

1 SENATE BILL 222

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH CARE; ESTABLISHING A DIRECT CARE WORKFORCE  
12 SUBCOMMITTEE OF THE LEGISLATIVE HEALTH AND HUMAN SERVICES  
13 COMMITTEE; PRESCRIBING DUTIES.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of Chapter 2, Article 13 NMSA  
17 1978 is enacted to read:

18 "[NEW MATERIAL] DIRECT CARE WORKFORCE SUBCOMMITTEE--  
19 CREATION--MEMBERSHIP--APPOINTMENT--MEETINGS--REMOVAL--DUTIES--  
20 REPORTING.--

21 A. The "direct care workforce subcommittee" is  
22 created as a permanent subcommittee of the legislative health  
23 and human services committee. The subcommittee shall be  
24 composed of six members of the legislative health and human  
25 services committee and nine additional members, as follows:

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- 1                   (1) three members of the house of  
2 representatives appointed by the speaker of the house of  
3 representatives, with political party representation in  
4 proportion to party representation in the house of  
5 representatives;
- 6                   (2) three members of the senate appointed by  
7 the president pro tempore of the senate, with political party  
8 representation in proportion to party representation in the  
9 senate;
- 10                  (3) one representative from the developmental  
11 disabilities planning council;
- 12                  (4) one representative of a local or state  
13 association or coalition providing support, education or  
14 training for direct care workers;
- 15                  (5) one representative of the direct care  
16 workforce;
- 17                  (6) one representative of an agency or a  
18 collective providing direct care services;
- 19                  (7) one representative of a disability  
20 advocacy agency, organization or group;
- 21                  (8) one representative of the community health  
22 worker or community health representative workforce;
- 23                  (9) one representative of a senior citizen  
24 advocate agency, organization or group;
- 25                  (10) one public member with knowledge and

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1 experience in direct home care; and

2 (11) one representative of the New Mexico  
3 community college system or other public higher education  
4 system providing training or engaged in the study of the New  
5 Mexico direct care workforce.

6 B. The New Mexico legislative council shall appoint  
7 the subcommittee members specified in Paragraphs (3) through  
8 (11) of Subsection A of this section for two-year terms  
9 expiring on January 1 of the appropriate year. Those  
10 subcommittee members shall serve staggered terms at the time of  
11 their initial appointment as determined by the co-chairs of the  
12 New Mexico legislative council.

13 C. A vacancy in the membership of the subcommittee  
14 shall be filled by the New Mexico legislative council.

15 D. Public members shall receive per diem and  
16 mileage as provided in the Per Diem and Mileage Act.

17 E. The subcommittee shall make policy  
18 recommendations to the legislative health and human services  
19 committee. The subcommittee shall:

20 (1) review opportunities for informing  
21 employers of requirements under the federal Fair Labor  
22 Standards Act of 1938 and other state and federal fair labor  
23 standards laws;

24 (2) identify best practices for application of  
25 the federal Fair Labor Standards Act of 1938 and other federal

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1 and state labor and employment laws to the direct care  
2 workforce;

3 (3) identify the cost to state government that  
4 compliance with labor standards laws represents;

5 (4) recommend policies for an exceptions  
6 process incorporating consumer input;

7 (5) recommend an implementation policy that  
8 incorporates a plan to maintain consumer services without  
9 disruptions to consumer hours;

10 (6) study ways to leverage and allocate state  
11 and federal funding for overtime and travel time for direct  
12 care workers and consider data from the payers that:

13 (a) identify the number of consumers  
14 determined to need more than forty hours of direct care per  
15 week; and

16 (b) are obtained through surveys of home  
17 health care agencies, personal care agencies and other self-  
18 directed programs that promote self-direction of direct care  
19 worker services to identify the number of consumers that rely  
20 exclusively on a single worker and are allotted more than forty  
21 hours of care per week;

22 (7) receive testimony from the payers;

23 (8) make recommendations to the legislative  
24 health and human services committee for assisting payers to  
25 meet the requirements of the federal Americans with

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1 Disabilities Act of 1990 and regulations promulgated pursuant  
2 to that act to ensure that consumers are not put at serious  
3 risk of institutionalization as a result of state action in  
4 implementing state or federal regulations relating to direct  
5 care;

6 (9) make recommendations for assisting state  
7 agencies in developing and disseminating information to direct  
8 care workers, consumers and employers of direct care workers,  
9 explaining each stakeholder's new rights and responsibilities  
10 under state and federal fair labor standards laws;

11 (10) conduct a study of how the private and  
12 public systems of direct care in the state may enhance a  
13 comprehensive system of direct care services and supports,  
14 including an analysis of:

