

**MINUTES
for the
THIRD MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE**

**September 19, 2016
Adelante Development Center, Inc.
3900 Osuna Road NE
Albuquerque**

The third meeting of the Disabilities Concerns Subcommittee (DSC) of the Legislative Health and Human Services Committee (LHHS) was called to order by Senator Nancy Rodriguez, vice chair, on September 19, 2016 at 9:17 a.m. at the Adelante Development Center, Inc., in Albuquerque.

Present

Sen. Nancy Rodriguez, Vice Chair
Rep. Miguel P. Garcia
Sen. Linda M. Lopez

Absent

Rep. Tim D. Lewis, Chair
Sen. Craig W. Brandt

Advisory Members

Rep. Deborah A. Armstrong
Sen. Ted Barela

Rep. Nora Espinoza
Sen. Gerald Ortiz y Pino

Staff

Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
Alexandria L. Tapia, Contractor, LCS
Diego Jimenez, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file. Handouts can also be found at [https://www.nmlegis.gov/Committee/Interim Committee?CommitteeCode=DISC](https://www.nmlegis.gov/Committee/Interim_Committee?CommitteeCode=DISC).

Monday, September 19

Welcome and Introductions

Senator Rodriguez welcomed members to the third meeting of the DCS. Members of the subcommittee and staff were asked to introduce themselves.

Services for Persons with Disabilities: Workforce Innovation and Opportunity Act (WIOA), Vocational Rehabilitation and Independent Living

Jessica Hathaway, policy associate, Family Opportunity Project, National Conference of State Legislatures (NCSL), discussed federal workforce funding in New Mexico and the final rules for the WIOA (see handouts for full information). The WIOA, signed into law in July 2014, creates a new vision for how America prepares an educated and skilled workforce and expands opportunity for workers and employers. The WIOA represents the most significant reform to public workforce development in nearly 20 years. Final federal WIOA rules became effective June 30, 2016 and are intended to enable the workforce development system to more efficiently and effectively provide career pathways for all Americans. The final rules include reforms that will affect more than a dozen programs receiving approximately \$10 billion in annual funding and programs that serve approximately 20 million Americans each year. Ms. Hathaway explained the core principles of the act and what they mean for states and local workforce development. There are six core programs of the WIOA, each offering different funds for state workforce development:

- Title I programs for adults;
- Title I programs for dislocated workers;
- Title I programs for youth;
- Title II adult education and family literacy;
- Title III federal Wagner-Peyser Act employment exchange;
- Title IV vocational rehabilitation (VR) (with most funding specifically for people with disabilities falling under Title IV).

The Title I and Title III programs are administered by the U.S. Department of Labor's (DOL's) Employment and Training Administration. Titles II and IV are administered by the U.S. Department of Education. For New Mexico, the total amount of federal WIOA workforce funds for all six core programs in program year (PY) 2016 is \$50,095,722. Ms. Hathaway offered a breakdown for each of the core programs in terms of funding distributions for PY 2016, noting the percentage increases from PY 2015. A time line for WIOA implementation detailing steps required for compliance with the WIOA has been given to all states. To date, most of the milestones have been met, and states are beginning to monitor activities that are part of their state plans.

Kyle Ingram, policy specialist for disability and employment, NCSL, explained the provisions under the WIOA for programs that serve individuals with disabilities. He focused on transition services and the use of a subminimum wage. The WIOA requires that at least 15 percent of public VR funds be reserved for the delivery of pre-employment transition services to students with disabilities. Mr. Ingram explained how states can meet this requirement, clarifying that administrative costs do not count toward the 15 percent. The WIOA's amendments to Section 113 of the federal Rehabilitation Act of 1973 authorizes states to meet the 15 percent requirement through funding; developing and implementing innovative strategies to increase competitive integrated employment; independent living; and post-

secondary education experiences for students participating in pre-employment transition services, so long as the required activities of Section 113 have been provided.

