

## **Department of Health Response to the LFC Evaluation of the DD and Mi Via Waivers**

The DDSO operates the Developmental Disabilities and Mi Via waiver programs (hereafter referred to as the DD Waivers) through a joint powers agreement between the Department of Health (DOH) and the Human Services Department (HSD). The DD Waivers are home and community-based services that provide long term care. The DD and Mi Via Waiver programs provide an array of services to support individuals with intellectual and developmental disabilities to live successfully in their community, become more independent and reach their personal goals. DDSO also works with children at risk for developmental delay or disability and their families.

The LFC review evaluated the traditional DD and Mi Via Waivers and provided findings and recommendations. DDSO has also internally been reviewing a number of the factors to prepare to propose possible alternative and more cost-effective solutions. The current DD Waiver was approved for 5 years effective July 1, 2016, so the DOH and HSD will be seeking waiver renewal again in 2021. This evaluation report, along with past task force reports, internal data, external data to include; information from the ACQ, provider organizations and litigation, as well as other resources and experiences will be useful tools in planning for the next renewal period.

For ease of reading, the DOH response primarily focused on highlighting areas from the Key Findings and Recommendations from the full report.

**The LFC found that the DD Waiver is costing more per client, even as enrollment declines.**  
The Department agrees that per client costs are rising.

The Department is studying cost containment strategies aimed at reducing the average cost per client. In 2010, DDSO faced similar challenges to address rising cost of program cost and average cost per person for the traditional DD Waiver. To address the rising cost and to address the waiting list in 2010, DDSO implemented cost containment efforts and redesigned the DD traditional Waiver.

Specifically, in 2012 DDSO implemented the use of the Supports Intensity Scale (SIS) based on a recommendation outlined in the LFC audit report from 2010 and developed a resource allocation system using data generated by the SIS. The SIS is a standardized valid and reliable assessment that provides a framework to quantify the support needs of people with intellectual and developmental disabilities. The goal of the resource allocation system was to create a system that is fair and equitable, allocate resources based on need so people with similar needs receive the same allocation of resources.

After the first full year of implementing the SIS and resource allocation system, the average cost per person decreased to \$67,065 in FY14 compared to \$73,334 in FY12.

DDSO efforts to implement the use of the SIS and resource allocation system were met with strong opposition from advocates, families, providers, Jackson Plaintiffs, the Court overseeing the Jackson litigation, and legislators which eventually resulted in litigation known as the Waldrop lawsuit. That litigation was eventually settled.

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As a result of the Waldrop Settlement Agreement, the resource allocation system was replaced with the Outside Reviewer (OR) and clinical criteria to justify services. The OR was implemented in 2015 and the SIS was discontinued in 2016. These required changes have contributed to the rising cost of the DDW since FY15. For example, the average cost per person increased from \$67,065 in FY14 to approximately \$88,000 in FY18.

Given this history, it is evident that the DOH understands the growing costs of the waiver system and has made efforts to address those. Any future waiver design to address the rising cost of the waivers, will take a collective effort. Any changes to the Waiver should be considered in light of the potential impact on current and future enrollees and the possibility of litigation based on changes.

Recommended changes to impact the rising costs will inevitably have to consider implementing a valid assessment tool and resource allocation methodology. Based on program expenditures for the DD waiver, 88% of the cost for the DD Waiver is related to residential and day services. Residential services are 24 hours a day, 365 days a year. The third highest DD Waiver expenditures are therapy and behavior support consultation services. Cost containment strategies should focus on these service types.

Since New Mexico closed the institutions in the 1990's, the DD and Mi Via Waivers are the only programs specifically for individuals with intellectual and developmental disabilities available to provide long term support in the community. This creates an overwhelming demand for the services provided in these waiver programs. Any changes to availability or eligibility for individual services will require a collective effort and large-scale changes to eligibility or otherwise should be made, if possible, via statutory amendment and must at any rate be supported by HSD and approved by the Centers for Medicare and Medicaid Services (CMS).

### **The LFC believes that Mi Via, the self-directed waiver, is driving cost increases of the state's developmental disability programs.**

The Department disagrees that Mi Via is driving cost increases for the DD programs. Pursuant to federal law, self-directed waiver programs are required to be more cost effective than traditional waiver programs, and this is true for the NM Mi Via Program. Even though the expenditures for the Mi Via Waiver have increased, the number of individuals enrolled in Mi Via has also increased from 192 in FY 12 to 1, 461 in FY 18.

