New Mexico Legislative Finance Committee
Progress Report

Developmental Disabilities and Mi Via Waivers

November 18, 2024

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Summary

The developmental disabilities (DD) and Mi Via waiver programs, administered by the Developmental Disabilities Supports Division (DDSD) of the Health Care Authority, serve approximately 7,900 New Mexicans with intellectual and developmental disabilities. The waiver programs use federal and state Medicaid dollars to contract with providers to deliver living supports, community services, therapy, employment, and other services to allow participants to live in their homes and communities rather than in an institutional setting.

Since the LFC 2018 program evaluation, DDSD fully resolved the *Jackson* lawsuit concerning mistreatment in state institutions and used approximately $211.4 million in federal America Rescue Plan Act dollars to mostly eliminate a 13-year waiting list for DD waiver services. However, the consequences of adding this many new people to the waivers resulted in issues with provider capacity, and persistent quality-monitoring and cost-containment issues remain. Compared to FY17, the state is serving 69 percent more DD clients, which has placed a strain on providers, and, as of FY24, at least half of providers are not accepting new clients. The state is working to increase provider capacity by increasing reimbursement rates, establishing telehealth frameworks, and collaborating with the Workforce Solutions Department. Yet providers report limited ability to serve this larger clientele, largely due to staffing shortages.

DDSD also improved its processes to identify and respond to abuse and neglect, including clarifying roles and orienting staff to points of risk. However, DDSD and the Division of Health Improvement, also in HCA, have not yet fully assessed the internal capacity of case managers and consultants to monitor participants, the result of which has been uncertainty regarding visit quality. Further, DDSD lacks outcome-based performance tracking. The division does not monitor the percentage of participants living as independently as possible nor does it measure the percentage of individual goals met. Rating providers on client quality of life, a federal practice with other Medicaid programs, could also be helpful.

Waiver costs continue to increase, limiting the number of new individuals the state can provide services to. The 2018 evaluation found a cost-per-client increase of 17 percent between FY14 and FY17, from $67 thousand to $78 thousand across the DD and Mi Via waiver programs. By FY24, that cost-per-client had grown another 26 percent to $98 thousand for a total 46 percent increase over a ten-year period, about 13 percent above inflation. The difference is largely due to higher levels of care and rate increases.

To improve access and service quality, DDSD should require providers to pass on 80 percent of their reimbursement revenue to direct support staff, change provider survey tools to include quality of life measures, use a

The Evaluation:

The 2018 program evaluation *Developmental Disabilities and Mi Via Waivers* evaluated the cost-effectiveness of DD waiver services, examined participant outcomes and quality measures, and reviewed the costs and impact of the *Jackson* and *Waldrop* litigations on the delivery of DD waiver services. The evaluation highlighted specific steps the Developmental Disabilities Supports Division (DDSD) and other key stakeholders could take to improve the waiting list and control costs.

Of the 14 recommendations from the previous report, DDSD completed four and is progressing or has not acted on the other 10.

While enrollment in the DD and Mi Via waivers increased 69 percent from FY17 to FY24, total DD and Mi Via waiver costs increased approximately 118 percent from $355 million in FY17 to $773.4 million in FY24.

validated assessment tool to guide the client planning and budget development process, and develop and adhere to service caps.

Key Recommendations

The Legislature should consider:

- Enacting legislation to require providers to, starting in FY27, pass 80 percent of Medicaid reimbursement rate revenues to the salaries of direct support professionals per the federal Centers for Medicare and Medicaid Services' final rule. This legislation should also require the Developmental Disabilities Supports Division to publish a compliance monitoring plan by September 1, 2025; and
- Funding provider expansion and start-up costs to increase the number of providers able to serve new clients.

The Developmental Disabilities Supports Division of the Health Care Authority should:

- Encourage the train-the-trainer model for therapists and direct support providers by January 2026;
- Work with the Legislative Finance Committee and Department of Finance and Administration to create FY27 Accountability in Government Act performance measures for client outcomes, quality of life, and provider quality;
- Ensure case manager and consultant ability to meet current standards, and increase training and oversight of the case management and consultant process if they cannot;
- Participate in the National Core Indicator survey to understand the waiver's strengths and challenges from a participant perspective;
- Follow through on plans to require the Vineland Adaptive Behavior Scale-3 and require the results of the scale be used to develop individualized service plans within the traditional Developmental Disabilities waiver;
- For the traditional developmental disabilities waiver, develop appropriate budgetary caps for services for new enrollees, and for the Mi Via waiver adhere to the individual budgetary allotment unless there are justifiable extenuating circumstances. Developmental Disabilities Supports Division should report to the Legislature annually on average budget, service utilization, expenditures per participant, and information about individuals exceeding expected budgetary allotments and service caps.

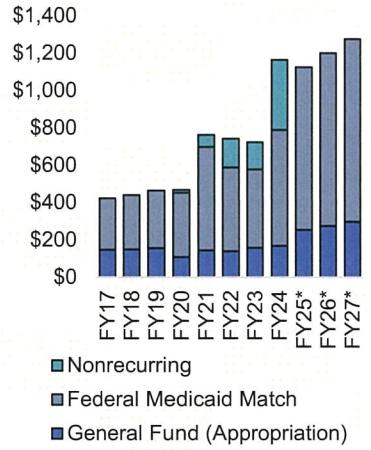
The Division of Health Improvement and the Developmental Disabilities Supports Division of the Health Care Authority should:

- Work to change the current Division of Health Improvement Quality Management Bureau survey tool to add measures of quality of life, including assessing percent of goals met and if clients are living as independently as possible, by January 2026.

Background

The Health Care Authority (HCA) oversees four home and community-based programs for individuals with intellectual and developmental disabilities. The programs are referred to as waivers because they require a waiver of standard Medicaid rules. These waivers allow the state to use Medicaid dollars, with a state match, to support individuals with diverse needs. The waivers provide a large array of supports to allow for community participation based on waiver participant's needs and preferences. Since LFC's last program evaluation on the waivers in 2018, the state has seen notable progress, officially exiting the *Jackson* lawsuit in 2022 and eliminating a 13-year waiver waiting list. However, costs continue to increase while program quality, participant satisfaction, and outcomes are uncertain.

