

LHHS Meeting – October 6, 2022  
Jim Copeland – Executive Director –  
Association of Developmental Disabilities Community Providers

Good morning, madam Chair and members of the Committee. My name is Jim Copeland. I am the Executive Director of the Association of Developmental Disabilities Community Providers (ADDCP). Presenting with me this morning is Ed Kaul from ARCA. Due to time constraints, highlights of remarks from Matt Poel from Great Livin' will be read and are provided in their entirety. ADDCP would like to thank you for your support of the disability community through the years and for the time you have taken this morning to hear our story. I will begin with what I hope will be a presentation that includes economics, marketing, business development, national, and historical perspectives concerning services to people with intellectual and developmental disabilities (IDD) and their families. This may be a trip down memory lane or at least a new perspective on an old story for some of you. It may be brand new information for some of you. Whatever the case, I hope it will be informative.

I have been associated with people with IDD both personally and professionally my entire life. My dad's oldest brother was born in 1917 in Arkansas. At 9 months of age, he developed an undiagnosed severe fever. As the story goes, my grandmother held him on her lap on a pillow for 3 days until the fever broke. It left my uncle with a significant intellectual and developmental disability. My uncle never learned to speak. He was able to assist with his activities of daily living. There were no services available. My uncle and grandmother were together every day of their lives for 62 years. My grandmother died in 1979 and my uncle died 3 months later. The only person that had taken care of him was no longer in his life. My wife's youngest brother was intellectually disabled as the result of a childhood immunization that went horribly wrong. He passed away in the care of the New Mexico DD Waiver in 2008. I began working in State institutions in Arkansas in 1975. This work has taken me to 6 states in positions from direct care to supervision to executive management. I feel my personal and professional experience qualifies me to provide the informed opinions I will express this morning.

I moved to New Mexico in August, 2001 when my wife was hired on the Special Education faculty at the University of New Mexico. In the intervening 21 years, I have worked at the Los Lunas Community Program for 3+ years, served as the Executive Director of Alta Mira Specialized Family Services, a DD Waiver and Early Intervention provider, for 14+ years, served as the Director of Developmental Disabilities Supports Division of the Department of Health for 2+ years and served as the Executive Director of ADDCP for 1 year.

I hope you are all aware that a lot of the foundation for DD Waiver services was formed by the 35+ year Jackson litigation. The lawsuit was dismissed with prejudice this year. While the lawsuit was initially instrumental in the development of services, it consumed enormous amounts of resources as it slowly moved toward dismissal. With the lawsuit over, New Mexico may now move to efficiently provide quality supports and services. There were very few opportunities to evaluate the efficiencies in service delivery under the lawsuit. Standards and procedures were developed and implemented in response to issues identified by the litigation. It is now an appropriate time to begin to identify and resolve duplications and redundancies in requirements for waiver services while maintaining an eye on the health and safety and quality lives for our recipients.

Let's talk about how these services are funded. The Centers for Medicare and Medicaid Services (CMS), provide the federal funding and oversight for DD Waiver services. The New Mexico Human Services Department is the Medicaid agency in New Mexico and is responsible for the operation of DD Waiver Services. This is accomplished through a Management Agreement with the Department of Health - Developmental Disabilities Supports Division. CMS requires that states "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area". New Mexico state law, the Developmental Disabilities Act, NMSA 28-16A-16 F, requires that contingent upon appropriations, the department (DOH) shall

conduct an independent biannual cost study for the purpose of establishing payment rates. Cost studies are good, but they are based on lagging indicators. The last cost study was completed in 2019 and based on 2018 data. The results of that cost study weren't fully implemented until July 2022. The inflation factors included in the rate study were not implemented at all. The inflation factor of 2.37% was determined from the 5-year average for 2015 – 2019. During 40 year high, record inflation, providers were not reimbursed for some services for 4 years. As an example, one of the services that was not reimbursed at the established cost, was Family Living. For the 4 years that an agency didn't receive the established rate, if the agency served 100 families in that service, that agency lost \$3.54 million. Recently, 3 New Mexico waiver agencies were purchased by out of state providers and 2 providers discontinued DD Waiver services all together. The out of state providers have joined ADDCP to provide a multi-state look at services on a national level.

