

ARTICLE 16A
Developmental Disabilities

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28-16A-1. Short title.

Sections 1 through 18 [28-16A-1 to 28-16A-18 NMSA 1978] of this act may be cited as the "Developmental Disabilities Act".

28-16A-2. Legislative Purpose.

A. It is the purpose of the legislature in enacting the Developmental Disabilities Act [28-16A-1 to 28-16A-18 NMSA 1978] to promote opportunities for all persons with developmental disabilities to live, work and participate with their peers in New Mexico communities. Priority shall be given to the development and implementation of support and services for persons with developmental disabilities that will enable and encourage them to:

- (1) exert control and choice over their own lives;
- (2) achieve their greatest potential for independent and productive living by participating in inclusive community activities; and
- (3) live in their own homes and apartments or in facilities located within their own communities and in contact with other persons living in their communities.

B. The Developmental Disabilities Act authorizes the department to plan, provide and coordinate support and services to persons with developmental disabilities

28-16A-3. Definitions.

As used in the Developmental Disabilities Act [28-16A-1 to 28-16A-18 NMSA 1978]:

- A. "assessment" means a process for measuring and determining a person's strengths, needs and preferences to determine eligibility for support and services and to develop or modify an individual support and service plan;
- B. "case management" means a process that assists a person with a developmental disability to know and understand his choices and rights, to obtain support and services that the person is eligible to receive and that is reflected in the individual support and service plan and monitors the provision of support and services received by the person;
- C. "department" means the department of health;
- D. "diagnostic evaluation" means an empirical process that determines if, and to what degree, a person has a developmental deficiency and the type of intervention and services that are needed for the person and that person's family;
- E. "inclusive" means using the same community resources that are used by, and available to, all citizens and developing relationships with non-paid caregivers or recipients of support and services for persons with developmental disabilities;
- F. "individual support and service plan" means a plan developed by an interdisciplinary team and agreed to by a person with a developmental disability, or a parent of a minor or legal guardian, as appropriate, that describes the combination and sequence of special, interdisciplinary or generic care, treatment or other support and services that are needed and desired by a person with a developmental disability;
- G. "interdisciplinary team" means a group of persons drawn from or representing professions that are relevant to identifying the needs of a person with a developmental disability and designing a program to meet that person's needs. The team shall include the person with a developmental disability, the parent of a minor child or legal guardian, as appropriate; and
- H. "service provider" means a nonprofit corporation, tribal government or trival [tribal] organization, unit of local government or other organization that has entered into a contract or provider agreement with the department for the purpose of providing developmental disabilities support and services.

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 [9-1-1 to 9-1-10 NMSA 1978].

B. The developmental disabilities planning council 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 designee;
- (2) the secretary of human services, or his designee;
- (3) the secretary of children, youth and families, or his designee;
- (4) the director of the state agency on aging, or his designee;
- (5) two directors from the state department of public education, including the vocational rehabilitation division;
- (6) the director of the state protection and advocacy system established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act;
- (7) representatives of institutions of post-secondary education;
- (8) representatives of each program established within institutions of post-secondary education, pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act; and
- (9) representatives of local government agencies, non-government 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.

28-16A-5. Powers and duties.

- A. The developmental disabilities planning council shall:
- (1) act as a planning and coordinating body for persons with developmental disabilities;
 - (2) provide statewide advocacy systems for persons with developmental disabilities;
 - (3) work with appropriate state agencies to develop the developmental disabilities three-year plan as required by the federal Developmental Disabilities Assistance and Bill of Rights Act;
 - (4) monitor and evaluate the implementation of the developmental disabilities state plan;
 - (5) to the maximum extent feasible, review and comment on all state plans that relate to programs affecting persons with developmental disabilities;
 - (6) submit to the secretary of the United States department of health and human services, through the office of the governor, periodic reports that the secretary may request;
 - (7) advise the governor and the legislature about the needs of persons with developmental disabilities; and
 - (8) carry out any other activities authorized or required by the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act.
- B. The developmental disabilities planning council is authorized to:
- (1) award grants and enter into contracts to carry out its duties;
 - (2) seek funding from sources other than the state;
 - (3) create and support regional county or local advisory councils; and
 - (4) provide training to persons with developmental disabilities, their families and providers of support and services through traineeships, sponsoring training opportunities and by other means determined appropriate by the developmental disabilities planning council.

28-16A-6. Eligibility.

