

**MINUTES
of the
FIRST MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**September 11, 2019
Science & Technology Park Rotunda
University of New Mexico
801 University Boulevard SE
Albuquerque**

The first meeting of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee was called to order by Representative Joanne J. Ferrary, chair, on September 11, 2019 at 9:22 a.m. at the University of New Mexico Science & Technology Park Rotunda in Albuquerque.

Present

Rep. Joanne J. Ferrary, Chair
Sen. Nancy Rodriguez, Vice Chair
Sen. Linda M. Lopez
Rep. Elizabeth "Liz" Thomson

Absent

Rep. Rachel A. Black
Sen. Mark Moores

Advisory Members

Rep. Deborah A. Armstrong
Rep. Miguel P. Garcia
Sen. Elizabeth "Liz" Stefanics

Guest Legislator

Sen. Gerald Ortiz y Pino

Staff

Peter Kovnat, Bill Drafter, Legislative Council Service (LCS)
Sabina Gaynor, Bill Drafter, LCS
Karen Wells, Contract Staff, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, September 11

Welcome and Introductions

The chair welcomed everyone to the meeting, and legislators introduced themselves. The chair introduced Ryan Stewart, the new secretary-designate of public education, and Jason Cornwell, the new director of the Developmental Disabilities Supports Division of the Department of Health. A moment of silence was observed in recognition of the tragic events of September 11, 2001.

Transportation Issues for People with Disabilities Traveling to and from Internships and Job Sites

Jim Reed, group director, Environment, Energy and Transportation, National Conference of State Legislatures (NCSL), identified mobility difficulties experienced by individuals with disabilities. He identified state policy options that may be pursued to address these difficulties, including federal and state funding, mobility management and coordination activities, partnering with on-demand services such as Uber and Lyft and more. He noted that New Mexico currently accesses federal funding through a Federal Transit Administration program known as the Enhanced Mobility of Seniors and Individuals with Disabilities Program. Mr. Reed described Florida's Transportation Disadvantaged Trust Fund, which exists to fill gaps in public funding streams, and New Jersey's Senior Citizen and Disabled Resident Transportation Assistance Program, which could serve as a model for New Mexico. He highlighted a program in California called the TNC (Transportation Network Company) Access for All Act, which expands wheelchair availability for those in need. Mr. Reed provided a map that indicates the presence of ride-hailing and public transit partnerships in the United States, and he described growing interest in autonomous vehicles.

Questions and comments from subcommittee members covered the following topics:

- whether there are known barriers to funding services for both seniors and individuals with disabilities: coordination is essential to avoid duplication, and a request was made for additional information from the NCSL regarding how to obtain funding to overcome these barriers;
- an observation that a designated body might be needed to oversee and enforce necessary coordination: Mr. Reed said that he will send information about states that have done this;
- clarification regarding how individual on-demand services such as Uber and Lyft are reimbursed;
- acknowledgment that lack of broadband access is a barrier to telework opportunities;
- recognition that many public libraries offer internet access;
- a suggestion that managed care organizations have a responsibility to address transportation needs of Medicaid recipients;
- clarification regarding who pays the assessed per-trip charges in the California program;

- recognition that New Mexico needs to prioritize transportation needs and to engage in more planning to address those needs;
- recognition of the importance of specificity in funding and grant applications;
- recognition that during the Richardson Administration, there was a transportation task force that addressed many of the issues raised today; and
- a recommendation that a transportation task force be reestablished through legislation.

Update on the Vocational Rehabilitation Division (VRD) of the Public Education Department (PED)

Diane Mourning Brown, executive director, VRD, PED, Secretary Stewart and William McCamley, secretary, Workforce Solutions Department (WSD), addressed the subcommittee.

Secretary Stewart acknowledged the work that lies ahead in the critical area of vocational rehabilitation. Secretary McCamley noted that this topic is a priority of Governor Michelle Lujan Grisham.

Ms. Mourning Brown described the mission and vision of the VRD and identified state and federal statutory and regulatory requirements to meet division goals and objectives. She identified partnerships and collaborative efforts in which the division is engaged, and she noted that primary focus areas of the division are helping people attain full employment and fostering a career path for current employees to grow in their careers. She described the steps under way to refine the order of selection process for participants to ensure that the maximum number of people can be served. She noted that division financial records are all current and ready for audit, and she asserted that the division is committed to maximizing budget resources. Ms. Mourning Brown introduced members of the State Rehabilitation Council (SRC), including Sandy Sandoval, who said that the goal of the SRC is to support efforts of the VRD to appropriately serve consumers in a timely and professional manner.

Secretary McCamley emphasized that, historically, the VRD has experienced a lack of adequate state resources. He said that much of the focus of the WSD is to foster efficient and collaborative efforts to enhance job opportunities for individuals with disabilities, and he noted that a state plan with comprehensive strategies is under development.

