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SENATE BILL 190

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Siah Correa Hemphill

AN ACT

RELATING TO DISABILITY; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE DEVELOPMENTAL DISABILITIES ACT TO MAKE CHANGES
TO THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL MEMBERSHIP,
PURPOSE 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.--~~[Sections 1 through 18 of this
act]~~ 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 PURPOSE.--

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1 A. It is the purpose of the legislature in enacting
2 the Developmental Disabilities Act to ~~[promote opportunities~~
3 ~~for all persons with developmental disabilities to live, work~~
4 ~~and participate with their peers in New Mexico communities.~~
5 ~~Priority shall be given to the development and implementation~~
6 ~~of support and services for persons with developmental~~
7 ~~disabilities that will enable and encourage them to:~~

8 ~~(1) exert control and choice over their own~~
9 ~~lives;~~

10 ~~(2) achieve their greatest potential for~~
11 ~~independent and productive living by participating in inclusive~~
12 ~~community activities; and~~

13 ~~(3) live in their own homes and apartments or~~
14 ~~in facilities located within their own communities and in~~
15 ~~contact with other persons living in their communities] assure~~
16 ~~that individuals with developmental disabilities and their~~
17 ~~families participate in the design of and have access to needed~~
18 ~~community services, individualized supports and other forms of~~
19 ~~assistance that promote self-determination, independence,~~
20 ~~productivity and integration and inclusion in all facets of~~
21 ~~community life, through culturally competent programs.~~

22 B. The Developmental Disabilities Act authorizes
23 the council to engage in advocacy, capacity building and
24 systemic change activities that:

25 (1) are consistent with the purpose described

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1 in this section and the policy described in this section; and
2 (2) contribute to a coordinated, consumer- and
3 family-centered, consumer- and family-directed comprehensive
4 system that includes needed community services, individualized
5 supports and other forms of assistance that promote
6 self-determination for individuals with developmental
7 disabilities and their families.

8 ~~[B.]~~ C. The Developmental Disabilities Act
9 authorizes the department to plan, provide and coordinate
10 support and services to persons with developmental
11 disabilities."

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

14 "28-16A-3. DEFINITIONS.--As used in the Developmental
15 Disabilities Act:

16 A. "assessment" means a process for measuring and
17 determining a person's strengths, needs and preferences to
18 determine eligibility for support and services and to develop
19 or modify an individual support and service plan;

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

21 (1) assists a person with a developmental
22 disability to know and understand ~~[his]~~ the person's choices
23 and rights and to obtain support and services that the person
24 is eligible to receive and that ~~[is]~~ are reflected in the
25 individual support and service plan; and

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

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

7 D. "council" means the developmental disabilities
8 council;

9 ~~[E.]~~ E. "department" means the department of
10 health;

11 ~~[D.]~~ F. "diagnostic evaluation" means an empirical
12 process that determines if, and to what degree, a person has a
13 developmental deficiency and the type of intervention and
14 services that are needed for the person and that person's
15 family;

16 ~~[E.]~~ G. "inclusive" means using the same community
17 resources that are used by and available to all citizens and
18 developing relationships with nonpaid caregivers or recipients
19 of support and services for persons with developmental
20 disabilities;

21 ~~[F.]~~ H. "individual support and service plan" means
22 a plan developed by an interdisciplinary team and agreed to by
23 a person with a developmental disability, or by a parent of a
24 minor or a legal guardian, as appropriate, that describes the
25 combination and sequence of special, interdisciplinary or

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1 generic care, treatment or other support and services that are
2 needed and desired by a person with a developmental disability;

3 ~~[G.]~~ I. "interdisciplinary team" means a group of
4 persons drawn from or representing professions that are
5 relevant to identifying the needs of a person with a
6 developmental disability and designing a program to meet that
7 person's needs. The team shall include the person with a
8 developmental disability, the parent of a minor child or a
9 legal guardian, as appropriate; and

10 ~~[H.]~~ J. "service provider" means a nonprofit
11 corporation, tribal government or ~~[tribal]~~ tribal organization,
12 unit 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 and
15 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 ~~[PLANNING]~~
19 COUNCIL--CREATION--MEMBERSHIP--TERMS.--

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

25 B. The ~~[developmental disabilities planning]~~

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1 council shall consist of no fewer than [~~eighteen~~] twenty-five
2 members [~~at least half of whom shall be persons with~~
3 ~~developmental disabilities or parents, immediate relatives or~~
4 ~~legal guardians of persons with developmental disabilities~~].

