



Presentation to the Legislative Health and Human Services Committee
October 17, 2023
New Mexico State University
Las Cruces

1. Presentation Topics

- ❖ The Rate Study of 2023
- ❖ Budget for Fiscal Year 2025
- ❖ Economic Impact
- ❖ National Impacts on the New Mexico DD System
- ❖ Congressional Action
- ❖ Fee for Service Model
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- ❖ Conclusion

2. ADDCP Member List

3. For questions or additional information:

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Good afternoon, Mr. Chair, and members of the Committee.

I am Jim Copeland, Executive Director of the Association of Developmental Disabilities Community Providers (ADDCP). I want to thank you for the opportunity to speak this afternoon. I appreciate the support and interest you continue to show for New Mexicans with intellectual and developmental disabilities (I/DD) and their families. This presentation may be a little different from presentations you have heard before. I hope this presentation will raise some tough questions and concerns that ADDCP feels need to be addressed. ADDCP represents twenty-nine provider agencies in New Mexico. Those provider agencies represent all five regions of the state. A list of our current members is included as part of this presentation.

The Developmental Disabilities system has been in the news recently as the result of the death of an individual that should not have occurred. At Home Advocacy, one of the four providers whose Provider Agreement was cancelled because of that case, was a member of ADDCP. ADDCP supports the Department of Health (DOH) Developmental Disabilities Supports Division's (DDSD) position that abuse, neglect, and exploitation (ANE) of anyone should never occur. Unfortunately, sometimes things happen that are beyond all the controls that are put in place to prevent them. The subsequent wellness checks for over 6,800 recipients of DD services supported the fact that substantiated claims of abuse, neglect, and exploitation are almost non-existent in our system. That is not a reason to decrease the efforts to reduce or eliminate allegations of ANE in the future. It is a motivation to continue our diligent efforts to protect our recipients and provide them with quality services that are safe and supportive of their life dreams.

Let me outline some of the more problematic concerns facing New Mexico's DD system.

The Rate Study of 2023 – There was a 29% participation rate for all providers of DD services. While the vendor stated that 29% was a significant response rate, we do not know which type of service providers responded. According to communication with DDSD, there were 138 letters assessing Civil Monetary Penalties (CMPs) for providers who did not complete the rate study survey documents. Of those 138 letters, sixty-seven entities paid the CMP, thirty-five letters were rescinded to date for verifiable reasons, nine reached informal resolutions without the Fair Hearing Process, and five were in the Fair Hearing stage. Additionally, twenty-two agencies have not responded to the CMP letter and resolutions are being pursued by DDSD. The rate study did not recommend rate increases for Supported Living. This was based on the determination that the workforce providing services, based on personnel rosters for participating provider entities, was 75% employees and 25% contractors. The use of contractors in the Supported Living

workforce is potentially a cause for concern. In some services in the DD system, the use of contractors is appropriate and they are properly classified. For example, in Family Living, those providers are 100% contractors. That classification has been approved under the Difficulty of Care Act. The stipend those providers receive is exempt from Federal income tax in accordance with the Internal Revenue Service Notice 2014-7. Primarily the providers of Case Management, Therapies, and Behavior Support Consultation services are either owners of their companies or subcontractors of those companies. That could largely equate to the 25% contractor classification in the rate study. There are some agencies that employ their workforce. There was a subcontractor factor included in the Supported Living calculations that seemingly reduced the rates that should have resulted in the Supported Living service receiving a recommended increase. That calculation has the effect of penalizing providers who hire employees over those who contract with their workforce. In discussions with DDS regarding the contractor issue, ADDCP was told it was not an issue that had been brought forward by the Human Services Department or the Department of Workforce Solutions as a concern that needs to be addressed by DDS. ADDCP believes it is a misclassification of Direct Support Professionals (DSPs) working scheduled shifts in Supported Living Homes to be classified as Independent Contractors. We understand there is currently a challenge in New Mexico to the classification of DSPs as Independent Contractors. This decision could have a far-reaching impact on the DD System. ADDCP feels this should be evaluated with the Department of Workforce Solutions and subsequent direction provided to the provider system.

