

Date	Comment	Submitted By	State Response
7/6/2023	<p>My concern is the lack of rate increases for the Supported Living services. If there is not going to be an increase in the Supported Living Categories 1, 2, and 3 and only a 1% increase in Category 4, I am afraid that the Supported Living Service will be dramatically impacted. There are not many Supported Living providers accepting new clients. The lack of a rate increase will significantly impact the ability to continue to hire and retain staff.</p>		<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>
7/7/2023	<p>I have been working for the DD Waiver field since 2006. The fact that this rate study does not recommend any changes in the rate for Supported Living Services (SL) that was established several years ago is ridiculous. Agencies have been forced to raise their pay for their staff, cover numerous expenses (rent, food, supplies) not included in the rate, and inflation. This rate does not factor in the change of pay, inflation, over-time costs, and the cost of turnover. Our agency is already running a 5 figure deficit this year and that is on the 10% rate increase. What will happen when the rate is decreased to these rates? Our agency is a non-profit who depends on fundraising and DD Waiver Medicaid reimbursement. How do you expect agencies to</p>	<p>Provider Agency</p>	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback. The Supported Living rate is not recommended to decrease by PCG.</p>

	<p>remain open and functioning if you are not willing to pay a reasonable rate to reimburse for SL services? How are we supposed to support everyone and keep them safe, with limited to no funding?</p>		
7/7/2023	<p>Does this mean that the rates will increase to the amounts in this study? If so, when?</p>	Therapist	<p>The Developmental Disabilities Supports Division Senior Leadership will meet with Human Services Department Senior Leadership to discuss the recommendations and make decisions around them. If these rates are approved, the tentative implementation date will be 7/1/24.</p>
7/7/2023	<p>It does not look like nutrition services are included. Why is that?</p>	Other	<p>Developmental Disabilities Supports Division focused on the services with the highest utilization rates for DD/MV/MF waivers. Nutritional services were not included in this rate study. Nutritional services were included in the 2019 rate study.</p>
7/10/2023	<p>I would like to say that the rates in this study will certainly help get more therapists into the incentive counties in New Mexico.</p>	Therapist	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>
7/10/2023	<p>To even suggest that Supported Living needs essentially no increase is a tremendous slap in the face to everyone that battled through the COVID pandemic. All of our costs have risen- Rent, groceries, our pay rates have had to increase substantially to even remain staffed, additional employee benefits had to be offered, maintenance costs, substantial overtime costs, the list goes on and on... This "Rate Study" is downright insulting. The math doesn't even add up in the Supported Living hourly rate breakdown, even though it is added correctly in every other</p>	Provider Agency	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>

category. And I would just like to say that if the state of New Mexico does not start appreciating the people that do the actual work and treating what they do as a CAREER- You will eventually end up without provider agencies and/or with the lowest quality staff possible throughout this field. You get what you pay for. It's an age old mantra, but as true and relevant today as it ever was. This state expects direct support staff to be the implementers of therapy plans written by licensed professionals, to excel at all required documentation (And you ask for a LOT), to maintain strict standards across the board, to handle every emergency, every medical need, every behavioral concern, to SPEND EACH AND EVERY SINGLE DAY ASSISTING THE LIVES OF THOSE WE SUPPORT. Do you ask this of therapists? No. Case managers? No. Other adjunct supports? No. You ask this of them. You have the standards set forth for the people who are DOING THE ACTUAL WORK. They are not sitting there with them providing an hour of weekly therapy. They are not visiting with them once a month. They are with them EVERY SINGLE DAY supporting their lives and well-being. This rate study is an insult to everyone out here

	<p>providing support to our individuals every single day. If you want quality people involved in supporting lives, you must start treating and compensating them as if what they do matters and is a legitimate career. Period.</p>		
7/10/2023	<p>I feel that direct support staff house leads management people that are with individuals day in and day out supporting them with all the changes seeing them at their good times and their bad times need a pay increase we are there for when stuff happens with these individuals we don't just see them once a month or an hour a week I feel that the rate of pay is severely insufficient and needs to be addressed not just for category 4 but for everybody that supports all the categories on the DD waiver not just category 4</p>	Direct Support Professional (DSP)	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>
7/10/2023	<p>It is a major insult that the state did not think that the people that provide the direct care deserve to be compensated more. There is no consideration of the amount of work that goes into the daily care of these individuals. The people</p>	Other	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>

that provide the direct care deserve to be better compensated for all of their hard work. They are with the client's day and night providing care, taking them to doctors' appointments, outings, making sure their needs are met, and help with the challenges they face. They are the people that let the case manager and therapist know the daily ups and downs. The fact that the state did not consider this at all when they did the study is very disappointing and shows that they are not willing to help with the labor shortage in this area.

