AGENCY: Department of Health, Developmental Disabilities Support Program

DATE: July 28, 2016

PURPOSE OF HEARING: Update on Jackson lawsuit disengagement, Waldrop lawsuit settlement, employment opportunities for people with developmental disabilities, waiting list, budgetary outlook, and DD Waiver costs.

WITNESS: Cathy Stephenson, Director, Developmental Disabilities Support Division

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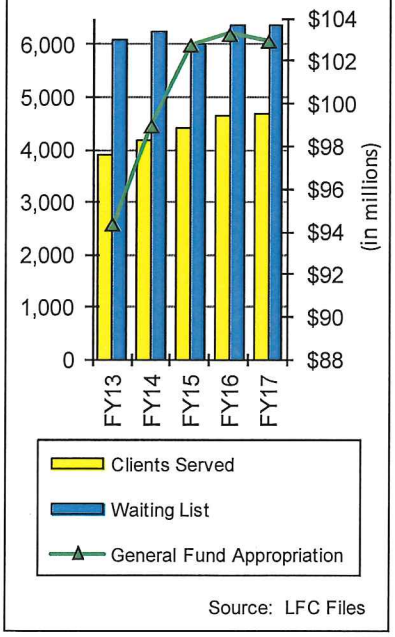
EXPECTED OUTCOME: Informational

DD General Fund Appropriation versus Waiting List



Source: LFC Files

BACKGROUND INFORMATION

Inadequate staffing and training, cases of abuse and rape, unacceptable levels of accident and injury, and nonexistent care planning were all examples of institutional deficiencies at the Las Lunas Hospital where Walter Stephen Jackson was living in October 1985, when he and a friend drank a cup of oven cleaner, causing severe burns to their esophagi. Their experiences were not isolated incidents, and in July 1987, the parents and guardians of Jackson and twenty-one other people with intellectual and developmental disabilities (IDD) filed suit against the Department of Health, the Human Services Department, the Division of Vocational Rehabilitation and several state officials in what is now known as the Jackson class action lawsuit, one of the longest running lawsuits in state history.

The federal court found the state to be discriminating against people with severe disabilities, unnecessarily segregating them, and subjecting them to institutional conditions which were unconstitutional. The court ordered the parties to negotiate corrective action plans to correct the identified violations. The parties developed the plans but the state was unsuccessful in meeting its obligations. In 1996, the plaintiffs filed a motion to hold the state in contempt of court alleging ongoing problems at the institutions and continued unnecessary segregation.

In response, the state closed all IDD institutions. However, the community service system was inadequate and needed improvements in order to meet the need. The state agreed to implement a detailed plan of action to improve the infrastructure for the community-based service system, and signed the disengagement plan which established the criteria and process for ending the lawsuit.

Jackson Lawsuit Disengagement

Nearly 30 years later, Jackson litigation continues. Under the lawsuit, the state is mandated to meet lawsuit disengagement criteria and to complete all of nearly 200 evaluative components. Jackson evaluative components are required to be completed by the state before disengagement can commence. The Department of Health (DOH) reports progress completing about 40 of the components and started about 87 of them in the middle of 2015. Many of the components, for example, require the state to change policy on how health issues are identified and how actions are taken to remedy the problem. The state is then required to implement the changes, and identify a plan for monitoring and evaluation.

Jackson Disengagement Evaluative Components				
Status	5/8/2015	8/24/2015	11/2/2015	1/8/2016
Complete	17	36	53	57
In Progress	4	99	93	91
Not Yet Started	172	64	53	51

Source: DOH as of 1-8-2016

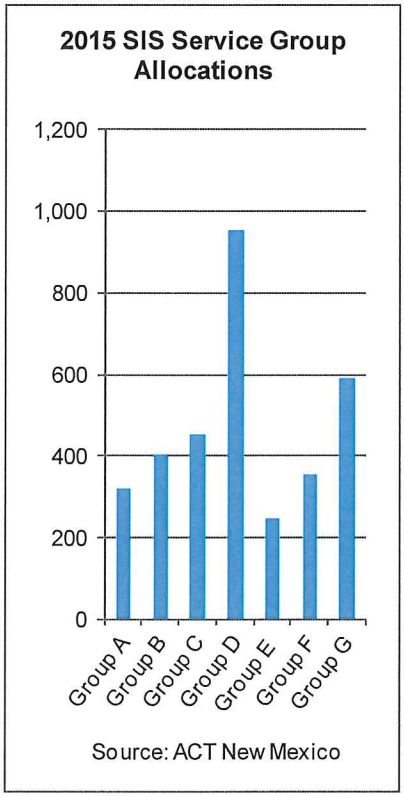
During the 2016 Legislative Session the department received a special appropriation of $6.8 million for expenses related to Jackson lawsuit disengagement and to settle the Waldrop lawsuit. Amounts for Jackson disengagement include a federal Medicaid match and may eventually add 9.5 term FTE to support individuals and providers; to train regional staff, case managers, and providers; and for meaningful day and supported employment services. These FTE are expected to allow the state to meet Jackson safety, health, and supported employment components and to track compliance.

