



THE ARC OF NEW MEXICO LEGISLATIVE PRIORITIES 2022

1) A wage increase for those providing supports to individuals with I/DD through a rate increase for HCBS providers.

Currently, there the average age of a direct support staff person is over the age of sixty (60) and the average income is less than \$12 per hour. Additionally, caregivers are not normally provided with health and other benefits, and they do not receive paid medical leave or family leave. Consequently, direct care workers are frequently forced to choose between taking care of their client and receiving compensation or caring for family members or themselves when ill. This situation has become significantly exasperated over the past two years with COVID and legitimate concerns by caregivers of potentially infecting either their clients or family with COVID.

On the federal level, the Better Care Better Jobs Act introduced a \$400 billion plan meant to increase the compensation and benefits of individuals providing care for people with disabilities. The proposal called for a mandatory minimum wage of \$15 per hour. However, so far in the House of Representatives, they have proposed reducing the allocation from \$400 billion to \$190 billion, less than half the amount initially requested. In the State of New Mexico, for FY22, the Legislative Finance Committee (LFC) is proposing \$10.4 million to increase DSP providers rate increase. The Better Care Better Jobs Act will provide for increased wages for DD caregivers, as well as providing for paid leave, and increase access to additional services. Such is crucial given that polls recently indicated that eighty-eight percent (88%) of people with disabilities wish to remain at home and receive HCBS, instead of moving to an institutional setting.

The funding for the Better Care Better Jobs Act would provide the following funding to:

- a) Facilitate statewide planning to develop HCBS infrastructure improvement plans;
- b) Enhance Medicaid funding for HCBS by providing states a permanent increase in the Medicaid match if the states expand access to HCBS and strengthen HCBS;
- c) Incentivize workforce growth through innovative models that benefit direct care recipients as well as help workers organize;
- d) Support quality and accountability by funding programs through the Centers for Medicaid Services and conducting oversight and offering technical assistance; AND
- e) Permanently authorizing protection against impoverishment for individuals who received Medicaid HCBS, as well as the Money Follows the Person program to select individuals who are transitioning from institutions to home- or community-based programs.

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2) Reduction in the DD Waiver Waitlist and providing increased services to those on the waiting list.

Currently, there are over 6,000 New Mexicans on the DD Waiver Waitlist, with some on the Waitlist having to wait over ten (10) years before they can receive benefits. At the federal level, Congress is entertaining the Better Care Better Jobs Act, which in discussion in the House of Representatives would provide \$190 billion to assist with reducing the DD Waiver Waitlist. On the state level, the New Mexico Legislative Finance Committee (LFC) is proposing to allocate \$7.5 million to remove three hundred and forty-seven (347) people from the DD Waiver Waitlist. Although such is definitely appreciated, it is expected that the DD Waiver Waitlist will almost immediately have an additional four hundred (400) people join the Waitlist, causing the overall number of people on the Waitlist to actually increase instead of decrease. Anyone who is eligible for Centennial Care community benefits should be able to receive the full range of benefits and services for which they are eligible.

3) Supported decision-making

In FY21, the New Mexico Legislature provided \$350,000 to DDPC for a study of the issue. Meanwhile, Colorado and ten (10) other states passed legislation providing for supported decision-making for individuals with I/DD in the last legislative session putting supported decision-making into action, with primarily positive results reported in each of those states. The Colorado bill was CO Senate Bill 21-075. Although the New Mexico stated that they wanted the study that they funded to examine whether supported decision-making should be offered in lieu of guardianships, other states have made clear that supported decision-making is to be used in addition to guardianships in most cases and in lieu of guardianships in some cases. The Arc of NM believes that guardianships will always prove to be necessary in certain circumstances and can never be replaced outright.

The number of benefits derived from the use of supported decision-making agreements are considerable. The CO Act sets out in the written supported decision-making documents that any third party relying on such a document will not incur any liability for relying on the document, as the document sets forth that the person with a disability signing the document is “legally competent” to make their own decisions and to execute such agreement. Additionally, the person or persons providing the “support” to the decision-maker are not considered to have a fiduciary duty to the person with a disability. As such, neither the “supporter” nor the business relying on the decision-making agreement have any liability for acting on the requests of the person with a disability. These supported decision-making agreements provide much more freedom, self-advocacy, and discretion when making decisions about how to live their lives. They are given more discretion on how to spend “their” money. They also have more flexibility and discretion in choosing their own housing.

4) Phasing out the subminimum wage for individuals with I/DD

The federal government is currently examining as to whether to phase out the

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subminimum wage for individuals with intellectual and developmental disabilities. However, Colorado and seven (7) other states phased out the subminimum wage recently in legislation in the last fiscal year. Each state that phased out the 14(c) provision that allows for businesses with 14(c) contracts to pay people with disabilities a subminimum wage noted that such an exemption was passed almost a hundred years ago during the Great Depression as an attempt to incentivize employers to hire members of the I/DD community for menial jobs. Through the introduction of technology, allowing people to work from home during the pandemic, and better schooling for people with disabilities, a great deal has changed over the past century.

Technology has created many more jobs than previously available in the early 1990s and has allowed for people with I/DD to perform jobs that were previously unavailable. Many employers do still have 14(c) exemptions to provide subminimum wage to I/DD individuals. However, one positive note is that a majority of employers have abandoned getting 14(c) subminimum wage contracts with the government in recent years. Still, there remain employers who are only paying individuals with disabilities pennies on the dollar for their work. As such, it is oftentimes impossible for a person with disabilities to find a livable wage to afford rent, food, utilities, and other expenses incurred when living out on one's own. Colorado and other states have proposed a four-year phase out period for subminimum wage, ideally to allow employers to adjust slowly over time and for the number of job coaches and direct care attendants to increase in the interim.

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