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AN ACT

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

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.--Chapter 28, Article 16A NMSA 1978 may be cited as the "Developmental Disabilities Act"."

SECTION 2. Section 28-16A-2 NMSA 1978 (being Laws 1993, Chapter 50, Section 2) is amended to read:

"28-16A-2. LEGISLATIVE AUTHORIZATION.--The Developmental Disabilities Act authorizes the department to plan, provide and coordinate support and services to persons with developmental disabilities."

SECTION 3. 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

1 determine eligibility for support and services and to develop
2 or modify an individual support and service plan;

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

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

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

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

15 D. "council" means the developmental disabilities
16 council;

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

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

23 G. "inclusive" means using the same community
24 resources that are used by and available to all citizens and
25 developing relationships with nonpaid caregivers or

1 recipients of support and services for persons with
2 developmental disabilities;

3 H. "individual support and service plan" means a
4 plan developed by an interdisciplinary team and agreed to by
5 a person with a developmental disability, or by a parent of a
6 minor or a legal guardian, as appropriate, that describes the
7 combination and sequence of special, interdisciplinary or
8 generic care, treatment or other support and services that
9 are needed and desired by a person with a developmental
10 disability;

11 I. "interdisciplinary team" means a group of
12 persons drawn from or representing professions that are
13 relevant to identifying the needs of a person with a
14 developmental disability and designing a program to meet that
15 person's needs. The team shall include the person with a
16 developmental disability, the parent of a minor child or a
17 legal guardian, as appropriate;

18 J. "self-determination" means having:

19 (1) the ability and opportunity to:

20 (a) communicate and make personal
21 decisions;

22 (b) communicate choices and exercise
23 control over the type and intensity of services, supports and
24 other assistance that an individual receives; and

25 (c) participate in, and contribute to,

1 an individual's community;

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

4 (3) support, including financial support, to
5 advocate for oneself and others, develop leadership skills
6 through training in self-advocacy, participate in coalitions,
7 educate policymakers and play a role in the development of
8 public policies that affect individuals with developmental
9 disabilities; and

10 K. "service provider" means a nonprofit
11 corporation, tribal government or tribal organization, unit
12 of local government or other organization that has entered
13 into a contract or provider agreement with the department for
14 the purpose of providing developmental disabilities support
15 and services."

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

18 "28-16A-4. DEVELOPMENTAL DISABILITIES COUNCIL--
19 CREATION--MEMBERSHIP--TERMS.--

20 A. The "developmental disabilities council" is
21 created in accordance with the federal Developmental
22 Disabilities Assistance and Bill of Rights Act. The council
23 shall be an adjunct agency as provided in the Executive
24 Reorganization Act.

25 B. The council shall consist of no fewer than

1 twenty-five members, at least sixty percent of whom shall be:

2 (1) individuals with developmental
3 disabilities;

4 (2) parents or legal guardians of children
5 with developmental disabilities; or

6 (3) immediate relatives or guardians of
7 adults with mentally impairing developmental disabilities who
8 cannot advocate for themselves.

9 C. Of the sixty percent of members described in
10 Subsection B of this section, one-third shall be individuals
11 with developmental disabilities, one-third shall be members
12 described in Paragraphs (2) and (3) of Subsection B of this
13 section and one-third shall be a combination of members
14 described in Subsection B of this section. At least one
15 member described in Subsection B of this section shall be an
16 immediate relative or guardian of an individual who resides
17 or previously resided in an institution or shall be an
18 individual with a developmental disability who resides or
19 previously resided in an institution. No member of the
20 council shall be an employee, or someone who manages
21 employees, of a state agency that receives funds to provide
22 developmental disabilities supports and services.

23 D. The council shall also include:

24 (1) the secretary of health, or the
25 secretary's designee;

1 (2) the secretary of human services, or the
2 secretary's designee;

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

5 (4) the secretary of aging and long-term
6 services, or the secretary's designee;

7 (5) the secretary of public education, or
8 the secretary's designee;

9 (6) the director of the vocational
10 rehabilitation division of the public education department,
11 or the director's designee;

12 (7) the director of the state protection and
13 advocacy system established pursuant to the federal
14 Developmental Disabilities Assistance and Bill of Rights Act
15 of 1990, or the director's designee;

16 (8) the director of an entity within a state
17 institution of higher education designated as a university
18 center for excellence in developmental disabilities
19 education, research and service; and

20 (9) at all times, representatives of local
21 and nongovernmental agencies and private nonprofit groups
22 concerned with services for individuals with developmental
23 disabilities in New Mexico.

24 E. The governor shall select the members of the
25 council for appointment pursuant to Subsection B and

1 Paragraph (9) of Subsection D of this section after
2 soliciting recommendations from organizations representing a
3 broad range of individuals with developmental disabilities
4 and individuals interested in individuals with developmental
5 disabilities. The council may, at the initiative of the
6 council or at the request of the governor, coordinate council
7 and public input to the governor regarding all
8 recommendations.

9 F. The membership of the council shall be
10 geographically representative of the state and reflect the
11 diversity of the state with respect to race and ethnicity.