Allocation of 2016 GAA Disengagement and Settlment Supplemental Appropriation ($6.8 million)		
	Waldrop	Jackson
FY 16	$ 1,122.9	$ 941.9
FY 17	$ 1,789.4	$ 2,985.8
TOTAL	**$ 2,912.3**	**$ 3,927.7**

Source: DOH

Waldrop Lawsuit Settlement

The supports intensity scale (SIS), one aspect of the state's 2011 effort to restructure the Medicaid waiver for people with developmental disabilities (DD Waiver) and reduce costs, as was recommended by a 2010 LFC evaluation, was originally intended to determine the needs and appropriate level of services for people with developmental disabilities. The SIS is used to develop budgets and service packages for DD waiver clients. Interviews are conducted with caregivers and an assessment is made that covers services and supports such as employment, social health, and medical needs. Clients are then assigned to one of seven groups, labeled A to G, with A being the least needy.

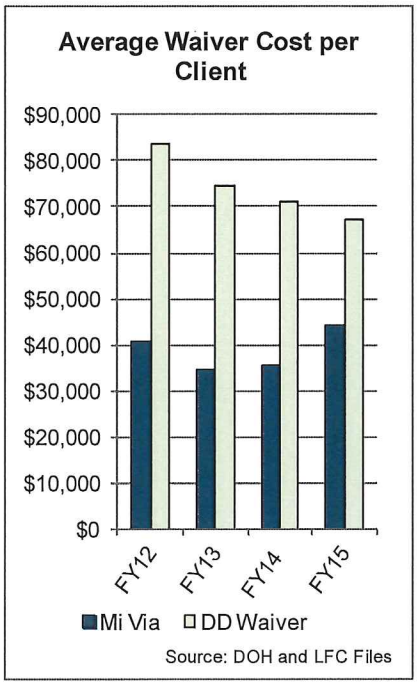


In 2014, several parents sued the state over its use of SIS. Parents participating in the lawsuit had adult children with severe disabilities and claimed they lost services such as speech, physical, and occupational therapy due to the state's implementation of SIS.

In May 2015, the state settled the lawsuit and agreed to continue using SIS for its intended purpose with the caveat for a third party to conduct an outside review (OR). The OR process requires all requests for DD Waiver services be clinically justified, applies to adults 18 and older, and does not apply to Jackson members. The OR has an interdisciplinary team who perform clinical reviews on all individual service plans, service requests, or budgets. The process requires teams to renew their commitment to person centered planning; to plan for support needs to allow people to grow, learn, and acquire new skills; and to receive services that are clinically necessary. The OR contract is with the University of New Mexico School of Medicine Continuum of Care Project.

A portion of the $6.8 million 2016 special appropriation to DOH will be used to cover the costs of meeting the requirements of the settlement. There have been issues with DOH's case management system slowing delivery of documents to the OR and contributing to delays in processing individual budgets.

IDD Service Scope and Costs



Our system of intellectual and developmental disabilities (IDD) services is far from adequate but is slowly improving. By almost any measure, since the events that lead to the Jackson lawsuit, services have improved and New Mexico is one of 12 states nationally not operating any IDD institutions. All people with developmental disabilities in direct state care live in community-based houses with six or fewer residents. In FY13, New Mexico ranked sixteenth nationally on per capita federal home and community-based services waiver spending.

Far to Go

Since FY08, the DD Waiver waiting list has grown at twice the rate new slots become available. With an average 6 percent growth rate since FY08, the DD Waiver waiting list has grown to 6,500 in FY16 and can take as long as 10.4 years before an individual starts receiving services. According to DOH, in any given year, if less than 300 new slots are made available, the wait list will grow. Slots become available when appropriations increase and infrastructure improves, when DD Waiver recipients move out of state or are deceased, and when the average cost per client decreases.