Chart 1. DDSD Budget, FY17-FY27
(in millions)



Note: Nonrecurring funding from HCBS ARPA.
*FY25-FY27 are projections.
Source: LFC files

The DD, Mi Via, and Supports Waivers served 7,849 New Mexicans at a cost of almost $800 million in FY24.

The state funds home and community-based services waivers through federal and state Medicaid dollars. Total appropriations to the Developmental Disabilities Supports Division (DDSD), the division overseeing these waivers, reached $1.2 billion in FY24. The DD and Mi Via waivers make up the largest portion of the DDSD budget. This budget increase is largely due to provider rate increases and increased enrollment, with a $211.4 million nonrecurring American Rescue Plan Act appropriation to mostly eliminate the waiting list for the DD and Mi Via waivers in FY22 through FY24.

The developmental disabilities waiver program offers home and community-based services to individuals with intellectual and developmental disabilities so they can live and participate in their communities. The division's mission is to "serve those with intellectual and developmental disabilities by providing a comprehensive system of person-centered community supports so that individuals live the lives they prefer, where they are respected, empowered, and free from abuse, neglect, and exploitation." Importantly, the developmental disabilities waiver is not a federal entitlement, so states can have waiting lists for these services when adequate funding is not available. New Mexico, which had a waiting list for many years, effectively cleared its waiver waiting list in FY23, though over 2,000 potential participants have declined to participate in the program at this time.

DDSD operates four waivers, including a medically fragile waiver, under Section 1915(c) of the Social Security Act. DDSD was recently housed at the Department of Health under a joint powers agreement between the Human Services Department, which oversaw funding and waiver administration, and the Department of Health, which oversaw operations.

Table 1. Types of Developmental Disabilities Waivers Available in New Mexico

Waiver	Description
DD Waiver	Provides services for eligible individuals with intellectual or developmental disabilities with services coordinated by a case manager.
Mi Via Self-Directed Waiver	Permits participants to choose and manage their services using a set budget allocation. Same eligibility as the traditional DD waiver.
Supports Waiver	Provides $10 thousand for individuals on the waiver waiting list or who have been allocated services. Supports Waiver services are intended to complement unpaid supports provided to individuals by family and others.

Source: HCA

Beginning in FY25, DDSD moved entirely under the new Health Care Authority, including all staff and funding for the division.

The traditional DD waiver, which serves the most participants (4,598 or 59 percent), offers community-based services coordinated by a case manager at an average cost in FY24 of approximately $116 thousand per client. The Mi Via waiver provides greater self-direction by offering participants more flexibility in their program oversight and monitoring, with the aid of a designated employer of record (the individual responsible for directing the work of employees and providers for Mi Via participants), if needed. The Mi Via Waiver had an average cost of $74 thousand per client in FY24. Lastly, the Supports Waiver provides up to $10 thousand for those on the waiting list to secure agency-based or participant-directed services to help complement the other Medicaid services they may receive while awaiting an allocation to the more comprehensive waivers.

Table 2. FY24 Waiver Costs and Enrollment

	Enrollment	Total Cost	Average
Traditional DD	4,598	$532,596,629	$115,832
Mi Via	3,248	$240,835,271	$74,148
Supports	3	$2,548	$849

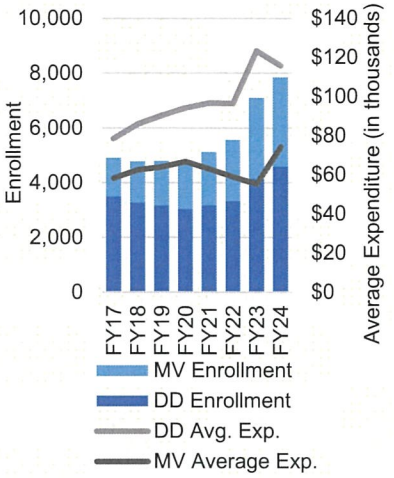
Note: Costs are projected based upon 88 percent of expenditures reported when LFC received data in August 2024. Supports waiver enrollment and total costs were significantly higher in FY22 and FY23, likely due to a larger waitlist meaning that FY24 could be an outlier or could be predictive of future utilization if HCA maintains a minimal waitlist.

Source: LFC analysis of DDSD data

Since FY22, DDSD has offered waiver services to approximately 5,700 participants. In the first half of FY22, the waiting list for waiver services reached over 4,100, with people waiting upwards of 13 years to be offered services. From November 2021 through FY23, DDSD removed hundreds of people per quarter, with several particularly large allocations, such as in the third quarter of FY22, when 1,453 individuals were allocated—this effectively eliminated the waiver services waiting list.

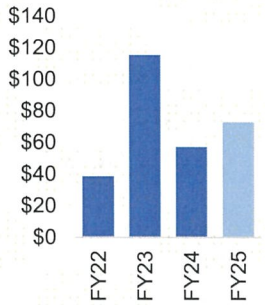
Ending the waiting list was a legislative and executive priority. The state used $211.4 million of federal America Rescue Plan Act (ARPA) funding to allocate these individuals. However, with the end of ARPA funding, the state will need to use general fund and Medicaid dollars to continue to support these and any additional newly enrolled individuals. DDSD expects to continue to allocate waiver services annually to those on the waiting list as long as funding is available. Therefore, the waiting list may increase throughout the year between annual allocation events. Because DDSD plans to continue to request additional allocations, the overall budget for DDSD will likely increase proportionately. For FY25, HCA projects it will need between $73 million and $89 million in both general and federal funds to move individuals off the waiting list.

