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HOUSE BILL 94

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

Kathleen Cates and Tara L. Lujan and Eleanor Chávez

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO LABOR; REQUIRING THE HEALTH CARE AUTHORITY DEPARTMENT TO COLLECT AND REPORT DATA RELATING TO THE DIRECT CARE WORKER WORKFORCE; REQUIRING A BIENNIAL PERSONAL CARE SERVICES COST STUDY; REQUIRING THE HEALTH CARE AUTHORITY DEPARTMENT TO IMPLEMENT THE COST STUDY'S RECOMMENDATIONS; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] DEFINITIONS.--As used in Sections 1 through 3 of this 2024 act:

A. "department" means the health care authority department;

B. "direct care worker" means a non-administrative employee of a personal care service provider agency who spends the majority of the employee's work hours providing personal

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1 care services to individuals;

2 C. "personal care service" means services provided  
3 to an individual to assist with the instrumental activities of  
4 daily living; and

5 D. "personal care service provider agency" means an  
6 entity that:

7 (1) has entered into a medicaid provider  
8 participation agreement with the medical assistance division of  
9 the department and:

10 (a) is contracted with a managed care  
11 organization to provide personal care services to medicaid  
12 recipients; or

13 (b) provides personal care services to  
14 medicaid recipients through fee-for-service arrangements;

15 (2) is reimbursed for personal care services  
16 provided to individuals covered by medicaid; and

17 (3) employs direct care workers to provide  
18 personal care services to individuals covered by medicaid.

19 SECTION 2. [NEW MATERIAL] DATA COLLECTION AND  
20 REPORTING.--

21 A. By April 1, 2025, and annually thereafter, each  
22 personal care service provider agency shall submit data to a  
23 third-party contractor engaged by the department, in a form and  
24 manner prescribed to the department, regarding direct care  
25 workers. The data shall include:

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1 (1) the number of full-time and part-time  
2 direct care workers employed at any time during the previous  
3 calendar year;

4 (2) the percentage of the previous calendar  
5 year that each employee was employed at the agency;

6 (3) the total length of employment for each  
7 employee as of the end of the previous calendar year;

8 (4) disaggregated demographic information on  
9 direct care workers that includes:

10 (a) age;

11 (b) gender;

12 (c) race and ethnicity; and

13 (d) education level;

14 (5) the hourly wage paid to each direct care  
15 worker during the previous calendar year;

16 (6) employee benefits provided to direct care  
17 workers in the previous calendar year; and

18 (7) the number of vacant direct care worker  
19 positions that the personal care service provider agency had  
20 not filled as of the end of the previous calendar year.

21 B. The format for data reporting shall provide for  
22 sufficient confidentiality to protect both an individual direct  
23 care worker's identifying information and an individual  
24 personal care service provider agency's identity.

25 C. The department shall review and analyze the data

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1 submitted by personal care service provider agencies and submit  
2 a report by September 1, 2025, and September 1 of each  
3 subsequent year, to the legislative health and human services  
4 committee, the legislative finance committee and the governor  
5 concerning the direct care workforce. The report shall  
6 include:

7 (1) the total number of full-time and part-  
8 time direct care workers in the state;

9 (2) a demographic analysis of the direct care  
10 worker workforce;

11 (3) the highest, lowest and average hourly  
12 wage paid to direct care workers;

13 (4) the average length of employment for  
14 direct care workers;

15 (5) the vacancy and turnover rates for direct  
16 care workers; and

17 (6) the availability and type of benefits  
18 provided by personal care service provider agencies to direct  
19 care workers.

20 SECTION 3. [NEW MATERIAL] COST STUDY AND RATE  
21 DETERMINATION.--

22 A. The department shall contract for an independent  
23 biennial cost study for the purposes of determining the cost of  
24 providing personal care services and recommending reimbursement  
25 rates for personal care service provider agencies to cover

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1 those costs. The contract for the initial cost study shall be  
2 executed no later than December 31, 2024. Recommended  
3 reimbursement rates from the cost study shall include  
4 consideration of the following factors:

5 (1) the additional costs that would be  
6 incurred by personal care service provider agencies if direct  
7 care workers employed by personal care service provider  
8 agencies were to be paid at least one hundred fifty percent of  
9 the state minimum wage;

10 (2) recent and projected changes in costs due  
11 to factors that include direct and indirect costs, inflation  
12 and changes in the applicable minimum wage; and

13 (3) direct care worker vacancies that affect  
14 personal care service provider agency costs.

15 B. The department's budget request for each fiscal  
16 year shall include sufficient funding to implement the most  
17 recent cost study's recommended reimbursement rates that would  
18 allow all direct care workers employed by personal care service  
19 provider agencies to be paid at least one hundred fifty percent  
20 of the state minimum wage.

21 C. If sufficient funds have been appropriated to  
22 implement the reimbursement rates recommended by the most  
23 recent cost study, the department shall adjust capitation  
24 payments to managed care organizations to allow the managed  
25 care organizations to pay in-network personal care service

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1 provider agencies the cost study's recommended reimbursement  
2 rates for personal care services, subject to approval by the  
3 federal centers for medicare and medicaid services. If the  
4 department determines that there is not a sufficient level of  
5 funding to support capitation payments that fully implement the  
6 personal care service reimbursement rates recommended by the  
7 most recent cost study, the department shall adjust the  
8 capitation rates as favorably as possible based on the level of  
9 funding available, subject to approval by the federal centers  
10 for medicare and medicaid services.

11 SECTION 4. APPROPRIATION.--Four hundred thousand dollars  
12 (\$400,000) is appropriated from the general fund to the health  
13 care authority department for expenditure in fiscal year 2025  
14 to contract for an independent cost study that determines the  
15 cost of providing personal care services and recommends  
16 reimbursement rates that are sufficient to cover the cost of  
17 providing personal care services. Any unexpended or  
18 unencumbered balance remaining at the end of fiscal year 2025  
19 shall revert to the general fund.

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