In FY11, in response to a 2010 LFC evaluation of the DD Waiver program, the department made reforms such as implementing the new SIS. Since that time, the average cost per client was reduced from a high of about $83.5 thousand in FY12 to about $65.9 thousand in FY16. Much of these cost savings were used to create new slots. Between FY14 and FY15, 590 slots were added to the waiver and the waiting list shrunk for the first time since at least FY08. The added slots were also due to increased general fund appropriations.

DD Waiver and Wait List Growth Rates

	DD Waiver Growth Rate	DD Waiver Wait List Growth Rate
FY09	0%	8%
FY10	-2%	6%
FY11	0%	8%
FY12	-1%	8%
FY13	4%	10%
FY14	0%	5%
FY15	15%	-3%
FY16	5%	5%
FY17	2%	0%
Average	3%	5%

Source: LFC Files

IDD Service Level Outlook. For FY16, the department received $400 thousand to reduce the waiting list and $450 thousand for a provider rate increase. The department also received non reverting language in the General Appropriation Act allowing for carried forward balances into FY17. For FY17, the Legislature appropriated enough to add about 40 slots to the DD Waiver. These appropriations are likely insufficient to reduce the current waiting list. Although the DD waiver was held-harmless from the statewide across-the-board budget cuts, diminished statewide general fund revenue had an effect.

Additionally, portions of the appropriation for Jackson lawsuit disengagement and the Waldrop lawsuit settlement are expected to be recurring and to increase the average cost per DD Waiver client. Revenues do not look like they will recover in time for the FY18 budgeting cycle and should provide impetus to find alternative ways of reducing the DD Waiver waiting list.

Options to Reduce DD Waiver Wait Times. One way to reduce the DD Waiver waiting list would be to leverage local government funding for the Medicaid match. Six other states use local funds as a portion of their state Medicaid matching requirement and 10 other states use local government funding for other IDD programs and services. For example, in

2013, local governments made up 33 percent of all IDD spending in Ohio with about $315 million used as a Medicaid match.

In FY14 New Mexico counties held approximately $30.4 million in county indigent fund balances. Making a statutory change to the Indigent Hospital and County Health Care Act and requiring counties to contribute a portion of the one-eighth gross receipts tax collected for county indigent funds to pay for a portion of the Medicaid match on the DD Waiver could have a significant impact on the waiting list.

In February 2016 a taskforce made recommendations to reduce the waiting list including working to attract more people into the Mi Via Waiver. In FY15, on a per client basis, Mi Via cost about $44.1 thousand and the DD Waiver cost nearly $70 thousand. When an individual is offered services they have the option of choosing the DD Waiver or the Mi Via Waiver program and once services start individuals are free to choose to move between either of the programs. Working to attract more people into the Mi Via program would reduce the number of people on or seeking to be on the DD Waiver and has the potential to slow wait time growth. The state had some success in the last few years with this approach and the Mi Via program grew 417 percent since FY11 to serve about 796 people.

The taskforce also estimated, to reduce the length of time clients spend on the wait list to three years, it would cost about $31.3 million in state general fund matching dollars every year through FY21. The taskforce report also found that achieving the three year wait time goal by 2021 would present challenges since it would be difficult for the network of service providers to expand this quickly.

Alternatively, DOH recommends developing a support waiver targeting individuals that do not currently need the comprehensive array of services in the traditional DD and Mi Via Waiver programs.

DD Waiver Statistics:

- Current wait time is 10.4 years.
- waiver service registrations received each year is 1,000
- FY17 appropriations added 40 DD Waiver slots
- Mi Via Waiver program total cost was $316.3 million in FY15
- Mi Via serves about 50 people on the DD Waiver wait list
- Six states, not including New Mexico, use local funds for a portion of their Medicaid matching requirement
- The DD Waiver wait list has not been culled for clients that have moved out of state, are deceased, or may not need the comprehensive array of services on the DD Waiver
- Culling the waiting list would also reduce wait times

IDD Employment Services

Of the $66 thousand annual cost per DD Waiver client LFC guesses that 10 percent to 15 percent of the annual budget is spent on employment services, about $10 million in general fund. The state offers IDD employment services such as job development, job maintenance, self-employment services, intensive community integrated employment (with inclusion aides), and group community integrated employment. Individuals are only eligible for these services when services otherwise available to individuals through the Division of Vocational Rehabilitation or through the New Mexico Department of Education are not currently available.