Chart 2. DD and Mi Via Enrollment and Average Expenditures



Source: HCA

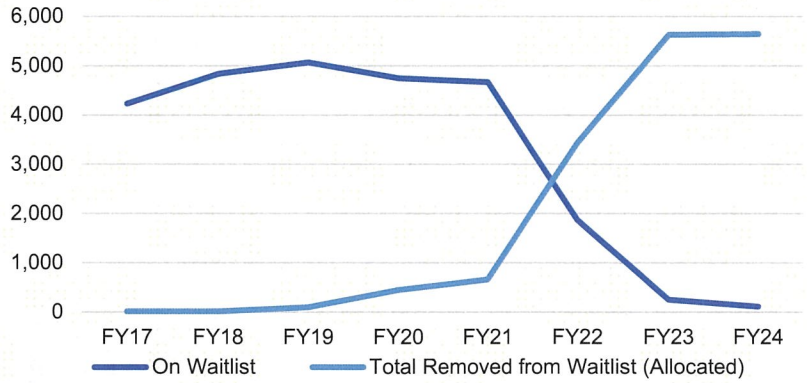
Chart 3. Appropriations for Waiting List Elimination, FY22-FY25
(in millions)



Note: FY25 is a projection from HCA's July Medicaid Projection meeting and includes adjustments for rate-increases, the November projection did not include details regarding expected costs for waiting list elimination. Prior to FY22 the state was not appropriating large amounts for waiting list elimination.

Source: LFC Post-Session and HCA

Chart 4. Total Number of People Offered Services and On Waiting List, FY17-FY24



Note: Waiting list point-in-time based on Q4 numbers. While DDSD provided allocations to approximately 5,700 individuals, only roughly 3,300 have started going through the service allocation process.

Source: DDSD

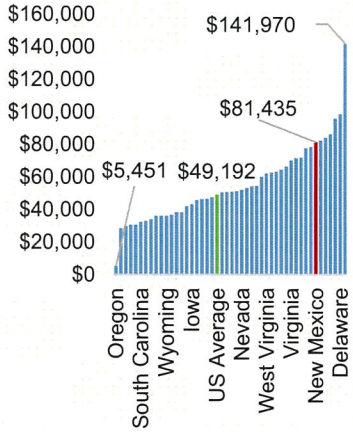
While minimizing the waiting list has positive impacts such as providing services to individuals as soon as possible, the increase in enrollment also has some unintended consequences. One, this growth is testing provider capacity. Two, as waiver enrollment increased sharply from FY22 through FY23, the performance of two DDSD performance metrics declined. The percentage of adults receiving employment support dropped from 18.4 percent in FY21 to 9.5 percent in FY23 (at least partially due to pandemic-related effects) and the percentage of waiver program applicants with a service plan and budget in place within 90 days of their clinical eligibility determination fell to 87 percent, down from 96 percent from FY22 to FY23.

Waiver costs continue to increase, with New Mexico continuing to have some of the highest client costs in the nation.

New Mexico's per-participant traditional DD waiver costs grew the seventh most and were some of the nation's highest between federal fiscal year 2014 (FFY14) and FFY19. Additionally, HCA estimates waiver costs will increase 27 percent from FY24 to FY25. The increases in both actual and projected costs are largely due to enrollment growth, higher provider reimbursement rates, and the increase in New Mexico's share of Medicaid costs. Medical inflation, which has hovered around 3 percent the last few years, is another important factor.

New Mexico's traditional DD waiver spending per participant was the seventh highest and grew the seventh most in the nation between FFY14 and FFY19. The most recent state-by-state comparison data available from the federal Centers for Medicare and Medicaid Services (CMS) show that New Mexico has the seventh highest per-participant cost for Intellectual and Developmental Disabilities (I/DD) waivers at $81

Chart 5. Developmental Disability Waiver Spending Per Participant by State, FFY19



Note: Cost per participant shown here are from FFY19 which is the most recent available data nationwide. Earlier cost per participant numbers in text for New Mexico are from FY24.

Source: CMS 372

thousand per patient in FFY19. This high cost may be partially attributable to the large number of participants using a high number of services. For example, New Mexico has higher caps for therapies than in other states and no caps for employment, community, and similar supports, likely leading to high utilization. In New Mexico, cost per participant grew by 32 percent from FFY14 to FFY19, significantly outpacing the national average of 5 percent. Among the states and the District of Columbia, which had higher cost growth than New Mexico, only D.C. had a higher per-participant cost at $141 thousand. Importantly, different states also have different services offered on their developmental disability waivers. New Mexico has one of the most comprehensive and wide-reaching service arrays to support waiver participants, which may also impact costs.

The Medicaid Assistance Division (MAD) projects a 14 percent increase in DD costs between FY24 and FY25. MAD projects DDSD waiver expenditures to increase from $794 million to $907 million in one year due to increasing enrollment, provider rate increases, and a drop in the state's Federal Medicaid Assistance Percentage (Medicaid matching rate). The division projected the most significant cost jumps to be due to increased enrollment and rate increases, but MAD did not specify amounts attributable to these components in the November projection. Importantly MAD projections are not actual expenditures and may not reflect actual expenditures.

From FY18 to FY25, DD reimbursement rates increased between 16 percent and 64 percent. Most rates kept pace with or surpassed the 24 percent inflation rate during this time. Increases vary across service categories, ranging from 64 percent for skilled therapies (occupational therapy, physical therapy, and speech-language pathology) to 16 percent for supported living for lowest acuity individuals. In FY24, provider rate increases added $48 million in expenditures. In the 2024 legislative session, the Legislature appropriated $20.5 million from the general fund. This appropriation can be matched with Medicaid dollars for a total of approximately $91 million to fully fund rate increases for FY25. LFC staff analysis projects DDSD will need an additional $75 million, or approximately $16 million in general fund, in both FY26 and FY27 to continue funding rate increases.

Table 3. Provider Rate Increases in Key DD Waiver Service Categories Since FY18

	FY25 Rate	% Change
Case Management (Month)	$331	32%
Behavioral Support Consultation (15 min.)	$26	42%
Family Living (Day)	$161	37%
Supported Living (Day)	$222-$459	16-24%
Customized In-Home Supports (15 min)	$8	25%
Community Support, Individual (15 min.)	$9	33%
Occupational Therapy, Physical Therapy, & Speech Language Pathology (15 min)	$37	64%

Note: Per BLS CPI, inflation was 25 percent between July 2018 and July 2024. Rates rounded to the nearest dollar.

Source: LFC analysis of DDSD data

A small subset of services makes up the majority of DD expenditures.