The WIOA places substantial limitations on the use of a subminimum wage, requiring that federal Fair Labor Standards Act Section 14(c) certificate holders ensure and maintain paperwork confirming that new hires and employees have been provided certain career counseling and transition services opportunities before being paid less than the minimum wage. An employer found in violation of the new requirements can be assessed back pay at the full minimum wage for each employee. Mr. Ingram provided an outline of eligibility for subminimum pay for new hires after July 22, 2016. According to the DOL, New Mexico currently has 520 workers, across five community rehabilitation providers, who are being paid a subminimum wage. This is based on self-reporting mechanisms in the Section 14(c) certificate application.

The WIOA is designed to support and encourage competitive, integrated workplaces. The act does not require that employees be in constant contact with individuals without disabilities; this means that self-employment is also viable. Mr. Ingram shared the most recent federal policy trends promoting workforce and community integration. The final report from the DOL's Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities was released in September. One recommendation of the report was for Congress to phase out usage of Section 14(c) certificates, while protecting individuals currently engaged in subminimum wage work from unintended consequences. Another policy change has come in the form of the Centers for Medicare and Medicaid Services (CMS) 2014 final rule for home- and community-based services (HCBS). The final rule set new residential and nonresidential provider requirements for integrated settings and person-centered planning. HCBS settings that do not meet the new requirements have until March 2019 to achieve compliance before becoming ineligible for reimbursement. Mr. Ingram provided a few examples of state efforts to get ahead of this trend, with a greater emphasis placed on increased coordination of services and state-driven efforts to phase out usage of a subminimum wage.

Faye Rencher, senior program manager, WIOA, Workforce Solutions Department (WSD), discussed New Mexico's WIOA combined state plan, which can be found at www.dws.state.nm.us/WIOA-Policy-Plans-Annual-Reports. Under the WIOA, the state plan communicates the state's vision for New Mexico's workforce system and serves as a vehicle for aligning and integrating this system across federal programs. On April 1, 2016, the WSD submitted the WIOA combined state plan to the appropriate federal oversight agencies. The WSD is focused on convening core partners and identifying program-specific sections. The state's two VR entities are the Commission for the Blind and the Vocational Rehabilitation Division (VRD) of the Public Education Department (PED). Ms. Rencher mentioned efforts to increase coordination between employment and training activities; core programs must come together and identify areas where service strategies can be aligned. The WSD is reassessing a one-stop delivery system that will provide universal accessibility while

formalizing contacts for seamless referral and follow-up. The subcommittee was provided with a map indicating the locations of workforce connection centers around the state. The next step for the state is working with local boards on the development and implementation of local WIOA programs. These local boards will play a key role in ensuring effective implementation of the state plan.

Gregg Trapp, executive director, Commission for the Blind, explained that the commission has historically done in the state what the WIOA has implemented on the national level. Before 2008, the Commission for the Blind ranked in the top five on all indicators of primary measures that look at competitive employment numbers. Of their members, 100 percent were placed in competitive jobs with comparable starting wages. Mr. Trapp explained what the pre-employment transition services mean for New Mexico. Some people have questioned the 15 percent requirement. While it creates a new level of services that need to be provided to this population, it takes away funding for other adult services and from administrative services. The Commission for the Blind must spend \$675,000 on transition services, which is more than what has been previously expended. Mr. Trapp believes this affects the commission's ability to continue doing what has already proven to be successful and what the WIOA was intended to do. The changes will force the Commission for the Blind to initiate new data-tracking methodologies and alter the way the commission spends funds on services to avoid federal penalties. Mr. Trapp added that the state's budget crisis will be a big factor, resulting in the potential cutting of services and perhaps the use of a wait list for future members.

James L. Salas, deputy director for VR programs, Commission for the Blind, described some of the pre-employment transition services currently offered for students with disabilities. The Commission for the Blind works with students through age 21 from high school and post-secondary educational institutions offering job exploration counseling, job readiness training and work-based learning experiences. As of now, the Commission for the Blind will continue to serve individuals as young as 14 years old. Mr. Salas explained the Pre-Employment Transition Services step program, which held recent job readiness and job training programs in Alamogordo and Albuquerque. He noted that, unlike other students, blind students typically do not work during the school year or summer breaks. The State Personnel Office (SPO) has reclassified a position resulting in the creation of a statewide job-transition coordinator charged with developing additional training programs, particularly in technology. The use of new technologies offers a lot of opportunities for individuals with disabilities, particularly the blind. The \$675,000 required expenditure cannot be used for purchasing technology or paying tuition.

