An act to amend Section 4519.10 of the Welfare and Institutions Code, relating to developmental services.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4519.10 of the Welfare and Institutions Code is amended to read:

4519.10. (a) The Legislature finds and declares all of the following:

(1) The current service provider rate structure in the system administered by the State Department of Developmental Services lacks transparency, remains complex, is not tied to person-centered outcomes, and varies across providers who provide the same service in the same region.

(2) In 2016, the Legislature funded a rate study to address the sustainability, quality, and transparency of community-based services for individuals with developmental disabilities.

(3) The department, with the help of a consultant, completed the rate study in 2019 and subsequently submitted the study's findings and recommendations to the Legislature. Among other things, the study recommended all of the following:

(A) Within each service category, rate models that include components that may be regularly updated.

(B) Regional differentials to account for regional variance in the cost of living and doing business.

(C) Enhanced rates for services delivered in other languages, including American Sign Language.

(D) An optional add-on for direct service professional levels and wage differentials based on training and demonstrated competency.

(E) The consolidation of certain service codes.

(4) The rate study's fiscal impact analysis indicated that full implementation of these rate models would cost an additional one billion one hundred million dollars ($1,100,000,000) from the General Fund, or one billion eight hundred million dollars ($1,800,000,000) of total funds, in the 2019–20 fiscal year.

(5) The recommendations from the rate study and the associated rate models have not been implemented, even as rate study findings informed supplemental rate increases for many service categories in the 2019–20 fiscal year and three additional service categories in the 2020–21 fiscal year.

(6) For Medi-Cal eligible consumers, the department receives federal Medicaid reimbursements to support home- and community-based services provided to those consumers.

(7) Direct service professionals employed by service providers are critical to the quality and provision of services and supports to individuals with intellectual and developmental disabilities.

(8) A prevailing need and challenge within the developmental services system is moving from a compliance-based system to an outcomes-based system. Outcome measures must reinforce the system's core values of meeting individual needs based on person-centered planning. The implementation of rates, pursuant to this section, should support this person-centered transformation through consideration of incentive payments, alternative payment models, alternative service delivery, lessons learned from the COVID-19 pandemic period, person-centered and culturally and linguistically sensitive and competent approaches, training of direct service professionals, compliance

with the federal home- and community-based services rule set to take effect on March 17, 2023, and methods for assessing and reporting outcomes.

(9) To improve consumer outcomes and experiences and measure overall system performance, four goals should guide rate reform:

(A) Consumer experience.

(B) Equity.

(C) Quality and outcomes.

(D) System efficiencies.

(b) Therefore, it is the intent of the Legislature to phase in funding and policies beginning in the 2021–22 fiscal year to implement rate reform, which shall include a quality incentive program, create an enhanced person-centered, outcomes-based system, and complete this transformation by July 1, 2025.

(c) (1) (A) Commencing April 1, 2022, the department shall 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.

(B) Commencing January 1, 2023, and continuing through the ~~2023–24~~ 2024–25 fiscal year, the department shall adjust rates to equal one-half of the difference between rates in effect March 31, 2022, and the fully funded rate model for each provider, and additional funding shall be available for the quality incentive program described in subdivision (e).

(i) Notwithstanding any other law or regulation, it is the intent of the Legislature that the majority of the rate increase described in this subparagraph for the 2022–23 fiscal year be used for the purpose of enhancing wages and benefits for staff who spend a minimum of 75 percent of their time providing direct services to consumers.

(ii) Commencing January 1, 2023, a provider shall not spend a smaller percentage of the rate increase on direct care staff wages and benefit costs than the corresponding percentage included for direct care staff wages and benefit costs in the rate models for each specific service.

(iii) A provider granted a rate increase pursuant to this section shall maintain documentation, subject to audit by the department or regional center, that the portion of the rate increase identified in this subparagraph was used to increase wages, salaries, or benefits of eligible staff members spending a minimum of 75 percent of their time providing direct services to consumers at least at the same percentage as provided in the rate models.

(iv) For the purpose of this subparagraph, “direct services” are services, supports, care, supervision, or assistance provided by staff directly to a consumer to address the consumer’s needs, as identified in the individual program plan, and includes staff’s participation in training and other activities directly related to providing services to consumers, as well as program preparation functions as defined in Section 54302 of Title 17 of the California Code of Regulations.