New Mexico's home and community-based waivers offer an array of residential, community-based, and professional services to foster independence, well-being, and safety. All waivers, including the traditional DD and Mi Via waivers, offer individually tailored case managers or consultants to coordinate services to foster independence and the participant's desired life outcomes. These services include living supports provided in the home, either in a personal home or a supported-living group home, assistance with daily living activities, and other in-home supports,

including home modifications. Annual per-client reimbursement rates for supported living in FY24 ranged from $79 thousand for participants in low acuity care to $164 thousand for participants in high acuity care. Services also include community-based support and inclusion, which enable participants to connect with their community and participate in functions of community life. Skilled therapy and nursing services are also available and include behavioral support consultancy, occupational and physical therapy, speech-language pathology, and adult nursing.

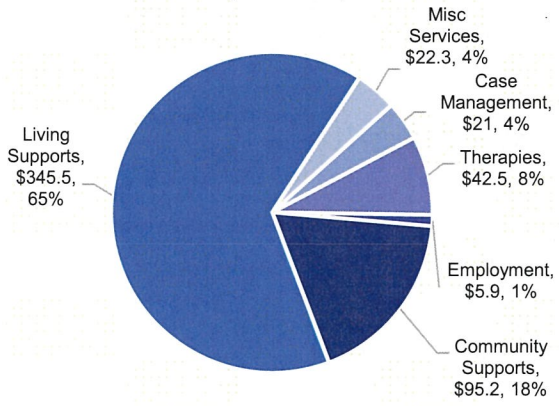
Table 4. DD and Mi Via Key Service Definitions and Costs

DD Waiver		Cost (in millions)	People Served
Living Supports	Residential support for individuals within a supported living home in the community, a family home, or an independent living situation, family living is 33 percent of living support costs.	$345	3,316
Community Support	Skills training, including educational supports, communication & social skills, community integration and relationship building.	$95	2,917
Case Management	Assists recipients in accessing services & service delivery & provides advocacy/support.	$21	4,550
Employment	Supports individuals pursuing jobs to increase independence and social connections.	$6	460
Mi Via Waiver			
In-Home Living	Provide individually designed services related to the participants qualifying condition, enabling them to live in their residence, or family home in the community of their choice, frequently provided by family members.	$135	2,288
Community Support	Assist the participant in community connections across social, educational, and recreational activities within the larger community.	$68	2,875
Consultant	Intended to provide information, support, guidance, and assistance both during the pre-eligibility/enrollment phase and for ongoing consultant services.	$15	3,243
Common to DD & Mi Via			
Skilled Therapy	Occupational, physical, & speech-language pathology services	$42 & 1.2	2,635 & 235
Nursing	Provided by a nurse and includes assessment, consultation, and ongoing services.	$3.2 & $0.84	2,061 & 15
Behavioral Support Consultation	Includes assessment of the person, identifies barriers to independent functioning, and tests of strategies to improve independence.	$11 & 0.17	2,255

Note: Numbers prorated using 88 percent of FY24 DDSD cost data.

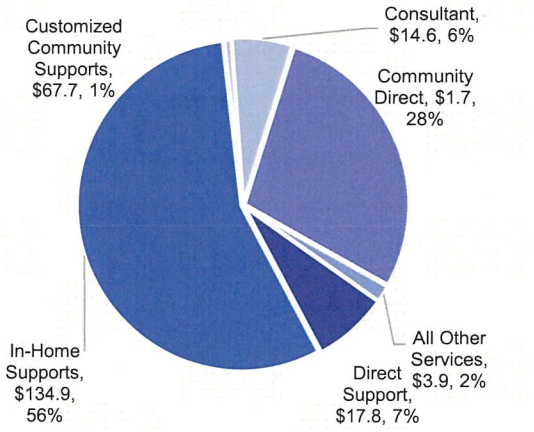
Source: HCA

Chart 6. DD Expenditures by Major Cost Category FY24
Total: $532.6
(in millions)



Source: DDSD

Chart 7. Mi Via Expenditures by Major Cost Category FY24
Total: $240.8
(in millions)



Source: DDSD

The state uses a multistep process for enrollment in traditional DD or Mi Via waiver services.

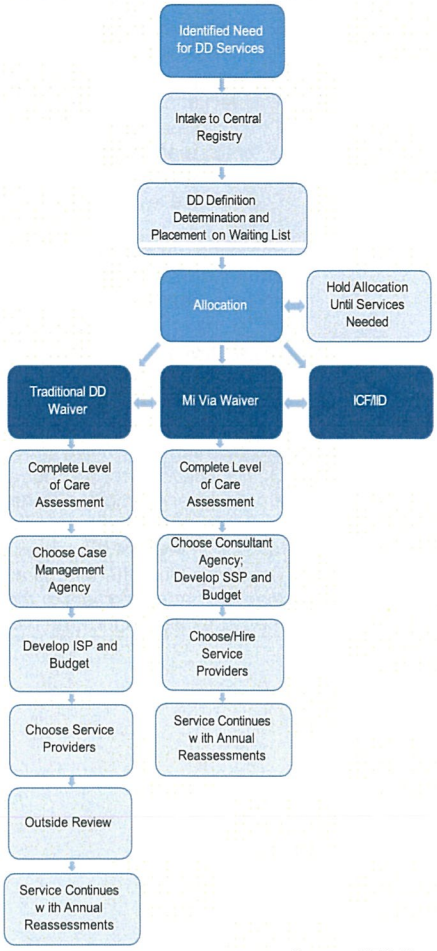
Once an individual with a qualifying condition identifies a need for waiver services, they can apply to the DDSD central registry. When the central registry receives an application, the intake bureau determines initial eligibility based on existing medical documentation. If they meet the developmental disabilities definition, they are placed on the waiting list and offered the Supports Waiver. When funds become available, a candidate must choose between an intermediate care facility or the two comprehensive waiver options: traditional DD waiver, or the more self-directed Mi Via waiver.

Once a candidate selects either comprehensive (DD or Mi Via) waiver option, they then select a case manager (traditional DD) or a consultant (Mi Via) to build and implement their individualized service plan. These case managers or consultants also draft a budget and an individual service plan for traditional DD waiver clients or a service and support plan for Mi Via clients.