7/11/2023

As someone who has required constant care due to a traumatic brain injury, and who has helped care for an individual with dementia both before and after my grandmother was placed in a memory care facility, I understand how difficult and how vital direct support is for individuals who need it. Supported living, even at the most basic levels, is a huge responsibility. We have trouble finding persons with the necessary stability, equanimity, and strength of character to provide these services for clients who need them, though an increase in the compensation offered might encourage more qualified people to consider this as a career path. I see that your recommendations

Provider Agency

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for SL are unchanged for the Minimal and Moderate Support levels, and only 50 cents a day increase for the Extensive Support level. Even at the Extraordinary Support level, you only suggest an increase of less than \$5 per day. This is not encouraging for people who have the necessary skill set, who could make a better living in other industries. Such people need to choose between helping individuals in need or earning what they're worth. This can be a difficult choice for someone with the compassion needed for a role in direct support.

7/11/2023

I am a Direct Support Staff for individuals on the DD waiver and I am sadly disappointed with the decision to not give Direct Support Staff a pay increase. We are the people with the individual EVERYDAY, reporting to the case managers and therapists as to how to help the individuals we support. It's a bit disheartening to see the "higher- ups" being rewarded and having their pay increase when we are the feet on the ground, doing the hard work EVERYDAY, not once a month, not once a week... EVERYDAY! Without the Direct Support Staff reporting to these individuals, case managers and therapists wouldn't how to help these individuals or what the

Direct Support Professional (DSP)

The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback. DDSD cannot determine what providers pay their DSPs.

	<p>individuals are working on or how they need support. We implement support plans and we provide medication and skill training and sooooo many other ways we support our individuals that it would take days to list. Please reconsider prioritizing Direct Support Staff and help us out with a pay increase. I have children, I have a family, and even though I do not have any degrees, I am a very skilled person and take a great pride in the work I do, EVERYDAY, and would greatly appreciate a pay increase. We have been working non-stop to support DD individuals and have been facing a staffing problem, maybe paying these employees more would help maintain our workforce? I think it would definitely help.</p>		
7/12/2023	Very informative report.	Therapist	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/12/2023	Very informative.	Participant	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/13/2023	When is the Home Modification program going to increase to a permanent status? I don't see that there was any information on the NM DDS Home and Community-Based Services Waivers Rate Study Final Report. This program funding has to increase to \$7000.00 or I believe more contractors will leave the	Provider Agency	The Environmental Modifications rate increase is available to the DD, MV, Supports, and MF Waivers. The rate has increased from \$5,000 to \$6,000 every 5 years until ARP funds are fully expended. The Developmental Disabilities Supports Division will consider your recommendation during the next rate study.

	<p>program. I myself am one of the contractors that will not do emods if the increase is not raised permanently, and it should be raised to \$700 minimum as it was at one time. Please consider raising the amount to \$7000.00 so the program can continue. Thank you</p>		
7/13/2023	<p>I'm a direct support staff. I haven't worked in this field for very long but in my observations the direct support staff are the front-line workers. They were out on the homes working with the clients on daily bases during Covid and maintaining a good quality of life for the DD waiver clients. They are there when anything happens with the clients and are supportive. They deserve a pay raise more than anyone else. They maintain the houses by keeping them safe and clean. They report anything that needs repaired. They observe and report on clients needs and safety.</p>	Direct Support Professional (DSP)	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/15/2023	<p>Being a dds worker we are directly working with the individuals regularly and raises were provided to those in this system that do not even work directly with the individuals and I strongly believe that if anyone in this field deserves a raise it is the staff that works one on one with these individuals on a daily basis. There is so much more than just watching these individuals</p>	Direct Support Professional (DSP)	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.

