

HOUSE BILL 205

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO EXECUTIVE REORGANIZATION; ENACTING THE VOCATIONAL REHABILITATION ACT; MOVING THE VOCATIONAL REHABILITATION DIVISION FROM THE PUBLIC EDUCATION DEPARTMENT TO THE WORKFORCE SOLUTIONS DEPARTMENT; MOVING CERTAIN PROVISIONS PERTAINING TO THE BLIND TO CHAPTER 28 NMSA 1978; PROVIDING FOR THE TRANSFER OF MONEY, APPROPRIATIONS, PERSONNEL AND PROPERTY; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through ~~15~~14 of this act may be cited as the "Vocational Rehabilitation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Vocational Rehabilitation Act:

A. "department" means the workforce solutions

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department;

B. "director" means the director of vocational rehabilitation;

C. "division" means the vocational rehabilitation division of the department;

D. "federal aid funds" means funds, gifts or grants received by the state under any federal aid for vocational rehabilitation;

E. "person with a disability" means an individual who has a physical or mental impairment, whose impairment constitutes or results in a substantial impediment to employment and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation; and

F. "vocational rehabilitation" means rehabilitation services described in an individualized plan for employment necessary to assist a person with a disability in preparing for, securing, retaining or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice of that person; provided that "vocational rehabilitation" does not include services for the blind. —

~~— E. "person with a disability" means a person with a physical or mental disability that constitutes a substantial handicap to employment but that is of such a nature that vocational rehabilitation may be reasonably expected to enable~~

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~~the person to engage in a remunerative occupation; and~~

~~----- F. "vocational rehabilitation" means services or training necessary to enable a person with a disability to engage in a remunerative occupation. Vocational rehabilitation may provide medical or vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools or equipment, maintenance and training material and equipment.~~

SECTION 3. [NEW MATERIAL] VOCATIONAL REHABILITATION
DIVISION CREATED--DIRECTOR.--

A. The "vocational rehabilitation division" is created in the department.

B. The secretary of workforce solutions shall appoint a director of the division to be known as the "director of vocational rehabilitation".

SECTION 4. [NEW MATERIAL] VOCATIONAL REHABILITATION
DIVISION--POWERS--DUTIES.--The division shall:

A. provide vocational rehabilitation to qualified persons with disabilities;

B. administer any state plan or federal aid funds relating to vocational rehabilitation;

C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;

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- D. enter into reciprocal agreements with other states to provide vocational rehabilitation;
- E. accept gifts or grants to be used for vocational rehabilitation;
- F. enforce rules for the administration of laws relating to vocational rehabilitation;
- G. conduct research and compile statistics relating to vocational rehabilitation; ~~and~~
- H. ensure that behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978-; and
- I. collaborate with the state independent living council and through the state plan for independent living identify the designated state agency to administer the independent living services program and to work to execute the transition for fiscal year 2018.

SECTION 5. [NEW MATERIAL] VOCATIONAL REHABILITATION--
STATE GOVERNING AUTHORITY.--

A. The division is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational rehabilitation, unless otherwise provided by law.

B. The division is the sole agency of the state for the administration or for the supervision of the administration

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of any state plan relating to vocational rehabilitation, or for any federal aid funds, except as may otherwise be provided by law.

SECTION 6. [NEW MATERIAL] STATE AGENCY FOR VOCATIONAL REHABILITATION--AUTHORITY.--The division is the sole agency of the state for the administration or the supervision of the administration of any federal aid funds pertaining to vocational rehabilitation. The division may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the division from agencies receiving federal aid funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;

F. establish standards to which agencies must conform in receiving federal aid funds; and

G. give technical advice and assistance to any

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agency in connection with that agency obtaining federal aid funds.

SECTION 7. [NEW MATERIAL] CUSTODY OF FUNDS--BUDGETS--DISBURSEMENTS.--

A. The state treasurer shall be the custodian of all federal aid funds for vocational rehabilitation. The state treasurer shall hold these funds in separate accounts according to the purposes of the funds.