Despite some progress, key findings of the 2018 evaluation are still unresolved, including rising costs and a need for improved oversight.

DDSD has made significant progress since the release of the 2018 evaluation, drastically reducing the state's waiting list, ending the over 35-year *Jackson* lawsuit, and improving its timeliness of abuse and neglect investigations. The waiting list is significantly smaller than it has been, with only approximately 200 individuals waiting to be allocated, down from around 4,100 in FY22; DDSD plans to offer services to individuals on the waiting list at least annually if funds are available. However, other challenges, such as limited DDSD oversight of service delivery, which can weaken program integrity, remain. The significant increase in waiver recipients results in the need for DDSD to be able to analyze and report on waiver cost drivers, focus on outcomes in performance metrics, and audit the individuals responsible for employees and training for Mi Via participants.

Figure 1. DD and MI Via Service Enrollment Process



Source: LFC files

Table 5. 2018 Program Evaluation:
Developmental Disabilities and Mi Via Waivers
Key Finding Status

2018 Key Finding	Status
DOH was beginning to reduce the waiting list, but New Mexico was still the only state with a higher rate of waiting list participants to those receiving services	Resolved
The Jackson lawsuit remains a major cost driver for the DD system	Resolved
Other states delivered IDD services in a more cost-effective manner; two potential reasons/mechanisms were that they offered fewer or more limited services, and that they took advantage of the Affordable Care Act Community First Choice levers that would have increased the federal matching percent by 6%	Partially Resolved
Improved oversight is necessary to mitigate risk to waiver participants, through Department of Health Improvement's timely processing of case investigations, and to mitigate the risk to public funds, through stricter rules for Mi Via employers of record.	Partially Resolved
DD Waiver cost per client rose 17 percent between FY14 and FY17, even though total enrollment declined 13 percent	Unresolved
Mi Via, through its rate range model and lack of effective oversight for employers of record, was driving cost increases for the state's developmental disability programs	Unresolved
DOH's assessment and budget allocation tool lacks standardization and is a cost driver, particularly since the standards-based SIS was dropped as a screening tool in response to the settlement of the Waldrop due process lawsuit, in favor of the more individualized and expensive Outside Review	Unresolved
Data collection offers DOH an opportunity to improve performance management and client outcomes, particularly by including DD-specific measures into DOH strategic priorities and goals.	Unresolved

Source: LFC files

New Mexico has Limited Provider Capacity for High Demand Services

Like many other states nationwide, New Mexico struggles with healthcare provider capacity due to having too few workers for direct support (direct support professionals or DSPs) and too few therapists. From FY17 to FY24, the state increased the number of participants served by home and community based waivers by 69 percent to a total comprehensive waiver enrollment of 7,849. However, after this large enrollment increase, fewer providers are accepting new clients, potentially impacting participant access and provider choice and cost. Although DDSD has more total provider agencies than one year ago, the need for more provider agencies and greater participant choice remains, specifically in the areas of clinical services: nursing, physical, occupation, and speech therapies.

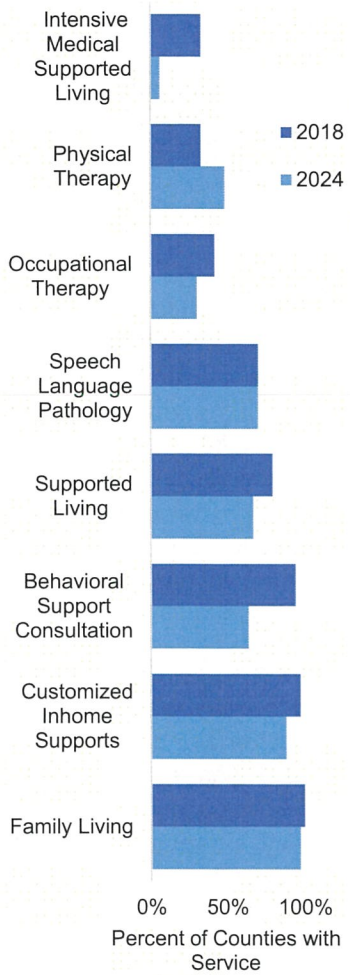
In 2023, a state-funded provider capacity study conducted by the Public Consultant Group (PCG) included recommendations to increase provider capacity, most of which DDSD is pursuing. This report found that most waiver participants had challenges receiving at least one service. Even as DDSD pursues most of these recommendations, other activities could ease provider burden, such as implementing wage pass-throughs to direct support professionals, increasing uptake of telehealth, and working with therapists and direct support professionals to free up provider time.

For most services, provider availability for new clients decreased between 2018 and 2024 by up to 30 percentage points across counties.

While the state has over 200 providers supporting participants on the traditional DD and Mi Via waivers across all service areas, the rate of counties with providers accepting new clients has decreased since 2018 (based on point-in-time comparisons, which may change). Capacity constraints are particularly noticeable for high-cost and high-demand services, with 83 percent of traditional DD waiver participants using at least one of the top eight services, according to the Public Consulting Group. As more individuals come onto the waivers, ensuring there are available providers is essential for participants to receive needed services.

Among the eight most expensive services, only physical therapists are accepting new clients in more counties in 2024 than in 2018—all others have dropped in availability. Similar to 2018, intensive medical living support has the fewest counties with providers accepting new clients. Importantly, no providers in the most populous counties—Bernalillo, Dona Ana, or Sandoval counties were accepting new clients for Intensive Medical supported living (see Appendix C. for a breakout of service availability by

Chart 8. Percent of Counties with Providers Accepting New Clients, 2018 versus 2024



Note: Data from 2024 was pulled from July 15-17, 2024. 2018 data was pulled in spring 2018.
Source: Secondary Freedom of Choice Website

county). If the most populous counties do not have access for new waiver participants, then the largest proportion of individuals may not be able to access the services they need. The state could help increase the number of providers through allocating funding for startup costs.