	that regularly has to be done on top of providing support and care to individuals in these programs.		
7/17/2023	I am trying to figure out how DDS could not give a rate increase for Supported Living services. Supported Living is by far the most difficult service to staff, we are also heavily impacted from inflationary costs. Food, Utilities, Rent, have all increased exponentially since 2020. Why did the state not at least adjust the rate for inflationary costs for Supported Living services (the most expensive service to provide) ?	Provider Agency	Inflationary factors were considered in the rate study and are found in the report on page 48. The reported average annual wages were \$14.02 per hour, so PCG instead relied on the higher BLS wage of \$17.11 per hour. A fringe rate of 23.76% was added to this. The buildup assumes that 55% of staff are employees and the remainder subcontractors. The subcontractor rate used was \$16.79 per hour. PCG combined the above and add 31.2% for admin and program support expenses (non-personnel factor based on cost reports). The mathematical result and recommended rate differ when the methodology would have otherwise resulted in a decrease. PCG recommends a 3.70% inflation factor annually.
7/17/2023	We do not understand why Supported Living did not get any rate increase when this service is profoundly underfunded and the most affected by increased costs. How can we expect agencies to pay us a living wage when the state won't recognize basic inflationary costs? It's a disservice to people on the DD waiver to not include Supported living in devotions like this one. They are the ones that need the most help. Our clients are home in a familiar environment to ensure their well-being and happiness.	Direct Support Professional (DSP)	The reported average annual wages were \$14.02 per hour, so PCG instead relied on the higher BLS wage of \$17.11 per hour. A fringe rate of 23.76% was added to this. The buildup assumes that 55% of staff are employees and the remainder subcontractors. The subcontractor rate used was \$16.79 per hour. PCG combined the above and add 31.2% for admin and program support expenses (non-personnel factor based on cost reports). The mathematical result and recommended rate differ when the methodology would have otherwise resulted in a decrease. The DDS made a policy decision that no existing rates be decreased.
7/17/2023	The pay for supported living is not a living wage. The cost of housing has increased tremendously even in the low income neighborhoods in	Direct Support Professional (DSP)	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.

Albuquerque. The price of food has increased as well and a dollar does not get you where it used to. The work that DSP provide is essential to the quality of life serving an at risk population. DSP are sometimes the only people that these individuals interact with on a daily basis assisting them with all daily activities and just basic companionship. Without the assistance of DSP these individuals would have difficulty achieving the life goals they have set for themselves.

7/17/2023

In the past 6, going on 7 years that I have worked with the DD waiver population, I have seen amazing staff come and go because the work we do just isn't enough to live on. I myself have had to take on side work just to make sure my utilities stay on. The work we do is hard, the things we are trained to handle are not for the faint of heart and yet we are hardly paid enough to live on. The reason so many agencies are struggling to keep enough staff to provide adequate service to our clients is directly related to how little we are paid for the service we are providing. I love what I do, but I have a child to care for as well as myself. I- and many others, will not be able to continue doing this work at the rate we are paid while the cost of living

Direct Support Professional (DSP)

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	<p>is skyrocketing. Changes need to be made to ensure the well being of the community we serve, starting with paying Direct Support Staff a livable wage during this economic crisis.</p>		
7/17/2023	<p>We are aware that Supported Living which I work for did not give a raise. Our cost of living went up last year but we didn't get a raise. I was asking if all supported living staff would be able to get one thank you for your time.</p>	Direct Support Professional (DSP)	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/17/2023	<p>Supported Living was not given a single dollar from the rebase study. Our job and our clients are important to NM, and failing to acknowledge our community in the face of rising living costs, is demeaning and harmful. It fails to see that we are also people, that our clients are deserving, and that we are humans with humans needs.</p>	Direct Support Professional (DSP)	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.

7/17/2023

1. We request copies of the Rate Calculation build up sheets, as demonstrated in Table 20 of the June 2023 HCBS Rate Study Recommendations report for all services. 2. We request copies of the cumulative provider time study and cost reports that formed the basis for determining the service rates. It appears that the survey results have produced some inconsistent rate determinations. 3. The decision was made to increase service rates that already exceeded the Market average. The Market Average for DSPs was below the Market average and there was no increase in rates for Supported Living where DSP work is the most extensive. Supported Living services also require substantially higher administrative cost than the blended average for all Waiver services, but it is unknown if this factor was applied in the rate calculations sheet. With HB 395 using 150% of the state minimum wage, that wage should have been \$18.00 per hour regardless of the wages of the proxy positions and BLS statistics. 4. Has DDSD made a policy decision to reduce the utilization of Supported Living services from the NM DD Waiver? The decision to have no increase in SL rates appears to incentivize