A national study on employment support from 2010 found that for the 104,200 individuals with IDD who had supported employment as a goal, 64,700 were successfully employed and generated an average monthly net benefit of $475.35 and a benefit-cost ratio of 4.2. Benefit-cost ratios range from 13.5 in Washington State to 1.86 in Wisconsin.

According to the "State of the States Report in Intellectual and Developmental Disabilities" many employment specialist professionals use braided funding strategies due to the wide array of funding mechanisms

and programs available for employment supports and services. These strategies are used to develop service plans to assist in the acquisition and retention of jobs for people with disabilities. As stated in the report, the use of braided funding strategies increases the complexity of obtaining data for supported employment expenditures.

Eastern New Mexico University-Roswell Special Services Program. Eastern New Mexico University-Roswell's (ENMU-RO) Special Services Programs (SSPs) are designed for students who have disabilities and who, with occupational training, are able to obtain entry level positions in competitive employment. Upon completion of the programs, according to ENMU-RO, graduates are better able to obtain employment that will help them move toward a path to independent living and sustaining themselves without public assistance.

Eastern New Mexico Universiyt-Roswell Special Services Program's FY15 Actual Expenditures (thousands)		
Faculty Salaries	$	219.1
Professional Salaries	$	165.0
Support Salaries	$	27.5
Other Salaries	$	8.2
Supplies and Expenses	$	22.1
Travel	$	7.7
Equipment	$	12.8
Indirect Cost	$	5.3
Misc. (State Appropriation)	$	1.5
Total	$	469.2

Source: FY15 ENMU-RO Expenditure Report

The SSPs, which started about 30 years ago, seek to teach students who would otherwise rely heavily on state and federal support to care for themselves, use public transportation, be good employees, manage their money, and care for others. Students in the program are also taught technical skills in the areas of child care, food service, laboratory animal care, office skills, sanitation, building maintenance, grounds keeping, and stocking and merchandising.

Eastern New Mexico University's Special Services Program budget is $469.2 thousand, serves about 90 students, and on average costs about $5,200 per enrollee.

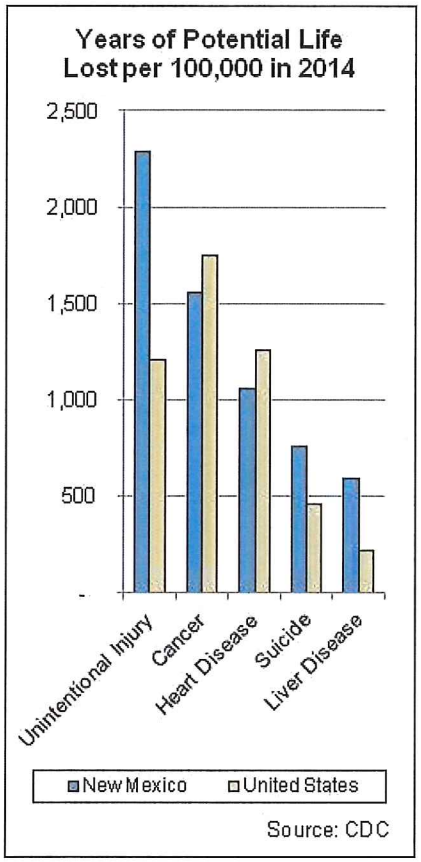
Federal Employment Efforts. In 2014, the federal government enacted the Workforce Innovation and Opportunity Act acknowledging the underrepresentation of people with disabilities in the workforce and increased services to youth with disabilities, placed emphasis on employer engagement, increased training in states' vocational rehabilitation programs, and improved federal accountability. President Obama also separately introduced an initiative to ensure more Americans are prepared to work through the attainment of marketable skills. These initiatives are expected to open more doors for people with disabilities including people with IDD.