Subcommittee members made comments and had questions in the following areas:

- clarification regarding current staff and vacancies in the VRD: there are currently 321 full-time employees and 113 vacancies;
- whether there is sufficient budget to fill vacancies: yes, according to Eileen Marrujo, deputy director, Administrative Services Unit, VRD;
- recognition that funding for pre-employment transition services is required but not currently funded: the VRD is seeking funding for this;
- acknowledgment that the federal government is enforcing a priority focus on orders of selection and adequate funding to meet needs;

- a request for the VRD to identify and inform the legislature of specific needs to fully meet federal requirements: Lucinda Garcia, deputy director, Rehabilitation Services Unit, VRD, noted that this is part of the VRD's strategic plan, and she highlighted actions already under way;
- whether efforts to fill positions with qualified individuals are realistic: VRD staff believes they are;
- Alan Hamlin, operations manager, Disability Determination Services, VRD, commented that federal funding for hiring is allocated regionally and that the VRD is working to ensure that information and staffing needs are fully reported to enable full staffing;
- whether data is retained: VRD staff said that it is, through a client data system;
- whether all services are provided by the VRD: no, specialty services are contracted out;
- whether information technology training is provided to clients seeking employment: yes;
- recognition of the importance of the VRD and the WSD working together on employment issues;
- recognition of the importance of collaborations with schools, especially for students with individualized education plans; and
- recognition that the governor is deeply committed to serving the needs of individuals with disabilities.

Subminimum Wage Task Force Report

Wendy Corry, Corry Consulting, LLC, said that she was contracted by the Developmental Disabilities Planning Council to conduct a study based on House Memorial 16 (2018). Although the memorial did not pass, a task force was created. Ms. Corry identified a core issue arising from the 14(c) provision of the federal Fair Labor Standards Act that allows the payment of subminimum wages to people with disabilities. She said that New Mexicans are deeply divided on this topic, and the task force did not reach a consensus or final agreement on a path forward. She said that the task force met eight times and heard several presentations outlining a variety of different perspectives. She said that approaches of other states were explored, but there is very little data about the results of requiring minimum wage for people with disabilities.

Ms. Corry provided a list of ideas for consideration but emphasized that there was no agreement by task force members on any recommendation. She said that the report presented to the subcommittee represents an account of the results of the work of the task force. She asserted that the sole agreement from everyone on the task force was that all people, regardless of the severity of their disability, have the ability to work in competitive, integrated employment.

Questions and comments from subcommittee members covered the following:

- clarification regarding why the work of the task force was discontinued;

- whether the WSD was involved in the work of the task force: Ms. Corry said that it was not;
- clarification of the level of subminimum wage that is permitted under this provision;
- recognition that much more work with employers is necessary for an understanding of the potential for individuals with special needs to be developed; and
- whether the task force included parents or family members who were fearful that their child would not be able to be employed without the 14(c) program: they were included.

Discussion and Best Practices for Prevailing Wages for Employees with Disabilities

Robert Silverstein, policy analyst, State Exchange on Employment and Disability (SEED) Project; and Josh Cunningham, program manager, NCSL, addressed the subcommittee.

Mr. Silverstein said that the mission of the SEED Project is to counsel state legislatures regarding best practices for achieving competitive integrated employment for people with disabilities. He identified a report called "Work Matters" that lays out guiding principles for a policy framework for addressing these issues. He highlighted seven policy options and practices that are considered best practices: establish a task force; focus on the state as a model employer; work with the private sector; ensure interagency coordination and collaboration; build in elements to promote youth transitions to employment; develop stay-at-work and return-to-work programs; and promote self-employment and entrepreneurship. He noted that New Mexico has workforce data on ethnicity and gender but not on disabilities, and he said that the NCSL has state examples for all of the policy options presented and is available to assist with research and preparation of bills.

Subcommittee members had questions and made comments in the following areas:

- clarification regarding the potential loss of social security disability income (SSDI) and other benefits should a person with a disability become employed: Mr. Silverstein said that there are provisions to allow individuals back on SSDI, but many people with disabilities are distrustful of them;
- a statement regarding the impact on a parent of the death of a disabled child; and
- an observation that the New Mexico Legislature has a responsibility to ensure adequate funding for disability programs.

Mr. Cunningham provided an overview of the labor market relative to unemployment. He briefly discussed the federal Fair Labor Standards Act and the issue of subminimum wage. He identified the parameters by which subminimum wage is calculated and noted a federal initiative to eliminate the use of 14(c) certificates over a period of six years. He discussed an interpretation by the Wage and Hour Division of the United States Department of Labor that a state law that prohibits the payment of subminimum wage is not precluded by federal law. He said that very few states have taken action in this area. He provided statistics regarding the extent to which subminimum wages are being paid in New Mexico, and he said that 29 states,

including New Mexico, have passed laws to raise the minimum wage above the federal requirement, which, by default, raises subminimum wages that may be paid. He noted that, nationally, there are currently 1.6 million more jobs available than there are individuals seeking employment.

Comments and questions from subcommittee members included the following:

- whether other states that have eliminated subminimum wages have tracked the impact of that decision: this is not known by the NCSL;
- recognition that schools should include training in how to apply for jobs and offer pre-employment applications to students with disabilities;
- whether termination of subminimum wage is done by federal action;
- whether there is information about the number of disabled workers who are being paid minimum wage: the NCSL says no; and
- a suggestion that the University of New Mexico be requested to track this data.