For purposes of eligibility for support and services:

A. "developmental disability" means a severe chronic disability of a person that:

- (1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or combination of mental and physical impairments;
- (2) is manifested before the person reaches the age of twenty-two years;
- (3) is expected to continue indefinitely;
- (4) results in substantial functional limitations in three or more of the following areas of major life activity:
 - (a) self-care;
 - (b) receptive and expressive language;
 - (c) learning;
 - (d) mobility;
 - (e) self-direction;
 - (f) capacity for independent living; and
 - (g) economic self-sufficiency; and
- (5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are of life-long or extended duration and are individually planned and coordinated;

B. are children, birth through two years of age, who are at risk for or have developmental delays as defined by the department. These children are eligible for early intervention services; or

C. is a person who is eligible for services based on any previous definition of developmental disability used by the state and is receiving services on the effective date of the Developmental Disabilities Act. However, children birth through age two who were determined to be a risk for or have developmental delays are eligible for early intervention services only, unless meeting the criteria set forth in Subsection A of this section.

28-16A-7. Assessment of needs of persons with developmental disabilities.

A. In order to comply with the provisions of 42 U.S.C. Section 6067, the developmental disabilities planning council shall conduct a needs assessment of persons with developmental disabilities to determine:

- (1) the number residing in New Mexico;
- (2) the range and degree of severity of their disabilities;
- (3) the present placement and support and services being received; and
- (4) the needs for support and services and the extent that their needs are unserved or underserved.

B. The findings of the assessment shall be included in the state plan for developmental disabilities services and support. The assessment shall be repeated at least every two years, with a summary of the findings distributed to relevant organizations, programs and agencies in the state.

28-16A-8. Planning for community services for persons with developmental disabilities.

A. The developmental disabilities planning council shall coordinate, review and comment upon plans for services to persons with developmental disabilities developed by all major state agencies providing or funding services to persons with developmental disabilities based, to the greatest extent possible, upon the most recent needs assessment completed pursuant to Section 7 [28-16A-7 NMSA 1978] of the Developmental Disabilities Act.

B. The department of health, the human services department, the state department of public education, the vocational rehabilitation division of the state department of public education, the children, youth and families department, the New Mexico school for the visually handicapped and the New Mexico school for the deaf shall each submit a plan for support and services for persons with developmental and other disabilities within a reasonable time to allow for meaningful coordination, review and comment by the developmental disabilities planning council.

C. Each plan shall define and provide for the support and services that are required within the scope of each respective agency's applicable federal and state laws and regulations. The goal of each plan is to enable persons with developmental disabilities to maximize their potential, live as independently as possible in their own homes and communities and achieve productive lives through involvement in inclusive service settings.

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;
- D. the New Mexico school for the deaf;
- E. the New Mexico school for the visually handicapped;
- F. the Carrie Tingley crippled children's hospital; and
- G. the children, youth and families department.

28-16A-10. Developmental disabilities planning council; staff.

The developmental disabilities planning council shall employ an executive director, who is the administrative officer of the council. The executive director shall employ other necessary employees pursuant to the provisions of the Personnel Act [10-9-1 NMSA 1978].

28-16A-11. Developmental disabilities planning council; reports.

The developmental disabilities planning council shall submit reports on its preceding year's work to the governor and the legislative interim health and human services committee by December 1 of each year. The reports shall contain recommendations, if any, for legislation or other appropriate action.

28-16A-12. Developmental disabilities planning council; compensation.

Developmental disabilities planning council members shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. Reasonable accommodations shall be made available to permit full participation in council activities by its members, including personal assistance to members with developmental disabilities and respite care for members that are parents, immediate relatives or legal guardians of persons with developmental disabilities. No other compensation, perquisite or allowance shall be received.

28-16A-13. Authorization for providing community-based services for persons with developmental disabilities.

A. Subject to the availability of appropriations provided expressly for this purpose, the department may:

(1) acquire, provide or coordinate support and services for persons with developmental disabilities;

(2) enter into contracts and provider agreements with agencies and individuals capable of providing support and services to persons with developmental disabilities that promote the objectives of the department's state plan, prepared pursuant to Section 5 [28-16A-5 NMSA 1978] of the Developmental Disabilities Act; and

(3) establish advisory councils and task forces as necessary to guide the development and review of support and services to persons with developmental disabilities.