Joe Cordova, director, VRD, PED, has over 35 years of experience in this field. While the final regulations for the WIOA came out in fall of 2015, Mr. Cordova pointed out that implementation of regulations have had different completion dates. The PED is in the process of sifting through the provisions to see how VR will be affected and is updating policies to comply with the WIOA. The VRD can assist with one-stop systems to implement Title I,

making it more accessible to those with disabilities. The VRD can also call upon the DOL for technical assistance to help clients become more employable. The requirement for pre-employment transition services will be an important component in the future. Mr. Cordova expressed the hope that the state budget situation will remain fairly stable. If five percent cuts are imposed, the PED may have to start a wait list for VR services. The department will be looking at ways to accomplish administrative efficiencies. One potential for cost savings is increasing flexibility in providing group services. Activities such as resume writing and career exploration can be done in group settings. Mr. Cordova added that the PED will continue to look at ways to be more responsive to clients. He believes that the WIOA affords an opportunity to provide more services.

Larry Rodriguez, New Mexico Statewide Independent Living Council (SILC), described the membership of the SILC and the state rehabilitation boards. Mr. Rodriguez hopes that more members will be added to the SILC board in the future. Interested parties can learn more about the SILC's mission on its website.

In response to subcommittee members' questions, the following topics were discussed by the panel:

- what other states are doing in terms of the WIOA;
- minimizing the potential for duplication of efforts while maximizing federal funding and resources;
- coordination with other entities;
- outreach efforts to individuals who have not historically participated in the workforce;
- how the rural nature of New Mexico affects delivery of services;
- the involvement of advocacy groups and stakeholders during development of the state plan;
- the limitations of VR funding;
- outreach to the Developmental Disabilities (DD) Waiver Program;
- the role of Medicaid in the WIOA;
- the potential for budget cuts due to the state's budget crisis and awareness of which programs the state is federally mandated to continue;
- concerns of jeopardizing federal funds and the potential for incurring penalties;
- usage of the subminimum wage rate in New Mexico;
- the potential unintended consequences of the WIOA, specifically the impact on employers of individuals with disabilities;
- the cost benefit of investing in individuals with disabilities to enter into the workforce;
- exclusion of individuals with disabilities from the hiring process solely based on their lack of work experience;
- a request for data on where individuals have been placed for employment at the state, county and local levels; and

- a request for clarification from the WSD on which agency oversees and approves programs.

In response to questions about the subminimum wage, Mike Kivitz, Adelante Development Center, Inc., voiced support and agreement with the tenets of the WIOA. Adelante Development Center is one of the largest supported-employment providers in the DD world. He noted that disabilities range greatly in terms of functional and cognitive abilities and that Section 14(c) is about a prevailing wage. According to Mr. Kivitz, 70 percent of people with disabilities are either not working or are underemployed. He contends that individuals are not being exploited; their housing is good, their insurance is covered and they are provided quality employment. However, without the option for a subminimum wage, individuals with cognitive disabilities will be left out of the workforce unless they can produce at a higher rate. Mr. Cordova added that in the Commission for the Blind's experience, providing competitive wages for blind employees helps make them feel valued, leading to an increase in productivity. However, this is not necessarily possible for all disabilities. Not all disabilities are the same, and they cannot be viewed in such a manner.

Public Comment

Robert Kegel, a parent and advocate for people with DD, believes that there is a tremendous disconnect between the DD waiver and the VRD. Approximately 1.5 percent of the state's population is developmentally or intellectually disabled. That is almost 31,000 New Mexicans. The Developmental Disabilities Supports Division (DDSD) of the Department of Health (DOH) is required to gather input before instituting any regulatory changes. Mr. Kegel stated that the DDSD never consulted with the Commission for the Blind about the implementation of the supports intensity scale (SIS) — a tool that cannot be used on a blind person. To him, these programs are spending money and yielding no real results for individuals. Mr. Kegel questioned why there were not representatives from the SPO present at the meeting. He believes this is because the state is not adequately hiring individuals with disabilities and that the state should consider a 1.5 percent set-aside for employment of persons with disabilities. Mr. Kegel has been researching DD waivers in other states and will be doing a comprehensive presentation for the next DCS meeting.