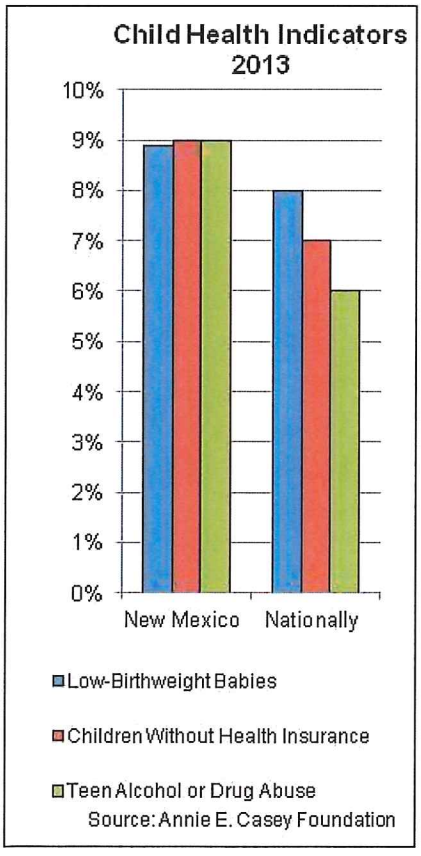
Developmental Disabilities Medicaid Waiver Program

Fiscal Year	General Fund Appropriation to DOH	Expansion Funds and Associated Clients Authorized by Legislature	Clients Allocated with Expansion Funds	Clients Allocated from Underutilization, Ramp up, Reversion	Clients Allocated from Program Reform and Redesign	Expedited Allocations (emergency placements)	Total DD Waiver Allocations	Number on DD Waiver	Number on Waiting List	Average Annual Attrition	Average Cost Per Client	Reversion to General Fund
FY08	$78,022,300	$5,000,000 for 70 new clients	0	N/A	N/A	14	14	3,738	3,991	N/A	$71,397	$0
FY09	$85,022,300	$4,000,000 for 50 new clients	0	86	55	15	156	3,750	4,330	75	$74,270	$11,564,700
FY10	$66,740,200	$5,400,000 for 215 new clients	0	0	36	12	48	3,693	4,610	60	$78,100	$2,100,200
FY11	$60,555,200	$2,250,000 for 100 new clients	89	N/A	N/A	22	111	3,703	4,988	67	$82,000	$2,447,800
FY12	$90,526,700	$1,000,000 for 50 new clients	45	5	N/A	13	63	3,678	5,401	76	$83,500	$3,290,100
FY13	$94,429,500	$2,769,500 for 123 new clients	123	135	51	19	328	3,820	5,943	70	$74,349	$7,358,452
FY14	$99,029,500	$4,600,000 for 227 new clients	209	176	50	30	465	3,829	6,248	70	$71,000	$5,522,130
FY15	$102,838,500	$3,300,000 for 175 new clients	185	80	70	20	355	4,419	6,035	70	$67,072	Non-reverting
FY16	$103,292,700	$450 for provider rate increases	0	141	50	20	211	4,630	6,365	70	$65,960	$0
FY17 (projected)	$104,009,700	$1,600,000 for 80 new clients	80	80	50	20	230	4,710	6,375	70	$66,895	$0

Source: Department of Health and LFC Files

Notes:
(1) Appropriations are from the other financing uses category in the General Appropriation Act (GAA) less the funding for the Medically Fragile Waiver. Drops in appropriation amounts in FY10 and FY11 were due to the supplanting of general fund with ARRA stimulus funds and low FMAP rates.
(2) The FY15 appropriation includes $500 thousand for a DD Medicaid waiver provider rate increase, and the FY16 projected appropriation includes $300 thousand for a rate increase.





Department of Health

The Department of Health, whose mission is broad and varied, requires comprehensive strategic planning and robust performance monitoring. In an effort to address limited performance reporting, the number of key performance measures has more than doubled since FY15. The Public Health and Epidemiology and Response Programs expanded measures from two to seven; and the remaining programs all added measures, except the Facilities Management Program. For FY17, even more measures have been added.

Projected increased patient revenue, reduced statewide general fund revenue, and adjusted General Services Department rates were all considerations leading to minimal special and supplemental appropriations and a 4 percent reduction in FY17 general fund revenue. To stay within budget in FY16 and beyond, the department is improving its ability to maximize patient revenue and reduce expenditures where feasible. A recent LFC evaluation found multiple opportunities for the department to leverage more Medicaid funding, and in some cases there is evidence the department has begun to do so.