Provider Agency

1. This information is available in Appendices B, C and D of the PCG Rate Recommendations Report. 3- The reported average annual wages were \$14.02 per hour, so PCG instead relied on the higher BLS wage of \$17.11 per hour. The mathematical result and recommended rate differ when the methodology would have otherwise resulted in a decrease. Please refer to Appendix F of the PCG Rate Recommendations report for projections related to HB 395. 4-No policy decision was made to reduce the utilization of Supported Living services. 5. If the hours were indicated as a portion of 2080, the wage and fringe calculations were adjusted for each accordingly. All costs were calculated in proportion to the number of hours reported. Rate tables for each service are in the report appendices.

seems to incentivize Family Living and In Home Living Supports over Supported Living. In the past DDSD has utilized the methodology of granting no rate increase as a means to make services unsustainable and greatly reduce the utilization of those services. 5. We determined that the Excel cost report workbook sent by PCG for data input in the cost/time study contained anomalies in its cell logic that impacted the calculations of waiver related costs for employees and subcontractors in the cost report. The PCG methodology used a standard number of annual work hours (i.e., 2080, equaling 40 hours per week X 52 weeks per year) as a fixed denominator in calculating percentages of time to allocate waiver related costs for each employee and contractor. This resulted in any part-time employee/contractor working less than 2080 annual hours actual costs to be understated, employees/contractors working more than 2080 hours actual costs to be overstated, and only those employees/contractors working exactly 2080 annual hours actual costs to be accurate. We made corrections to our cost report workbook but requests that information on how this anomaly was

addressed during the rate study calculations be addressed. We believe there was a large number of hours reported for the "Subcontractor" classification in both therapists and Family Living Providers which would have effectively overstated the cost of providing those services.

7/17/2023

This rate study will be used to determine the FY 25 Health Care Authority Department's legislative budget request. It is our understanding that the transfer of DDS and DHI to the Health Care Authority will be effective July 1, 2024. The FY 25 budget request will have DDS in the Health Care Authority Department. We want to ensure that the DD Waiver rates are sufficient to support and stabilize the system. It is our position that: 1. The rate increases from the FY 24 \$10.2 million DOH appropriation request be published and implemented immediately or as soon as possible. 2. The 5% temporary rate increase from the ARPA funds be

Provider Agency

1.-3. are outside the scope of the rate study. 5. If contractors were not included in this study it would result in artificial picture of the type of staff working in each service and would not be reflective of the current system. PCG calculated rates based on the current practice using the methodology outlined in the final report for the rate study. PCG does not provide legal guidance, but it is important to note that there are several sources noting that DSPs, as of 2022, are often contractors, including the U.S. Department of Labor, Office of Disability Employment Policy, such as in the think tank executive summary. Recommendations are cited here:
<https://www.dol.gov/sites/dolgov/files/ODEP/pdf/dsp-recommended-actions-and-report.pdf>

continued until June 30, 2024.3. The estimated cost to “end the waiting” list (approximately \$40,000,000 State General Fund) be included in the Health Care Authority Department’s (HCAD) FY 25 budgetary request. 4. The HB 395 calculation in the PCG Rate study (approximately \$16,000,000 State General Fund) be included in the HCAD FY 25 budgetary request. The PCG rate study should be revised to remove the HCBS Contractor impact from the rate recommendations. (It is our understanding that the classification of DSPs as Independent Contractors is illegal and not in compliance with Labor Department and IRS regulations.) Use of these potentially illegal classifications should not be considered in rate study recommendations. We request that DD Waiver rates are sufficient to support and stabilize the system across all waiver services. The current information requests need to be provided and any remaining questions need to be discussed and resolved prior to the adoption of the PCG Rate Study in order to maintain Provider confidence in DDSD leadership and the Waiver system. We look forward to ongoing collaborative discussions with DDSD and the Health

	<p>Care Authority Department to ensure the valuable and necessary services provided through the waivers to New Mexicans, their families and communities will be available well into the future.</p>		
7/20/2023	<p>Heartily support pay raises for case managers and consultants, both of whom have been handed numerous extra duties since the last rate study and raise. For Mi Via consultants especially, who are now responsible for monthly in person visits (versus quarterly), assistance with EVV, and logging/tracking/monitoring training on the UNM Training Hub. Case Managers have been asked to complete additional training each year and continue to be saddled with unrealistic paperwork gathering responsibilities that take up an increasing amount of time and energy. Homemaker pay rate cap really needs to be raised to \$20 at least to attract quality staff. \$14.60 for a max rate is far less than the average fast food job these days.</p>	<p>Case Manager/Consultant/Community Supports Coordinator</p>	<p>We appreciate your feedback, and the Developmental Disabilities Supports Division has reviewed your comments.</p>