5 The [~~developmental disabilities planning~~] council shall
6 include:

7 (1) members, comprising at least sixty percent
8 of the council's membership, who are individuals with
9 developmental disabilities or parents, immediate relatives or
10 legal guardians of individuals with developmental disabilities;
11 provided that none of these members shall be an employee, or
12 someone who manages employees, of a state agency that receives
13 funds to provide developmental disabilities supports and
14 services;

15 [~~(1)~~] (2) the secretary of health, or [his]
16 the secretary's designee;

17 [~~(2)~~] (3) the secretary of human services, or
18 [his] the secretary's designee;

19 [~~(3)~~] (4) the secretary of children, youth and
20 families, or [his] the secretary's designee;

21 [~~(4)~~] (5) the [director] secretary of [the
22 state agency on aging, or his] aging and long-term services, or
23 the secretary's designee;

24 [~~(5) two directors from the state department~~
25 ~~of]~~

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- 1 (6) the secretary of public education;
2 ~~[including the vocational rehabilitation division]~~
3 (7) the director of the vocational
4 rehabilitation division of the public education department;
5 ~~[(6)]~~ (8) the director of the state protection
6 and advocacy system established pursuant to the federal
7 Developmental Disabilities Assistance and Bill of Rights Act;
8 ~~[(7) representatives of institutions of post-~~
9 ~~secondary education;~~
10 ~~(8) representatives of each program~~
11 ~~established within institutions of post-secondary education~~
12 ~~pursuant to the federal Developmental Disabilities Assistance~~
13 ~~and Bill of Rights Act and~~
14 ~~(9) representatives of local government~~
15 ~~agencies, nongovernment agencies or nonprofit groups concerned~~
16 ~~with services to persons with developmental disabilities,~~
17 ~~including a service provider]~~
18 (9) the director of any entity within a state
19 institution of higher education designated as a university
20 center for excellence in developmental disabilities education,
21 research and service; and
22 (10) representatives of local and
23 nongovernmental agencies and private nonprofit groups concerned
24 with services for individuals with developmental disabilities
25 in New Mexico.

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1 C. The governor shall select the members of the
2 council for appointment pursuant to Paragraphs (1) and (10) of
3 Subsection B of this section after soliciting recommendations
4 from organizations representing a broad range of individuals
5 with developmental disabilities and individuals interested in
6 individuals with developmental disabilities. The council may,
7 at the initiative of the council or at the request of the
8 governor, coordinate council and public input to the governor
9 regarding all recommendations.

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

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

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

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

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

25 "28-16A-5. POWERS AND DUTIES.--

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1 A. The [~~developmental disabilities planning~~]
2 council shall:

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

5 ~~(2)]~~ (1) provide statewide advocacy [~~systems~~]
6 for persons with developmental disabilities;

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

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

13 (2) develop and submit to the federal
14 government the five-year plan for council activities and any
15 amendments to the plan;

16 ~~[(5)]~~ (3) to the maximum extent feasible,
17 review and comment on all state plans that relate to programs
18 affecting persons with developmental disabilities;

19 ~~[(6)]~~ (4) submit to the secretary of the
20 United States department of health and human services, through
21 the office of the governor, periodic reports that the secretary
22 may request;

23 ~~[(7)]~~ (5) advise the governor and the
24 legislature about the needs of persons with developmental
25 disabilities; and

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1 [~~(8)~~] (6) carry out any other activities
2 authorized or required by the provisions of the federal
3 Developmental Disabilities Assistance and Bill of Rights Act of of
4 2000.