(v) Commencing July 1, 2023, a vendor shall be in compliance with the home- and community-based final rule, effective March 17, 2014, or implementing a corrective action plan, to be eligible for the quality incentive program described in subdivision (e).

(C) (i) Commencing July 1, ~~2024,~~ 2025, the department shall implement the fully funded rate models. The fully funded rate models shall be implemented using two payment components, a base rate equaling 90 percent of the rate model, and a quality incentive payment, equaling up to 10 percent of the rate model, to be implemented through the quality incentive program described in subdivision (e).

(ii) Notwithstanding any other law, commencing July 1, 2024, the rate models shall be updated to account for the current and any subsequent changes to the statewide minimum wage, as established by Section 1182.12 of the Labor Code, or other relevant statute.

(2) (A) Effective July 1, ~~2024,~~ 2025, it is the intent of the Legislature that rates be uniform within service categories and adjusted for geographic cost differentials, including differentials in wages, the cost of travel, and the cost of real estate.

(B) Providers who were not identified as requiring a rate increase in the rate study are not eligible for rate adjustments pursuant to paragraph (1).

(d) (1) Beginning in the 2021–22 fiscal year, the department shall implement a hold harmless policy for providers whose rates exceed rate model recommendations. The policy shall freeze a provider's existing rates until June 30, 2026, after which time the provider's rates shall be adjusted to equal the rates for other providers in the provider's service category and region.

(2) Beginning July 1, ~~2024,~~ 2025, the department shall also implement a hold harmless policy for providers whose rates in effect on January 1, 2023, exceed 90 percent of the rate model. The policy shall freeze a provider's base rate at the rate in effect on January 1, 2023, until June 30, 2026, after which time the provider's base rates shall be adjusted to equal the base rates for other providers in the provider's service category and region. The provider shall be eligible for a quality incentive payment that, when added to their base rate, equals the fully funded rate model.

(3) Notwithstanding paragraphs (1) and (2), the department may adjust rates as a result of reviews or audits.

(e) In conjunction with implementing rate reform, the department shall implement a quality incentive program in order to improve consumer outcomes, service provider performance, and the quality of services.

(1) (A) The department shall, with input from stakeholders, develop quality measures or benchmarks, or both, for consumer outcomes and regional center and service provider performance. Given the time necessary to identify and develop the measures or benchmarks described in this paragraph, the department may establish quality measures or benchmarks, or both, in the initial years of the quality incentive program that focus on building capacity, developing reporting systems, gathering baseline data, and similar activities while working towards meaningful outcome measures at the individual consumer level for all services. Measures or benchmarks, or both, shall initially include process- and performance-related measures for service providers and, by the conclusion of the 2025–26 fiscal year, shall also evolve to include outcome measures at the individual consumer level. In developing the proposed measures or benchmarks, or both, the department shall do all of the following:

(i) Gather public input through regularly held public meetings that are accessible both virtually and by telephone. Public meeting agendas and meeting materials shall be posted at least three days in advance of any meeting and shared by various means, including internet website updates, focus groups, and other communication.

(ii) Provide documents, which may include, but are not limited to, updates, concept papers, interim reports, proposals, and performance and quality measures and benchmarks, and revisions to these materials, to the Legislature and post these materials on an internet website for public comment at least 30 days, as required by the Centers for Medicare and Medicaid Services, prior to submitting a request for federal funding.

(iii) Seek input from subject matter experts to understand options for outcomes-based system structures using person-centered planning and alternative payment models.

(B) (i) On or before April 1, 2022, proposed quality measures or benchmarks, or both, shall be provided to the Legislature and posted for public comment, as described in subparagraph (A). After the department has considered public comments and modified the proposed quality measures or benchmarks, or both, as needed, the measures or benchmarks, or both, shall be finalized and implemented in the 2022–23 fiscal year.

(ii) On or before April 1 of any subsequent year in which the department proposes new or revised quality measures or benchmarks, or both, the proposed measures or benchmarks, or both, shall be provided to the Legislature and posted for public comment, as described in subparagraph (A). After the department has considered public comments and modified the proposed quality measures or benchmarks, or both, as needed, the measures or benchmarks, or both, shall be finalized and implemented in the upcoming fiscal year.