7/20/2023	The rates for DDW CM and Mi Via consultant should be comparable. They are 2 different programs, but the facilitation component of the service delivery is similar, although the scope can be different. Keeping the facilitation rates comparable stops the CM or consultant from trying to incentivizing one program over the other due to reimbursement rates.	Case Manager/Consultant/Community Supports Coordinator	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/20/2023	If the cost of the use of station MD past the pilot period is intended to be built into the LCA rates- the cost of this service should be considered in the current rate study to prevent the implementation of an initiative in the future without corresponding funding to support the change. the SL rates specifically do not have increases that may allow for the provider agencies to absorb this cost.	Case Manager/Consultant/Community Supports Coordinator	Station MD was not part of the scope of work for this rate study nor is it being built into the LCA rates.
7/20/2023	There are several decisions reflected in the final report that were questioned in the preliminary presentation on June 28th that were not addressed in the final report that was distributed on June 30th.	Provider Organization	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/20/2023	The job of caring for people (disabled/elderly) comes with many responsibilities that require being vigilant and attentive. Potential for abuse and neglect is higher. You would think hiring strong stable staff would be the highest priority. But in	Direct Support Professional (DSP)	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.

	<p>this organization you are lucky to be getting paid 15.00-17.00 an hour. When, in fact, 15 years + should be getting 30.00+. People whom have been in the industry for many years should be getting a healthy living wage and there should be better training.</p>		
7/20/2023	<p>Reimbursement rates per unit for most, if not all, services do not cover a living wage for direct support personnel. Additionally, certain rates such as CCSG do not meet the minimum wage of the State of New Mexico making it challenging for the Provider Agencies to be competitive in the current employment market. This can be a challenge for providers who must find ways to make up for the lack of reimbursement for all services including supported living categories, operating in the red in the total of 248,000 to increase wages, provide retention bonuses, and other stipends to acknowledge our front line workers. The PCG rate study should be revised to remove the HCBS Contractor impact from the rate recommendations for the Supported Living Categories 1 - 4. I understand that the classification as Independent Contractors of DSPs who are working regularly scheduled shifts is illegal and not in compliance with Labor</p>	Provider Agency	<p>If contractors were not included in this study, it would result in artificial picture of the type of staff working in each service and would not be reflective of the current system. PCG calculated the rates based on the current practice using the methodology outlined in the final report for the rate study. PCG is not providing legal advice, but there are several sources noting that DSPs, as of 2022, are often contractors, including the U.S. Department of Labor, Office of Disability Employment Policy, such as in the think tank executive summary and recommendations cited here: https://www.dol.gov/sites/dolgov/files/ODEP/pdf/dsp-recommended-actions-and-report.pdf</p>

Department and IRS regulations and should not be used in a rate study. The wage for a contractor is more than agencies can afford. We do not use contractors as Direct Support, thereby rate study rates do not account for benefits; sick leave requirement, workers compensation, overtime, unemployment insurance. HCBS compliance is full access to the community for clients, however we want to clarify that the cost of transportation, preventive maintenance, and fuel is not included in the overall cost of the service which is an additional burden of cost passed on to Provider agencies with the insufficient reimbursement rates. Inflation is on the rise, but reimbursement rates for services remain stagnant for the care of vulnerable individuals who deserve more. We are dedicated to providing quality care and ensuring health and safety. However, this has become a challenge for provider agencies who struggle to recruit, retain and provide wellness to personnel

7/21/2023

Homemaker/Direct Supports-The New Mexico Legislation passed House Bill (HB) 395 during the last legislative session. Page 6 of HB 395 requests the consideration of compensating Direct Service Professionals (DSPs), “at least one hundred fifty percent of the state minimum wage”. The state minimum wage is currently \$12.00 per hour. It is unthinkable that there was not a recommended rate increase for the services of Homemaker Direct Support. The current range of rate (per hour) for Homemaker Direct Support is \$7.50 - \$14.60. This is not in line with the market analysis, or the current state minimum wage. Additionally, on page 42 of the PCG Rate Study Report, it was recommended not to raise the comparable DD Waiver rate for Customized In-Home Supports which is \$7.99 per 15-minute unit or \$31.96 per hour. We agree with the decision not to raise this rate. However, the disparity of paying professionals per hour on Mi Via versus \$31.96 per hour on the DD Waiver creates capacity issues. Agencies that provide both waiver services have and will more likely opt to provide DD Waiver services due to a higher rate of payment. This will add to the current shortage of staff for this service. Based