In July 2024, more than half of waiver providers were not accepting new clients. Of those not accepting new clients, the vast majority were on a self-imposed moratorium, meaning the provider told the state they could not take on new clients, generally due to staffing shortages. Providers can move on and off a moratorium at their discretion, such that the number of providers accepting new clients may be different from day to day. However, in the sample of monthly provider reports provided to LFC staff, at least 150 providers were on moratorium each month, meaning, on average, at least half of potential providers are not accepting new clients.

Table 6. Number of Total Providers and those on Moratorium for Select Months

	September 2023	May 2024	July 2024	August 2024
# on Moratorium	157	162	152	159
# Total providers	282	258	260	282
% on Moratorium	56%	63%	58%	56%

Note: These numbers are across all waivers, including DD, Mi Via, and Medically Fragile as some of these providers serve multiple waivers, this number may contain duplicates and is therefore an underestimate of the % of providers on moratorium.

Source: DDSD

Most provider capacity shortages are for highly utilized services, especially within the traditional DD waiver. The Public Consulting Group (PCG) disability services provider capacity report in 2023 identified roughly eight service types with limited capacity (listed in Table 7.) In FY24, 83 percent of DD waiver participants engaged in at least one of these limited-access services. Together these services accounted for 66 percent of total DD waiver expenditures. In Mi Via, where support is more self-directed, these services were less utilized except for community supports, which 89 percent of participants used, constituting 29 percent of all Mi Via expenditures.

Table 7. Percent of Waiver Participants Utilizing Limited Access Services in FY24

Service	DD Waiver	Mi Via Waiver
Customized Community Supports	63%	89%
Behavioral Support Consultation	49%	2%
Speech Therapy	45%	4%
Occupational Therapy	34%	3%
Physical Therapy	34%	2%
Supported Living	31%	N/A
Respite	7%	N/A
Private Duty Nursing	N/A	1%

Source: DDSD

PCG's provider capacity report found DD and Mi Via participants were generally satisfied, but at least 46 percent could not access all authorized services. Specifically, at least two-thirds of participants agreed they had services that met their needs, were culturally appropriate, respected their dignity and privacy, and were delivered in an individualized way. Yet roughly half of traditional DD (46 percent) and Mi Via waiver (53 percent) participants indicated they could not always access *all* the services in their service plan. Case managers and consultants also responded that access to services was a concern, with 86 percent of case managers indicating participants cannot access one or more needed services within their plan, while 60 percent of Mi Via consultants stated participants could not access some of the needed services in their plan. These services include the most expensive services identified above as well as respite and private duty nursing. Through surveys of participants, PCG noted the most

While 2 out of 3 participants agreed they had services that met their needs, roughly one in two traditional DD and Mi Via waiver participants indicated they could not always access *all* the services included in their individual service plan.

common barriers to service availability included providers not accepting new clients, no providers in the area, or providers unable to staff service due to the complexity of participant needs.

DDSD is working to address provider capacity but could also proactively implement future federal policies and best practices.

The PCG study of New Mexico's DD and Mi Via waivers provider capacity included recommendations to improve the provider workforce. National research shows that to recruit and retain low-income workers, employers may need financial work incentives to support advancement. So far, DDSD has taken steps to implement most of the PCG recommendations, but more could be done, especially with the fast-tracking adoption of federal policy, due to be implemented by 2030 and adoption of some best practices done in other states.

PCG made 12 recommendations to DDSD to improve provider capacity, of which DDSD is currently pursuing nine. These recommendations centered on provider recruitment and retention, rates and wages, telehealth strategies, conducting additional research into specific access areas, examining Mi Via participant engagement, and ensuring use of requests for assistance.

Table 8. PCG Recommendations and DDSD Action

Recommendation	Is DDSD Pursuing this Recommendation?
Providers Enhance Recruitment and Retention Efforts	Yes- posting positions but could use incentive payments &/or career ladder
Support Recruitment and Retention by Leveraging the Advisory Council on Quality Supports for People with Developmental Disabilities and Their Families	Yes
Collaborate with Department of Workforce Solutions	Yes- starting grant
Implement Wage Pass Throughs	No, waiting for federal rule
Implement Rate Modifiers to Target Wage Pass Throughs	No, waiting for federal rule
Establish Telehealth Oversight Framework	Yes – but could better utilize services
Develop a Telehealth Quality Assurance and Monitoring Process	Yes
Additional Study of Service Availability	Yes
Explore Cause and Impact of Providers' Inability to Staff Services for Participants with Complex Needs	Yes, but long term
Additional Survey or Targeted Focus Group of Mi Via Waiver Participants	No
Implement a Participant Data Management System to Enhance Participant Communication and Engagement	Partially – waiting for MMISR
Outreach to Encourage the Use of and Feedback on the Regional Office Request for Assistance (RORA) Process	Yes- but need to also understand if RORA resolved challenge

Note: green = the recommendation is implemented or started, orange = the recommendation is started but with risks and/or not following best practices and red = the recommendation is not started

Source: PCG Report

Federal rule will require DD waiver providers to pass through 80 percent of the service rate revenue to direct support professionals by 2030, but New Mexico could require this sooner to improve retention of individuals providing direct care. According to the PCG rate study, a separate study focused on determining appropriate reimbursement rates for DD services, only 69 percent of New Mexico's DD service rates are passed through to support the salaries of direct support professionals (DSPs), who provide the actual care to participants on the waiver. This information was self-reported by providers, which, according to DDSD, are already requesting exemptions from the future CMS required pass-through requirement.

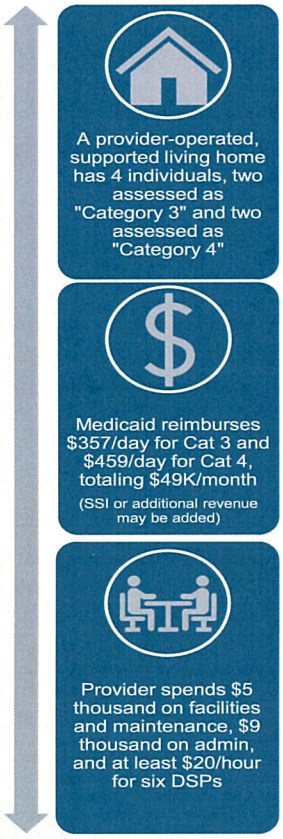
These jobs have historically been low-paid and often do not require experience or a degree. In September 2024, DDSD reported the 2023 salary ranges for DSPs were largely between $12 and $17 per hour, with 2 percent of DSP salaries reported at the state minimum wage. Additionally, DDSD reported that in 2023 agencies hired 4,939 DSPs, but another 3,419 (or roughly 32 percent of all DSPs) left their agency.

