

HOUSE BILL 395

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

INTRODUCED BY

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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:

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

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1 or modify an individual support and service plan;

2 B. "case management" means a process that:

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

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

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

13 D. "council" means the developmental disabilities  
14 council;

15 E. "department" means the department of health;

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

21 G. "direct support professional" means a non-  
22 administrative employee of a direct support provider agency who  
23 spends the majority of the employee's work hours providing  
24 supportive services to individuals with developmental  
25 disabilities living and working in the community;

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

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

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

10                              (3) employs direct support professionals to  
11                   provide services to persons with developmental disabilities;

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

17                              ~~[H.]~~ J. "individual support and service plan" means  
18                   a plan developed by an interdisciplinary team and agreed to by  
19                   a person with a developmental disability, or by a parent of a  
20                   minor or a legal guardian, as appropriate, that describes the  
21                   combination and sequence of special, interdisciplinary or  
22                   generic care, treatment or other support and services that are  
23                   needed and desired by a person with a developmental disability;

24                              ~~[I.]~~ K. "interdisciplinary team" means a group of  
25                   persons drawn from or representing professions that are

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1 relevant to identifying the needs of a person with a  
2 developmental disability and designing a program to meet that  
3 person's needs. The team shall include the person with a  
4 developmental disability, the parent of a minor child or a  
5 legal guardian, as appropriate;

6 ~~[J.]~~ L. "self-determination" means having:

7 (1) the ability and opportunity to:

8 (a) communicate and make personal  
9 decisions;

10 (b) communicate choices and exercise  
11 control over the type and intensity of services, supports and  
12 other assistance that an individual receives; and

13 (c) participate in, and contribute to,  
14 an individual's community;

15 (2) the authority to control resources to  
16 obtain needed services, supports and other assistance; and

17 (3) support, including financial support, to  
18 advocate for oneself and others, develop leadership skills  
19 through training in self-advocacy, participate in coalitions,  
20 educate policymakers and play a role in the development of  
21 public policies that affect individuals with developmental  
22 disabilities; and

23 ~~[K.]~~ M. "service provider" means a nonprofit  
24 corporation, tribal government or tribal organization, unit of  
25 local government or other organization that has entered into a

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1 contract or provider agreement with the department for the  
2 purpose of providing developmental disabilities support and  
3 services."

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

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

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

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

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

18 (3) employee wages paid; and

19 (4) employee benefits provided.

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

25 (1) the total number of full- and part-time

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1 employees;

2 (2) a demographic analysis of this workforce;

3 (3) the highest, lowest and average hourly  
4 wage paid by direct support provider agencies;

5 (4) the average length of employment and  
6 vacancy and turnover rates; and

7 (5) the availability and type of benefits  
8 provided by direct support provider agencies."

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

11 "28-16A-16. DETERMINATION OF RATES FOR PAYMENT FOR  
12 SUPPORT AND SERVICES.--

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

17 ~~B. If the approved funding from the legislature~~  
18 ~~does not permit the implementation of a reimbursement system~~  
19 ~~using the considerations provided for in this section, the~~  
20 ~~department shall develop and implement a service reduction~~  
21 ~~plan.~~

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

25 ~~D. The department shall report annually to the~~

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1 ~~legislature and the governor an estimate of the costs of~~  
2 ~~maintaining support and services for persons with developmental~~  
3 ~~disabilities being served, including the effects of changes in~~  
4 ~~the costs of providing support and services, an estimate of the~~  
5 ~~costs of providing support and services to persons that are~~  
6 ~~eligible for service but not receiving services and the request~~  
7 ~~of the department for funding of services.]~~

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

15 (1) the additional costs that would be  
16 incurred by the direct support provider agency if all direct  
17 support professionals were paid at least one hundred fifty  
18 percent of the state minimum wage;

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

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

25 C. The department's budget request for each fiscal

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1 year shall include sufficient funding to:

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

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

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

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

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

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