Public Health

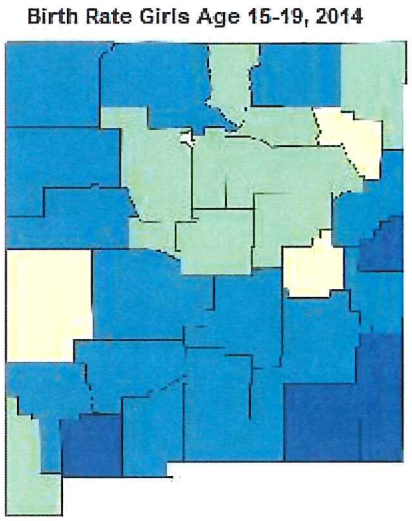
The Affordable Care Act (ACA) shifted the need for safety net health services in some cases away from public health offices into primary care offices covered by Medicaid and private insurance options, and may be leading to a reduction in visits. To ensure reductions in direct services do not materialize, patient billing opportunities should be maximized in FY17. The program received a red rating for measure one, which may be a symptom of ACA changes and a reduction in health center patronage. The Office of School and Adolescent Health is working with the Human Services Department and Centennial Care managed care organizations to reduce duplicative services. The target for measure four was not met and only 55 percent of female clients ages 15 through 17 were given effective contraceptives. The department's action plan for measure four is to provide confidential clinical services and teen-friendly clinical practices to support teens in reaching life goals.

Public Health		FY15 Actual	FY16 Target	Q1	Q2	Q3	Rating
Budget: $181,241.7	FTE: 892						
1	Students using school-based health centers who receive a comprehensive well exam	34%	38%	36%	20%	26.4%	R
2	QUIT NOW enrollees who successfully quit using tobacco at seven month follow-up	31%	33%	29%	35%	32%	Y
3	Teens ages fifteen through seventeen receiving services at clinics funded by the family planning program	1,334	2,900	898	1,163	1,129	G
4	Female clients ages fifteen through seventeen seen in public health offices given effective contraceptives	55%	66%	53%	60%	55%	R
5	Women infants and children recipients that initiate breastfeeding	80%	85%	81%	82%	81.5%	R
Program Rating		Y					R

Epidemiology and Response

The Epidemiology and Response Program added five key measures to improve reporting on stroke, heart attack occurrence, emergency preparedness, and Naloxone (powerful opiate overdose reversal drug) distribution. During the third quarter only two infant cases of pertusis (whooping cough) were reported in New Mexico compared with the previous quarter when there were six. The program increased the number of Naloxone kits distributed, exceeding the total number of kits distributed during FY15. A bill passed during the 2016 Legislative Session ensured wider access to Naloxone by removing prescription requirements for the drug.

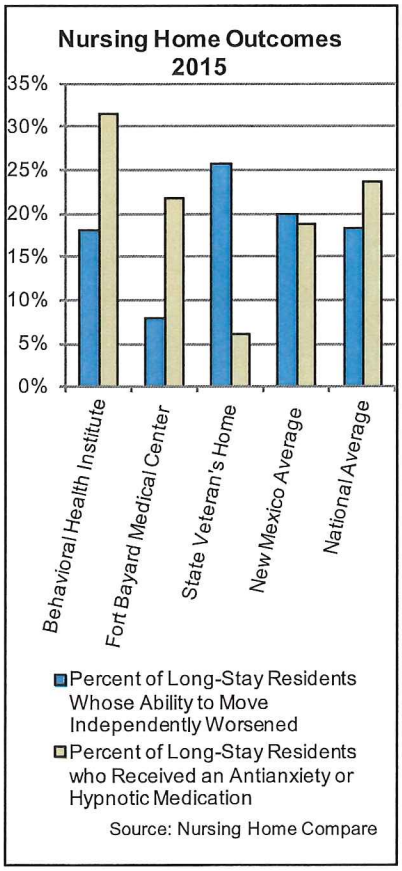
Epidemiology and Response		FY15 Actual	FY16 Target	Q1	Q2	Q3	Rating
Budget: $29,139.3	FTE: 183						
6	Rate of infant pertussis cases to total pertussis cases of all ages	1:12	1:15	1:7	1:17	1:13	G
7	Acute care hospitals reporting stroke data into approved national registry	9.3%	13.6%	9.3%	9.3%	9.3%	Y
8	Acute care hospitals reporting heart attack data into approved national registry	11.6%	13.6%	11.6%	13.9%	13.9%	G
9	Hospitals reporting bed availability in the healthcare emergency preparedness bed reporting system within four hours of request	82%	75%	73%	73%	76%	G
10	Naloxone kits provided in conjunction with prescription opioids	381	500	105	83	230	G
11	Counties with documented implementation plans for developing regionalized emergency medical services response	42%	27%	42%	42%	42%	G
Program Rating		G					G



