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## FISCAL IMPACT REPORT

**ORIGINAL DATE**  
**SPONSOR** Soules **LAST UPDATED** 01/24/15 **HB** \_\_\_\_\_

**SHORT TITLE** 5 Year Plan for Dev. Disability Allocations **SB** SB 19

**ANALYST** Dunbar

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	\$25,000.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
		\$59,000.0	Recurring	Federal Funds

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

Responses Received From  
 Department of Health (DOH)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 19 appropriates \$25 million to the Department of Health (DOH) to fund supports and services for individuals enrolled in the Medicaid Developmental Disabilities (MDD) Waiver and to allow enrollment of eligible individuals listed on the DOH central registry who are awaiting allocation for fiscal year 2016. In addition, the bill requires the HSD and DOH to collaborate to create and provide the Legislative Health and Human Services Committee (LHHS) a rolling (updated annually) five-year plan by September 1 of each year for increasing allocations from the DOH DD Waiver central registry. The plan shall be designed to achieve a waiting period on the DOH central registry of no greater than three years. The plan shall include:

- Number of individual on the DOH central registry by age, county and years on the DOH central registry,
- An estimate of cost of providing waiver supports and services to individuals who are eligible but not yet receiving such supports,
- A target for the number of individuals to be moved into supports and services over the five year period covered by the plan and the amount of new state funding needed each year to meet the target.

## **FISCAL IMPLICATIONS**

The appropriation of \$25 million contained in this bill is a recurring expense to the general fund any unexpended or unencumbered balance remaining at the end of FY16 shall revert to the general fund.

This appropriation is not included in the Executive Budget Request.

DOH reports that in order to increase the number of DD Waiver recipients based on a \$25 million appropriation, DOH would require Budget Adjustment Request (BAR) authority or an initial alternate placement of funds within the appropriate categories of the DOH budget of approximately 8 percent of the appropriation to be set aside for additional state agency administration resources, including authorization for additional FTE at both DOH and HSD.

DOH is proposing the following Budget Adjustment Request Language to address fiscal and infrastructure challenges related to the administration of the DD Waiver:

“The department of health may request program transfers from the public health program, epidemiology and response program, developmental disabilities support program and the administration program to the personal services and employee benefits, contractual services and other categories in the facilities management program to relieve budget shortfalls. The department of health may request category transfers up to five percent of the other financing uses category in the developmental disabilities support program to the personal services and employee benefits, contractual services and other categories to improve the developmental disabilities waiver program infrastructure, increase capacity and quality in the developmental disabilities community provider system.”

A breakdown of the state and federal funds is as follows:

- Eight percent is \$2 million which with federal administrative match, creates \$4 million for this purpose. Additional Developmental Disabilities Support Program FTE and associated equipment and operating costs will be needed for the following functions: intake and eligibility determination, training and technical assistance, provider recruitment and enrollment, clinical consultation, and participate in fair hearings. Additional Health Certification, Licensing and Oversight Program FTE and associated equipment/operating costs needed for incident investigations and program compliance surveys for additional participants and providers. Additional HSD FTE and associated equipment/operating costs will be needed to oversee the program, process and audit claims, conduct initial and annual eligibility determination, prior authorization of services, conduct fair hearings and operation of MMIS system.

- Additional federal Medicaid match is projected to total \$57,074,852 per HSD bill analysis for a total budget obligation of \$82,074,852. This represents an 80 percent increase in the total DD Waiver budget in a single fiscal year. Neither HSD nor DOH have factored this into its FY 2016 budget projections.

## SIGNIFICANT ISSUES

DOH expresses concern that it takes a significant period of time between notifying an individual that services are available and the completion of all steps necessary to confirm program requirements: medical and financial eligibility, assess service needs, interview and select preferred providers, obtain prior authorization for services chosen, and begin service delivery. This time period may range from 60-180 days (or in some rare cases even longer). Timeframes depend upon the status of each individual's financial and medical records, competing scheduling issues for individuals and their families, provider success in recruitment and expansion of physical space to accommodate additional individuals and so forth. DDS refers to this as the "ramp up" effect.

As required by our currently approved DD Waiver, some funds must be used for Supports Intensity Scale (SIS®) assessments for the approximately two-thirds of those adults allocated that are expected to select the traditional DD Waiver rather than Mi Via. Due to the ramp up effect for new allocations, covering this initial assessment cost is not problematic.