(C) Beginning in the ~~2024–25~~ 2025–26 fiscal year, there will be opportunity for eligible providers to earn full quality incentive payments through one or more measures.

(2) (A) The department shall develop a quality incentive payment structure for providers meeting the quality measures or benchmarks, or both, developed pursuant to paragraph (1). The department shall issue written directives to define the way quality incentive payments will be made to service providers based on quality measures or benchmarks, or both, developed and implemented under this subdivision.

(B) The department shall determine each provider's quality incentive payment percentage prior to the start of the fiscal year by measuring the provider's performance against the quality measures or benchmarks for the most recently available reporting period. The department shall provide a written communication to the fiscal and policy committees of the Legislature that reports on the total amount of quality incentive payments estimated to be paid to providers pursuant to this section. This written communication shall be made as soon as is practicable, but no later than 60 days after the quality incentive payment percentages are determined and the providers are informed of their payments.

(f) On or before March 1, 2024, the department shall provide a status update to the Legislature regarding progress toward implementing rate reform and creating an enhanced person-centered, outcomes-based system. The status update may include, but is not limited to, information about all of the following:

(1) Additional changes that may be necessary to effectively implement rate reform, including adding and amending statutes, regulations, and other departmental policies.

(2) Compliance with rules of the federal Medicaid program, including the home- and community-based services final rule effective on March 17, 2014, and state compliance consistent with the current federal guidance, including all of the following:

(A) A definition of what it means to be compliant with the rules of the federal Medicaid program.

(B) Whether there are certain service categories that are unlikely to achieve compliance due to the structure of the service, and, if so, which categories this includes.

(C) Data about the total number of providers within each service category and the estimated number of providers that have not yet achieved compliance.

(3) Program and system improvement efforts made as a result of the state's home- and community-based services additional federal funding, including the one-time investment implemented beginning in the 2021–22 state fiscal year, including a description of how the department will build on the investments.

(g) For purposes of this section, "rate model" means a rate model included in the rate study submitted to the Legislature pursuant to Section 4519.8.

(h) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement, interpret, or make specific this section by means of written directives or similar instructions ~~through July 1, 2025.~~ until the time regulations are adopted.

(i) Implementation of this section is contingent upon the approval of federal funding.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, ______.
General Subject: Service provider rate reform.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law requires the department, on or before March 1, 2019, to submit a rate study to specified committees of the Legislature regarding community-based services for individuals with developmental disabilities. Existing law requires the department to implement rate increases between April 1, 2022, and July 1, 2024, to raise service providers' rates to the fully funded rate reflected in the rate models that were included in the rate study. Existing law requires the fully funded rate models to be implemented using 2 payment components, a base rate equaling 90% of the rate model, and a quality incentive payment, equaling up to 10% of the rate model.

This bill would extend the time period for implementing the fully funded rate to July 1, 2025.

Existing law requires the department, beginning in the 2021–22 fiscal year, to implement a hold harmless policy for providers whose rates exceed rate model recommendations, and requires the policy to freeze a provider's existing rates until June 30, 2026, after which time the provider's rates shall be adjusted to equal the rates for other providers in the provider's service category and region. Existing law similarly requires the department, beginning July 1, 2024, to implement a hold harmless policy for providers whose rates in effect on January 1, 2023, exceed 90% of the rate model, and requires the policy to freeze a provider's base rate at the rate in effect on January 1, 2023, until June 30, 2026, as specified.

This bill would instead begin the hold harmless policy for providers whose rates exceed 90% of the rate model on July 1, 2025.

Existing law requires the department to implement a quality incentive program to develop quality measures or benchmarks, or both, with input from stakeholders, for consumer outcomes and regional center and service provider performance, as specified, and to develop a quality incentive payment structure for providers meeting the quality measures or benchmarks, or both. Existing law requires the proposed quality measures or benchmarks to be provided to the Legislature and posted for public comment, as specified, and to be finalized and implemented in the upcoming fiscal year. Existing law requires the opportunity for eligible providers to earn full quality incentive payments through one or more measures to begin in the 2024–25 fiscal year.

This bill would instead require the opportunity for eligible providers to earn full quality incentive payments through one or more measures to begin in the 2025–26 fiscal year.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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