainer	3.90%
612 - Behavior Analyst	8.20%
613 - Associate Behavior Analyst	8.20%
615 - Behavior Management Assistant	8.20%
616 - Behavior Technician - Paraprofessional	8.20%
635 - Independent Living Specialist	2.40%
645 - Mobility Training Services Agency	8.20%
650 - Mobility Training Service Specialist	8.20%
860 - Homemaker Services	8.20%
862 - In-Home Respite Services Agency	8.20%
864 - In-Home Respite Worker	8.20%
875 - Transportation Company	8.20%
880 - Transportation-Additional Component	8.20%
882 - Transportation-Assistant	8.20%
896 - Supported Living Services	8.20%
904 - Family Home Agency	8.20%
905 - Residential Facility Serving Adults-Owner Operated	8.20%
910 - Residential Facility Serving Children - Owner Operated	8.20%
915 - Residential Facility Serving Adults - Staff Operated	8.20%
920 - Residential Facility Serving Children-Staff Operated	8.20%
950 - Supported Employment-Group	8.20%
952 - Supported Employment-Individual	7.60%

SB 81 (Committee on Budget and Fiscal Review), Chapter 28, Statutes of 2019, required the DDS, beginning in the summer of 2019, to hold workgroups with stakeholders to discuss how to “create a sustainable, innovative, cost-effective, consumer focused, and outcomes-based delivery system.” The first meeting of this workgroup occurred on January 15, 2020. The DDS will report on the progress and any outcomes of these workgroups during the 2020-21 budget process.

ISSUES FOR CONSIDERATION

While this document has examined the various challenges, concerns, and considerations associated with the rate study itself and its implementation, there is no plan to implement the study at this time. Proposals in both the 2019-20 budget and the proposed 2020-21 budget have made efforts to improve the financial situations of service providers and improve the overall system by proposing rate increases for various service codes. Additionally, the DDS has developed a stakeholder workgroup to discuss creating a sustainable and cost-effective system. Advocates express concern that no plan for implementation has been put forth in the DDS's budget proposals.

Implementation of the proposed rate models would involve significant and consequential adjustment at every level of the system. Specific considerations include:

- Enacting required policy changes. Implementing the rate models will require changes to statute and/or regulations. The DDS has not identified policy changes that would be needed in order to implement the proposed rate models.
- Update of the rate models. The proposed rate models are developed from 2016-17 data. If redone using more recent data, it is likely that recommended rates would change. If implemented, the rate models would need to be updated on a frequent basis to keep up to date with current data.
- Day-to-day operational changes. Numerous changes would be needed at the DDS, RC, service provider, and consumer levels to successfully implement the rate models. For example, the study recommends a conversion to hourly billing for most services. Most day services are currently reimbursed on a daily basis so the adoption of hourly billing would require changes to these vendors' monitoring and billing practices.

Questions for DDS.

1. *What does the DDS see as the next reasonable and realistic step in rate reform within the DDS system? Would those next steps include any of the issues for consideration listed above? If so, how would the DDS proceed on the considerations listed above?*
2. *Please provide an update on the goals and progress of the system and fiscal reform workgroup required by Senate Bill 81 (Committee on Budget and Fiscal Review), Chapter 28, Statutes of 2019.*

Questions for DDS and Burns and Associates.

3. *Were various policy initiatives, such as Employment First and Self Determination, considered in the development of the rate models?*

4. *Was the concept of value based budgeting/payments considered when developing the rate models?*
5. *Please explain how the fiscal impact of the study, after updating several rate models in January 2020, remains at \$1.8 billion.*
6. *Please provide an overview of the department's responses to public comments on the rate study that were made public on January 10, 2020.*