Facilities Management

The Facilities Management Program was the only program that did not add new quarterly performance measures. For performance in any hospital system, it is important to monitor not only patient outcomes – reduced substance misuse, lower risk of injury – but also how well the system manages resources to provide the highest quality of care. In quarter three, the percent of long-term care patients experiencing one or more falls with injury remained too high. The department stated that this was due to a change in the way the department counts falls and is now including all patients who fall with injury. Measure 14 should be split into two measures – major injury, minor injury – to match national benchmark data for long-term care facilities in the future.

LFC staff evaluators followed up on previous reports and outlined several issues at the Fort Bayard Medical Center (FBMC), such as uncompetitive salaries compared to the private sector, patient safety, facility deficiencies, a lack of operational oversight over projected revenues, and a worse case budget shortfall for FY16 of $4.5 million to $5 million. Evaluators suggested a more in-depth independent review of the facility is needed to gain a better understanding of the issues.



PERFORMANCE REPORT CARD
Department of Health
Third Quarter, Fiscal Year 2016

Star Ratings for State-Run Nursing Homes 2015*	New Mexico Behavioral Health Institute	Fort Bayard Medical Center	New Mexico State Veteran's Home	
Overall Rating	3	3	3	
Health Inspection	2	3	3	
Staffing	5	5	4	
Quality	3	1	1	

* Rating out of five stars

Source: CMS Nursing Home Compare

KEY ISSUES

In an effort to address limited performance reporting, the number of key performance measures has more than doubled. All programs except Facilities Management added measures. For FY17, measure quality improved and is expected to lead to higher quality quarterly reports.

IMPROVEMENT PLANS

Submitted by agency?	Yes
Timeline assigned?	No
Responsibility assigned?	No

Facilities Management Budget: $136,698.6 FTE: 2,070.5		FY15 Actual	FY16 Target	Q1	Q2	Q3	Rating
12	Staffed beds filled at all agency facilities	96%	90%	93%	95%	95%	G
13	Long-term care residents with healthcare acquired pressure ulcers	4.3%	6.4%	3.3%	3.0%	2.7%	G
14	Long-term care patients experiencing one or more falls with injury	0.5%	3.3%	6.4%	6.1%	6.4%	R
Program Rating		Y					Y

Developmental Disabilities Support Program

While the program met most performance targets, there continues to be a large number of individuals on the developmental disabilities waiver waiting list and measure 18 is well above targeted levels. Since FY12, with appropriations from the Legislature, the department increased the number of individuals served by the developmental disabilities waiver by nearly 20 percent and is expected to add 40 slots while maintaining a relatively flat budget into FY17.

Recent actions should allow the program to disengage from the Jackson lawsuit and settle the Waldrop lawsuit. The GAA of 2016 included a $6.8 million appropriation for expenses related to the two lawsuits. The appropriations will fund additional FTE for financial operations, program management for outside review and outreach, regional liaison support to individuals and providers, and training for regional staff, case managers and providers. Settlement mandates are expected to increase client service levels, improve program infrastructure, and provide technical assistance to service providers to improve service delivery systems to clients.

Developmental Disabilities Support Budget: $163,422.8 FTE: 183		FY15 Actual	FY16 Target	Q1	Q2	Q3	Rating
15	Developmental disabilities waiver applicants who have a service plan in place within ninety days of income and clinical eligibility determination	91%	93%	50%	42.8%	66.6%	R
16	Adults receiving developmental disabilities community inclusion services who also receive employment services	29%	33%	33%	35%	36%	G
17	Individuals on the developmental disabilities waiver receiving services	4,610	4,000	4,610	4,613	4,624	G
18	Individuals on the developmental disabilities waiver waiting list	6,365	6,400	6,400	6,349	6,497	R
19	Children served through the Family Infant Toddler (FIT) Program who receive all of the early intervention services on their individualized family service plan within thirty days	98%	97%	98%	98%	97%	G
Program Rating		Y					Y