Lisa Rosenthal, Parents Reaching Out, is an advocate who works to help parents find resources for recently diagnosed children with DD. Ms. Rosenthal is a parent of a child with an intellectual disability. In the past, families like hers could receive between 800 to 1,000 hours of respite care per month. Now they only receive up to 100 hours. Ms. Rosenthal told the subcommittee that she and her husband work four jobs and are unable to use community services for their child due to the level of care she requires. Ms. Rosenthal noted that even a little bit of support funding would be helpful to families like hers.

Claudia Ibaniz applied for the DD waiver for her 12 year-old son with cerebral palsy but was informed of the long wait list for the waiver. Although her family is able to provide some support and care, the family still needs help from outside services. Omar Ibaniz, husband to Ms. Ibaniz, is a native New Mexican and a disabled veteran. He is unable to work and provide the services needed for his son. Mr. Ibaniz is asking for more support for his family and other families in the state in the form of a supports waiver. He noted that Centennial Care only pays for doctor's appointments and that the DD waiver wait list is far too long to wait for help.

Ms. Rosenthal read a statement from Jessica Kingsley, a woman who has recently moved out of state to Colorado. Ms. Kingsley has a son with autism and a seizure disorder. Ms. Kingsley's son was in need of early-intervention services that were not covered by insurance and faced long wait lists for care. The family did not qualify for Medicaid by \$50.00. According to the statement, Albuquerque does not have enough quality providers to support and serve the need in the community. After relocating to Colorado, they are now getting the services they need. The statement encouraged the subcommittee to look at the successful program for early intervention in Colorado and urged lawmakers to consider funding a supports waiver to get children the services they need and the opportunity for early-intervention services. Ms. Rosenthal added that a supports waiver could help families in need stay afloat. A flexible supports waiver would have been specifically geared for people under the age of 18 or for those with autism. In her view, this would help prevent individuals from inappropriately being placed on the DD waiver.

Lisa Miller, assistant director, Behavioral Services of the Rockies (BSR), said it is upsetting to know that there are people who need services and are not getting them. Ms. Miller talked about her organization, which has been applying to expand services into New Mexico. Ms. Miller expressed concern with the process of qualifying as a Medicaid service provider in the state. There are currently two individuals in New Mexico for which BSR has funding — one in Bloomfield and one on the Navajo Nation — but BSR is unable to get approved as a Medicaid provider. Ms. Miller stated that these roadblocks have little to do with providing care and more to do with wording and semantics. Cathy Stevenson, director, DDSD, offered to meet with Ms. Miller and address her concerns.

Jim Jackson, Disability Rights New Mexico (DRNM), admitted that change is always challenging, but he believes that New Mexico needs to get in line with national trends. With the WIOA's employment rules, transition is important to get people meaningful employment while they are young. While the 15 percent-set aside will be difficult, Mr. Jackson said it is easier to find employment for someone just starting out versus an older individual who has not had the opportunity to gain work experience. It will be a matter of making meaningful employment a priority for the state. Mr. Jackson believes that the move away from a subminimum wage is a positive step. One of the key issues in the *Jackson* lawsuit is that the state has failed to meet the employment goals of

the settlement. Mr. Jackson reminded those present that the federal recommendations are the result of input from advocacy organizations and providers in the field. He believes that New Mexico can set the standard for employment by being creative and funding services that help with job placement.

