

AN ACT

Relating to health; enacting the Direct Support Professional Workforce Stabilization Act; requiring provider agencies that provide services through certain Medicaid waiver programs to increase compensation for certain staff; requiring provider agencies to maintain records and report data on staffing and compensation; requiring the department of health to collect certain data from providers.

Be it enacted by the legislature of the state of New Mexico:

SECTION 1. SHORT TITLE. -- This act may be cited as the "Direct Support Professional Workforce Stabilization Act."

SECTION 2. DEFINITIONS. -- As used in the Direct Support Professional Workforce Stabilization Act:

- A. "otherwise applicable minimum wage" means the highest minimum wage among municipal or county minimum wages in New Mexico, the state minimum wage pursuant to Section 50-4-21 [NMSA 1978](#), or the federal minimum wage pursuant to [29 USC Chapter 8, Section 206](#);
- B. "base wage" means the minimum hourly rate of pay for a direct support professional;
- C. "department" means the department of health;
- D. "direct support professional" means a non-administrative employee of a provider agency who:
 - (1) spends the majority of their work hours providing supportive services to individuals with a developmental disability on a day-to-day basis to enable those individuals to live and work in their communities; and
 - (2) is not a 1099 worker or an independent contractor;
- E. "developmental disabilities Medicaid waiver programs" are those as authorized pursuant to Section 1915(c) of the federal Social Security Act and administered by the department;
- F. "provider agency" means an entity that:
 - (1) has entered into a Medicaid provider participation agreement with the medical assistance division of the human services department and a provider agreement with the department; and
 - (2) is eligible to be reimbursed for services provided to individuals through a developmental disability Medicaid waiver program; and
 - (3) employs direct support professionals to furnish services to those individuals with a developmental disability;
- G. "reimbursement rate" means the amount of the fee set by the department or by the human services department to compensate provider agencies, as defined in this section.

SECTION 3. BASE WAGE FOR DIRECT SUPPORT PROFESSIONALS. -- The base wage for a direct support professional employed by a provider agency that furnishes services under a developmental disability program shall be no less than one hundred and fifty percent of the highest otherwise applicable minimum wage.

A. The effective date for the base wage shall be within three months of the department implementing a new fee schedule following approval from the Centers for Medicaid and Medicare Services and shall be no later than January 1, 2024.

B. On January 1, 2025, and January 1 of each subsequent year, the base wage shall be adjusted at a level commensurate with future changes in reimbursement rates, as determined by the department.

SECTION 4. FUTURE REIMBURSEMENT RATE ADJUSTMENTS. — On a biannual basis, the department shall formally request from the legislature an increase in funding and subsequently an increase reimbursement rates in accordance with cost study findings conducted pursuant to NM Stat § 28-16A-16.

A. By October 1, 2023, and October 1 of each biennium thereafter, the department shall formally request an increase in funding, at a minimum, to a level commensurate with rates recommended in the biannual cost study.

B. All future biannual cost studies shall account for the following provider agency expenses:

(1) The direct support professional base wage.

(2) Any changes in the highest applicable minimum wage to be implemented during the calendar year.

(3) Wages for all occupations used in the rate analysis, measured as the higher of:

a. Current wages for each occupation as determined through labor market analysis; or

b. Past wages used in the previous rate analysis with an inflation adjustment based on the current series consumer price index for all urban wage earners and clerical workers (CPI-W) in the Mountain region, as calculated by the federal government.

(4) Changes in the cost of health insurance, workers' compensation insurance, and other employee-related expenses and benefits.

(5) Wage compression as a result of changes in the direct support professional base wage, any changes in the high applicable minimum wage, labor market conditions, and/or inflation.

C. During the legislative session immediately following the completion of the biannual rate study, the department shall formally request an increase in funding at a minimum commensurate with the funding levels recommended in the most recent rate analysis.

(1) If the legislature does not fully fund the reimbursement rates recommended in the previous rate analysis, the department shall submit a budget request in subsequent legislative sessions to account for funding shortfalls.

SECTION 5. PROVIDER AGENCY RESPONSIBILITIES. -- Provider agencies shall:

A. Ensure contact information on file with the Department is accurate; information shall be utilized by the department to complete oversight responsibilities.

B. Notify direct support professionals who are affected by the base wage requirement.

(1) Provider agencies shall utilize the department-approved letter.

C. Publish and make readily available the department's designated contact for direct support professionals to submit questions, concerns or complaints regarding the base wage requirement.

D. Attest to the department that all direct support professionals receive at minimum the required base wage on or before July 1, 2024, and July 1 of each subsequent year, using an attestation tool developed by the department.

E. Keep true and accurate records to support and demonstrate that all direct support professionals received the base wage at a minimum.

F. Keep records for no less than three years which shall be made available for inspection by the department upon request. Records may include, but are not limited to:

(1) Payroll summaries and details

(2) Timesheets

(3) Paid time off records

(4) Cancelled checks (front and back)

(5) Direct deposit confirmations

(6) Accounting records such as: accounts receivable and accounts payable

SECTION 6. DATA COLLECTION. — The department and providers shall compile annual direct support professional staffing data using a nationally standardized reporting survey organization specified by the department.

A. The department shall specify the survey organization and provide guidance to providers regarding data submission by January 1, 2024.

C. The department shall submit an annual report by September 1, 2026, and September 1 of each subsequent year, to the legislature and the governor detailing the following direct support workforce data for the state of New Mexico:

(1) Demographics;

(2) Supports provided and number of individuals receiving services under IDD programs.

(3) Turnover rate;

(4) Tenure;

(5) Full- or part-time status;

(6) Vacancy rates;

(7) Hourly wages; and

(7) Other forms of compensation and benefits.

SECTION 7. REPORTING & AUDITING REQUIREMENTS. -- Records shall be kept and reported in accordance with the following specifications:

A. The department has ongoing discretion to request information from providers pursuant to NM Stat § 28-16A-13 to demonstrate that all direct support professionals received the base wage at a minimum.

(1) All records related to the base wage requirement received by the provider agency shall be made available to the department upon request, within specified deadlines.

B. The provider must, upon request, submit data, statistics, schedules, reports, and other required information to the department, whether federal, state, or local within the timelines and format specified by the department.

C. Failure to provide adequate documents and timely responses may result in the provider agency being required to submit a plan of correction and/or recoupment of funds.

D. If a plan of correction is requested by the department, the provider agency shall have forty-five business days from the date of the request to respond.

(1) The provider agency must notify the department in writing within five business days of receipt of the request if they will not be able to meet the deadline.

(2) The provider agency must explain the rationale for the delay and the department may or may not grant an extension in writing.

E. Upon the department's receipt of the plan of correction, the department will accept, request modifications, or reject the proposed plan of correction.

(1) Modifications or rejections will be accompanied by a written explanation.

(2) If a plan of correction is rejected, the provider agency must resubmit a new plan of correction along with any requested documentation to the department for review within five business days of notification.

F. The department may recoup part or all of the funding resulting from higher reimbursement rates, as outlined in Section 4 of this legislation, if the department determines the provider agency fails to implement a plan of correction within correction pursuant to this section.

G. If such determination is made to recoup funds, the provider agency will be notified by the department.

(1) All recoupments will be conducted pursuant to [\[Section 8.351.2.9 NMAC\]](#).

SECTION 8. APPROPRIATION. – Eight million, four hundred thousand dollars (\$8.4 million) are appropriated from the general fund to the department for expenditure in fiscal year 2024 and subsequent fiscal years to match federal funds for the developmental disabilities supports division to increase provider reimbursement. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.

09/30/2022