Case Manager/Consultant/Community Supports Coordinator

Homemaker/Direct Supports: Annual salary \$35,588.80/hourly \$17.11, ERE/Benefits - \$4.07, Total Hourly Personnel Cost \$21.18, Rate: \$30.79, billable/nonbillable consideration \$34.77. Total Hourly Rate: \$34.77, 15 min rate - \$7.50, max \$8.69, current rate max: \$14.60. This rate is lower than the current fee schedule rate. DDS does not intend to reduce any rates. The rate will remain flat, as PCG recommends holding this rate at the current level to prevent provider loss. Making equitable spending per person between waivers is a policy decision. These rates were developed using the cost-based methodology described in the final report for the rate study: Exceptions to Mi Via Waiver Range Calculations. There were instances where the proposed Mi Via range methodology would either lower the rate or change the rate dramatically. For these, PCG proposed a different methodology. For Customized Community Group Supports and Community Direct Supports the current maximum Mi Via rate is above the rate for the comparable DD Waiver services so the methodology would have reduced the maximums. In order to maintain the rate value PCG proposed the minimum would follow proposed methodology. The therapy incentive rates will be looked at for the Mi Via Waiver during the next rate study. In Home Living Supports-The maximum will still follow the proposed methodology. The daily rate makes a minimum wage calculation unfeasible. Instead, PCG changed the current minimum by the same percentage that the rate for the comparable Developmental Disabilities service (Family Living) rate is increasing. Homemaker/Direct Supports - This Mi Via rate is an hourly rate while the rate for the comparable DD service (Customized In Home Supports) is a 15-minute unit rate. If the 15-minute unit Developmental Disabilities rate were converted to hourly, it is much higher than the current Mi Via maximum, which suggests that to change the maximum to the Developmental Disabilities service’s rate is not viable. Instead, PCG held the current maximum constant. The minimum will still follow the proposed methodology. There is a difference in scope of work for MV and DDW therapy services. MV has a range of rates for each therapy service that is negotiated by the MV participant or their EOR. The IBA was increased by the average increase for Mi Via services, not by any individual rate increase. While some services would

on the market analysis, minimum wage requirement and disparity with the DD Waiver rates, our suggested range for this service is \$12.00/hour - \$31.96/hour Incentivized Rates. We raise the question of why the DD Waiver provides incentivized rates while the Mi Via Waiver does not. This rate study is an opportunity to correct that disparity. Page 45 of the PCG Rate Study Report demonstrates that providers can charge the incentivized rate of \$49.32 for a 15-minute unit for occupational therapy of DD Waiver while Mi Via providers are capped at \$38.68 per 15-minute unit. Again, this rate disparity incentivizes providers who have limited capacity to support the DD Waiver over Mi Via. This will further increase the lack of providers/agencies willing to provide services to Mi Via Participants. The need for incentivized rates is justified for Mi Via as provider need is necessary and equivalent whether on DD Waiver or Mi Via. Individual Budget Allotment-The PCG Rate Study Report recommends that the Mi Via Individual Budgetary Allotment (IBA) increase by 10.2%. While we commend the effort to increase the total IBA, this is not in line with the rate increases of the services.

receive increases higher than that, providing the highest increase for all Mi Via participants would also not be tenable.

For example, the recommended rate increase for IHLS is 21%. This means that if Mi Via participants choose the maximum IHLS allocation, the participant will lose services that they were previously able to get within the IBA. Another example is the minimum rates that need to be increased to meet the minimum wage requirements. Community direct support minimum rate is currently \$7.52. If you increase this minimum rate to \$12.00 to meet the wage requirement, this is an increase of 59%. Almost every single rate increase is over 10.2%. This means that if the overall IBA does not increase more than 10.2% then participants will lose services that they were previously able to get. This will impact the health and safety of the participants. Overall Funding for Waiver Services. According to page 47 of this report, there are 4114 people on DD Waiver services with a fiscal impact to NM of \$38,728,466. Mi Via serves 2478 participants with a fiscal impact of \$14,315,892. In other words, the cost per person on the DD Waiver is \$9,413.82 while the cost per person on the Mi Via Waiver is \$5,777.20. If funds were shifted to support incentivized rates for the Mi Via program, increased rates for homemaker direct

supports, and an increase in the overall IBA greater than 10.2% it would create more equity between each waiver service per person.