5 B. The [~~developmental disabilities planning~~]
6 council is authorized to:

7 (1) award grants and enter into contracts to
8 carry out its duties;

9 (2) seek funding from sources other than the
10 state;

11 (3) create and support regional county or
12 local advisory councils; and

13 (4) provide training to persons with
14 developmental disabilities, their families and providers of
15 support and services through traineeships, sponsoring training
16 opportunities and by other means determined appropriate by the
17 [~~developmental disabilities planning~~] council."

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

20 "28-16A-6. ELIGIBILITY.--

21 A. For purposes of eligibility for support and
22 services [~~A.~~], "developmental disability" means a severe
23 chronic disability of [~~a person that~~] an individual, which
24 disability:

25 (1) is attributable to a mental or physical

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1 impairment, including the result from trauma to the brain, or
2 combination of mental and physical impairments;

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

5 (3) is expected to continue indefinitely;

6 (4) results in substantial functional
7 limitations in three or more of the following areas of major
8 life activity:

9 (a) self-care;

10 (b) receptive and expressive language;

11 (c) learning;

12 (d) mobility;

13 (e) self-direction;

14 (f) capacity for independent living; and

15 (g) economic self-sufficiency; and

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

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

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

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

14 "28-16A-7. ~~[ASSESSMENT OF NEEDS OF PERSONS WITH~~
15 ~~DEVELOPMENTAL DISABILITIES]~~ COMPREHENSIVE REVIEW AND
16 ANALYSIS.--

17 A. ~~[In order to comply with the provisions of 42~~
18 ~~U.S.C. Section 6067]~~ The ~~[developmental disabilities planning]~~
19 council shall conduct a ~~[needs assessment of persons with~~
20 ~~developmental disabilities to determine]~~ comprehensive review
21 and analysis of the extent to which services, supports and
22 other assistance are available to individuals with
23 developmental disabilities and their families and the extent of
24 unmet need for services, supports and all other assistance for
25 those individuals and their families in the state. The results

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1 of the comprehensive review and analysis shall include:

2 (1) the number of individuals with
3 developmental disabilities residing in New Mexico;

4 (2) the range and degree of severity of
5 [~~their~~] the disabilities of individuals with developmental
6 disabilities in New Mexico; and

7 [~~(3) the present placement and support and~~
8 ~~services being received; and~~

9 [~~(4) the needs for support and services and the~~
10 ~~extent that their needs are unserved or underserved]~~

11 (3) such other information and analysis
12 required under federal law.

13 B. The findings of the [~~assessment~~] comprehensive
14 review and analysis shall be [~~included in the state plan for~~
15 ~~developmental disabilities services and support~~] utilized in
16 the development of the council's five-year plan.

17 C. The [~~assessment shall be repeated~~] council
18 shall:

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

22 (2) distribute the comprehensive review and
23 analysis and the summary of findings to relevant organizations,
24 programs and agencies in the state."

25 SECTION 8. Section 28-16A-8 NMSA 1978 (being Laws 1993,

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1 Chapter 50, Section 8) is amended to read:

2 "28-16A-8. PLANNING FOR COMMUNITY SERVICES FOR PERSONS
3 WITH DEVELOPMENTAL DISABILITIES.--

4 A. The [~~developmental disabilities planning~~]
5 council shall coordinate, review and comment upon plans for
6 support and services to persons with developmental disabilities
7 developed by all major state agencies providing or funding
8 services to persons with developmental disabilities based, to
9 the greatest extent possible, upon the most recent needs
10 assessment completed pursuant to Section [~~7 of the~~
11 ~~Developmental Disabilities Act~~] 28-16A-7 NMSA 1978.