B. All state funds, federal aid funds or grants to the state relating to vocational rehabilitation shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director or the director's authorized representative.

C. All federal aid funds received by the state to be used for vocational rehabilitation programs may be expended in any succeeding year from the year received.

SECTION 8. [NEW MATERIAL] VOCATIONAL REHABILITATION--ELIGIBILITY.--Vocational rehabilitation shall be provided to any person with a disability who is a resident of the state at the time of filing an application for vocational rehabilitation and who:

A. qualifies for eligibility under a vocational rehabilitation program established by the state; or

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B. qualifies for eligibility under the terms of an agreement that the state has with the federal government or with another state.

SECTION 9. [NEW MATERIAL] THIRD-PARTY LIABILITY.--

A. The division shall make reasonable efforts to ascertain any legal liability of third parties who are or may be liable to pay all or part of the cost of rehabilitation services of an applicant or client of vocational rehabilitation.

B. When the division provides vocational rehabilitation services to a qualified person with a disability, the division is subrogated to any right of that person against a third party for recovery of costs incurred.

SECTION 10. [NEW MATERIAL] HEARINGS.--

A. ~~A~~ **An opportunity for a** fair hearing shall be provided for any person with a disability applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the division or the director.

B. The division shall adopt rules for the conduct of hearings pursuant to this section.

SECTION 11. [NEW MATERIAL] NONTRANSFERABLE OR NONASSIGNABLE RIGHTS.--The rights of a person with a disability under the provisions of any state law relating to vocational rehabilitation are not transferable or assignable in law or in equity.

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SECTION 12. [NEW MATERIAL] LIMITATIONS ON POLITICAL ACTIVITIES.--

A. A person engaged in administering any vocational rehabilitation program pursuant to the Vocational Rehabilitation Act shall not:

(1) use the person's official authority or influence to permit the use of the vocational rehabilitation program to interfere with any public election or partisan political campaign;

(2) take any active part in the management of a political campaign or participate in any political activity beyond the person's constitutional rights of voting and of free speech; or

(3) be required to contribute or render service, assistance, subscription, assessment or contribution for any political purpose.

B. Any person violating the provisions of this section shall be subject to discharge or suspension.

SECTION 13. [NEW MATERIAL] ADMISSION TO STATE EDUCATIONAL INSTITUTIONS--EXEMPTION FROM CERTAIN FEES.--Upon written request of the division, all state educational institutions shall accept for admission, without any charge for any fees except tuition charges, any person with a disability who meets the standards of the institution.

~~SECTION 14. [NEW MATERIAL] NEW MEXICO SCHOOL FOR THE~~

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~~BLIND AND VISUALLY IMPAIRED--CERTAIN FUNCTIONS TRANSFERRED.--~~

~~Those powers, fiscal responsibilities, duties, records, equipment, lands, buildings and personnel of the New Mexico school for the blind and visually impaired pertaining to the training, rehabilitating and employing of blind persons over the age of eighteen years is transferred to the division, in cooperation with any other federal or state agency.~~

SECTION 1514. [NEW MATERIAL] TRANSFER OF FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.--

A. On the effective date of this act, all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property of the vocational rehabilitation division of the public education department are transferred to the vocational rehabilitation division of the workforce solutions department.

B. On the effective date of this act, all contractual obligations of the vocational rehabilitation division of the public education department are binding on the vocational rehabilitation division of the workforce solutions department.

C. On the effective date of this act, all references in the law to the vocational rehabilitation division of the public education department shall be deemed to be references to the vocational rehabilitation division of the

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workforce solutions department.

