



# LEP Program Evaluation Progress Report

**Report Issued:**

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**Progress Report:**

September 2013

**KEY FINDINGS**

- 1) Spending levels are unsustainable.
- 2) The DD Waiver program lacks a needs-based assessment tool and a utilization review process to ensure participants receive the right care at the right time.
- 3) The number of individuals on the waiting list outpaces allocation to the DD waiver program, causing individuals with unknown needs to wait seven to eight years for waiver services.
- 4) Increased program oversight, improved cost management, and benefit redesign are needed to maintain or expand the DD waiver program. Enhanced performance reporting to the legislature and public could build on positive benefits provided through the DD waiver program and federal consent decree.

***Developmental Disabilities Waiver Program***

Reviewed the program costs and outcomes, adequacy of program oversight, and the accuracy and timeliness of information used to manage the Developmental Disability (DD) Waiver program.

**Background.** The DD Waiver program offers a broad array of community-based services, in lieu of institutional care, to individuals with a developmental disability. The Department of Health (DOH), through the Division of Developmental Disabilities, is the operational manager of the program, while the Human Services Department (HSD) oversees the Medicaid program, which funds services for DD Waiver clients. The Legislature appropriates funding for program operations, as well as the state match for Medicaid services for DD Waiver enrollees.

In FY08, the state spent \$71.4 thousand per person for the DD Waiver services and an additional \$7,400 for regular Medicaid services, ranking NM in the top 10 most expensive programs in the country. The program's cost growth increasingly puts the waiver in jeopardy of not meeting federal cost-neutrality requirements.

The state used an inadequate assessment and resource allocation process to gauge care levels. As a result, New Mexico's DD Waiver clients were ranked in the highest level of care need, exceeding all other comparison states. The appropriateness of the rates paid to providers for care had not been reviewed since 2001, despite regulations requiring annual rate validation studies. These factors significantly impacted program costs.

From FY11 to FY13, the Legislature increased appropriations to move consumers from the ever-growing wait list to the DD Waiver. However, waiver enrollment has not met legislative intent, greatly surpassed by the number of individuals added to the waiting list, with large amounts of appropriated funding going unused.

**Key Recommendations.**

DOH and HSD should:

- Submit a comprehensive cost-benefit analysis to the Department of Finance Administration and Legislative Finance Committee of a current rate validation study, implementation of an effective assessment process, and an integrated information system.
- Update their interagency Joint Powers Agreement to reflect best practices.

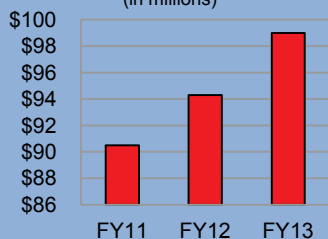


### **DD Waiver Complications:**

- **Multiple regulations and standards,**
- **Administered by two state departments,**
- **3,807 DD waiver enrollees,**
- **6,300 awaiting DD waiver enrollment,**
- **300 contracted providers,**
- **An unresolved class action lawsuit, and**
- **Critical budget issues.**

**Applications for the waiver average 1,200 per year. However, after review for eligibility, an average of 300 individuals qualify for the waiting list annually.**

**2011-2013 GAA Appropriations for DD Waiver**  
(in millions)



Source: FY11-FY13 GAA

**Level of Care: The intensity of services required for an individual based upon a functional and psychosocial assessment.**

### DOH should:

- Move forward immediately with cost-saving strategies using the information gathered from stakeholders, their experiences, and this report. Ensure utilization is based upon established criteria and is conducted by the utilization review contractor or DOH staff for levels of care, annual resource allotments, and service exceptions and outliers.
- Perform reviews of a certain number of clients at the top of the waiting list in each region to reaffirm medical and financial eligibility and service needs which could be provided through other funding sources and traditional Medicaid plan services. This information is important in identifying how existing needs can be met and predicting future funding requirements for the DD Waiver program.
- Urge the Jackson lawsuit court officials to focus on measurement of goal outcomes, eliminating the specific action plans from court documents, and allow the department to develop and implement plans to meet outcome expectations. Submit semi-annual disengagement progress reports to the Legislative Finance and Legislative Health and Human Services Committees.