Mr. Kivitz welcomed everyone to Adelante and noted that the community room at Adelante is available for community use. Mr. Kivitz informed the subcommittee that a former advocate of over 30 years, Al Friedman, recently passed away. In response to questions raised during an earlier presentation, Mr. Kivitz stated that there are five nonprofit organizations in the state that use subminimum wage certificates; Adelante is the largest of those employers. Approximately 520 individuals are employed by these organizations, which are mostly DD agencies. Many employers do not want to use the subminimum wage because the required paperwork is burdensome. Mr. Kivitz noted that states that have done away with the use of the Section 14(c) requirement have significantly higher numbers of unemployed individuals with DD. Mr. Kivitz shared some of the programs that are offered through Adelante and invited subcommittee members to tour the "social enterprises" the center operates. Adelante runs a benefit connection center that works with individuals coming out of prison to determine eligibility, and provides assistance with paperwork, for programs. In addition, Adelante also runs a program for recycling donated medical equipment, such as walkers and wheelchairs. Equipment is repaired and cleaned up, then offered to community members in need at no cost. Adelante has partnered with Intel to refurbish computers and distribute them to individuals in the community who need them for job seeking. All of these programs are run by individuals with DD.

The WIOA has placed a large emphasis on settings, which is a big focus for Adelante. The WIOA has eliminated consumer choice when it comes to where people work. Mr. Kivitz believes this to be a civil rights issue. Individuals with DD are being told that they cannot congregate with other persons with DD. In 2011, Adelante generated \$14.5 million in waiver revenues. This year, revenues are projected to be only \$11 million. There have been no increases in staff pay, and Adelante is not permitted to use private funding for pay raises. Mr. Kivitz stressed that restrictions on subminimum wages and settings means individuals with intellectual disabilities will have fewer employment opportunities because individuals with other disabilities are more likely to be hired due to their increased work output. A subminimum wage is not appropriate for every disability. Mr. Kivitz explained the usage of a "prevailing wage", noting that not every job is a minimum-wage job and that pay cannot be calculated as a percentage of productivity.

Outside Review of Budgets for Persons on the DD Waiver

Jason Gordon, litigation manager, DRNM, explained that the outside review (OR) process is a result of the *Waldrop* litigation over the SIS. The suit challenged the use of the SIS in determining the DD waiver budget for individuals. Following an SIS assessment, an individual was categorized into a group that determined the budget for the

individual. The intention behind the OR process is to be more person-centered. The SIS is still utilized as a planning tool, but now the client meets with a case manager to create a service plan that is both clinically justified and medically necessary. The OR is a mechanism to ensure that the services being requested meet those criteria. If there is a problem with the submission, then the outside reviewers can send it back to the case manager to correct errors or request more information. If the budget is approved, then the state is bound by that determination. If the budget is denied, then there must be notice of denial and a right to appeal through a fair hearings process.

Mr. Gordon addressed reports of delays in the OR process. He explained that budget submissions are supposed to be checked for technical issues within 10 days. If the budget is sent back to the case manager, errors must be corrected within 10 days. According to complaints, budget approval is taking weeks or even months. The DRNM has received a lot of calls about delays and has been working with clients and case managers to identify and resolve the issue. These delays do not only affect the budgets, but they prevent service providers from getting paid. There is concern with the impact on providers and the potential for causing closures. Communication between the outside reviewers and case managers could be improved. Mr. Gordon acknowledged reports from case managers who felt they were not adequately trained on the new system's forms or the process for medical justifications. While training for case managers recently took place, there has still been criticism regarding the lack of support for case managers. Mr. Gordon believes that the OR process is a good system, putting the client back in control of the client's own care while ensuring that the state is adhering to the law. The DRNM pledges to continue to facilitate cooperation in the process while addressing the delays. Mr. Gordon urged the continuation of training for providers and case managers, as well as increased communication among all parties.

Ingrid M. Nelson, senior program manager, Continuum of Care Project, University of New Mexico (UNM), explained that the Continuum of Care Project is a quiet partner in the process. The OR process has been in existence for one year. The Continuum of Care Project has been around for 23 years and has the contract for conducting the OR. Ms. Nelson provided some background on the experience of the staff, which ranges from three to 25 years of experience with the DD Waiver Program. The project currently has 27 employees; ideally, it should have 35. The OR process was created from scratch and has improved over the last year by trial and error. Ms. Nelson admitted that the process is not always working well, but now that there is adequate staff, a tickler system has been implemented to ensure that reviews are not sitting unprocessed. A data manager compiles reports and interfaces with state agencies and Qualis Health, a third-party assessor. Ms. Nelson talked about some of the technological and programmatic changes that are being addressed. One of these includes designating an individual to answer calls and emails within 72 hours. She believes that case managers could use more training on the system.