7/20/2023	This report was very thorough, well written and I was able to understand all of it. I did not have any questions and was able to follow exactly what was being said. Thank you.	Advocacy Organization	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/20/2023	I have reviewed the results to the study conducted, after reviewing all its contents, I believe the survey has captured adequate information in all areas. I do agree with the recommendation about individuals with increase level of care shall be paid	Provider Agency	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.

<p>more per hour. Recommendation of clarity for In Home Supports live with family/ independently, should be Identified, during last CARF survey surveyor wanted to count this as two separate services, it was a challenge to clear this up. I believe the increase is fair and it will help to recruit adequate staff, and just an applicant.</p>		
<p>7/21/2023 We are pleased that DDS included in PCG's Scope of Work HB 395 and how that law will impact rates. We are especially pleased that PCG's methodology in Appendix A, page 92 demonstrates the increases that will be required for direct care positions that are like Direct Support Professionals but differently named. B. We note that Independent Contractor Direct Service FTEs made up a large percentage of the staff identified in personnel rosters submitted to PCG. This report simply highlights that a large percentage of independent contractors were identified in personnel rosters submitted to PCG and we have no issue with that finding. C. Related to item B. above, however, various advocates of the DD Waiver system have suggested that Family Living and Mi Via Waiver providers "can often be appropriately classified as independent contractors." We believe that may be a mischaracterization. We</p>	<p>Advocacy Organization</p>	<p>Respite recommendations were all higher than the respite current rates. DD Respite -current rate \$4.82/15 min recommendation \$7.08/15 min 47% increase. MF Respite - current \$30.46/hour recommended \$42.93/hour 41% increase. MV respite - range current \$3.38/15 min recommended \$7.53/15 min. Healthy Workplaces Act (HWA) requires employers in New Mexico to allow employees to accrue and use a benefit called earned sick leave, at a rate of one hour of earned sick leave for every 30 hours worked or 3.33%. The HWA allows paid time off (PTO) to be counted towards this if it can be used for the same purpose. In this study, providers reported PTO and Sick time at 1.97%, which is 1.36% below the required 3.33%. PCG therefore adjusted the Fringe Rate upwards by 1.36%. DDS is responsible for ensuring adequate reimbursement for the cost of HCBS service delivery falls under their purview. DDS has the responsibility to ensure rates for HCBS encompass minimum wage and paid leave requirements. Providers must follow applicable labor laws. E. and F. were survey results, not findings.</p>

also believe that Respite care workers (especially those workers our organization has interviewed) should rarely be considered contractors because they are told by their agency not only when, where and how to perform their job, but also because the agency sets the rate of pay for that Respite Care Worker. As a result of what we know about Respite Care Workers working within the New Mexico DD Waiver system, we request that DDS ask U.S. Department of Labor or NM Department of Workforce Solutions to determine if these direct support staff (and especially Respite Care workers) are indeed appropriately classified as contractors as opposed to employees. As NMCC has noted in past briefings co-authored with National Employment Law Project (NELP), Human Services Department Legal Counsel has no authority to name a particular position as one appropriate for classifying as an independent contractor; that determination is conducted by U.S. Department of Labor according to a five-part test. Finally, page 31 states that “36% suggest agencies or employees set the rates” for Mi Via. One component of the five-part test of whether an individual is a contractor or an employee is an agency’s

setting of a rate. As in item D. above, we request that DDS ask U.S. Department of Labor or NM Department of Workforce Solutions to determine if these direct support staff are indeed appropriately classified as contractors as opposed to employees. F. And, page 30 of the report states: "3. Responses indicated that agencies are not always providing benefits to employees providing Mi Via services. Mi Via vendor agencies do not contract with the DOH. Vendor agencies contract directly with the Mi Via participant and/or EOR. Availability of benefits is entirely up to the vendor agency. Current and recommended Mi Via rates have paid sick leave built into them. Of the respondents who reported they work for a vendor agency, most (62%) report they are an employee of the agency and (38%) reported they are contracted with the agency. Of employees, 66% reported that they do not receive any benefits through their vendor agency. Of employees, 47% reported that they do not receive any paid time off through their vendor agency."

