

HOUSE BILL 422

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Joanne J. Ferrary and Elizabeth "Liz" Thomson and

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO DISABILITY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE DEVELOPMENTAL DISABILITIES ACT TO MAKE CHANGES TO THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL MEMBERSHIP AND DUTIES.

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

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

"28-16A-1. SHORT TITLE.--~~[Sections 1 through 18 of this act]~~ Chapter 28, Article 16A NMSA 1978 may be cited as the

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"Developmental Disabilities Act".

SECTION 2. Section 28-16A-3 NMSA 1978 (being Laws 1993, Chapter 50, Section 3) 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 [~~his~~] the person's choices and rights and to obtain support and services that the person is eligible to receive and that [~~is~~] are reflected in the individual support and service plan; and

(2) monitors the provision of support and services received by [~~the~~] 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 planning council;

[~~G.~~] E. "department" means the department of health;

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~~[D-]~~ 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 family;

~~[E-]~~ G. "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;

~~[F-]~~ H. "individual support and service plan" means 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;

~~[G-]~~ I. "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; and

~~[H-]~~ J. "service provider" means a nonprofit

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corporation, tribal government or ~~[tribal]~~ 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 3. Section 28-16A-4 NMSA 1978 (being Laws 1993, Chapter 50, Section 4) is amended to read:

"28-16A-4. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL-- CREATION--MEMBERSHIP--TERMS.--

A. The "developmental disabilities planning council" is created in accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act. The ~~[developmental disabilities planning]~~ council shall be an adjunct agency as provided in the Executive Reorganization Act.

B. The ~~[developmental disabilities planning]~~ council shall consist of no fewer than ~~[eighteen]~~ twenty-five members ~~[at least half of whom shall be persons with developmental disabilities or parents, immediate relatives or legal guardians of persons with developmental disabilities]~~. The ~~[developmental disabilities planning]~~ council shall include:

HHHC → (1) members, comprising at least sixty percent of the council's membership, who are individuals with developmental disabilities or parents, immediate relatives or legal guardians of individuals with developmental disabilities;

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~~provided that none of these members shall be an employee, or someone who manages employees, of a state agency that receives funds to provide developmental disabilities supports and services;~~←HHHC

HHHC→(1) members who are individuals with developmental disabilities or parents, immediate relatives or legal guardians of individuals with developmental disabilities comprising at least sixty percent of the council's membership, provided that:

(a) no more than three of these members are primarily served by the same developmental disabilities service provider;

(b) none of these members shall be an employee, contractor or board member of a service provider that receives funds from the council or the department to provide developmental disabilities supports and services; and

(c) as long as the council operates the office of guardianship, pursuant to Section 28-16B-2 NMSA 1978, none of these members shall be an employee, contractor or board member of an agency that provides guardianship, conservatorship or mental health treatment guardianship services;←HHHC

[(+)] (2) the secretary of health, or [his] the secretary's designee;

[(+)] (3) the secretary of human services, or

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[his] the secretary's designee;

[~~(3)~~] (4) the secretary of children, youth and families, or [his] the secretary's designee;

[~~(4)~~] (5) the [~~director~~] secretary of [~~the state agency on aging, or his~~] aging and long-term services, or the secretary's designee;

[~~(5)~~] ~~two directors from the state department of]~~

(6) the secretary of public education [~~including the vocational rehabilitation division~~];

(7) the director of the vocational rehabilitation division of the public education department;

[~~(6)~~] (8) the director of the state protection and advocacy system established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act;

[~~(7)~~] ~~representatives of institutions of post-secondary education~~;

[~~(8)~~] ~~representatives of each program established within institutions of post-secondary education pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and~~

[~~(9)~~] ~~representatives of local government agencies, nongovernment agencies or nonprofit groups concerned with services to persons with developmental disabilities, including a service provider]~~

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(9) the director of any entity within a state institution of higher education designated as a university center for excellence in developmental disabilities education, research and service; and

(10) representatives of local and nongovernmental agencies and private nonprofit groups concerned with services for individuals with developmental disabilities in New Mexico.

C. The governor shall select the members of the council for appointment pursuant to Paragraphs (1) and (10) of Subsection B of this section after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with developmental disabilities. The council may, at the initiative of the council or at the request of the governor, coordinate council and public input to the governor regarding all recommendations.

D. The membership of the council shall be geographically representative of the state and reflect the diversity of the state with respect to race and ethnicity.

~~[G.]~~ E. Members, except for ex-officio members, shall be appointed by the governor for terms of three years.

F. The governor shall provide for rotation of the membership of the council. These provisions shall allow members to continue to serve on the council until those

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members' successors are appointed.