Just an FYI - The Healthy Workplaces Act defines Independent Contractor as *“a person who agrees to do certain work where the person who engages the contractor may direct the result to be accomplished but does not have the right to control the manner in which the details of the work are to be performed”*. If you understand anything about DD services, DSPs and their work, you know it is controlled and regulated by the DD Waiver Standards.

The budget for Fiscal Year 2025 – In discussion with DDS, ADDCP was notified that the FY 25 budget request for DDS included the funding to cover the Super Allocation, adding the \$10.2 million appropriation for FY 24 to the base budget, and the rate recommendations from the 2023 rate study. We have been informed by DDS that the \$10.2 million appropriation for FY 24 will provide a 5.32% COLA rate increase retroactive to July 1, 2023, for the majority of services in the DD Waivers, including Supported Living. This 5.32% increase is based on the 2022 rate structure. With DDS transitioning to the Health Care Authority Department (HCAD) on July 1, 2024, the FY 25 budget for DD services is under the care and control of the HCAD. The FY 25 budget request for the general fund match is \$231,590,000. There are approximately 1,100 people still completing the medical and financial eligibility process. There is no way to be certain what level of care or services those 1,100 people are going to need if they meet the medical and financial eligibility. We do not know if the request covered the inflation factor listed in the 2023 rate study. The 5-year rolling average for the inflation factor is 3.7%. The 2023 Rate Study rates, implemented in July 2024, should include a 3.7% inflation adjustment to keep providers fully funded. With DDS transitioning to the Health Care Authority Department (HCAD) on July 1,

2024, the FY 25 budget for DD services is under the care and control of the HCAD. The FY 25 HCAD budget request for the general fund match is \$231,590,000. We do know that all rates and services, especially Supported Living, will be significantly impacted by FY 25 with the elimination of the 5% American Rescue Plan Act temporary funding increase. With 1,100 people completing the eligibility process, there is a concern that the FY 25 budget request may not cover the costs of serving those that are newly allocated into services. What preparations should be considered to cover the increased costs, to cover the continued operation of the DD system? With the current federal medical assistance percentage (FMAP) rate, that will put DD services revenue at approximately \$926,360,000.

Economic impact - ADDCP is working on finding a partner and the funding to complete an Economic Impact study. The projected \$926,360,000 funding for DD Services in New Mexico reaches all thirty-three counties in the state. Those dollars are spent in the local economies of the provider agencies. Those are dollars that will not go away. As long as New Mexico chooses to provide DD services and the Medicaid match is available from the federal government, we will receive approximately \$3 for every \$1 of state general fund revenue in the system. ADDCP is requesting support to get an economic impact study completed that will detail the impact of the DD system in New Mexico. An almost \$1 billion dollar investment in the local communities to support New Mexicans with IDD and their families is a significant investment in the local economies in New Mexico. If those dollars turn over a couple of times, that is a significant impact. Those are dollars that are buying groceries, paying utilities, purchasing clothing and vehicles, paying taxes, paying rent or mortgages, and stimulating local economies.

National impacts on the New Mexico DD System – The US Department of Labor has introduced proposed rulemaking to increase the overtime salary exemption from \$35,568 to \$55,068 per year. What does this have to do with DD Services? DD providers currently can have salaried positions that pay \$35,568 per year. That means that positions like a house manager, service coordinator, program coordinator could be salaried at \$35,568 per year. Salaried workers are exempt from overtime. If this proposed rule changes, those same workers would have to be paid \$55,068. If those workers are not increased by almost \$20,000 a year, they will have to be classified as hourly and paid 1.5 times their hourly rate for any hours more than forty per week. The impact of that change is not factored in the rate study. Neither is the cost of that extra \$20,000 per person to retain the same level of supervision and training for the staff under their supervision.

Another FYI – The United States Supreme Court ruled on June 8, 2023, in a 7 – 2 ruling in the Talevski case, to preserve the right of people with disabilities to sue when federally funded programs aren't properly administered.

Congressional action – The United States Senate is pursuing legislation to develop a Standardized Occupational Classification (SOC) for the Direct Support Professional. This is necessary to strengthen the DSP job in rate studies and to more professionally identify the job

to improve recruitment and retention for this critical position. The current rate studies utilize a Bureau of Labor Statistics proxy role. It uses a hybrid job of the Community and Social Service Specialist, the Home Health/Personnel Care Aide and the Social and Human Services Assistant. These jobs do not include the training, competencies, and importance of these valuable personnel. DSPs are the life blood of the DD system. They participate in incorporating our participants in their local communities as outlined in their person-centered individual support/service plans.

