



August 7, 2018

Representative Deborah J. Armstrong  
Senator Jerry Ortiz y Pino  
Legislative Health and Human Services Committee  
Attn: LCS Staff, Michael Healy, Chris Pommier, Karen Wells

*Via Email*

Re: Legislative Finance Committee Program Evaluation Report

The Arc of New Mexico appreciates the time and effort which the analysts for the Legislative Finance Committee Program Evaluation Unit expended on this report and the time that the Health and Human Services Committee are spending on this discussion on August 8, 2018. We believe that the size of the program(s) currently administered by the New Mexico Department of Health Developmental Disabilities Support Division plus the additional needs of the largely underserved populations on the wait list warrants this type of comprehensive data collection and analysis. We are in full support of the recommendations that that the NM Department of Health and the Legislative Health and Human Service Committee should work jointly to develop a comprehensive five year plan to significantly reduce the wait list. We are, also, in agreement with the majority of the recommendations indicated to improve the existing services. However, the issues and concerns are complex as should be the answers. This paper and input is provided to assist to inform the committee and to make our own recommendation.

We will begin by pointing out that there are two areas which are often over-looked in the discussion then we will go into more specifics on our recommendations.

1. Successes of New Mexico efforts
2. Benefits to the community when individuals with IDD are supported in the community.

To the first point: **Successes of New Mexico efforts**

- New Mexico is one of 14 states without institutions
- New Mexico is serving individuals with the most significant impact of disability in community locations.
- New Mexico has been a leader in the nation in Self-Directed Services
- New Mexico has relatively few individuals working under the FLSA 14C allowances for sub-minimum wage

- New Mexico has done a good job of providing transitional employment services to those individuals who are appropriate for the Project Search model of support
- Attempts have been made and, in some cases, have been successful for individuals to receive day services in community locations for at least a portion of the day.

Many of these items are referenced in both the Program Evaluation and the Department's response. However, to the degree they are part of the conversation, they are often referred to as cost drivers, as the reason for high expenses, or in terms of why the Jackson lawsuit should end.

The Arc New Mexico's position is that these successes demonstrate what can be accomplished when New Mexico commits to quality, focused supports for New Mexicans with intellectual/developmental disabilities. While these are successes, the program evaluation offers many opportunities for improvement with which we agree and will discuss later. **The basic question facing New Mexico is: What quality of services and supports do we believe individuals with intellectual/developmental disabilities should receive.** Knowing that we can be successful when we focus our energy indicates that if New Mexico has the will, then proceed with how to assure that **all services for all individuals rise to at least the same service level as those listed as successes.**

In acknowledging these successes, we must acknowledge the influence the Jackson Class Lawsuit has had. The Jackson Class Lawsuit is often discussed in terms of costs and creation of administrative burdens. Both of these points might be accurate to some degree. However, we should not discount that without the Jackson Class Lawsuit many of these successes would not have been possible. Please refer back to the question in bold in the paragraph above. If there was an appropriate commitment to quality of services and supports from the state of New Mexico for at least those individuals who were previously institutionalized, then the lawsuit would end. The best way, therefore, to end the lawsuit is for the state of New Mexico to provide quality services and supports. Again that is a simple response to complex problems with nuanced solutions, but the answers begin with this response and commitment.

To the second point: **Benefits to the community when individuals with IDD are supported in the community.**

A completely overlooked topic when discussing supports and services to individuals with IDD is the benefits to the community when individuals are properly supported in the community.

It is important, for example, to note the studies that have been completed on supported employment from both a cost benefit analysis, but, also, a workplace culture environment. The state of New Mexico should consider these benefits when thinking about the dollars spent to supported employment and why the continued and improved commitment is important.