G. The council shall notify the governor regarding membership requirements of the council and shall notify the governor when vacancies on the council remain unfilled for a significant period of time."

SECTION 4. Section 28-16A-5 NMSA 1978 (being Laws 1993, Chapter 50, Section 5) is amended to read:

"28-16A-5. POWERS AND DUTIES.--

A. The [~~developmental disabilities planning~~] council shall:

~~[(1) act as a planning and coordinating body for persons with developmental disabilities;~~

~~(2)]~~ (1) provide statewide advocacy [~~systems~~] for persons with developmental disabilities;

~~[(3) work with appropriate state agencies to develop the developmental disabilities three-year plan as required by the federal Developmental Disabilities Assistance and Bill of Rights Act;~~

~~(4) monitor and evaluate the implementation of the developmental disabilities state plan;]~~

(2) develop and submit to the federal government the five-year plan for council activities and any amendments to the plan;

~~[(5)]~~ (3) to the maximum extent feasible, review and comment on all state plans that relate to programs

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affecting persons with developmental disabilities;

[~~(6)~~] (4) submit to the secretary of the United States department of health and human services, through the office of the governor, periodic reports that the secretary may request;

[~~(7)~~] (5) advise the governor and the legislature about the needs of persons with developmental disabilities; and

[~~(8)~~] (6) carry out any other activities authorized or required by the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000.

B. The [~~developmental disabilities planning~~] council is authorized to:

(1) award grants and enter into contracts to carry out its duties;

(2) seek funding from sources other than the state;

(3) create and support regional county or local advisory councils; and

(4) provide training to persons with developmental disabilities, their families and providers of support and services through traineeships, sponsoring training opportunities and by other means determined appropriate by the [~~developmental disabilities planning~~] council."

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SECTION 5. Section 28-16A-6 NMSA 1978 (being Laws 1993, Chapter 50, Section 6) is amended to read:

"28-16A-6. ELIGIBILITY.--

A. For purposes of eligibility for support and services [~~A.~~], "developmental disability" means a severe chronic disability of [~~a person that~~] an individual, which disability:

(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or combination of mental and physical impairments;

(2) is manifested before the person reaches the age of twenty-two years;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity:

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; and

(g) economic self-sufficiency; and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary or

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generic care treatment or other support and services that are of life-long or extended duration and are individually planned and coordinated.

B. ~~[are children]~~ A child, from birth through two years of age, who [are] is at risk for or [have] who has a developmental [delays] delay as defined by rules of the department [These children are] is eligible for early intervention services [or].

C. ~~[is a person]~~ An individual who is eligible for developmental disability supports and services based on any previous definition of developmental disability used by the state and [is] was receiving services on [the effective date of the Developmental Disabilities Act] June 15, 1993 shall remain eligible for developmental disability supports and services. However, [children] a child, from birth through age two who [were] is determined to be [a] at risk for or [have] who has a developmental [delays are] delay shall be eligible for early intervention services only, unless [meeting] the child meets the criteria set forth in Subsection A of this section."

SECTION 6. Section 28-16A-7 NMSA 1978 (being Laws 1993, Chapter 50, Section 7) is amended to read:

"28-16A-7. ~~[ASSESSMENT OF NEEDS OF PERSONS WITH DEVELOPMENTAL DISABILITIES]~~ COMPREHENSIVE REVIEW AND ANALYSIS.--

A. ~~[In order to comply with the provisions of 42~~  
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~~U.S.C. Section 6067]~~ The ~~[developmental disabilities planning]~~  
council shall conduct a ~~[needs assessment of persons with  
developmental disabilities to determine]~~ comprehensive review  
and analysis of the extent to which services, supports and  
other assistance are available to individuals with  
developmental disabilities and their families and the extent of  
unmet need for services, supports and all other assistance for  
those individuals and their families in the state. The results  
of the comprehensive review and analysis shall include:

(1) the number of individuals with  
developmental disabilities residing in New Mexico;

(2) the range and degree of severity of  
~~[their]~~ the disabilities of individuals with developmental  
disabilities in New Mexico; and

~~[(3) the present placement and support and  
services being received; and~~

~~(4) the needs for support and services and the  
extent that their needs are unserved or underserved]~~

(3) such other information and analysis  
required under federal law.

B. The findings of the ~~[assessment]~~ comprehensive  
review and analysis shall be ~~[included in the state plan for  
developmental disabilities services and support]~~ utilized in  
the development of the council's five-year plan.

