

1 HOUSE BILL 422

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO DISABILITY; AMENDING, REPEALING AND ENACTING
12 SECTIONS OF THE DEVELOPMENTAL DISABILITIES ACT TO MAKE CHANGES
13 TO THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL MEMBERSHIP
14 AND DUTIES.
15

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

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

19 "28-16A-1. SHORT TITLE.--~~[Sections 1 through 18 of this~~
20 ~~act]~~ Chapter 28, Article 16A NMSA 1978 may be cited as the
21 "Developmental Disabilities Act"."

22 SECTION 2. Section 28-16A-3 NMSA 1978 (being Laws 1993,
23 Chapter 50, Section 3) is amended to read:

24 "28-16A-3. DEFINITIONS.--As used in the Developmental
25 Disabilities Act:

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1 A. "assessment" means a process for measuring and
2 determining a person's strengths, needs and preferences to
3 determine eligibility for support and services and to develop
4 or modify an individual support and service plan;

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

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

11 (2) monitors the provision of support and
12 services received by [~~the~~] a person with a developmental
13 disability;

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

17 D. "council" means the developmental disabilities
18 planning council;

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

21 [~~D-~~] F. "diagnostic evaluation" means an empirical
22 process that determines if, and to what degree, a person has a
23 developmental deficiency and the type of intervention and
24 services that are needed for the person and that person's
25 family;

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1 [~~E-~~] G. "inclusive" means using the same community
2 resources that are used by and available to all citizens and
3 developing relationships with nonpaid caregivers or recipients
4 of support and services for persons with developmental
5 disabilities;

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

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

20 [~~H-~~] J. "service provider" means a nonprofit
21 corporation, tribal government or [~~tribal~~] tribal organization,
22 unit of local government or other organization that has entered
23 into a contract or provider agreement with the department for
24 the purpose of providing developmental disabilities support and
25 services."

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1 SECTION 3. Section 28-16A-4 NMSA 1978 (being Laws 1993,
2 Chapter 50, Section 4) is amended to read:

3 "28-16A-4. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--
4 CREATION--MEMBERSHIP--TERMS.--

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

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

15 The [~~developmental disabilities planning~~] council shall
16 include:

17 (1) members, comprising at least sixty percent
18 of the council's membership, who are individuals with
19 developmental disabilities or parents, immediate relatives or
20 legal guardians of individuals with developmental disabilities;
21 provided that none of these members shall be an employee, or
22 someone who manages employees, of a state agency that receives
23 funds to provide developmental disabilities supports and
24 services;

25 [~~(1)~~] (2) the secretary of health, or [~~his~~]

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1 the secretary's designee;

2 [~~(2)~~] (3) the secretary of human services, or
3 [~~his~~] the secretary's designee;

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

6 [~~(4)~~] (5) the [~~director~~] secretary of [~~the~~
7 ~~state agency on aging, or his~~] aging and long-term services, or
8 the secretary's designee;

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

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

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

15 [~~(6)~~] (8) the director of the state protection
16 and advocacy system established pursuant to the federal
17 Developmental Disabilities Assistance and Bill of Rights Act;

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

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

24 (9) ~~representatives of local government~~
25 ~~agencies, nongovernment agencies or nonprofit groups concerned~~

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1 ~~with services to persons with developmental disabilities,~~
2 ~~including a service provider]~~

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

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

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

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

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

25 F. The governor shall provide for rotation of the

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1 membership of the council. These provisions shall allow
2 members to continue to serve on the council until those
3 members' successors are appointed.

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

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

10 "28-16A-5. POWERS AND DUTIES.--

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

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

15 ~~(2)] (1) provide statewide advocacy [systems]
16 for persons with developmental disabilities;~~

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

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

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

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1 [~~(5)~~] (3) to the maximum extent feasible,
2 review and comment on all state plans that relate to programs
3 affecting persons with developmental disabilities;

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

8 [~~(7)~~] (5) advise the governor and the
9 legislature about the needs of persons with developmental
10 disabilities; and

11 [~~(8)~~] (6) carry out any other activities
12 authorized or required by the provisions of the federal
13 Developmental Disabilities Assistance and Bill of Rights Act of of
14 2000.

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

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

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

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

23 (4) provide training to persons with
24 developmental disabilities, their families and providers of
25 support and services through traineeships, sponsoring training

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1 opportunities and by other means determined appropriate by the
2 [~~developmental disabilities planning~~] council."