SECTION 1615. Section 9-7-6.4 NMSA 1978 (being Laws 2004, Chapter 46, Section 8, as amended) is amended to read:

"9-7-6.4. INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE.--

A. There is created the "interagency behavioral health purchasing collaborative", consisting of the secretaries of aging and long-term services; Indian affairs; human services; health; corrections; children, youth and families; finance and administration; workforce solutions; public education; and transportation; the governor's health policy coordinator; and the directors of the administrative office of the courts, the New Mexico mortgage finance authority, the governor's commission on disability, the developmental disabilities planning council, the ~~[instructional support and] vocational rehabilitation division of the [public education department]~~ workforce solutions department and the New Mexico health policy commission ~~[and the governor's health policy coordinator]~~, or their designees. The collaborative shall be chaired by the secretary of human services with the respective secretaries of health and children, youth and families alternating annually as co-chairs.

B. The collaborative shall meet regularly and at the call of either co-chair and shall:

- (1) identify behavioral health needs

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statewide, with an emphasis on that hiatus between needs and services set forth in the department of health's gap analysis and in ongoing needs assessments and develop a master plan for statewide delivery of services;

(2) give special attention to regional differences, including cultural, rural, frontier, urban and border issues;

(3) inventory all expenditures for behavioral health, including mental health and substance abuse;

(4) plan, design and direct a statewide behavioral health system, ensuring both availability of services and efficient use of all behavioral health funding, taking into consideration funding appropriated to specific affected departments; and

(5) contract for operation of one or more behavioral health entities to ensure availability of services throughout the state.

C. The plan for delivery of behavioral health services shall include specific service plans to address the needs of infants, children, adolescents, adults and seniors, as well as to address [~~work force~~] workforce development and retention and quality improvement issues. The plan shall be revised every two years and shall be adopted by the department of health as part of the statewide health plan.

D. The plan shall take the following principles

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into consideration, to the extent practicable and within available resources:

(1) services should be individually centered and family-focused based on principles of individual capacity for recovery and resiliency;

(2) services should be delivered in a culturally responsive manner in a home- or community-based setting, where possible;

(3) services should be delivered in the least restrictive and most appropriate manner;

(4) individualized service planning and case management should take into consideration individual and family circumstances, abilities and strengths and be accomplished in consultation with appropriate family members, caregivers and other persons critical to the individual's life and well-being;

(5) services should be coordinated, accessible, accountable and of high quality;

(6) services should be directed by the individual or family served to the extent possible;

(7) services may be consumer- or family-provided, as defined by the collaborative;

(8) services should include behavioral health promotion, prevention, early intervention, treatment and community support; and

(9) services should consider regional

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differences, including cultural, rural, frontier, urban and border issues.

E. The collaborative shall seek and consider suggestions of Native American representatives from Indian nations, tribes and pueblos and the urban Indian population, located wholly or partially within New Mexico, in the development of the plan for delivery of behavioral health services.

F. Pursuant to the State Rules Act, the collaborative shall adopt rules through the human services department for:

(1) standards of delivery for behavioral health services provided through contracted behavioral health entities, including:

- (a) quality management and improvement;
- (b) performance measures;
- (c) accessibility and availability of services;
- (d) utilization management;
- (e) credentialing of providers;
- (f) rights and responsibilities of consumers and providers;
- (g) clinical evaluation and treatment and supporting documentation; and
- (h) confidentiality of consumer records;

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and

(2) approval of contracts and contract amendments by the collaborative, including public notice of the proposed final contract.

G. The collaborative shall, through the human services department, submit a separately identifiable consolidated behavioral health budget request. The consolidated behavioral health budget request shall account for requested funding for the behavioral health services program at the human services department and any other requested funding for behavioral health services from agencies identified in Subsection A of this section that will be used pursuant to Paragraph (5) of Subsection B of this section. Any contract proposed, negotiated or entered into by the collaborative is subject to the provisions of the Procurement Code.

H. The collaborative shall, with the consent of the governor, appoint a "director of the collaborative". The director is responsible for the coordination of day-to-day activities of the collaborative, including the coordination of staff from the collaborative member agencies.

I. The collaborative shall provide a quarterly report to the legislative finance committee on performance outcome measures. The collaborative shall submit an annual report to the legislative finance committee and the interim legislative health and human services committee that provides

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information on:

- (1) the collaborative's progress toward achieving its strategic plans and goals;
- (2) the collaborative's performance information, including contractors and providers; and
- (3) the number of people receiving services, the most frequently treated diagnoses, expenditures by type of service and other aggregate claims data relating to services rendered and program operations."