To address a recommendation of the 2013 Senate Memorial 20 report, DDS has prioritized increasing the attractiveness of the Mi Via Waiver and has been a national leader in promoting self-direction. Key motivators for choosing the Mi Via Waiver over the traditional waiver include more autonomy and choice in selecting providers and staff, and more control over their program and supports.

The Mi Via budgets are capped based on age of the participant, although in some individual cases additional funding may be approved. Participants are using up to 90% of their approved budgets. This high percentage of utilization is a prime factor impacting the average cost per person. The Department does acknowledge the availability of additional funding and the range of rate (the

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amount of money a participant can pay their staff) criteria in the Mi Via Waiver could be strengthened as a possible cost containment measure.

### **The LFC indicates that other states are more cost effective in delivering services for the developmentally disabled population.**

The Department agrees that other states have mechanisms to control costs for services provided to individuals with intellectual and developmental disabilities. Each state is given the flexibility to determine what services and amounts of service it will provide. Many states have moved to a managed care model, and most states use a standardized assessment tool and resource allocation. Additionally, approximately 30 states have supports waivers which are designed to complement unpaid supports that are provided to individuals with IDD by family and other natural supports. DDS should review how other states determine who qualifies for the waiver including how they define intellectual and developmental disability.

Currently, the DD Waiver offers a comprehensive array of services with few limitations. The range of services and limits to those services are being explored internally at DDS. The initial thoughts have been to look at cost containment measures which would result in the reduction of some services and service amounts provided under the waiver. Home and community-based services, such as our waivers, are options afforded to the states.

The Department recognizes the need to implement program reform and best practices to align with what is occurring across the nation. This would entail ensuring the waivers are cost effective, fair and equitable, while also addressing the waiting list. It is essential that future program changes are made in partnership with all stakeholders across state agencies and the waiver system.

### **DOH is improving the management of the DD Waiver Waiting List, but needs to do more to predict future needs and service capacity.**

The Department agrees with this finding.

DDS is considering using a standardized assessment tool for people on the waiting list to assess need and better predict future funding and program needs. DDS is also exploring the point in time a determination is made from the date of the registration.

However, approximately 65% of the people on the Waiting List are enrolled in Centennial Care and are eligible for the Community Benefits that Centennial Care offers.

The Department was allocated \$2 million in the 2018 legislative session to reduce the waiting list. DDS has begun the allocation of 70 people from the wait list into services effective July 2018. It is the Department's plan to expend the \$2 million in support of removing people from the wait list.

### **LFC found that DOH's current assessment and budget allocation process lacks standardization and contributes to rising annual client budgets.**

The Department agrees with this finding. The impact of the Waldrop litigation and the discontinuation of the Supports Intensity Scale (SIS) in 2015 is a factor in the rising annual budgets. The Waldrop Settlement Agreement established the implementation of the Outside

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Review process, clinical criteria and the allowance for requesting service levels in any amount. CMS requires the use of assessment tools.

New Mexico has used different assessment tools in the past. The SIS was one such tool. The Department is not opposed to a standardized tool. We will contact other states and see what is being successfully used, although most commonly used is the SIS. This will require working with stakeholders and developing support and understanding for a decision that will be in the programmatic and financial interest of the state.

### **Improved oversight is necessary to mitigate risk to waiver participants and public funds.**

The Department agrees that oversight is part of any Continuous Quality Improvement. The Department strongly disagrees that there is no oversight from DOH of Mi Via providers. Oversight requirements are outlined in the approved waiver and service standards. Those standards may be found at <https://nmhealth.org/publication/view/policy/3381/>. With respect to Mi Via services provided by any employee, contractor, vendor or other community-based waiver service agency having a provider agreement with DOH, any suspected abuse, neglect, exploitation, suspicious injury, environmental hazard, eligible recipient death must be reported to the CYFD/CPS or DOH/DHI/IMB for the eligible recipient under 18 years or to IMB for eligible recipients age 18 years or older. See Sections 27-7-14 through 27-7-31 NMSA 1978 (Adult Protective Services Act) and in Sections 32A-4-1 through 32A-4-34 NMSA 1978 (Child Abuse and Neglect Act).