### HSD should:

- Validate the financial data contained in the managed care organizations (MCO) spending reports and make available to the Legislature relevant MCO data.
- Amend the contract with the utilization review agency expanding the duties to include review and approval authority for all exceptions and outliers and initial and annual assessment reviews.

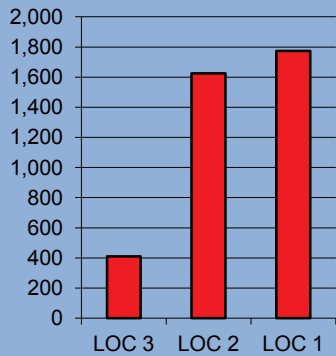
### Agency-Reported Progress to Date.

- The DOH continues the implementation of the new waiver approved by the Centers for Medicare and Medicaid (CMS). DD Waiver approval was received from CMS in 2011. However, the one year transition period as approved by CMS, concerns expressed by stakeholders, and third party administrator implementation problems, have caused full implementation delays. The delays have hindered the DOH from making services changes and evaluating the cost impact of the changes.
- A rate study was completed to ensure appropriate reimbursements to providers. The results indicated that most rates were on par or above other states. The rates were approved by the CMS in the granting of the waiver.



# LFC Program Evaluation Progress Report

**DDW Clients Served by Level of Care FY09**



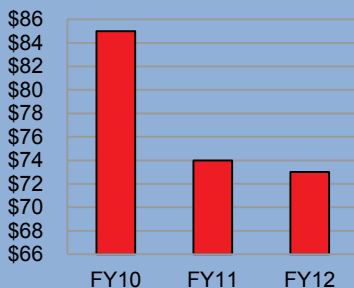
Source: DDSD

**Average Cost Per Individual on the DDW by LOC FY09**  
(in thousands)



Source: DDSD

**FY10-FY12 Annual Medicaid Cost per DD Waiver Enrollee**



Source: HSD

- As of August 2013, needs assessments have been completed for 3,532 clients using the new assessment tool. This number does not include second assessments requested by the consumer or guardian. No changes are made until, if requested, a second assessment is completed. Jackson lawsuit members will retain their current level of services regardless of charges due to the new assessment.
- The state's appeal process relating to care and services for consumers has been found to be as good or better to that of other states, according to the DOH.
- Federal regulations require the cost of community-based services be less than the average cost of institutional care or the DD Waiver could be in violation of federal regulations. In 2010, the cost per waiver enrollee was on target to at least equal institutional costs. In 2011, individual consumer service costs decreased from \$85 thousand to \$74 thousand per enrollee. By November, 2012, the annual cost per client had decreased to \$73 thousand. The 2013 cost for New Mexico institutional care was \$94.8 thousand.
- In reaction to the shortage of certain therapists, DOH is reimbursing full therapist rates for therapy assistants, based upon the need for assistant supervision by licensed personnel. This action increases availability of therapy services throughout the state. Nursing, which had been bundled into the support living contracts, is now paid as a stand-alone service, allowing reimbursements to be more competitive.

### Outstanding Issues.

- The department is seeking proposals from outside entities for the completion of the initial consumer assessments. The LFC evaluation had recommended assessments be completed by state staff but the department is opting for contract assessors to dispel the perception of state bias in the process.
- Allocations of enrollees to the waiver continue to be slow and the growth of the waiting list continues to outpace the waiver allocations.
- The state continues to work towards disengagement from the Jackson lawsuit under the surveillance of a court-appointed administrator. This administrator position is funded by the state.
- Although the department has reinstated the process of annual letters to waiting list consumers to reaffirm their desire to be placed on the waiver and to identify existing needs, other actions to address the waiting list are awaiting recommendations from the 2012 Senate Joint Memorial Task Force. The report is scheduled for presentation to the Legislative Finance and Health and Human Services Committee by October 31, 2013.
- HSD disputed the evaluation finding questioning the validity of the financial data provided by the MCOs. It is unknown whether any subsequent actions have been taken to ensure the Legislature receives accurate Medicaid MCO expenditures for the DD Waiver enrollees.