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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 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 the person's choices and rights and to obtain support and services that the person is eligible to receive and that are reflected in the individual support and service plan; and

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

1 disability;

2 C. "comprehensive review and analysis" means the
3 comprehensive review and analysis conducted pursuant to
4 Subsection A of Section 28-16A-7 NMSA 1978;

5 D. "council" means the developmental disabilities
6 council;

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

8 F. "diagnostic evaluation" means an empirical
9 process that determines if, and to what degree, a person has
10 a developmental deficiency and the type of intervention and
11 services that are needed for the person and that person's
12 family;

13 G. "direct support professional" means a
14 non-administrative employee or subcontractor of a direct
15 support provider agency who spends the majority of the
16 employee's work hours providing supportive services to
17 individuals with developmental disabilities living and
18 working in the community;

19 H. "direct support provider agency" means an
20 entity that:

21 (1) has entered into a medicaid provider
22 participation agreement with the medical assistance division
23 of the human services department and a provider agreement
24 with the department of health;

25 (2) is reimbursed for services provided to

1 persons through a developmental disabilities medicaid waiver
2 program; and

3 (3) employs or subcontracts with direct
4 support professionals to provide services to persons with
5 developmental disabilities;

6 I. "inclusive" means using the same community
7 resources that are used by and available to all citizens and
8 developing relationships with nonpaid caregivers or
9 recipients of support and services for persons with
10 developmental disabilities;

11 J. "individual support and service plan" means a
12 plan developed by an interdisciplinary team and agreed to by
13 a person with a developmental disability, or by a parent of a
14 minor or a legal guardian, as appropriate, that describes the
15 combination and sequence of special, interdisciplinary or
16 generic care, treatment or other support and services that
17 are needed and desired by a person with a developmental
18 disability;

19 K. "interdisciplinary team" means a group of
20 persons drawn from or representing professions that are
21 relevant to identifying the needs of a person with a
22 developmental disability and designing a program to meet that
23 person's needs. The team shall include the person with a
24 developmental disability, the parent of a minor child or a
25 legal guardian, as appropriate;

1 L. "self-determination" means having:

2 (1) the ability and opportunity to:

3 (a) communicate and make personal
4 decisions;

5 (b) communicate choices and exercise
6 control over the type and intensity of services, supports and
7 other assistance that an individual receives; and

8 (c) participate in, and contribute to,
9 an individual's community;

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

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

18 M. "service provider" means a nonprofit
19 corporation, tribal government or tribal organization, unit
20 of local government or other organization that has entered
21 into a contract or provider agreement with the department for
22 the purpose of providing developmental disabilities support
23 and services."

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

1 "DATA COLLECTION AND REPORTING.--

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

6 (1) the number of full- or part-time
7 employees at any time during the year, the percentage of the
8 year that the employees were employed and the total length of
9 time that the employees had been employed as of the end of
10 the year;

11 (2) disaggregated demographic information,
12 including age, gender, race and ethnicity, education level
13 and work experience;

14 (3) employee wages paid; and

15 (4) employee benefits provided.

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

21 (1) the total number of full- and part-time
22 employees;

23 (2) a demographic analysis of this
24 workforce;

25 (3) the highest, lowest and average hourly

1 wage paid by direct support provider agencies;

2 (4) the average length of employment and
3 vacancy and turnover rates; and

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

6 SECTION 3. Section 28-16A-16 NMSA 1978 (being Laws
7 1993, Chapter 50, Section 16) is amended to read:

8 "28-16A-16. DETERMINATION OF RATES FOR PAYMENT FOR
9 SUPPORT AND SERVICES.--

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

14 B. Beginning in 2024, contingent on available
15 funding, the department shall conduct an independent biennial
16 cost study for the purpose of recommending reimbursement
17 rates for all service providers. The cost study shall
18 include all reasonable costs of providing services.
19 Recommended reimbursement rates, based on the cost study,
20 shall include consideration of the following factors:

21 (1) the additional costs that would be
22 incurred by the direct support provider agency if all
23 direct support professionals were paid at least
24 one hundred fifty percent of the state minimum wage;

25 (2) recent and projected changes in costs

1 due to factors that include inflation, changes in the
2 applicable minimum wage or newly effective requirements for
3 employers during the period covered by the cost study; and

4 (3) direct support professional vacancies
5 that affect direct support provider agency costs.

6 C. The department's budget request for each fiscal
7 year shall include sufficient funding to:

8 (1) continue to provide supports and
9 services for persons with developmental disabilities
10 currently being served, based on the service provider
11 reimbursement rates recommended by the most recent cost
12 study; and

13 (2) serve additional persons, who as
14 determined by the department, are eligible for but are not
15 currently receiving services.

16 D. If sufficient funds have been appropriated to
17 implement the reimbursement rates recommended by the most
18 recent cost study, the department shall implement those
19 rates, subject to approval by the federal centers for
20 medicare and medicaid services. If the level of funding for
21 developmental disabilities services and support is determined
22 to be insufficient to fully implement such rates, the
23 department shall adjust reimbursement rates as favorably as
24 possible based on the level of funding available, subject to
25 approval by the federal centers for medicare and medicaid

1 services.

2 E. Contractors shall be required to submit records
3 of support and services delivered as determined by the
4 department, subject to monitoring by the department.”

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