Jennifer Rodriguez, community programs bureau chief, DDS, DOH, noted that since a system change came about as the result of a lawsuit, the department was required to move quickly to get it in place. Now that the OR process has been in place for a year, the DDS has been able to identify areas that are not working efficiently. Ms. Rodriguez provided a handout that illustrated the OR process resulting from the *Waldrop* settlement. The department has noticed two systemic issues as follows.

1. Level of accountability. The system change introduced a new level of accountability for everyone involved. The time frame for case managers and interdisciplinary teams to conduct their work has been shifted, and extra time has to be anticipated. The budget process went from one level of review to two levels.

2. Medical justification. The new set of standards for clinical services did not previously exist. Every budget submission must include a medical justification for services being requested. The provider network will have to get used to this requirement.

Ms. Rodriguez noted that late submissions have caused some delays in the process. Budget submissions need to occur 60 days in advance of their expiration. The case managers are responsible for collecting all the necessary information and ensuring complete, correct packets. Case managers need to do this in a timely manner to account for the additional level of review and allow for any corrections. Another delay occurs when there are errors in the packet, which then requires a request for information from the reviewer back to the case manager. Ms. Rodriguez explained that the budget sheet is an Excel spreadsheet; it is auto-populated but still needs to be filled out by someone. A request for information could also be needed for additional clinical information. There is a lot of room for error, and the case manager is responsible for making sure that the packet is in perfect order to avoid approval delays. Ms. Rodriguez informed the subcommittee that the DDS provided training for case managers and DOH staff prior to the implementation of the OR. Since then, several guides and check lists have been developed to aid the process. The first review of the OR was conducted after six months. DDS staffers continue to meet with the DRNM and case management agencies to identify process deficiencies. In addition, the DDS meets monthly with the Association of Developmental Disabilities Community Providers (ADDCP) and oversight reviewers to stay focused on these issues. Ms. Rodriguez admits that the budget documentation packets are in excess of 200 pages and need to be streamlined. She said the DDS is working with oversight reviewers to identify what documentation is necessary.

In response to the presentation, the subcommittee addressed the following topics with the panel:

- clarification about the OR process, including the various steps and who administers it;
- questions regarding Qualis Health, its function and its scope of work;

- the implications of the *Waldrop* lawsuit;
- the use of medical justification of services for ensuring that clients receive the services they need;
- the importance of the interdisciplinary team in justifying service needs;
- the shift toward person-centered planning;
- other technical errors that have caused issues in budget submissions;
- the process for addressing technical denials and fair hearings;
- concerns about the inordinate amount of paperwork required by case managers;
- New Mexico's current process for review of the DD waiver, and the DOH's intention to incorporate the OR process into the state's application for renewal of the DD waiver;
- the contract with UNM as an OR administrator;
- the cost of the contract for OR, which was \$800,000 for the first year and \$1.4 million for the second year;
- plans for additional hiring at UNM for the OR contract;
- the potential to eliminate the SIS and out-of-state contracts; and
- concern over the need for extensive administrative oversight of budgets versus random audits.

Public Comment

Mr. Kegel addressed the subcommittee in response to the email from Ms. Stevenson regarding the SIS. The email was sent to subcommittee members informing them about priority needs in the system. Mr. Kegel stated that prior to any changes in policy, the DOH is, by law, required to collect public input. He emphasized that the lack of public input was how the state ended up with the SIS in the first place. State law does not provide for the OR, and if the DOH is out of compliance with federal law, Mr. Kegel argues, it needs to come to the legislature to properly address the issue. Requiring case managers to travel to Santa Fe to receive OR training is not acceptable. Mr. Kegel questioned how the DOH can justify not being able to afford an adequate number of therapists to meet needs, yet it has the funds to pay for individuals to review budget submissions. The extended length of time to review budgets has resulted in providers having to provide services without compensation. The claim that New Mexico's DD waiver is the most expensive waiver in the country is false, according to Mr. Kegel. He stressed that the DOH needs to comply with existing state law.