B. Support and services shall be provided based on individual support and service plans developed by an interdisciplinary team. The team is responsible for collectively evaluating the child's or adult's needs and developing an individual support and service plan to meet the needs.

C. The department shall:

(1) solicit the involvement of consumers, providers, parents, professional organizations and other governmental organizations prior to the adoption or revision of any policies or regulations concerning the provision of support, services, standards or funding systems. Participants shall be selected in a manner that reflects geographical, cultural, organizational and professional representation across the state;

(2) develop policies, procedures, rules and regulations that to the extent possible will promote uniformity in reimbursement and quality assurance systems regardless of the source of funding; and

(3) convene and maintain a family infant toddler inter-agency coordinating council and a statewide adult support and services task force that shall, at a minimum, address quality assurance.

28-16A-14. Quality assurance system.

- A. The department shall develop and maintain a quality assurance system to improve and enhance the quality of support and services for persons with developmental disabilities. The management information system portion of the quality assurance system shall track and maintain information concerning the characteristics of the persons served, support and services received and the length of time support and services are provided.
- B. The program evaluation portion of the quality assurance system shall consist of a comprehensive collection of data from providers and analysis of measures of effectiveness, efficiency and consumer satisfaction.
- C. The department shall adopt regulations that ensure compliance with recognized professional standards for support and services.

28-16A-15. Admission, transfer, withdrawal and discharge of persons receiving support and services purchased or provided by the department.

A. In cooperation with other state agencies, the department shall adopt requirements for admission, transfer, withdrawal and discharge of persons receiving support and services funded in whole or in part by state funds.

B. The department shall maintain a centralized registry of persons who are requesting or receiving support and services and a centralized referral system that promotes the delivery of support and services within the person's home community and reflects the person's informed selection and choice of a support or service provider. This centralized referral system shall determine eligibility based on a comprehensive assessment and shall prioritize individuals waiting to access publicly funded developmental disability support and services.

C. The centralized referral system shall maintain information regarding the needs of persons not receiving services and shall report the information annually to the legislature. The department shall have the authority to provide assessments and case management services to persons applying for and receiving publicly funded support and services necessary to implement the provisions of this section.

28-16A-16. Determination of rates for payment for support and services.

- A. The department shall develop, implement and maintain a provider reimbursement system based on the level of support and services required by a person with a developmental disability.
- B. If the approved funding from the legislature does not permit the implementation of a reimbursement system using the considerations provided for in this section, the department shall develop and implement a service reduction plan.
- C. The department shall report to the legislature and the governor the impact of any service reduction plans and the steps that will be taken to reinstate those services.
- D. The department shall report annually to the legislature and the governor an estimate of the costs of maintaining support and services for persons with developmental disabilities being served, including the effects of changes in the costs of providing support and services, an estimate of the costs of providing support and services to persons that are eligible for service but not receiving services, and the request of the department for funding of services.
- E. Contractors shall be required to submit records of support and services delivered as determined by the department, subject to monitoring by the department.
- F. Contingent upon appropriations, the department shall conduct an independent biannual cost study for the purpose of establishing payment rates. The results of this study shall be submitted to the legislature.

28-16A-17. Independent status of service providers.

Except as otherwise provided, each service provider shall be considered to be an independent contractor and not an entity of state government.

28-16A-18. Developmental disabilities early childhood evaluation system.

The state shall have a timely, comprehensive, multidisciplinary system for evaluating infants, toddlers and preschool-age children suspected of having developmental delays. Diagnostic evaluations for infants and toddlers shall address family service needs and shall include training capabilities to educate community providers and parents in the understanding and application of the evaluations. This diagnostic evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division or the developmental disabilities division of the department, the university of New Mexico's developmental disabilities team and the state department of public education.

28-16A-19. Information and referral task force creation.

There is created an information and referral task force located in the developmental disabilities planning council to develop a statewide, comprehensive "211" information and referral plan for use as a telephone dialing code for access to health and human services. The plan shall include a tariff structure based on existing agreements, a common taxonomy of terms, coordination between public and private systems and standardized statewide training and exploration of a centralized information repository. The task force shall include representation from the department of health; the human services department; the children, youth and families department; the labor department; the state agency on aging; the internet long-term care link program; the governor's committee on concerns of the handicapped; the New Mexico commission for the blind; the commission for deaf and hard-of-hearing persons; a statewide organization that raises money for health and human service purposes; and other interested parties.