DOH indicates that from an appropriation stand point, the "ramp up" means that, in the first year, funds are appropriated for a given number of DD Waiver allocations and only approximately 1/3 will be used for services; however, they will require the full amount beginning in the second and subsequent fiscal years. This means that reversions typically occur in any fiscal year in which DOH issues a significant number of new allocations. To prevent reversion while better addressing the need for infrastructure growth, the SM20 taskforce in 2013 recommended that the Legislature and Executive Branches allow DOH Budget Adjustment Request (BAR) authority to spend appropriated funds, not needed in the individuals' first year for direct services on "one time only efforts" to expand infrastructure. Such infrastructure efforts include:

- Recruit and enroll additional qualified provider agencies statewide, including start up incentives to support provider and direct staff recruitment and appropriate wages and benefits for direct support personnel and associated equipment and capital expansion.
- Deliver education, training, and information to families, individuals and providers.
- Recruit, train and certify additional Supports Intensity Scale® assessors.
- Obtain and implement a web-based system to effectively manage the central registry, ISP development, utilization review, quality assurances and access to accurate data. This is to ensure the state has the necessary real time data to manage cost and measure the success of this recommendation.
- Simplify and streamline the program to minimize administrative costs and burdens.

DOH notes that based on current average annual cost per recipient, this appropriation would support approximately 1,125 individuals. The DD Waiver provider system statewide would need to grow significantly before 1,125 individuals could be served by the program. The DD Waiver has never had an allocation of more than 500 in a single year. Some provider agencies are

experiencing difficulty adjusting to current growth rate being experienced by the 355 allocated for FY15 on top of approximately 400 absorbed in FY14.

The infrastructure development, within both the state government and provider network will take time to develop. Even if given BAR authority to use some funds as described above, the DOH is concerned that there is not adequate time between now and the beginning of FY2016 to build the capacity necessary to bring 1,125 people into services during next fiscal year and spend the full appropriation proposed.

New Mexico, like much of the nation, has a shortage of qualified personnel. Even with the *current* size of the DD Waiver program, recruitment and retention of qualified personnel is a significant and ongoing challenge for provider agencies and for individuals who hire their own support personnel through the Mi Via DD Waiver.

The degree of growth proposed by SB19 is likely to compound this workforce concern. It will not be possible to provide adequate and consistent services without a sufficient workforce. Building the required workforce to meet the projected needs will take time and cooperation with many other systems (i.e., Department of Workforce Solutions, Educational Institutions, Division of Vocational Rehabilitation, etc.).

With regard to the annual report set forth in lines 16-25 of page 2 and line 1 of page 3 of the bill, sections A and B are already consistently tracked by the DOH and can be provided upon request to the legislature at any time, including on an annual basis. Section C would be a challenge because setting a target for the number of people to be allocated over a five year period is difficult without knowledge of factors, such as resources available, legislative priorities, executive priorities, and status of provider network issues.

## **PERFORMANCE IMPLICATIONS**

One of DDS's performance measures is the number of DD Waiver participants, which is expected to grow larger over time as permitted by legislative appropriations and cost efficiencies. The program has grown from 3,838 participants in FY 2010 to 4,497 as of November 30, 2014 in FY 2015, with the largest increase of 379 occurring between FY 2013 and FY2014 as a result of a \$4.6 million dollar appropriation as well as cost efficiencies resulting from the DD Waiver redesign of FY 2012.

## **ADMINISTRATIVE IMPLICATIONS**

Increases in the DDW program must be approved by the Center for Medicaid and Medicare Services (CMS) and would require amending the current approved waiver. Once an amendment is developed, issued for public comment and submitted, CMS has ninety days to approve requested amendments or formally request additional information as determined necessary. Such requests for information "stop the 90 day clock", therefore it is important to note that this can be a lengthy process that takes at least 120 days and could last more than six months.

**TECHNICAL ISSUES**

DOH express concern over the five year plan language which may impinge upon separation of powers by imposing targets and priorities within a timeframe that crosses executive branch terms of office.

**OTHER SUBSTANTIVE ISSUES**

The Developmental Disabilities Waivers, including the self-directed Mi Via Waiver, serve individuals with intellectual and/or developmental disabilities in home and community based settings as an alternatives to placement in an Intermediate Care Facility for Intellectual Developmental Disabilities (ICF/IDD). Despite a continual increase in the number of DD Waiver participants since FY2010 (totaling 659), currently there are more individuals waiting for this program (6,035 as of October 1, 2014) than the number participating in the program (4,497).

**ALTERNATIVES**

The following alternatives were offered by DOH

- Allow DOH to submit Budget Adjustment Request to DFA for approval in order to utilize funds unexpended during the first year, due to allocation ramp up, for infrastructure development as described in significant issues above.
- Appropriate a smaller amount of funds consistent with current system capacity (300-500 allocations at a long term annual cost of \$6 million to \$10 million)
- Do not appropriate funds for this purpose and allow DOH to allocate based solely upon recipient attrition and utilization/cost analysis.

BD/bb/aml