DOH requested \$10.4 million for FY 23 to fully fund the 2019 Cost Study. This funding was approved and the increased rates for 15 services were implemented effective July 1, 2022.

The Developmental Disabilities Act, NMSA 28-16A-17, identifies providers as independent contractors and not an entity of state government. This places DD Waiver providers in the same category as all other contractors with the State of New Mexico. I have used this analogy several times. If the Department of Transportation issued a Request for Proposals (RFP) for Road construction and notified potential bidders they would be reimbursed at their 2018 rates, we probably wouldn't get many roads constructed. If the State Police issued an RFP for police vehicles and stated prices were controlled at 2018 levels, they wouldn't buy any police vehicles. There is not an RFP process for DD Waiver services. CMS requires that cost studies be performed, and rates established for the provision of those services. Why is that? Because CMS must pay the Federal Medical Assistance Percentage (FMAP) on those services. From that standpoint, DD Waiver services have an economic impact on the State of New Mexico. The standard FMAP for New Mexico is around 75%. That means for every dollar that New Mexico spends to support DD Waiver services, CMS contributes \$3. That's why we conduct cost

studies. To determine what it costs to provide those services. Those rates are then sent to CMS and approved so CMS can determine how much money they need to reimburse New Mexico. That's where the lagging indicators come into play. Cost studies are based on retrospective data. Providers can't project what it will cost them to provide services, particularly in the last 2+ years with COVID and the Great Resignation and record inflation. That is why it is important to provide DD Waiver provider agencies with adequate funding. The 2019 cost study, remember was based on 2018 cost reports, determined that the DD Waiver was approximately 19% underfunded. A new cost study is scheduled to begin this year. Over the intervening 4 years, with all the economic impacts on the cost of goods and services, it will be interesting to see what the 2022 cost study will determine. Senator Munoz was quoted in the newspaper recently stating the projected surplus for FY 23 and the projected new money for FY 24, were "Once in a century" dollars. Let's make a "Once in a century" commitment to New Mexicans with intellectual and developmental disabilities and provide prospective funding for DD Waiver services. Our providers have survived some stressful events and times. New Mexico is ending the Wait List for services, adding more stress to a fragile network. The fact of the matter is, there are approximately 300 new people applying for DD Services each year. Unless we maintain and grow the current provider network, we face the possibility of developing another wait list.

There are a lot of reasons to be considered. The state's ongoing workforce issues are a huge concern. Everyone is hiring, but there seems to be a lack of people applying. DD Waiver providers are competing with local businesses in every region of the state for the available workforce. Every member agency of ADDCP wants to increase wages and benefits for their employees. Every provider agency needs a business model that allows them to be flexible to respond to whatever is the next unexpected crisis. July 1, 2022, there were 2, not unexpected, but real impacts on our provider agencies. The Healthy Workplace Act took effect. DD Waiver provider agencies were required to provide 1 hour of paid sick leave for every 30 hours any employee worked. The State of New Mexico raised the minimum wage of all State employees and Public Education Department employees to \$15 per hour. The paid sick leave was not

covered in the current reimbursement structure. The \$15 per hour minimum wage was direct competition for provider agencies in hiring staff to provide DD waiver services. The provider agencies are mostly local, not for profit community agencies with local community member Boards of Directors. They make decisions based on the best interest of their community. There are national efforts to improve the jobs for direct support professionals. There are national solutions that would impact the job market. The direct support workforce is in crisis on a national level in IDD services. ADDCP is a member of the American Network of Community Options and Resources (ANCOR). ANCOR, with 2000 member organizations, is the leading voice on the federal level for community-based services for people with IDD. The crisis is real. Everyone is working to make it better. Let's put New Mexico in a great position to support our citizens with IDD and their families to live their best lives. Let's make that once in a century investment that will have an impact on every community in New Mexico.

ADDCP has received the support of Representative Thomson to sponsor our legislation to provide \$7.7 million in additional funding to the Department of Health for provider rate increases. This additional funding will be used to cover increases in operational costs to include wages, benefits, utilities, groceries, gasoline, vehicle replacements and other costs. ADDCP is formally asking for the endorsement of this legislation from this Committee. Thank you for your time and consideration for this request.

I will turn this presentation over to Ed Kaul.