C. The ~~[assessment shall be repeated]~~ council

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shall:

(1) repeat the comprehensive review and analysis at least every [~~two~~] five years, with a summary of the findings [~~distributed~~]; and

(2) distribute the comprehensive review and analysis and the summary of findings to relevant organizations, programs and agencies in the state."

SECTION 7. Section 28-16A-10 NMSA 1978 (being Laws 1993, Chapter 50, Section 10) is amended to read:

"28-16A-10. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--STAFF.--The [~~developmental disabilities planning~~] council shall employ an executive director, who is the administrative officer of the council. The executive director shall employ other necessary employees pursuant to the provisions of the Personnel Act."

SECTION 8. Section 28-16A-11 NMSA 1978 (being Laws 1993, Chapter 50, Section 11) is amended to read:

"28-16A-11. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--REPORTS.--The [~~developmental disabilities planning~~] council shall submit reports on its preceding year's work to the governor and the [~~legislative~~] interim legislative health and human services committee by December 1 of each year. The reports shall contain recommendations, if any, for legislation or other appropriate action."

SECTION 9. Section 28-16A-12 NMSA 1978 (being Laws 1993, .211351.4

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Chapter 50, Section 12) is amended to read:

"28-16A-12. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--COMPENSATION.--~~[Developmental disabilities planning]~~ Council members shall be reimbursed as provided in the Per Diem and Mileage Act. Reasonable accommodations shall be made available to permit full participation in council activities by its members, including personal assistance to members with developmental disabilities and respite care for members that are parents, immediate relatives or legal guardians of persons with developmental disabilities. Council members shall receive no other compensation, perquisite or allowance ~~[shall be received]~~ for their service on the council."

SECTION 10. Section 28-16A-13 NMSA 1978 (being Laws 1993, Chapter 50, Section 13) is amended to read:

"28-16A-13. AUTHORIZATION FOR PROVIDING ~~[COMMUNITY-BASED]~~ SUPPORT AND SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.--

A. Subject to the availability of appropriations provided expressly for this purpose, the department may:

(1) acquire, provide or coordinate support and services for persons with developmental disabilities;

(2) enter into contracts and provider agreements with agencies and individuals capable of providing support and services to persons with developmental disabilities ~~[that promote the objectives of the department's state plan,~~

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~~prepared pursuant to Section 5 of the Developmental Disabilities Act]; and~~

(3) establish advisory councils and task forces as necessary to guide the development and review of support and services to persons with developmental disabilities.

B. Support and services shall be provided based on individual support and service plans developed by an interdisciplinary team. The team is responsible for collectively evaluating the child's or adult's needs and developing an individual support and service plan to meet the needs.

C. The department shall:

(1) solicit the involvement of consumers, providers, parents, professional organizations and other governmental organizations prior to the adoption or revision of any policies or regulations concerning the provision of support, services, standards or funding systems. Participants shall be selected in a manner that reflects geographical, cultural, organizational and professional representation across the state;

(2) develop policies, procedures, rules and regulations that, to the extent possible, will promote uniformity in reimbursement and quality assurance systems regardless of the source of funding; and

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(3) convene and maintain a family infant toddler inter-agency coordinating council and a statewide adult support and services task force that shall, at a minimum, address quality assurance."

SECTION 11. Section 28-16A-18 NMSA 1978 (being Laws 1993, Chapter 50, Section 18) is amended to read:

"28-16A-18. DEVELOPMENTAL DISABILITIES EARLY CHILDHOOD EVALUATION SYSTEM.--The state shall have a timely, comprehensive, multidisciplinary system for evaluating infants, toddlers and preschool-age children suspected of having developmental delays. Diagnostic evaluations for infants and toddlers shall address family service needs and shall include training capabilities to educate community providers and parents in the understanding and application of the evaluations. This diagnostic evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division or the developmental disabilities supports division of the department, the university of New Mexico's [~~developmental disabilities team~~] center for development and disability and the [~~state department of~~] public education department."

SECTION 12. A new section of the Developmental Disabilities Act is enacted to read:

"[NEW MATERIAL] REPORTING--DEPARTMENT OF HEALTH--  
INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL

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DISABILITIES--INDEPENDENT REVIEW.--Within thirty days of the date on which reporting pursuant to each review is available, the department shall provide the council with each report issued pursuant to the independent reviews of intermediate care facilities for individuals with intellectual disabilities that are performed pursuant to the requirements of federal law."

SECTION 13. REPEAL.--Sections HHHC→28-16A-9←HHHC  
HHHC→28-16A-8←HHHC and 28-16A-19 NMSA 1978 (being Laws 1993, Chapter 50, Section HHHC→9 8←HHHC and Laws 2003, Chapter 323, Section 1) are repealed.

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