12 B. The department of health, the human services
13 department, the [~~state department of~~] public education
14 department, the vocational rehabilitation division of the
15 [~~state department of~~] public education department, the
16 children, youth and families department, the New Mexico school
17 for the blind and visually [~~handicapped~~] impaired and the New
18 Mexico school for the deaf shall each submit a plan for support
19 and services for persons with developmental and other
20 disabilities within a reasonable time to allow for meaningful
21 coordination, review and comment by the [~~developmental~~
22 ~~disabilities planning~~] council.

23 C. Each plan shall define and provide for the
24 support and services that are required within the scope of each
25 respective agency's applicable federal and state laws and

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1 regulations. The goal of each plan is to enable persons with
2 developmental disabilities to maximize their potential, live as
3 independently as possible in their own homes and communities
4 and achieve productive lives through involvement in inclusive
5 service settings."

6 SECTION 9. Section 28-16A-10 NMSA 1978 (being Laws 1993,
7 Chapter 50, Section 10) is amended to read:

8 "28-16A-10. DEVELOPMENTAL DISABILITIES [PLANNING]
9 COUNCIL--STAFF.--The [~~developmental disabilities planning~~]
10 council shall employ an executive director, who is the
11 administrative officer of the council. The executive director
12 shall employ other necessary employees pursuant to the
13 provisions of the Personnel Act."

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

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

23 SECTION 11. Section 28-16A-12 NMSA 1978 (being Laws 1993,
24 Chapter 50, Section 12) is amended to read:

25 "28-16A-12. DEVELOPMENTAL DISABILITIES [PLANNING]

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

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

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

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

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

20 (2) enter into contracts and provider
21 agreements with agencies and individuals capable of providing
22 support and services to persons with developmental disabilities
23 [~~that promote the objectives of the department's state plan,~~
24 ~~prepared pursuant to Section 5 of the Developmental~~
25 ~~Disabilities Act~~]; and

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1 (3) establish advisory councils and task
2 forces as necessary to guide the development and review of
3 support and services to persons with developmental
4 disabilities.

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

11 C. The department shall:

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

20 (2) develop policies, procedures, rules and
21 regulations that, to the extent possible, will promote
22 uniformity in reimbursement and quality assurance systems
23 regardless of the source of funding; and

24 (3) convene and maintain a family infant
25 toddler inter-agency coordinating council and a statewide adult

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1 support and services task force that shall, at a minimum,
2 address quality assurance."

3 SECTION 13. Section 28-16A-18 NMSA 1978 (being Laws 1993,
4 Chapter 50, Section 18) is amended to read:

5 "28-16A-18. DEVELOPMENTAL DISABILITIES EARLY CHILDHOOD
6 EVALUATION SYSTEM.--The state shall have a timely,
7 comprehensive, multidisciplinary system for evaluating infants,
8 toddlers and preschool-age children suspected of having
9 developmental delays. Diagnostic evaluations for infants and
10 toddlers shall address family service needs and shall include
11 training capabilities to educate community providers and
12 parents in the understanding and application of the
13 evaluations. This diagnostic evaluation system shall be
14 jointly provided through a coordinated system by the children's
15 medical services bureau of the public health division or the
16 developmental disabilities supports division of the department,
17 the university of New Mexico's [~~developmental disabilities~~
18 ~~team~~] center for development and disability and the [~~state~~
19 ~~department of~~] public education department."

20 SECTION 14. A new section of the Developmental
21 Disabilities Act is enacted to read:

22 "[NEW MATERIAL] REPORTING--DEPARTMENT OF HEALTH--
23 INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL
24 DISABILITIES--INDEPENDENT REVIEW.--Within thirty days of the
25 date on which reporting pursuant to each review is available,

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1 the department shall provide the council with each report
2 issued pursuant to the independent reviews of intermediate care
3 facilities for individuals with intellectual disabilities that
4 are performed pursuant to the requirements of federal law."

5 SECTION 15. REPEAL.--Sections 28-16A-9 and 28-16A-19 NMSA
6 1978 (being Laws 1993, Chapter 50, Section 9 and Laws 2003,
7 Chapter 323, Section 1) are repealed.

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