Monitoring client services is a shared responsibility between waiver participants, family members and consultants and is not the sole responsibility of the EOR.

Although the Employee of Record (EOR) is currently a volunteer position, DDS D will consider adding an EOR as a required service at the next renewal in 2020.

### **Data collection offers DOH an opportunity to improve performance management and client outcomes.**

The Department agrees that data informs decisions. DD Waiver service providers have always been required to report on CMS performance measures as part of their provider agreements with DDS D. This year, DDS D has implemented 3 Key Performance Indicators (KPI) based on Quality Management Bureau, Incident Management Bureau, the Jackson Individual Quality Review and the Centers for Medicare and Medicaid Services 2014 Final Settings Rule that will be reported on by all providers of DD Waiver services. DDS D specifically identified these three KPI to assist the State in analyzing and developing more client centered outcomes. The KPI are: [1) The percent of Individual Service Plans (ISPs) that are implemented as written; 2) the percent of appointments attended as recommended by medical professionals (physician, nurse, practitioner or specialist) and 3) the percent of individuals accessing Customized Community Supports in a non-disability specific setting. The directive to add these three KPI is included in Chapter 22 of the DDS D Standards and the language of the KPI was circulated to the field on March 5, 2018. Guidance to the field continues regarding this new initiative. These 3 KPI are expected to be collected in addition to other performance indicators selected by provider agencies as part of their overall service delivery approach. Data will be available and reported to the Department in quarter 3 of FY 2019.

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DDSD is in the final stages of issuing a Request for Proposals to select a vendor to develop a Client Data Management System that will allow the Division access to the types of data that will allow tracking of client outcomes and system performance.

### **Employment**

DDSD is proud to continue to exceed the national average for employment for individuals with Intellectual/Developmental Disabilities (I/DD). While New Mexico performs higher than the national average, there are several states that have implemented policies and initiatives that prioritize employment and have improved outcomes. A database was created with the assistance of the University of Massachusetts Employment Leadership Network in 2015. DDSD implemented an Employment First policy in 2017 after researching the steps those high performing states took to achieve better employment outcomes. The Employment First Policy establishes competitive integrated employment as the preferred service over other day service options for all working age adults.

DDSD agrees that Project Search and ENMU-R have promising employment programs for those individuals who qualify for their programs. DDSD is excited to report that through their work with Partners for Employment at UNMCDD, there are currently 5 Project Search sites in New Mexico with plans to secure 8 in FY 19.

The Department agrees that the Eastern New Mexico University – Roswell (ENMU-R) Special Services Program is a value-based asset for some individuals with I/DD who seek employment. Efforts to partner with ENMU-R in the past have been unsuccessful. The business model utilized by the University does not include becoming a Medicaid provider as this would require that the University program accept any Medicaid eligible applicant. ENMU-R does have a strong special services program and DDSD will continue to promote the ENMU-R program as an option outside the Medicaid employment system.

DDSD will continue to utilize their data as well as the new KPI that relates to the amount of time spent in community integrated settings, which includes employment related services and supports.

In addition to the database, the KPI and Project Search, DDSD has embarked on promising practices intended to increase interest and participation in employment for individuals with I/DD. In partnership with the UNM Center for Developmental Disability and the Division of Vocational Rehabilitation, DDSD has launched a comprehensive, multi- year training plan to address the diverse training needs of employment support professionals in New Mexico. While employment professionals are the primary target of the training plan, the trainings should also meet the needs of other important stakeholders, such as individuals with disabilities, their families and guardians, case managers, advocates and providers.

### **Transition to Employment Grant**

The Transition to Employment Grant is designed to provide opportunities for employment to individuals who might not otherwise have access to employment supports. The program is intended to give individuals who are preparing to exit/graduate from high school or have recently exited or graduated from high school the opportunity to receive supports for community employment as adults. Individuals who are between the ages of 17 and 25 are eligible for this

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program. This grant was developed through Senate Memorial 20, which provides funding for efforts that reduce the wait time between school and adult services. The individual must be on the Department of Health/Developmental Disabilities Supports Division Central Registry. Individuals who are already receiving services through the Developmental Disabilities (DD) Waiver or the Mi Via Waiver are not eligible for this program.