12 G. Members, except for ex-officio members, shall
13 be appointed by the governor for terms of three years.

14 H. The governor shall provide for rotation of the
15 membership of the council. These provisions shall allow
16 members to continue to serve on the council until those
17 members' successors are appointed.

18 I. The council shall notify the governor regarding
19 membership requirements of the council and shall notify the
20 governor when vacancies on the council remain unfilled for a
21 significant period of time.

22 J. Council members shall recuse themselves from
23 any discussion of grants or contracts for which such members'
24 departments, agencies or programs are grantees, contractors
25 or applicants. The council shall ensure that no council

1 member casts a vote on any matter that would provide direct
2 financial benefit to the member or otherwise give the
3 appearance of a conflict of interest."

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

6 "28-16A-5. POWERS AND DUTIES.--

7 A. The council shall:

8 (1) provide statewide advocacy for persons
9 with developmental disabilities;

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

13 (3) to the maximum extent feasible, review
14 and comment on all state plans that relate to programs
15 affecting persons with developmental disabilities;

16 (4) submit to the secretary of the
17 United States department of health and human services,
18 through the office of the governor, periodic reports that
19 the secretary may request;

20 (5) advise the governor and the legislature
21 about the needs of persons with developmental disabilities;

22 (6) hold all council meetings with a video
23 conference option; and

24 (7) carry out any other activities
25 authorized or required by the provisions of the federal

1 Developmental Disabilities Assistance and Bill of Rights Act
2 of 2000.

3 B. The council is authorized to:

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

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

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

10 (4) provide training to persons with
11 developmental disabilities, their families and providers of
12 support and services through traineeships, sponsoring
13 training opportunities and by other means determined
14 appropriate by the council."

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

17 "28-16A-6. ELIGIBILITY.--

18 A. For purposes of eligibility for support and
19 services, "developmental disability" means a severe chronic
20 disability of an individual, which disability:

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

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

1 (3) is expected to continue indefinitely;
2 (4) results in substantial functional
3 limitations in three or more of the following areas of major
4 life activity:

- 5 (a) self-care;
- 6 (b) receptive and expressive language;
- 7 (c) learning;
- 8 (d) mobility;
- 9 (e) self-direction;
- 10 (f) capacity for independent living;

11 and

- 12 (g) economic self-sufficiency; and

13 (5) reflects the person's need for a
14 combination and sequence of special, interdisciplinary or
15 generic care treatment or other support and services that are
16 of life-long or extended duration and are individually
17 planned and coordinated.

18 B. A child, from birth through two years of age,
19 who is at risk for or who has a developmental delay as
20 defined by rules of the department is eligible for early
21 intervention services.

22 C. An individual who is eligible for developmental
23 disability supports and services based on any previous
24 definition of developmental disability used by the state and
25 was receiving services on June 15, 1993 shall remain eligible

1 for developmental disability supports and services. However,
2 a child, from birth through age two who is determined to be
3 at risk for or who has a developmental delay shall be
4 eligible for early intervention services only, unless the
5 child meets the criteria set forth in Subsection A of this
6 section."

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

9 "28-16A-7. COMPREHENSIVE REVIEW AND ANALYSIS.--

10 A. The council shall conduct a comprehensive
11 review and analysis of the extent to which services, supports
12 and other assistance are available to individuals with
13 developmental disabilities and their families and the extent
14 of unmet need for services, supports and all other assistance
15 for those individuals and their families in the state. The
16 results of the comprehensive review and analysis shall
17 include:

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

20 (2) the range and degree of severity of the
21 disabilities of individuals with developmental disabilities
22 in New Mexico; and

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

25 B. The findings of the comprehensive review and

1 analysis shall be utilized in the development of the
2 council's five-year plan.

3 C. The council shall:

4 (1) repeat the comprehensive review and
5 analysis at least every five years, with a summary of the
6 findings; and

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

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

12 "28-16A-8. REPORTING ON COMMUNITY SERVICES FOR PERSONS
13 WITH DEVELOPMENTAL DISABILITIES.--The department of health,
14 the human services department, the public education
15 department, the vocational rehabilitation division of the
16 public education department, the children, youth and families
17 department, the New Mexico school for the blind and visually
18 impaired and the New Mexico school for the deaf shall provide
19 to the council, on an annual basis, information and data with
20 respect to the actual or estimated number of individuals with
21 developmental disabilities served by the agency, the type of
22 services provided, any major changes in policies adopted in
23 the previous year or anticipated in the coming year that have
24 had or are expected to have a beneficial or deleterious
25 effect on persons with developmental disabilities and any

1 gaps in eligibility or services that pose a barrier to the
2 provision of services needed by persons with developmental
3 disabilities."

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

6 "28-16A-9. INFORMATION AND REFERRAL SYSTEM--
7 COORDINATION AND CONTINUATION.--In order to coordinate
8 information and referral services and eliminate the
9 duplication of effort, the council shall provide information
10 and referral services for persons with disabilities, their
11 families, providers of support and services and local and
12 state agencies, including:

- 13 A. the human services department;
- 14 B. the department of health;
- 15 C. the public education department and its
16 vocational rehabilitation division;
- 17 D. the New Mexico school for the deaf;
- 18 E. the New Mexico school for the blind and
19 visually impaired;
- 20 F. the Carrie Tingley crippled children's
21 hospital; and
- 22 G. the children, youth and families department."

