

HOUSE BILL 395

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Kathleen Cates and Elizabeth "Liz" Thomson

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LABOR; REQUIRING THE DEPARTMENT OF HEALTH TO COLLECT AND REPORT DEMOGRAPHIC AND COMPENSATION DATA ON DEVELOPMENTAL DISABILITIES DIRECT SUPPORT PROVIDER AGENCY EMPLOYEES; AMENDING A SECTION OF THE DEVELOPMENTAL DISABILITIES ACT REGARDING THE DETERMINATION OF RATES PAID FOR SUPPORT AND SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

.225103.1AIC March 6, 2023 (12:22pm)

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SECTION 1. Section 28-16A-3 NMSA 1978 (being Laws 1993, Chapter 50, Section 3, as amended) is amended to read:

"28-16A-3. DEFINITIONS.--As used in the Developmental Disabilities Act:

A. "assessment" means a process for measuring and determining a person's strengths, needs and preferences to determine eligibility for support and services and to develop or modify an individual support and service plan;

B. "case management" means a process that:

(1) assists a person with a developmental disability to know and understand the person's choices and rights and to obtain support and services that the person is eligible to receive and that are reflected in the individual support and service plan; and

(2) monitors the provision of support and services received by a person with a developmental disability;

C. "comprehensive review and analysis" means the comprehensive review and analysis conducted pursuant to Subsection A of Section 28-16A-7 NMSA 1978;

D. "council" means the developmental disabilities council;

E. "department" means the department of health;

F. "diagnostic evaluation" means an empirical process that determines if, and to what degree, a person has a developmental deficiency and the type of intervention and services that are needed for the person and that person's

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family;

G. "direct support professional" means a non-administrative employee HHHC→or subcontractor←HHHC of a direct support provider agency who spends the majority of the employee's HHHC→or subcontractor's←HHHC work hours providing supportive services to individuals with developmental disabilities living and working in the community;

H. "direct support provider agency" means an entity that:

(1) has entered into a medicaid provider participation agreement with the medical assistance division of the human services department and a provider agreement with the department of health;

(2) is reimbursed for services provided to persons through a developmental disabilities medicaid waiver program; and

(3) employs HHHC→or subcontracts with←HHHC direct support professionals to provide services to persons with developmental disabilities;

~~[G.]~~ I. "inclusive" means using the same community resources that are used by and available to all citizens and developing relationships with nonpaid caregivers or recipients of support and services for persons with developmental disabilities;

~~[H.]~~ J. "individual support and service plan" means

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a plan developed by an interdisciplinary team and agreed to by a person with a developmental disability, or by a parent of a minor or a legal guardian, as appropriate, that describes the combination and sequence of special, interdisciplinary or generic care, treatment or other support and services that are needed and desired by a person with a developmental disability;

[F.] K. "interdisciplinary team" means a group of persons drawn from or representing professions that are relevant to identifying the needs of a person with a developmental disability and designing a program to meet that person's needs. The team shall include the person with a developmental disability, the parent of a minor child or a legal guardian, as appropriate;

[G.] L. "self-determination" means having:

- (1) the ability and opportunity to:
  - (a) communicate and make personal decisions;
  - (b) communicate choices and exercise control over the type and intensity of services, supports and other assistance that an individual receives; and
  - (c) participate in, and contribute to, an individual's community;
- (2) the authority to control resources to obtain needed services, supports and other assistance; and
- (3) support, including financial support, to

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advocate for oneself and others, develop leadership skills through training in self-advocacy, participate in coalitions, educate policymakers and play a role in the development of public policies that affect individuals with developmental disabilities; and

[K-] M. "service provider" means a nonprofit corporation, tribal government or tribal organization, unit of local government or other organization that has entered into a contract or provider agreement with the department for the purpose of providing developmental disabilities support and services."

**SECTION 2.** A new section of the Developmental Disabilities Act is enacted to read:

"[NEW MATERIAL] DATA COLLECTION AND REPORTING.--

A. By April 1, 2024 and annually thereafter, direct support provider agencies shall submit data, in a form approved by the department, from the previous calendar year regarding direct support professionals that includes:

(1) the number of full- or part-time employees at any time during the year, the percentage of the year that the employees were employed and the total length of time that the employees had been employed as of the end of the year;

(2) disaggregated demographic information, including age, gender, race and ethnicity, education level and work experience;

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- (3) employee wages paid; and
- (4) employee benefits provided.

B. The department shall submit an annual report by September 1, 2024, and on September 1 of each subsequent year to the legislative health and human services committee, the legislative finance committee and the governor regarding the direct support professional workforce, including:

- (1) the total number of full- and part-time employees;
- (2) a demographic analysis of this workforce;
- (3) the highest, lowest and average hourly wage paid by direct support provider agencies;
- (4) the average length of employment and vacancy and turnover rates; and
- (5) the availability and type of benefits provided by direct support provider agencies."

**SECTION 3.** Section 28-16A-16 NMSA 1978 (being Laws 1993, Chapter 50, Section 16) is amended to read:

"28-16A-16. DETERMINATION OF RATES FOR PAYMENT FOR SUPPORT AND SERVICES.--

A. The department shall develop, implement and maintain a provider reimbursement system based on the level of support and services required by a person with a developmental disability.

~~B. If the approved funding from the legislature~~

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~~does not permit the implementation of a reimbursement system using the considerations provided for in this section, the department shall develop and implement a service reduction plan.~~

~~C. The department shall report to the legislature and the governor the impact of any service reduction plans and the steps that will be taken to reinstate those services.~~

~~D. The department shall report annually to the legislature and the governor an estimate of the costs of maintaining support and services for persons with developmental disabilities being served, including the effects of changes in the costs of providing support and services, an estimate of the costs of providing support and services to persons that are eligible for service but not receiving services and the request of the department for funding of services.]~~

B. Beginning in 2024, contingent on available funding, the department shall conduct an independent biennial cost study for the purpose of recommending reimbursement rates for all service providers. The cost study shall include all reasonable costs of providing services. Recommended reimbursement rates, based on the cost study, shall include consideration of the following factors:

(1) the additional costs that would be incurred by the direct support provider agency if all direct support professionals were paid at least one hundred fifty

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percent of the state minimum wage;

(2) recent and projected changes in costs due to factors that include inflation, changes in the applicable minimum wage or newly effective requirements for employers during the period covered by the cost study; and

(3) direct support professional vacancies that affect direct support provider agency costs.

C. The department's budget request for each fiscal year shall include sufficient funding to:

(1) continue to provide supports and services for persons with developmental disabilities currently being served, based on the service provider reimbursement rates recommended by the most recent cost study; and

(2) serve additional persons, who as determined by the department, are eligible for but are not currently receiving services.

D. If sufficient funds have been appropriated to implement the reimbursement rates recommended by the most recent cost study, the department shall implement those rates, subject to approval by the federal centers for medicare and medicaid services. If the level of funding for developmental disabilities services and support is determined to be insufficient to fully implement such rates, the department shall adjust reimbursement rates as favorably as possible based on the level of funding available, subject to approval by the

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federal centers for medicare and medicaid services.

E. Contractors shall be required to submit records of support and services delivered as determined by the department, subject to monitoring by the department.

~~[F. Contingent upon appropriations, the department shall conduct an independent biannual cost study for the purpose of establishing payment rates. The results of this study shall be submitted to the legislature.]"~~