The Transition to Employment program will fund up to 10 hours per month of Follow-Along supports and/or up to \$460 for transportation supports to/from work.

### **WORK EXPERIENCE GRANT PROGRAM**

In 2015, DDS D launched the Work Experience Grant Program. Individuals with I/DD who are interested in community employment are now able to apply for grant funding in collaboration with their supported employment agency. There are three design models for this program. They are: Trial Work Opportunity, Community-Based Situational Assessment, and Microenterprise start-up. The Work Experience Grant program can be accessed to cover funding for wages and workers' compensation insurance for individuals in the Trial Work Opportunity and the Community-Based Situational Assessment models. The Microenterprise model is designed to cover business start-up costs that cannot be obtained through other means.

### **Informed Choice Project**

The Informed Choice Initiative uses Discovery strategies and techniques to help individuals and their team to determine if the individual is interested in integrated competitive employment customized community inclusion activities, or both. Outcomes of this project include:

- To assist agencies in making the system change
- Provide customized services to the individuals they represent.

The expectation of the project is to focus on selected agencies that are interested in making systems change that will incorporate Discovery strategies in assisting individuals in making informed choices related to how they spend their time.

### **Qualified Provider Project**

DDS D worked with National Subject Matter Expert Linda Rolfe to establish new expectations for providers related to quality outcomes by updating the Developmental Disabilities Waiver provider application. DDS D partnered with 7 Supported Employment agencies to pilot the new requirements to determine whether the assumptions that DDS D developed based on national and local data are sound.

The pilot has been completed and the results are being shared with other bureaus within DDS D to improve the overall provider application.

### **Abuse, Neglect and Exploitation Investigations**

The Division of Health Improvement continually works to improve processes and recently began specific measures to address the timeliness of the investigative process. Specifically, the Division has identified the need to look at that issue from a variety of different angles to include: the investigative process itself; what has to be done to close an investigation, who has to review it; how that review is happening; staffing; how many employees we have, how long they stay, how they are trained and special projects like OverTime and contract assistance.

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### **New Mexico has made progress on resolving the Jackson lawsuit, but it remains a significant cost driver for the entire DD system.**

The Department agrees that we are making progress on the Jackson litigation and that it is a high cost-driver for the state and as a result for the DD Waiver providers. The Jackson litigation is both an administrative burden and a cost driver. DDS D meets at least monthly in smaller groups, as well as tri-annually, with the Court, Court experts and Plaintiffs' counsel to clarify expectations on the Remedial Plan. This continued court involvement in how the state hires staff and conducts investigations impacts the timeliness, cost and independence by which the state can run its DD system.

The positive response from the 10<sup>th</sup> Circuit in January 2018, indicating federal oversight of the class should terminate if there are no ongoing constitutional or federal statutory violations, is encouraging. DDS D hopes that the approaching trial will finally bring resolution to this protracted litigation, which will allow the state the autonomy to run its programs and services without interference, which in turn will bring funds back into services and away from litigation costs.

In the meantime, DDS D could provide the Legislature with the Jackson Quarterly Reports that are required under the Court Orders. This report has been significantly structured by the Jackson Compliance Administrator, but DDS D and DHI use it to demonstrate their ongoing efforts to meet the objectives and evaluative components of the current Remedial Plan.

DHI continues to work on the viability of the recently developed Individual Quality Review. While it remains a Jackson only tool today, DHI is open to the recommendation that the IQR be adapted to measure DDS D performance measures that apply to the entire waiver population.

Finally, DDS D has made efforts in the past to minimize areas of greatest administrative burden through a project titled "Reduce the Burden". DDS D agrees that continuing to address Jackson documentation requirements is essential to supporting providers.

### **Conclusion**

The Department will continue to carefully consider the findings and recommendations included in the report to help inform future actions. The Department is thankful that the state of New Mexico is committed to improving its system for providing services and supports for its citizens with intellectual and developmental disabilities. We will continue to work toward making program and cost-containment improvements while at the same time maintaining the high-quality services provided to our New Mexican citizens, and we look forward to doing that in partnership with the LFC and other important stakeholders.