23 SECTION 10. Section 28-16A-10 NMSA 1978 (being Laws
24 1993, Chapter 50, Section 10) is amended to read:

25 "28-16A-10. DEVELOPMENTAL DISABILITIES

1 COUNCIL--STAFF.--The council shall employ an executive
2 director, who is the administrative officer of the council.
3 The executive director shall employ other necessary employees
4 pursuant to the provisions of the Personnel Act."

5 SECTION 11. Section 28-16A-11 NMSA 1978 (being Laws
6 1993, Chapter 50, Section 11) is amended to read:

7 "28-16A-11. DEVELOPMENTAL DISABILITIES

8 COUNCIL--REPORTS.--The council shall submit reports on its
9 preceding year's work to the governor and the interim
10 legislative health and human services committee by November 1
11 of each year. The reports shall contain recommendations, if
12 any, for legislation or other appropriate action."

13 SECTION 12. Section 28-16A-12 NMSA 1978 (being Laws
14 1993, Chapter 50, Section 12) is amended to read:

15 "28-16A-12. DEVELOPMENTAL DISABILITIES

16 COUNCIL--COMPENSATION.--Council members shall be reimbursed
17 as provided in the Per Diem and Mileage Act and the federal
18 Developmental Disabilities Assistance and Bill of Rights Act
19 of 2000. Reasonable accommodations shall be made available
20 to permit full participation in council activities by its
21 members, including personal assistance to members with
22 developmental disabilities and respite care for members that
23 are parents, immediate relatives or legal guardians of
24 persons with developmental disabilities. Other than what is
25 required in the federal Developmental Disabilities Assistance

1 and Bill of Rights Act of 2000, council members shall receive
2 no other compensation, perquisite or allowance for their
3 service on the council."

4 SECTION 13. Section 28-16A-13 NMSA 1978 (being Laws
5 1993, Chapter 50, Section 13) is amended to read:

6 "28-16A-13. AUTHORIZATION FOR PROVIDING SUPPORT AND
7 SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.--

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

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

12 (2) enter into contracts and provider
13 agreements with agencies and individuals capable of providing
14 support and services to persons with developmental
15 disabilities; and

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

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

1 C. The department shall:

2 (1) solicit the involvement of consumers,
3 providers, parents, professional organizations and other
4 governmental organizations prior to the adoption or revision
5 of any policies or regulations concerning the provision of
6 support, services, standards or funding systems.

7 Participants shall be selected in a manner that reflects
8 geographical, cultural, organizational and professional
9 representation across the state;

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

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

18 SECTION 14. Section 28-16A-18 NMSA 1978 (being Laws
19 1993, Chapter 50, Section 18) is amended to read:

20 "28-16A-18. DEVELOPMENTAL DISABILITIES EARLY CHILDHOOD
21 EVALUATION SYSTEM.--The state shall have a timely,
22 comprehensive, multidisciplinary system for evaluating
23 infants, toddlers and preschool-age children suspected of
24 having developmental delays. Diagnostic evaluations for
25 infants and toddlers shall address family service needs and

1 shall include training capabilities to educate community
2 providers and parents in the understanding and application of
3 the evaluations. This diagnostic evaluation system shall be
4 jointly provided through a coordinated system by the
5 children's medical services bureau of the public health
6 division or the developmental disabilities supports division
7 of the department, the university of New Mexico's center for
8 development and disability and the public education
9 department."

10 SECTION 15. Section 28-16A-19 NMSA 1978 (being Laws
11 2003, Chapter 323, Section 1) is amended to read:

12 "28-16A-19. INFORMATION AND REFERRAL TASK FORCE
13 CREATION.--There is created an information and referral task
14 force located in the council to develop a statewide,
15 comprehensive "211" information and referral plan for use as
16 a telephone dialing code for access to health and human
17 services. The plan shall include a tariff structure based on
18 existing agreements, a common taxonomy of terms, coordination
19 between public and private systems and standardized statewide
20 training and exploration of a centralized information
21 repository. The task force shall include representation from
22 the department of health; the human services department; the
23 children, youth and families department; the workforce
24 solutions department; the aging and long-term services
25 department; the internet long-term care link program; the

1 governor's commission on disability; the New Mexico
2 commission for the blind; the commission for deaf and
3 hard-of-hearing persons; a statewide organization that raises
4 money for health and human service purposes; and other
5 interested parties."

6 SECTION 16. A new section of the Developmental
7 Disabilities Act is enacted to read:

8 "REPORTING--DEPARTMENT OF HEALTH--INTERMEDIATE CARE
9 FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES--
10 INDEPENDENT REVIEW.--Within thirty days of the date on which
11 reporting pursuant to each review is available, the department
12 shall provide the council with each report issued pursuant to
13 the independent reviews of intermediate care facilities for
14 individuals with intellectual disabilities that are performed
15 pursuant to the requirements of federal law."

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