15 (a) statewide coordination and  
16 collaboration among the direct care programs and services  
17 within both urban and rural settings in the state;

18 (b) the supply of services of the  
19 state's direct care workforce and personal care attendants;

20 (c) the affordability and accessibility  
21 of direct care services;

22 (d) the sustainability and retention  
23 rates of the direct care workforce and methods for improving  
24 workforce retention; and

25 (e) the economic participation of the

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1 New Mexico direct care workforce and methods for making direct  
2 care services a sustainable source of employment for residents  
3 of the state; and

4 (11) evaluate the capacity for the state's  
5 residents to age in their homes and maintain their independence  
6 for as long as possible, or "age in place", while addressing  
7 the risk of isolation and lack of socialization that may  
8 accompany aging in place. This evaluation shall include an  
9 analysis of means to encourage the development and use of new  
10 forms of technology and digital communications that may support  
11 aging in place through monitoring, emergency response and real-  
12 time communications.

13 F. By December 1, 2018, the subcommittee shall  
14 consult with direct care workers and produce a report on the  
15 feasibility of creating a direct care worker registry. The  
16 report shall include:

- 17 (1) an evaluation of the need for a registry;  
18 (2) identification of the potential cost and  
19 savings to the state that may result from the registry;  
20 (3) identification of possible funding sources  
21 for the registry;  
22 (4) recommendations to the payers and the  
23 legislative health and human services committee on how to  
24 coordinate, align and support family members who serve as  
25 caregivers with the direct care workforce; provided that in

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1 developing these recommendations, the subcommittee shall  
2 consider:

3 (a) how to consolidate and coordinate  
4 resources and public funding streams for direct care services;  
5 and

6 (b) the impact of turnover in the  
7 industry and any relationship to the quality of care for  
8 individuals who are elderly or have a disability;

9 (5) recommendations on methods to compensate  
10 direct care workers at a living wage, including recommendations  
11 for revenue streams to fund direct care;

12 (6) proposals to promote direct care work as a  
13 profession in New Mexico;

14 (7) identification of problems faced by direct  
15 care workers and means by which these pressures could be  
16 alleviated;

17 (8) an analysis of the affordability of  
18 long-term care for low- and moderate-income New Mexico  
19 residents and identification of strategies and funding streams  
20 to provide affordable access to direct care for those residents  
21 to allow residents to age in place;

22 (9) an examination of methods to provide  
23 consumer education and accessibility to direct care resources;

24 (10) consideration of the ways to advance the  
25 quality of in-home care programs;

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1 (11) consideration of the development of a  
2 seamless service delivery system with local points of entry for  
3 home care programs administered by local, state and federal  
4 agencies;

5 (12) a discussion of the methods to provide  
6 for collaboration with state and local programs and health and  
7 behavioral health programs;

8 (13) consideration of the methods to develop  
9 and manage data collection systems to support the functions of  
10 a coordinated direct care system and to enable accurate  
11 evaluation of the system;

12 (14) recommendations to reflect the diversity,  
13 cultural heritage and strengths of the families and communities  
14 of the state;

15 (15) consideration of the development of an  
16 aligned system of professional development for professionals  
17 providing direct care and education;

18 (16) consideration of the establishment of an  
19 administrative framework to promote the development of direct  
20 care services that are staffed by qualified professionals and  
21 are available in every community for all families requiring  
22 those services;

23 (17) an analysis of the state's aging  
24 population, including:

25 (a) the income levels and health and

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1 disability statistics of individuals reaching sixty-five years  
2 and older during the next twenty years; and

3 (b) the array of services and supports  
4 that exist in the state for retirees; and

5 (18) an assessment of the state's  
6 attractiveness as a location for economically solvent retirees  
7 to relocate and the development of strategies to encourage and  
8 promote New Mexico as an attractive place for economically  
9 solvent retirees to relocate. These strategies shall include  
10 coordination of public-private partnerships among the tourism  
11 department, state and local convention and visitors services,  
12 private tourism stakeholder groups and the media.

13 G. As used in this section:

14 (1) "direct care worker" means an individual  
15 providing care as a home health aide, personal care assistant,  
16 personal care aide, nursing assistant or home care aide;

17 (2) "direct care workforce" means the  
18 individuals employed as home health aides, personal care  
19 assistants, personal care aides, nursing assistants and home  
20 care aides to provide direct care services; and

21 (3) "payer" means the state medicaid program,  
22 a state agency or a private entity, risk-bearing or non-risk-  
23 bearing, that pays for direct care services in the state."