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August 3, 2018

Representative Deborah J. Armstrong
Senator Jerry Ortiz y Pino
Legislative Health and Human Services Committee

VIA EMAIL TO COMMITTEE STAFF

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Dear Representative Armstrong and Senator Ortiz y Pino:

Over the past 30 years I have represented several hundred New Mexicans who either participate in the DD Waiver program or the Mi Via Waiver, or who have been trying to get Waiver services.

I am writing to convey two points that I hope you will consider during the August 8, 2018 hearing regarding the State's programs for people with Intellectual and Developmental Disabilities (I/DD).

1. People enrolled in the State's system for people with I/DD are not being adequately protected from abuse, neglect and exploitation.

People enrolled in the State's developmental disabilities programs (DD Waiver, Mi Via Waiver and ICF/DD facilities) are abused, neglected and/or exploited far too often. In my opinion, the Department of Health's system of investigating incidents of possible abuse, neglect and exploitation (A/N/E) of those people is badly broken. A *substantial majority* of the incidents reported to DOH's Incident Management Bureau (IMB) in the past twelve months still have not been closed. Many incidents reported to the IMB *over a year ago* remain open at this time. It appears that approximately 950 reported cases of possible A/N/E were opened for investigation during FY18. Shockingly, I understand that DOH has at least 700 open cases at this time. The IMB cases are being processed so slowly that I have clients whose incident investigations were not completed within *500 days*, although the State's performance measure for completing investigations which is stated in DOH's November 2016 Strategic Plan is 45 days.

I believe that, among other problems with DOH's Incident Management Bureau (IMB), there simply are not enough investigators, supervisors and support staff assigned to the IMB. Staff overloads and a "backlog" of investigations is chronic and those problems have been recognized by DOH since at least SFY 14. High staff turnover and resulting high vacancy rates are major factors in the State's failure to timely and effectively investigate incidents. For years, DOH has

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contracted with private individuals to investigate A/N/E of people in the DOH Waiver programs. One such contractor evidently has *150 open cases* at this time. Yet, the understaffing and staff burnout that DOH has known about since at least 2014 have not been adequately addressed.

Short-term actions could partially address this problem. For example, DOH could provide more administrative support to investigators, freeing them up from numerous clerical tasks that they currently perform. Contracting with additional outside investigators also could help reduce the current backlog.

In the longer term, however, more is needed. Adding more FTE for administrative staff, investigators and supervisors, and modifying personnel practices, so investigators can have a career ladder, would make the job more do-able; and would likely reduce staff turnover and the vacancy rate. I believe that these tactics would substantially improve the incident investigation system and, most importantly, would reduce preventable harm to people with I/DD who depend on us to keep them safe.

2. In the past seven years, DOH's decisions have caused massive disruptions throughout the service system for people with I/DD, while costing the State millions of dollars.

When the Martinez Administration decided in 2011 to contract with Human Services Research Institute (HSRI) to implement the Supports Intensity Scale (SIS) in New Mexico, their main purpose was to reduce spending on the people participating in the DD Waiver.

However, one of HSRI's subcontractors, Burns and Associates, issued a "fiscal impact" report in September 2013 that included these findings: "the estimated cost of implementing the new DDW . . . is now anticipated to **increase costs by \$6.7 million in fiscal year 2014, \$5.0 million in 2015, and \$4.1 million in 2016.**" The report also acknowledged that the impact on individual service provider agencies was highly variable. "Impacts by provider vary greatly based upon the services they provide and their consumer mix. An almost equal number of providers are expected to see revenue increases (138) as decreases (150)."

Burns and Associates created a spreadsheet showing these projected increases in DDW revenues for FY14:

Coyote Canyon's revenue increased by \$722,000 (48%) from \$1,499,00 to over \$2,200,000.

ENMRSH's increased by \$913,000 (15.9%) from \$5,747,000 to \$6,615,000.

ARCA's increased by almost \$1.500,000 (11%) from over \$13,300,000 to nearly \$15,000,000.

At the same time, Burns and Associates projected decreases in DDW revenues:

Advantage Communications Stems revenue decreased 6.1% (\$172,000)

Campo Behavioral Health decreased 6.0% (\$172,000)

Community Options decreased 4.7% (\$184,000)

Great Livin' LLC decreased 28% (\$298,000)

Some small agencies had projected reductions in Waiver revenue of over 30%.

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It is unclear whether the recent LFC Program Evaluation report captures all of DOH's payments to HSRI and Burns and Associates, or the additional fees paid by DOH to the American Association on Intellectual and Developmental Disabilities (AAIDD) for use of the SIS tool, or all the monies paid to the Continuum of Care for reviewing the SIS-based budgets.

There can be no doubt that the effort to reduce State spending by using the SIS was a complete failure. Simultaneously, it caused huge disruption to the entire system, the effects of which are still harming my clients today. For example, therapy provider agencies sustained millions of dollars of reduced funding, with some agencies quitting the DD Waiver system. As a result, in most New Mexico counties not one therapy provider agency is currently willing to take on new DD Waiver clients.

Another major change to the system since 2012 is the rapid migration of over 1,000 people from the regular DD Waiver into the Mi Via "self-directed" Waiver. In 2012, less than 400 people were enrolled in the Mi Via program. The LFC Program Evaluation reported that the number has skyrocketed to 1,434; stating, "In FFY14, Mi Via enrollment and costs both grew by 67 percent. However, over the next three years, while enrollment grew 83 percent, costs grew 239 percent." Many people fled to the Mi Via program to avoid the funding cuts and chaotic budgeting issues caused by DOH's 2012 adoption of the SIS.

Worse yet, many of the 1,434 people now enrolled in the Mi Via program are not receiving minimally adequate services, are going without health care plans, aspiration risk management plans, monthly home visits to check on the person with I/DD and other essential safeguards to prevent abuse, neglect and exploitation. Simultaneously, people in Mi Via are going without effective oversight by the State. Two of my clients have died while enrolled in Mi Via and I believe that both of their deaths were hastened because they went without the healthcare coordination, case management, nursing care and State oversight that is mandatory for people enrolled in the regular DD Waiver.

In my opinion the Legislature should mandate proper oversight of the Mi Via program, including rules that will reasonably accommodate the needs of people with severe disabilities.

I look forward to discussing with you and your Committee the State's service system for people with I/DD during your August 8, 2018 hearing.

Respectfully submitted,

Peter Cubra

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