

**MINUTES
of the
FIRST MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**September 17, 2020
Video Conference Meeting**

The first meeting of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee was called to order by Representative Joanne J. Ferrary, chair, on September 17, 2020 at 9:06 a.m. by video and audio conference via an online platform.

Present

Rep. Joanne J. Ferrary, Chair
Sen. Nancy Rodriguez, Vice Chair
Rep. Rachel A. Black
Rep. Elizabeth "Liz" Thomson

Absent

Sen. Linda M. Lopez
Sen. Mark Moores

Advisory Members

Rep. Deborah A. Armstrong
Rep. Miguel P. Garcia
Sen. Elizabeth "Liz" Stefanics

Guest Legislators

Rep. Rebecca Dow
Rep. Tara L. Lujan
Sen. Gerald Ortiz y Pino
Sen. Michael Padilla
Sen. Antoinette Sedillo Lopez

Staff

Peter Kovnat, Bill Drafter, Legislative Council Service (LCS)
Sabina Gaynor, Bill Drafter, LCS

Minutes Approval

Because the subcommittee will not meet again this year, the minutes for this meeting have not been officially approved by the subcommittee.

Handouts

Handouts and other written testimony are in the meeting file and posted on the legislature's website.

Thursday, September 17

Welcome and Introductions (9:08 a.m.)

The chair welcomed everyone to the meeting and subcommittee members introduced themselves.

Supported Decision Making in Lieu of Guardianship and Conservatorship (9:17 a.m.)

Alice Liu McCoy, executive director, Developmental Disabilities Planning Council (DDPC), and Pamela Stafford, public policy director, The Arc of New Mexico, provided a presentation on supported decision making in lieu of guardianships and conservatorships. The presentation can be found here:

<https://www.nmlegis.gov/handouts/DISC%20091720%20Item%201%20McCoy.pdf>.

Questions and comments from subcommittee members addressed the following topics:

- whether a statute is needed at this time, or whether a task force created through a memorial should study the issue;
- the risks of enacting laws that will not properly address supported decision making;
- introduction of a memorial would create a time lag in addressing supported decision making, and a statute would be more efficient;
- whether an appropriation would benefit the study of supported decision making if a memorial is introduced;
- guardianship law has been a past concern of the legislature, particularly with regard to the rights of persons with disabilities and the lack of oversight of guardians;
- the sixty-day session would provide the proper time for input on a supported decision making bill;
- the payment of financial abuse monitors should be studied;
- family members as first options for providing care should be studied;
- guardianship programs should receive better funding; and
- how has supported decision making been supervised in other states.

Expanding the Oversight of the DDPC Over Guardianship and Conservatorship (10:52 a.m.)

Ms. Liu McCoy provided a presentation on the expansion of DDPC oversight of guardianships and conservatorships. The presentation can be found here:

<https://www.nmlegis.gov/handouts/DISC%20091720%20Item%202%20McCoy.pdf>.

Questions and comments from subcommittee members included the following:

- guardianship oversight issues exist regarding the appropriate agency to oversee guardianship matters;

- whether any other states use their equivalent of New Mexico's DDPC as the oversight entity;
- whether a sampling or auditing program would be appropriate for monitoring annual reports that guardians must file with the courts; and
- retaliation is an issue raised by families in regard to guardianship.

Update on the Developmental Disabilities and Mi Via Waiver Programs (11:46 a.m.)

Jason Cornwell, acting deputy secretary, Department of Health (DOH), and Scott Doan, deputy director, Developmental Disabilities Supports Division, DOH, provided the subcommittee with an update on the developmental disabilities and Mi Via waiver programs. The presentation can be found here:

<https://www.nmlegis.gov/handouts/DISC%20091720%20Item%203%20Cornwell.pdf>.

Questions and comments from subcommittee members included the following:

- whether legislation can be enacted to increase access to residential services for young people;
- whether a specific location that would reduce wait times could be designated for direct support staff to be tested for coronavirus disease 2019;
- whether direct support staff members have tested positive for coronavirus disease 2019;
- whether direct support staff who test positive for coronavirus disease 2019 continue to receive pay;
- whether the income requirement is waived when an individual receives a supports waiver;
- what is the average cost for serving medically fragile persons;
- whether the majority of people receiving the medically fragile waiver are children or adults;
- which individuals fall into the "child pending" category;
- what is the attrition rate for the application list, and how many individuals are placed on wait lists; and
- many families may decide to not apply for these waivers because of the rigorous application process.

Challenges to Providing Services to People with Disabilities During the Pandemic (1:37 p.m.)

Ms. Stafford; Edward J. Kaul, president and chief executive officer, ARCA; Mark Johnson, executive director, Association of Developmental Disability Community Providers; and Jim Jackson, public policy associate, Disability Rights New Mexico, provided a presentation to the subcommittee regarding challenges faced in the course of providing services to people with disabilities during the coronavirus disease 2019 pandemic. The presentation materials can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=DISC&Date=9/17/2020&ItemNumber=4>.

Questions and comments from subcommittee members included the following:

- whether crisis intervention teams have provided outreach for individuals who receive services;
- what types of training are available for police for dealing with persons with disabilities;
- a concern about visitation restrictions during the coronavirus disease 2019 pandemic;
- what circumstances affect individuals who are not able to access the community benefits program; and
- whether an applicant for the community benefits program must be on the wait list for the developmental disabilities waiver.

Educational Challenges for Children with Disabilities in Today's World (2:52 p.m.)

Joel Davis, parent and member, DDPC; Laurel Nesbitt, staff attorney, Disability Rights New Mexico; and Representative Thomson provided a presentation regarding educational challenges experienced by children with disabilities. The presentation materials can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=DISC&Date=9/17/2020&ItemNumber=5>.

Questions and comments from subcommittee members included the following:

- restraint legislation will be introduced;
- what training exists for school boards and school superintendents;
- parents should be involved in school trainings regarding disability laws;
- whether data is available regarding how many children of color are in special education programs, and whether children of color are overrepresented; and
- a concern over school closures and obligations of school districts with respect to individualized educational plans.

Public Comment (4:20 p.m.)

Comments from members of the public included the following:

- Adrian Smith, president and chief executive officer, New Mexico Caregivers Coalition, said that there is minimal data provided by state agencies, illustrating the difficulties caregivers encounter when attempting to receive paid time off;
- Christina Hastings said that problems with individualized educational plans persist and have been exacerbated during the coronavirus disease 2019 pandemic; and

- Ellen Pinnes, Disability Rights New Mexico, encouraged the subcommittee to consider all New Mexicans with disabilities in need of support and to continue to fund the community benefits program.

Adjournment

There being no further business before the subcommittee, the meeting adjourned at 4:54 p.m.