Employment Opportunities for People with Disabilities

Mike Kivitz, president and chief executive officer, Adelante Development Center, Inc., and Pamela Stafford, public policy director, The Arc of New Mexico, presented to the subcommittee.

Mr. Kivitz provided national, state and Adelante data on the topic of employment opportunities for people with disabilities. He noted that there are only three organizations in the state that offer subminimum wage employment and that Adelante is the largest competitive integrated employment agency in the state. He said that there are very strong and very diverse opinions on this topic. Mr. Kivitz emphasized that all disabilities are not the same, noting that his comments are focused on individuals with intellectual developmental disabilities (IDD). He described the process by which an employer must identify an allowable subminimum wage relative to the prevailing wage, and he provided information regarding the extent of subminimum wage use and ways in which individuals with IDD benefit from employment. He contended that the data shows that people with cognitive disabilities have the lowest employment rate. He provided New Mexico employment data and information specific to Adelante and its clients, and he called for a formal, scientific study in New Mexico and nationally on the projected impact of removal of the option to pay subminimum wages to this population.

Ms. Stafford described the importance of employment for individuals with IDD, asserting that hiring individuals with IDD is good for business. She described a vision for what the world would look like with robust employment opportunities for individuals with IDD, contending that it is transformative not only to the individual but to business and society as a whole. She noted that The Arc of New Mexico is guardian to some individuals with IDD, some who are employed at Adelante with subminimum wage and some who are not. Ms. Stafford said that the best interests and needs of the individual are always the first consideration when placing an individual in employment. She briefly reviewed the data for employment services in New Mexico as well

as what she contends is the damaging legacy of the last two administrations. Ms. Stafford said that there is a lack of supported employment providers: 10 counties have no individual-supported employment providers and 10 more have only one. She highlighted several promising programs that are under way and provided recommendations for expansion of integrated employment services in New Mexico. Ms. Stafford cautioned members about relying on only one promising model.

Subcommittee members had questions and made comments as follows:

- clarification regarding declining employment trends for individuals with IDD;
- an assertion that the real issue of concern is that the state is not finding jobs for disabled individuals;
- clarification regarding funding for day habilitation: Mr. Kivitz and Ms. Stafford said that it is largely covered through Medicaid waivers;
- clarification regarding the percentage of individuals with both IDD and mental illness: Mr. Kivitz and Ms. Stafford said that most individuals with mental health disorders also have some level of IDD;
- clarification regarding the status of the *Jackson* lawsuit;
- clarification regarding VRD closures and the relationship to the drop in supportive employment: many individuals with a disability report that they have not been approached with job opportunities;
- clarification regarding the lowest minimum wage being paid in New Mexico: Mr. Kivitz said that the lowest wage Adelante pays is around \$2.00 per hour, but much of its employment is piecework and is not really based on hourly work; and
- clarification regarding very low subminimum wages, in seeming contradiction to state law that says that the subminimum wage cannot be less than one-half of the standard minimum wage.

Public Comment

Robert Kegel, advocate for people with developmental disabilities, testified concerning previous promises made by the Department of Health regarding community services in the Medicaid program. He provided data to demonstrate that over the past five years, more than \$50 million in services that should have been approved were not provided.

Jill Martinez testified as a parent of a person with a disability. She provided additional input on questions and comments made by subcommittee members during the course of the day. She supports the notion of teleworking, the lack of broadband notwithstanding. She noted that the amount of support funding she is able to receive to support her child has significantly declined, and she spoke strongly in favor of training for personal care providers for disabled individuals.

Yvonne Hart stated her frustration with the meeting. She asked the legislators to use their influence to address problems and issues.

Anesheva Levin identified herself as a person with autism. She said that she does not qualify for skills training offered by VRD, as her disability is not severe enough, but that she is not a strong candidate for jobs on her own. The end result is that she is perennially underemployed, she said.

Rebecca Stanford read a statement from Angela Lybarger, who was unable to attend the meeting. The statement said that a lack of attendance by family members should not be taken as an indication of a lack of support for the issue. She expressed support for the work Adelante has done on behalf of Ms. Lybarger's family members with IDD and in support of jobs that pay subminimum wages.

Jim Jackson, former executive director, Disability Rights New Mexico (DRNM), encouraged subcommittee members not to wait for the perfect solution for integrated supported employment but to get started right away. He highlighted a new federal program that permits individuals on SSDI to save up to \$2,000 without losing benefits. He also said that disability advocates support individual choice in employment but that DRNM believes this is a civil rights issue.

Molly Madden testified as a mother of a grown daughter with IDD. She stated that she is feeling more hope that the issue of 14(c) exemptions will ultimately be resolved, and she urged members to ensure that there will be a replacement if this option is eliminated.

Adjournment

There being no further business before the subcommittee, the meeting adjourned at 4:43 p.m.