- Every dollar spent on a supported employee could yields a cost benefit to the tax payer of \$21. SOURCE: Cimeria, R. E. (2010). National cost efficiency of supported employees with intellectual disabilities: 2002 to 2007, *American Association on Intellectual and Developmental Disabilities*, 115(1), 19-29

- The above calculation does not include the additional benefit of individuals having increased funds to spend as consumers and, thus, fueling the economy.
- Supported Employees can change the workplace in general for the better. Companies like Walgreens have found that including individuals with intellectual/developmental disabilities has contributed to higher productivity, lower absenteeism, higher retention rates and increased customer loyalty. Quote from a Walgreen Executive- “Look at the hiring of individuals with IDD not through the lens of a charitable activity but a strategy that is integral to business.”  
SOURCE: Institute for corporate productivity. (2014). *Employing People with Intellectual and Developmental Disabilities*

The benefits to the community of community involvement by individuals with IDD have not been quantified to this same degree. However, anecdotal evidence of the impact on non-disabled community members when they interact with individuals with IDD abound. In New Mexico individuals with IDD volunteer in nursing homes, food banks, homeless shelters, meals on wheels, animal shelters, and for church organizations. Non-disabled individuals who go to community gyms, belong to clubs, attend church or take classes, alongside an individual with IDD are benefitted by their opportunity to know an individual with a unique life experience and strengths.

According to the Arc US, if individuals with IDD voted in the same percentage as the non-disabled population, there would be 2.2 million additional votes nationwide.

The citizenry of the United States are currently involved in significant debate around the value of diversity. This debate has centered on diversity of race, ethnicity of gender identification and sexual preferences more than on the disability community in general or the IDD community specifically. However, it is the same question and the same value. Does having a more diverse community, workforce and informed voting citizenry benefit the country, our state, our community? We should absolutely commit ourselves to providing support to New Mexicans with IDD due to their significant needs including medical, mental health, behavioral, supported, employment, to increase academic and daily living skills, to reduce the impact of social isolation and political disempowerment, but we should, also, commit ourselves to providing adequate support to individuals with IDD because it promotes inclusivity and respect for all New Mexicans.

### **Recommendations for Improved Supports:**

Having given voice to those two points, we will now provide some key recommendations to improve supports. These are broad recommendations to inform continued dialogue.

**Recommendation Number 1: The current definitions of eligibility for service should be maintained.** The Department of Health response to questions before the LFC was that they were “looking at eligibility.” Cost containment should not mean eliminating individuals who have been determined eligible from services through redefining eligibility to mean only individuals with the most significant needs.

**Recommendation Number 2: The Department of Health should create a supportive, person-centered environment where teams and family members would believe that as support needs changes, supports budgets could more readily and easily change.** One key point that the Program Evaluation report alludes to is the changes within an individual's budget in the second or third year. In fact, if we look philosophically at this issue, we determine that there should be no expectation of an individual's unique budget remaining stable over a 10 – 20 year period. If the waiting list is reduced and individuals begin to receive services at a younger age and if the services are adequate to support independence and skill building, then some individuals might be able to decrease their services within a few years. However, an individual who might not have significant support needs could suddenly develop a medical situation or, as a result of aging, have their support needs increase. Changes in budgets from year to year should be common place. However, the various efforts by the Department of Health to contain costs have not been successful specifically because they have been cost containment focused instead of person-centered focus. In the current environment, it is not uncommon for family and team members to discuss the need to maximize supports and budgets in order to be assured that the individual will have those supports in the future.

While this might sound counter-intuitive from a cost containment analysis providing the services a person actually needs to maximize, health, growth and independent skills building is actually the purpose of the supports. The Department of Health has created increased budget demands by creating this environment of fear that services might be drastically cut in random, non-person-centered or arbitrary methods.

**Recommendation Number 3: Significantly reduce the waiting list.** The Arc NM fully endorses the LFC program evaluation recommendation to create a five year plan to reduce the waiting list. Various advocates have discussed a support waiver. The Arc New Mexico endorses a support waiver with certain caveats. The comprehensive waiver should be preserved not only for individuals currently receiving services, but for individuals who require that degree of support. Because a person's needs changes over time, the waivers should be flexible to allow individuals to transfer between the supports as determined by their need.

**Recommendation Number 4: The LFC program evaluation recommended to implement a standardized, validated and evidence-based assessment and allocation tool to drive and inform its person-centered review and allocation process, while incorporating appropriate safeguards to protect client rights.** The Department of Health's response to the evaluation report blames the Waldrop lawsuit for the lack of an assessment tool, but fails to acknowledge that the reason the lawsuit was successful is because of the Department's failure of implementation in a person-centered way, with full transparency as to the process and reason for the tool, and with adequate Due Process. If the Department approached needs assessment in a person-centered way instead of a cost containment methodology it is possible costs would decrease and quality of services would improve. The environment of fear that fuels maximizing budgets also fuels the dependency of services which is helpful to no one.