Ellen Pinnes, Disability Coalition, noted that federal funds pay for at least a part of some contracts related to DD waiver budgets. Shari Roanhorse-Aguilar, bureau chief, Exempt Services and Programs Bureau, Medical Assistance Division, Human Services Department (HSD), clarified that the Qualis Health contract is paid from matching federal funds. The federal government pays for 75 percent of the contract. One requirement to qualify for federal matching funds is that the entity be certified by the CMS, which Qualis Health is.

Mr. Kivitz noted that the issues related to the SIS itself have not been addressed. Administering the SIS costs \$700 per assessment. Adelante has been consistently owed reimbursements ranging from \$100,000 to \$250,000 for services rendered over the last several years. Legally, providers are not supposed to be providing services without a current budget in place, yet providers are not given the choice to deny services. The *Jackson* lawsuit added the usage of case managers, which has been a good addition. Mr. Kivitz believes that having one individual who is trained on submission requirements attending meetings with the interdisciplinary team and case managers could eliminate many of the budget issues and save money. The plaintiffs from the *Jackson* lawsuit are supposed to be meeting with the state on this issue. Mr. Kivitz questioned why the state has not eliminated the SIS altogether.

Ms. Stevenson explained that the email referenced by Mr. Kegel was directing UNM to prioritize certain persons for the SIS. Under the current waiver, the DDS is required to administer the SIS. Ms. Stevenson contended that prioritization will save money because the focus will be placed on those individuals who need an SIS so that they can receive services.

A member of the subcommittee requested a breakdown by age of individuals on the DD waiver wait list. Ms. Stevenson responded that there are currently 137 children receiving the DD waiver and agreed to follow up with the subcommittee regarding a breakdown of the wait list. Mr. Kegel suggested that the information also include persons under the age of 22 who might be receiving services through the school system.

Update: Developmental Disabilities Planning Council (DDPC)

John Block, executive director, DDPC, addressed the subcommittee with an update on the activities of the council. The mission of the DDPC is to promote advocacy, capacity-building and systemic change to improve the quality of life for individuals with DD and their families. Every state and territory in the United States has a council; there are 56 councils. In addition, there is also a university branch and a protection and advocacy branch. Mr. Block noted that New Mexico's DDPC works well with its counterparts around the state, but it remains its own agency, which he believes is an asset in getting more done. New Mexico is also the only state in the nation to have its guardianship program under the DDPC. Over half of the membership either has a disability or has a family member with one. This provides the council with an understanding and first-hand experience of needs. Mr. Block provided members with a folder containing information on the DDPC, its membership, the state plan development process, needs assessment criteria, federal program projects and the "Logic Model".

Sandy Skaar, chair, DDPC, explained the makeup of the council for the subcommittee. Overall, there are 22 members on the DDPC. Some have family members with disabilities while others are self advocates. Ten members are representatives from

state agencies and other key organizations such as DRNM. The DDPC meets on a quarterly basis, with the next meeting scheduled for November 4, 2016.

Barbara Ibaniz, DDPC, explained that every council is required to establish a five-year state plan. Ms. Ibaniz provided information to the subcommittee on how data were gathered from all areas of the state to develop the plan. Following a period of surveys and self-advocacy meetings, five top priorities were identified: 1) formal and informal community supports; 2) employment; 3) health; 4) self-advocacy leadership; and 5) education and early childhood. Council member work groups were created for each of the five priority areas. The work groups reviewed the surveys and input results; drafted goals, objectives and activities; and reported back to the full DDPC. These drafts became the foundation for the council's new goals, objectives and activities and were incorporated into the five-year plan. After completion of the draft, public input was sought prior to final approval. The plan was then edited and finalized for approval by the council on July 29, 2016. Council members provided further insight and input, which resulted in approval of the finalized 2017-2021 five-year state plan, which is available online.