SECTION 1716. Section 9-24-4 NMSA 1978 (being Laws 2004, Chapter 27, Section 4, as amended) is amended to read:

"9-24-4. DEPARTMENT CREATED.--

A. The "public education department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

- (1) the administrative services division;
- (2) the assessment and accountability division;
- (3) the charter schools division;
- (4) the educator quality division;
- (5) the Indian education division;
- (6) the information technology division;
- (7) the instructional support and vocational education division;
- (8) the program support and student

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transportation division;

(9) the quality assurance and systems integration division; and

(10) the rural education division [~~and~~

~~(11) the vocational rehabilitation division].~~

B. The secretary may organize the department and divisions of the department and may transfer or merge functions between divisions and bureaus in the interest of efficiency and economy."

SECTION ~~18~~17. Section 9-26-4 NMSA 1978 (being Laws 2007, Chapter 200, Section 4) is amended to read:

"9-26-4. WORKFORCE SOLUTIONS DEPARTMENT CREATED.--The "workforce solutions department" is created in the executive branch pursuant to the Executive Reorganization Act. The department is a cabinet department that includes:

- A. the office of the secretary;
- B. the administrative services division;
- C. the business services division;
- D. the labor relations division;
- E. the workforce technology division; [~~and~~
- F. the workforce transition services division; and
- G. the vocational rehabilitation division."

SECTION ~~19~~18. Section 22-14-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 191, as amended) is amended to read:

"22-14-1. DEFINITIONS.--As used in [~~Sections 22-14-2~~

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~~through 22-14-16]~~ Chapter 22, Article 14 NMSA 1978:

A. "vocational education" means vocational or technical training or retraining conducted as part of a program designed to enable ~~[an individual]~~ a person to engage in a remunerative occupation. Vocational education may provide but is not limited to guidance and counseling, vocational instruction, training for vocational education instructors, transportation and training material and equipment; and

~~[B. "person with a disability" means a person with a physical or mental disability that constitutes a substantial handicap to employment but that is of such a nature that vocational rehabilitation may be reasonably expected to enable the person to engage in a remunerative occupation;~~

~~C. "vocational rehabilitation" means services or training necessary to enable a person with a disability to engage in a remunerative occupation. Vocational rehabilitation may provide but is not limited to medical or vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools or equipment, maintenance and training material and equipment; and~~

~~D.]~~ B. "federal aid funds" means funds, gifts or grants received by the state under any federal aid for vocational education ~~[or vocational rehabilitation]."~~

SECTION 2019. Section 28-11A-3 NMSA 1978 (being Laws

.202858.1SA Amendments in Context

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1981, Chapter 260, Section 3) is amended to read:

"28-11A-3. VOCATIONAL REHABILITATION DIVISION--PURCHASE OF TELECOMMUNICATION DEVICES FOR THE DEAF.--A telecommunication device for the deaf shall be purchased by the vocational rehabilitation division of the workforce solutions department [~~of education~~] and installed in the office of the municipal police department of any municipality with a population in excess of ten thousand inhabitants, if the division determines and verifies that at least five telecommunication devices for the deaf are in use by deaf persons in the municipality, and in the office of the county sheriff in counties not having a municipality with a population in excess of ten thousand inhabitants, if the division determines and verifies that at least five such devices are in use by deaf persons in that county."

SECTION ~~2120~~²¹²⁰. Section 28-16A-4 NMSA 1978 (being Laws 1993, Chapter 50, Section 4) is amended to read:

"28-16A-4. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL-- CREATION--MEMBERSHIP--TERMS.--

A. The "developmental disabilities planning council" is created in accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act. The developmental disabilities planning council shall be an adjunct agency as provided in the Executive Reorganization Act.