LFC staff analysis of one large supported-living provider indicates the impending federal wage pass-through could be feasible to implement now. The examined provider ran several supported living homes with a mixture of levels of care (acuity). LFC staff found this sample of homes received an average of approximately $40 thousand in monthly Medicaid reimbursements. If administrative costs were capped at 20 percent and operating expenses deducted, the provider still would have sufficient funding to pay up to $30 per hour for the provider's supportive living DSP staff.

The federal government has yet to publish guidance regarding how the 2030 requirements should be implemented. However, North Carolina preemptively included pass-through recommendations in its 2023 budget bill, encouraging 80 percent of rates to go directly to DSPs. To get ahead of the federal rule, the New Mexico Legislature could follow North Carolina and enact legislation to require 80 percent pass-throughs sooner, mirroring the federal definitions. DDSD would need to develop a plan for monitoring providers if the 80 percent pass-through requirement was established and may need to adjust course if its implementation conflicts with any eventual federal guidance on the pass-throughs.

Another strategy to improve recruitment and retention could be DSP incentive payments. Incentive payments are a common strategy for recruiting and retaining staff. Oklahoma, Ohio, and other states use incentives to improve provider capacity by decreasing DSP staff vacancies. Ohio pays qualified providers 6.5 percent of total claims for eligible services paid in a quarter as retention payments for staff. Oklahoma started incentive payments this year that provide a $1,000 recruitment incentive for new DSPs, a $1,000 retention incentive for existing workers, and a $1,000 retention incentive every six months through January 31, 2025.

Figure 2. Example of Supported Living Reimbursement Process



Note: This is an illustrative example. Category 3 is the second highest level of supported living and Category 4 is the highest level of support.
Source: LFC analysis of provider data

The state rents 22 homes for the Los Lunas Community Program (LLCP), spending more on some homes than they are worth especially for long-term rentals. LLCP spent almost half a million at two properties and will have paid more in rent than the homes' current value in the next 24 months. Additionally, the state spent $1.8 million for its ICF/IDD at LLCP, almost three times the estimated value. To get the best value, reduce monthly overhead costs, and reduce modification costs, the state should buy its homes, a practice done by many supported living providers.

Source: LLCP

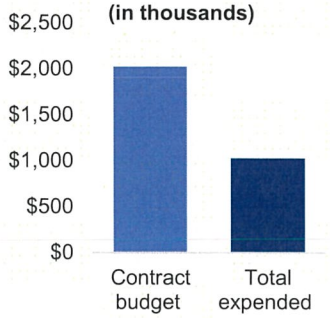
New Mexico could pilot an incentive program for DSPs using Government Results and Opportunity funding. Creating a pilot program with funding for approximately 1,000 DSPs to receive either $500 or $1,000 every six months for one year would cost approximately $1.8 million.

As of July 1, 2024, federal rule increased the salary cap for overtime requirements to $44 thousand, likely increasing DSP pay but potentially minimizing profit for provider agencies. The cap will increase again in January to $59 thousand, meaning employers will need to pay overtime to employees making less than the cap. In New Mexico, the average salary for healthcare support jobs is $28 thousand, with 25 percent of those in field making between $36 thousand and $44 thousand a year meaning up to 13.5 thousand health care support workers could potentially qualify for overtime.

The recently settled Golden vs. Quality Life Services lawsuit, in which plaintiffs alleged the direct service agency they worked for was in violation of overtime rules, showed these federal changes could affect the DD waiver provider network and force providers to reclassify employees, potentially raising wages and minimizing provider profits.

Leadership changes and contract amendments delayed use of a 24/7 telehealth service, leading to the division spending 51 percent of its $2 million contract. The 2023 PCG report highlighted the need for providers to expand their use of telehealth to better serve each DD waiver participant. Telehealth can provide immediate access to care, ease some provider capacity challenges, and improve participant and provider experiences. DDSD contracted with StationMD in FY23 and FY24 for just over $2 million to provide telemedicine services as an emergency room diversion strategy. However, the division only spent $1.03 million, and, as of September 2024, only an estimated two out of every three supported-living providers used the platform. However, use of StationMD is optional for providers. The division reported not fully expending the contract due to leadership changes within the agency and contract amendments. Yet turnover should not stop providers from using a needed service, nor should it stop assistance to providers to increase use of StationMD. This tool could likely alleviate the need for more on-call nurses and DSPs, improving capacity. For FY25, DDSD expanded StationMD to Mi Via and Medically Fragile providers, likely increasing uptake.

Chart 9. DDSD Expended Only 51 Percent of a Telehealth Contract in FY23 and FY24
(in thousands)



Source: SHARE

New Mexico's waiver application anticipates more therapy usage per participant than nearly any other state, potentially exacerbating provider shortages¡ LFC analyzed I/DD waiver applications for states with similar waivers and found New Mexico's traditional DD Waiver allowed and anticipated more therapy units (or 15 minutes of therapy) per participant than any other state. This high usage and demand could worsen the state's limited provider capacity; according to PCG, occupational therapy, physical therapy, and speech-language pathology are three of the four services most frequently identified as having limited access for participants.

The need for therapists to train DSPs on participant service plans potentially exacerbates this problem and takes up more time, especially given the high turnover for the DSP profession. Current waiver standards allow for the designation of supported living provider staff as DSP trainers. Therapists can train these supported-living provider staff who will then train their own

DSPs, allowing therapists to provide services to more participants. Fidelity to this "train-the-trainer" model could provide greater flexibility in how services are delivered and free up therapists' time to see more patients. For example, if New Mexico had units-per-participants at the level of West Virginia, the most comparable of the peer states listed below, it could free up 60 percent more therapist time.

