

March 25, 2019

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RE: Public Comment re: DDS Rate Study

To Whom It May Concern,

The California chapter of the Association of People Supporting Employment First (CA APSE) submits the following comments and recommendations regarding the DDS Rate Study.

Ten years ago, APSE called nationally for the phase out of subminimum wage, which should occur over time and be accompanied by a comprehensive, systems change movement based on the principle that employment in the community be the first or preferred service option for individuals with disabilities. California embraced this vision in 2014 when it passed an Employment First law.

As part of the only national organization (APSE) that promotes equitable employment for all people with disabilities, we applaud the efforts of DDS and its contractor to tackle the disparities caused by the existing rate system in California. Some positive aspects of the Rate Study are (1) adding job development as a separate service; (2) creating direct care support levels (1-3) that provide compensation based on training and experience; and (3) determining that independent rate models are advantageous because providers can receive the same rate for delivering the same service in the same area, rather than rates based on historical costs or dates services began. However, to our disappointment, some of the Rate Study proposals related to employment reinforce current segregated and congregate services.

Employment is valued by society and people are judged by their contributions – regardless of whether or not they have a disability. The practice of undervaluing citizens with disabilities, whether by segregation or by paying pennies on the dollar is out dated, ineffective and inequitable. We know that individualized supported employment cost-benefit studies are positive, and that people significantly improve their wages, quality of life, and skill development when they access jobs in the community that meet a business need at prevailing wage. The few Community Rehabilitation Providers who provide **only** individualized supported employment continue to go out of business or struggle to break even given increased costs, artificially depressed wage rates, and high staffing turn-over, things that this Rate Study was supposed to explore and remedy. If

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the trend of incentivizing and fully funding segregated and congregate programs continues, people with disabilities seeking employment will have even fewer options for support services.

Research has demonstrated that people overwhelmingly express satisfaction with and preferences for community job experiences. Customized Employment, Individual Supported Employment, and small business ownership support strategies, which lead to competitive, integrated employment (CIE), are all well past the 'beta' stage and their successes can be validated with data. With proper planning, the right job match, the right supports, and the right funding incentives, even individuals with the most significant disabilities can work successfully in the community for minimum wage or higher. The rates in California need to incentivize individualized services in order to comply with federal Home and Community Based Services (HCBS) regulations and move the state to an Employment First model.

Moreover, organizations that have totally converted to CIE services have found that individuals with disabilities have no need for facility-based employment services. All services and supports can be provided successfully in an individualized fashion in the community at comparable costs to segregated services. In contrast, there is very little national data about traditional, segregated day services in terms of wages earned, skills learned, movement to integrated employment, costs, and other quality of life measures. Yet the majority of funding at the state level continues to support these traditional, segregated programs.

CA APSE recommends addressing the following issues as the Rate Study process moves forward:

1. The Rate Study must address what is mandated in statute as it relates to incentivizing CIE pursuant to the HCBS regulations and WIOA implementation, and as embraced in California's Employment First law and Blueprint for Change.

Welfare and Institutions Code Section 4519.8 requires that the rate study include as follows:

"[a]n 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.***

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

(Added by Stats. 2016, 2nd Ex. Sess., Ch. 3, Sec. 2. (AB 1 2x) Effective June 9, 2016.)

There is a need for exploring and embracing outcome-based rate structures that incentivize movement to CIE and away from segregated and subminimum wage settings. This Rate Study fails to address (1) the fact that there are too few CIE-focused providers in California to serve the need; (2) whether individuals in all areas of the state are able to have a choice of providers, which includes those focused solely on CIE as the outcome; (3) any comparison of the fiscal effects of alternative rate methodologies for employment providers; and (4) how the rates proposed would incentivize CIE outcomes.

2. The Rate Study must explore outcome-based rate methodologies, as this is necessary to shift services from segregated work settings to CIE.

In furtherance of its Employment First law, California has committed to a five-year Blueprint to increase the rates of CIE among individuals with intellectual and developmental disabilities. For instance, one of the commitments in the Blueprint is to substantially limit the use of 14c certificates in the State (these are necessary to pay subminimum wage), including ending many sheltered workshop programs (aka Work Activity Centers) that are segregated and paying subminimum wage. The rates proposed in this study will provide **increases** to segregated worksite providers where individuals are segregated from their non-disabled peers and paid a subminimum wage. Conversely, the rates proposed will **decrease** individual job coaching rates in many locations and artificially restrict hours for job development without regard to data that outlines best practice.

There is a substantial need for more CIE-focused providers who can provide individualized supports to individuals with disabilities. DDS is in its third \$15 million funding cycle to assist segregated facilities to either move to providing individualized, community-based employment preparation and placement services, or to end their employment program effective March 2022 (the date required by CMS for full compliance with the new Home and Community Based Services federal funding requirements). First, any rates set for facilities who do not meet the HCBS criteria should have a sunset date of March 2022. Second, merely ending programs without an infill of providers who can work with the roughly 9,000 to 15,000 individuals who are already working but in segregated settings, would be irresponsible and would not fulfill the objective of CIE. The worst-case scenario would be moving individuals who have already proven that they can work into facility-based, segregated day programs or ending services completely.

3. In the Rate Study, the transportation, overtime allocation, and training and record-keeping time of staff are in some cases substantially under-estimated. The result of which will be continuing higher costs to CIE-focused providers for which they will not be adequately reimbursed through the new rates. This was a problem the Rate Study was supposed to address.
4. High quality employees cannot be compensated at minimum wage. Stated another way, some of the wages proposed are not high enough to attract and retain high quality employees who are needed to do the hard work of employment preparation. For example, the rates proposed for job coaches may be adequate as a starting salary for a relatively inexperienced applicant, but these rates do not allow providers to attract qualified and trained candidates. Moreover, there is no allocation of time for supervision and training of job coach and job development employees.
5. The 40 hours/year cap for job development is likely not adequate for most individuals with intellectual and developmental disabilities. The cap sets an arbitrary limit that is not based on individual need and choice. As an example, Customized Employment proponents and technical assistance sources use a guideline of 6-8 weeks and 40-60 hours for the discovery process, then job development including reaching out to and meeting with employers would **start** at that point. At the very least, the Rate Study should include an exemption that allows for more hours as necessary for an individual client. An outcome-based rate methodology could help address the need to serve the most significantly disabled individuals by paying a higher rate to providers and/or allowing additional hours based on need.
6. Along with an analysis of outcome-based rate methodologies should be a change to the regulatory requirement that a person's job coaching needs to be faded to 20-30% before funding of Supported Employment shifts from DOR to DDS. This regulation makes it difficult for DOR to serve clients with intellectual and developmental disabilities who may always need more than 30% job coaching due to their disability. This requirement is an arbitrary cut-off that causes DOR to turn away applicants who have the most significant barriers to employment.

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Incentivizing the employment-related service delivery system to provide individualized services will empower people with disabilities, strengthen our local businesses and bring money into our economy. Any questions or further discussion related to these comments can be addressed to Debbie Ball at Debbie.Ball@essc.org.

Sincerely,

Debbie Ball

Carole Watilo

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Board of Directors, CA APSE