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

5 "28-16A-6. ELIGIBILITY.--

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

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

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

15 (3) is expected to continue indefinitely;

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

- 19 (a) self-care;
- 20 (b) receptive and expressive language;
- 21 (c) learning;
- 22 (d) mobility;
- 23 (e) self-direction;
- 24 (f) capacity for independent living; and
- 25 (g) economic self-sufficiency; and

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

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

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

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

24 "28-16A-7. ~~[ASSESSMENT OF NEEDS OF PERSONS WITH~~
25 ~~DEVELOPMENTAL DISABILITIES]~~ COMPREHENSIVE REVIEW AND

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1 ANALYSIS.--

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

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

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

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

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

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

23 B. The findings of the ~~[assessment]~~ comprehensive
24 review and analysis shall be ~~[included in the state plan for~~
25 ~~developmental disabilities services and support]~~ utilized in

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1 the development of the council's five-year plan.

2 C. The ~~[assessment shall be repeated]~~ council
3 shall:

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

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

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

12 "28-16A-10. DEVELOPMENTAL DISABILITIES PLANNING
13 COUNCIL--STAFF.--The ~~[developmental disabilities planning]~~
14 council shall employ an executive director, who is the
15 administrative officer of the council. The executive director
16 shall employ other necessary employees pursuant to the
17 provisions of the Personnel Act."

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

20 "28-16A-11. DEVELOPMENTAL DISABILITIES PLANNING
21 COUNCIL--REPORTS.--The ~~[developmental disabilities planning]~~
22 council shall submit reports on its preceding year's work to
23 the governor and the ~~[legislative]~~ interim legislative health
24 and human services committee by December 1 of each year. The
25 reports shall contain recommendations, if any, for legislation

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1 or other appropriate action."

2 SECTION 9. Section 28-16A-12 NMSA 1978 (being Laws 1993,
3 Chapter 50, Section 12) is amended to read:

4 "28-16A-12. DEVELOPMENTAL DISABILITIES PLANNING
5 COUNCIL--COMPENSATION.--~~[Developmental disabilities planning]~~
6 Council members shall be reimbursed as provided in the Per Diem
7 and Mileage Act. Reasonable accommodations shall be made
8 available to permit full participation in council activities by
9 its members, including personal assistance to members with
10 developmental disabilities and respite care for members that
11 are parents, immediate relatives or legal guardians of persons
12 with developmental disabilities. Council members shall receive
13 no other compensation, perquisite or allowance ~~[shall be~~
14 ~~received]~~ for their service on the council."

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

17 "28-16A-13. AUTHORIZATION FOR PROVIDING ~~[COMMUNITY-BASED]~~
18 SUPPORT AND SERVICES FOR PERSONS WITH DEVELOPMENTAL
19 DISABILITIES.--

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

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

24 (2) enter into contracts and provider
25 agreements with agencies and individuals capable of providing

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1 support and services to persons with developmental disabilities
2 [~~that promote the objectives of the department's state plan,~~
3 ~~prepared pursuant to Section 5 of the Developmental~~
4 ~~Disabilities Act~~]; and

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

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

15 C. The department shall:

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

24 (2) develop policies, procedures, rules and
25 regulations that, to the extent possible, will promote

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1 uniformity in reimbursement and quality assurance systems
2 regardless of the source of funding; and

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

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

9 "28-16A-18. DEVELOPMENTAL DISABILITIES EARLY CHILDHOOD
10 EVALUATION SYSTEM.--The state shall have a timely,
11 comprehensive, multidisciplinary system for evaluating infants,
12 toddlers and preschool-age children suspected of having
13 developmental delays. Diagnostic evaluations for infants and
14 toddlers shall address family service needs and shall include
15 training capabilities to educate community providers and
16 parents in the understanding and application of the
17 evaluations. This diagnostic evaluation system shall be
18 jointly provided through a coordinated system by the children's
19 medical services bureau of the public health division or the
20 developmental disabilities supports division of the department,
21 the university of New Mexico's [~~developmental disabilities~~
22 ~~team~~] center for development and disability and the [~~state~~
23 ~~department of~~] public education department."

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

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"[NEW MATERIAL] REPORTING--DEPARTMENT OF HEALTH--
INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL
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 28-16A-9 and 28-16A-19 NMSA
1978 (being Laws 1993, Chapter 50, Section 9 and Laws 2003,
Chapter 323, Section 1) are repealed.