Mr. Block added that the council is working to build a new data system and will be migrating data from the old database. It currently has a waiting list due to a shortage of attorneys who can take care of persons in need of guardianship in outlying areas. In terms of the DDPC's budget, efforts have been made to keep it flat. Costs have increased by \$13,000 for property insurance, and there have been increases in charges from the Department of Information Technology. The DDPC will be requesting a van to replace its bus in hopes of reducing fuel expenses. Mr. Block addressed the recent allegations of embezzlement by a DDPC employee. All of the recommendations from the Office of the State Auditor following the investigation have been implemented, and Mr. Block anticipates good results from the external audit. He reported that the investigation has since been turned over to the New Mexico State Police. Mr. Block added that the DDPC is going to begin looking at the new WIOA regulations, the Achieving a Better Life Experience Act of 2014, also called the "ABLE Act", and self-directed savings accounts.

Update: Notice of Public Meetings to Solicit Comment on Proposed Changes to Waiver Programs

Ms. Roanhorse-Aguilar provided the subcommittee with an update regarding public meeting notices for proposed changes to state waiver programs. The HSD has two distinct processes and various requirements for gathering public input on 1915(c) waiver programs, including informal public input meetings and formal public input meetings. (Please see handout for full descriptions of the processes.) Ms. Roanhorse-Aguilar stated that the HSD is currently preparing formal public comment activities for the Mi Via waiver amendment and the DD waiver renewal. An outline for the upcoming hearings for both waivers is included in the handout. The HSD will be submitting the DD waiver to the CMS for approval in February.

Mr. Kegel stated that he is unaware of any individual who has received notice for the June meeting and that the notice for public comment on the Mi Via waiver was sent out late. Mr. Kegel believes that having meetings with only a few days notice is not good enough, and he wants state agencies to follow state law. It was noted that mailings regarding the DD waiver would have to be sent by the DDSD, not the HSD.

Melanie Buenviaje, deputy bureau chief, Exempt Services and Programs Bureau, HSD, explained that the town hall meetings that took place in August were only for Mi Via participants. The purpose of the informal process is to solicit comments and gather information. The formal process will have, in detail, every single proposed change in the waiver. During the formal comment period, notice will be going out to all stakeholders. Ms. Buenviaje assured members that the HSD will be following state law during the formal comment period. The department has forms for oral, written and email comment submissions. The Mi Via website also has an open comment section where the public can submit feedback. All comments from hearings are compiled and published on the HSD website at the end of the comment period. Ms. Buenviaje stated that the addresses that the HSD uses are taken from the case system, noting that from the last Mi Via mailing, only three pieces of mail were returned to the department.

Public Comment

Gay Finlayson, a local representative of Autism Speaks, believes that the age cap for services needs to be removed from New Mexico insurance mandates. The 2009 mandate has an age cap of 18 or 22, depending on whether the individual is still in high school. It also had a monetary cap, which was removed through a bulletin from the Office of Superintendent of Insurance (OSI). The OSI believes that the age cap does not align with the federal Patient Protection and Affordable Care Act or with the federal Mental Health Parity Act of 1996. The OSI further believes that legislation may be required to correct this. Ms. Finlayson questioned whether this action could be taken by a bulletin. She also questioned why Medicaid has an age cap of 21 on applied behavior analysis therapy. Ms. Finlayson suggested that Lori Unumb, who is going to be at the Southwest Conference on Disability next month, be included on the agenda for the next DCS meeting.

Liz Thomson, former state representative, expressed concern over the amount of money being spent on oversight of the DD waiver budgets. She noted that the Mi Via waiver budget per person is set at \$70,000 regardless of need, and she cited several examples of misuse. There needs to be a balance between too much oversight and not enough oversight in the waiver system. Ms. Thomson also claims that she has never received any mailings or notices regarding the public hearings by the HSD and DOH. Autism programs in New Mexico are 20 years behind other states. Pending cuts for autism services are troublesome. Ms. Thomson is worried that the small system that the state has been able to develop is being dismantled due to funding constraints.

Adjournment

There being no further business before the subcommittee, the third meeting of the DCS adjourned at 5:15 p.m.