Fee for service model – The process for establishing rates for these “fee-for-service” DD programs is very regulated. The Centers for Medicare and Medicaid (CMS) establish the system that states must comply with to be approved to provide Home and Community Based (HCBS) Waiver services. CMS must approve the number of people a state will be able to serve under their respective waivers. This is all done through an application and amendment process. The application is relatively complicated. Once approved, the application must be changed or revised through an amendment process. No changes can be made until CMS has approved the changes. On any amendment, CMS has 90 days to respond and that can be extended if CMS has more questions. The approval may then be retroactive to the date of the original amendment. Rate studies are always retrospective using the data from the most recently completed fiscal or calendar year. This process becomes especially restrictive when state statutory changes are passed that increase the costs of provider entities. This includes changes like the Healthy Workplace Act and the proposed Paid Family and Medical Leave Act. When providers are operating on slim to zero or negative margins, any increased cost without subsequent increases in “fee-for-service” rates has catastrophic results. Providers could stop services altogether or request to go on self-imposed moratorium. Each of those options places the New Mexico system in potential jeopardy with CMS for access issues. CMS has issued a proposed rulemaking Ensuring Access to Medicaid Services. The public comment period is closed, and we are waiting for the final language. There was language included that exempted HCBS from the proposed rule. But there was a payment adequacy provision in the rule that could be applied to HCBS providers. That language stated that 80% of the funding received for HCBS services must be paid to direct support professionals limiting administrative overhead. The 2023 rate study showed a 31% administrative overhead rate which is comparable in other states.

Data requests - ADDCP has requested the number of people receiving Supported Living, Family Living and In Home Living Supports from our state partners. To date we have not received a response to that request. These are the major, labor-intensive supports in the DD and Mi Via waivers. Family Living received a recommended rate increase of 19%. In Home Living Supports received a recommended rate increase of 0 – 21%. Supported Living received a 1% recommended rate increase for Category 4, which is a service for Extraordinary Medical and Behavioral Support. Remember, the current rates are based on FY 19 cost reports and data. Since 2019, we have experienced the COVID pandemic, record 40-year high inflation, an increase in the state minimum wage and the Healthy Workplace Act. Providers have not

received any rate increases other than the American Rescue Plan Act temporary increases. We do not see how the 2023 cost study would generate the same reimbursement rates as the 2019 rate study.

Conclusion – Considering these factors, it is important that we collaborate with all stakeholders to find solutions to these concerns. We are committed to working to find solutions to these concerns so that we may all get back to providing the supports and services that our citizens with intellectual and developmental disabilities (I/DD) and their families both need and deserve to live their best lives. ADDCP wants to ensure the capacity in the system to provide safe, quality DD services well into the future. An informal survey of our twenty-nine providers revealed that ADDCP members provide support to over 5,000 DD waiver participants. There is duplication in that number. ADDCP is asking for consideration of these and other issues. I have heard it said that “to go somewhere we have never been, we must do things we have never done”. If we want to continue to provide quality services to our New Mexican citizens, we must provide the funding. That is the responsibility of the State of New Mexico, so that providers can comply with all the state and federal requirements imposed on the system.

Thank you for your time and attention. I will stand for questions.



MEMBER AGENCIES

A Better Way of Living

Abrazos Family Support Services

Alianza Family Services

A. W. Holdings of New Mexico dba Benchmark

Citizens for the Developmentally Disabled

Dungarvin New Mexico

Family Options

J and J Home Care

Las Cumbres

New Vistas

PMS – Project Shield

Santa Maria El Mirador

Share Your Care

Tobosa Developmental Services

Zia Therapy Center

Ability First

Adelante Development Center

Alta Mira Specialized Family Services

ARCA

CARC

ENMRSH

Great Livin'

La Vida Felicidad

Maxcare

Peak Developmental Services

Progressive Residential Services

Santa Lucia

Su Vida Services

Tresco, Inc.