**Recommendation Number 5: Any utilization or outside review process should be designed with consideration as to the cost of implementing the process vs. the amount of resources saved.** The SIS experiment was an expensive experiment for the State of New Mexico. The current outside review process is inefficient with numerous administrative reviews related to

issues like forgotten signatures. Before an administrative review can be completed, the guardian or individual must file a request for a fair hearing. Administrative reviews often involved more than one representative from DDS. The process is laborious, time intensive, confusing and has not resulted in savings. Don't spend a dollar to save a penny.

**Recommendation Number 6: The Arc agrees with the LFC program evaluation recommendation to establish more efficient and effective protocols as well as ensuring staffing is adequate across the state for DHI IMB to complete and close abuse, neglect, and exploitation cases on time.** While the Department of Health laments the cost of the Jackson Class lawsuit, they fail to provide for an adequate system to prevent and investigate abuse, neglect and exploitation. Any belief that the state of New Mexico should be allowed to disengage from the lawsuit while this issue is so prevalent is, to be frank, ridiculous. Individuals with IDD including those previously institutionalized have the right to be free of abuse, neglect and exploitation, and for investigations into alleged abused, neglect or exploitation to be quickly investigated. If the Department wants to eliminate the cost of the Jackson lawsuit, they must commit to providing at least a minimum quality of service.

**Recommendation Number 7: Increase rates with a flow through for increased wages for direct support staff.** The most important role in the service provision industry is the direct support staff. The combination of low wages and decreasing unemployment rates results in inadequate staffing ratios and a staff skill set which is minimal and, for which, training only partially compensates. For instance, training on health and wellness is needed and should continue, but cannot compensate for basic lack of problem solving or reasoning skills. The Arc NM recognizes that there are many qualified, caring and competent direct support staff, but they are accepting a lower standard of living in order to do the work they love. In these cases, they often are working two jobs. Additionally, the lack of adequate staffing sometimes mean staff are working multiple back to back shifts. Direct Support Staff providing services to individuals with developmental disabilities are often fatigued and tired. This creates more mistakes, less attention to innovative supports, and a less engaged work force. The Arc NM believes that if providers were able to pay enough to recruit staff with higher skills at a level to adequately meet the demands that the allegation of abuse, neglect and exploitation might go down. Compliance issues might decrease. Performance outcomes measurements might increase. The Department of Health should consider, if necessary, diverting funds from complicated oversight and regulatory systems to direct service. While the Department often indicates that the monitoring and oversight systems are requirements of the Jackson lawsuit, the need for these systems are driven by a failure to provide adequate services. There is also a failure of the Department of Health to recruit and retain providers of direct services across the state. Allocate resources where it is most needed and can do the most good. Additionally, a higher rate for direct support staff increases consumer spending which fuels the economy.

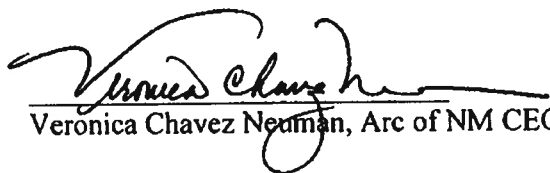
**Recommendation Number 8: Improve the service supports for employment for individuals with the most significant impact of disability. The legislative body should enact legislation that studies the use of FLSA 14C. The State of New Mexico should consider ways to improve employment outcomes for individuals for whom Project Search and similar projects will not work.** While there are certainly other states that rely more heavily on the FLSA 14C initiatives, New Mexico should consider how to protect individuals for whom eliminating FLSA 14C employment would significantly disrupt their lives, while assuring that

individuals who want community employment at full minimum wage have the opportunity to pursue that option. However, we, also need to assure that there are viable options for **all** individuals with IDD who want to work. While the Department of Health, in conjunction with Partners for Employment at CDD, has made some efforts to bring the practices of Customized Employment into the state, they should consider the barriers to fully implement these practices into the state by considering higher rates for providers who practice customized employment in order to assure that qualified staff, once trained, are retained.

Respectfully submitted,



Pamela Stafford  
Pamela Stafford, Arc of NM Public Policy Director



Veronica Chavez Neuman  
Veronica Chavez Neuman, Arc of NM CEO