B. The developmental disabilities planning council

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shall consist of no fewer than eighteen members, at least half of whom shall be persons with developmental disabilities or parents, immediate relatives or legal guardians of persons with developmental disabilities. The developmental disabilities planning council shall include:

- (1) the secretary of health, or ~~[his]~~ the secretary's designee;
- (2) the secretary of human services, or ~~[his]~~ the secretary's designee;
- (3) the secretary of children, youth and families, or ~~[his]~~ the secretary's designee;
- (4) the ~~[director]~~ secretary of ~~[the state agency on]~~ aging and long-term services, or ~~[his]~~ the secretary's designee;
- (5) ~~[two directors]~~ one director from the ~~[state department of]~~ public education ~~[including the vocational rehabilitation division]~~ department;
- (6) the director of vocational rehabilitation of the workforce solutions department;
- ~~[(6)]~~ (7) the director of the state protection and advocacy system established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act;
- ~~[(7)]~~ (8) representatives of institutions of post-secondary education;
- ~~[(8)]~~ (9) representatives of each program

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established within institutions of post-secondary education pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act; and

[~~(9)~~] (10) representatives of local government agencies, nongovernment agencies or nonprofit groups concerned with services to persons with developmental disabilities, including a service provider.

C. Members, except for ex-officio members, shall be appointed by the governor for terms of three years."

SECTION ~~2221~~. Section 28-16A-9 NMSA 1978 (being Laws 1993, Chapter 50, Section 9) is amended to read:

"28-16A-9. INFORMATION AND REFERRAL SYSTEM--COORDINATION AND CONTINUATION.--In order to coordinate information and referral services and eliminate the duplication of effort, the developmental disabilities planning council shall provide information and referral services for persons with disabilities, their families, providers of support and services and local and state agencies, including:

- A. the human services department;
- B. the department of health;
- C. the [~~state department of~~] public education [~~and its vocational rehabilitation division~~] department;
- D. the vocational rehabilitation division of the workforce solutions department;
- [~~D.~~] E. the New Mexico school for the deaf;

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[E-] F. the New Mexico school for the blind and
visually [~~handicapped~~] impaired;

[F-] G. the Carrie Tingley crippled children's
hospital; and

[G-] H. the children, youth and families
department."

SECTION ~~23~~**22**. Section 38-9-6 NMSA 1978 (being Laws 1979,
Chapter 263, Section 6, as amended) is amended to read:

"38-9-6. NOTICE--PROOF OF DISABILITY.--Every deaf person
whose appearance at a proceeding entitles the person to an
interpreter shall notify the appointing authority of the
person's disability at least two weeks prior to any appearance
and shall request the services of an interpreter. An
appointing authority may require a person requesting the
appointment of an interpreter to furnish reasonable proof of
the person's disability when the appointing authority has
reason to believe that the person is not so disabled.
Reasonable proof shall include but not be limited to a
statement from a doctor, an audiologist, the vocational
rehabilitation division of the [~~public education~~] workforce
solutions department, the commission for deaf and hard-of-
hearing persons or a school nurse that identifies the person as
deaf or as having hearing so seriously impaired as to prohibit
the person from understanding voice communications."

SECTION ~~24~~**23**. TEMPORARY PROVISION--RECOMPILATION.--

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Sections 22-14-21 through 22-14-29 NMSA 1978 (being Laws 1953, Chapter 163, Sections 1 through 3 and Laws 1957, Chapter 180, Sections 1 through 5, as amended) are recompiled in Chapter 28, Article 7 NMSA 1978.

SECTION 2524. REPEAL.--Sections 22-14-2.1, 22-14-3.1, 22-14-7 through 22-14-20 and 22-14-30 NMSA 1978 (being Laws 2005, Chapter 328, Sections 2 and 4, Laws 1967, Chapter 16, Sections 196 through 199, Laws 1983, Chapter 60, Section 1, Laws 1967, Chapter 16, Sections 200 through 202 and 204 and Laws 1971, Chapter 324, Sections 5 and 4, as amended) are repealed.

SECTION 2625. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.

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