Table 9. Anticipated Therapy Use Per State 1915(c) Application

	New Mexico	Alabama	D.C.	Maine	West Virginia
OT Units Per Participant	92-108	49	23	40	89
PT Units Per Participant	108-125	55	32	127	108
SLP Units Per Participant	148-160	29	37	127	24

Note: Data taken from Year 1 Projections from most recent applications for NM019, AL001, WV007, ME006 and DC0037 waivers; waivers selected are comparable, predominately non-institution states and include the two waivers above and below New Mexico in CMS average cost (excluding states that do not provide therapy). Actual median usage for OT, PT, and SLP in New Mexico exceed unit ranges stipulated above

Source: State waiver plans

Recommendations

The Legislature should consider:

- Enacting legislation to require providers pass through 80 percent of Medicaid reimbursement revenues to direct support professionals per the Centers for Medicare and Medicaid Services final rule starting in FY27. This legislation should require Developmental Disabilities Supports Division to come up with a monitoring and support plan by September 1, 2025, that would allow the state to ensure providers successfully pass through at least 80 percent of Medicaid reimbursement rates;
- Funding provider expansion and startup costs to increase the number of providers able to serve new clients; and
- Funding with the government results and opportunity fund a pilot to randomly test the effect of different levels of incentive payments to help recruit and retain direct support professionals at an estimated cost of $1.8 million annually.

The Developmental Disabilities Supports Division of the Health Care Authority should:

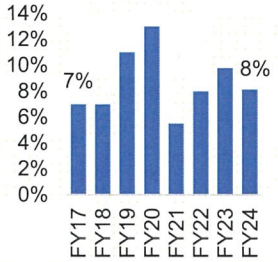
- Present to the Legislature by September 1, 2025, a plan that will consider how Developmental Disabilities Supports Division's monitoring and technical assistance practices will change when providers are required to pass through at least 80 percent of rates to those directly providing services as will be required by federal Centers for Medicare and Medicaid Services;
- Continue to utilize StationMD, tracking spending and provider uptake of the service, and provide technical assistance to increase provider use of the platform; and
- Continue to implement a train-the-trainer model, through encouragement for therapists and direct support providers by January 2026.

HCA is Addressing Some Safety Concerns but Others Regarding Client Monitoring and Requests for Assistance Remain

In 2023, a waiver participant died due to abuse. This case led DDSD to perform routine health and wellness checks on all the waiver participants and evaluate its current processes to ensure the safety of all people on DD waivers. While few cases of abuse, neglect, or exploitation (ANE) were found in these first wellness checks, the state's overall rate of ANE has remained practically unchanged since FY17.

Since the state served 69 percent more waiver participants in FY24 than in FY17, the effectively flat rate between these two years means almost 400 more waiver participants were subject to ANE in FY24 than in FY17. Considering this increase, the state should continue to monitor the rate of ANE.

Chart 10. ANE rate for DD and Mi Via Waiver Participants



Source: Report cards and DHI

Table 10. Total Cases of Abuse, Neglect and Exploitation, FY22-FY24

	Total Cases	Victims with Substantiated Cases	% Cases Substantiated	Substantiated Abuse Cases
FY24	2,409	645	27%	69
FY23	2,256	547	20%	22
FY22	1,701	341	23%	19

Source: DHI

In 2023, DDSD contracted with Accenture to evaluate the state's processes to ensure the safety of those on the waivers. This evaluation led to several immediate and longer-term recommendations. DDSD is currently working to address most of the immediate recommendations, and the Health Care Authority's Division of Health Improvement (DHI) —the division responsible for investigating ANE involving waiver participants —is working to ensure it has enough workforce to investigate cases per the state's timelines. The report included 16 findings and 29 recommendations, with seven recommendations the report suggested DDSD enact immediately (see Appendix D. for a full list of recommendations).

Beyond ANE, the agency should also monitor participant outcome metrics, including measures of quality of life at the provider level. For other Medicaid and Medicare services, the federal government includes these in provider ratings, and elsewhere states may play a larger role in ensuring providers measure quality of life or assess it themselves.

Recent findings of abuse, neglect, and exploitation led to HCA implementing new procedures to improve participant safety.

In the aftermath of a participant dying due to abuse in 2023, DDSD, with help from DHI, began monitoring participant safety through twice-yearly wellness checks. The state is responsible for monitoring and investigating critical incidents and monitoring whether a provider has repeated incidents of ANE. The Accenture report highlighted there is no clear accountable or responsible party for addressing ANE incidents. However, DDSD and DHI have taken steps to address this and other safety issues.

In spring 2023, DDSD began wellness checks for all waiver participants but did not have final procedures for these checks until summer 2024. In April 2023, DOH announced its plan to visit all 6,800 people receiving DDSD services within 30 days. According to DDSD Advisory Council on Quality meeting minutes, members expressed inconsistent experiences with the visits. Some people reported that the visits went very well, while others expressed concern over the visits' intrusive nature and lack of staff training. However, a finalized checklist was not in place until August 2024.

To conduct these visits, staff are supposed to schedule the visit beforehand. While severe abuse or neglect will likely still be caught in an announced visit, announcing visits may pose a risk due to providers potentially being able to hide lower levels of neglect or exploitation. While DDSD initially had unannounced visits, these were a major concern and an issue for individuals in service, families, and guardians. DDSD now visits every person receiving DDSD services twice a year, meaning they will conduct an estimated 18 thousand wellness visits annually.

The 2023 Accenture report found DDSD failed to provide adequate crisis management services and was unable to evaluate consumer risk, likely increasing the risk for abuse, neglect, and exploitation. Accenture's recommendations include ensuring case managers engage with participants meaningfully and adequately, have clearly communicated processes, leverage best practice risk assessment tools to determine individual consumer risk, and develop technology solutions that allow DDSD to easily access key consumer information.

DDSD worked or is working to address six of the seven recommendations that needed immediate attention. Additionally, while staff members do not yet have access to ASPEN (the state's Medicaid information system), DDSD is working to ensure access to select staff members, especially after joining HCA.