7/21/2023 The rate study uses subcontractor rates to lower the pay from the market rate for supported living and customized in home supports. The use of subcontractors for these positions violates both IRS and US Department of Labor rules. The study states that DDS does not enforce labor laws yet their signature is required for any subcontracts according to their provider contract. Further the MAD 355 provider contract requires providers to comply with state and federal law. The fact that some providers have had to use subcontractors to provide services in areas outside Albuquerque should be remedied by better rates instead of being embraced as a state wide model which will force non-profit providers out of business. (Their books are audited and the reports to their boards of directors would capture the illegal activity). The vacancy rate of 7% stated in the study does not appear realistic for certain services where there is clearly a shortage of staff in supported living and customized in home supports. The cost report instructions do not define a vacancy and the cost report does not require the participant to list what categories of positions are vacant. The cost report fails to report the cost of filling

Other

APPENDIX F: HB 395 MINIMUM WAGE CONSIDERATIONS This appendix details the impact of House Bill 395 minimum wage requirements on rates within the scope of this study. The statewide minimum wage rate is \$12.00 per hour, as of January 1, 2023. The base rates within the scope of this study are each above the current statewide minimum wage. PCG has recommended increasing the Mi Via Individual Budgetary Allotment (IBA) to maintain continuity of services, see report page 47. I Budget Allocation Levels Current New 0–17-year-olds \$23,443 \$25,854, 18–20-year-olds \$54,589 \$60,204, and 18-20-year-olds with In Home Living Supports \$68,589 \$75,644, 21 years and older \$72,710 \$80,189. In the men time Mi Via participants have access to Additional Funding to supplement their IBA in the case if rate increases. PCG calculated the vacancy rate based on reported provider turnover (pg. 27 of the report). This table demonstrates the methodology but does not directly feed into the rate calculations. The rate build-up models used for calculating the recommended rates assume that all providers participating are meeting Departmental standards, including those for participant safety. If contractors were not included in this study, it would result in artificial picture of the type of staff working in each service and would not be reflective of the current system. PCG calculated rates based on the current practice using the methodology outlined in the final report for the rate study. PCG does not provide legal guidance, but there are several sources noting that DSPs, as of 2022, are often contractors, including the U.S. Department of Labor, Office of Disability Employment Policy, such as in the think tank executive summary and recommendations cited here:
<https://www.dol.gov/sites/dolgov/files/ODEP/pdf/dsp-recommended-actions-and-report.pdf>

vacant positions and in situations where supported living and in home supports providers can't fill current positions due to inadequate rates the study has recommended continuing the inadequate rates which will continue inadequate staffing and lead to increased abuse and neglect. NMSA 28-16A,B, 3 now requires the vacancies of Direct Care Professionals to be reported because of the problem. Currently on a county by county basis 77 out of 111 supported living providers are on self-imposed moratorium due to inadequate rates. The increase in rates in the Mi Via program without increasing the budget cap will result in a cut of services without the required fair hearings. The cap was arbitrarily set a dozen years ago and will need to be raised to avoid litigation. The study cites House bill 395 and includes a breakdown and cost to bring Direct Service Professionals up to 1.5 times minimum wage yet fails to include the subcontractors that are defined in the bill and law as Direct Service Professionals. NMSA 28-16A, 3, G. The failure to require providers to cooperate with the study in accordance with their Statement of Assurances has resulted in a study based on minimal data that

	<p>leads to questionable validity. It renders it impossible to provide accurate cost information to the legislature to bring all the DSP including subcontractors to the required wage. By limiting the most expensive services in the DD Waiver to 2019 levels it appears that the administration intends to fund the waiting list reduction by cutting services and rates to those on the waiver.</p>		
7/27/2023	<p>I'm concerned with the Home maker/direct service that there is no recommendation to increase this rate. It would have been nice to have a session to review.</p>	<p>Case Manager/Consultant/Community Supports Coordinator</p>	<p>Homemaker/Direct Supports Position used for Wage: Direct Care Staff/Direct Support Professional Annual Salary \$ 35,588.80 Hourly (2,080) \$ 17.11 ERE/Benefits \$ 4.07 Total Hourly Personnel Cost \$ 21.18 Admin + Program Support \$ 9.62 RATE \$ 30.79 Billable/Non-Billable Consideration \$ 34.77 TOTAL HOURLY RATE \$ 34.77 15 Min Rate (Min) \$ 7.50 15 Min Rate (Max) \$ 8.69 Current Rate (Max) \$ 14.60 Current Rate (Max) \$ 8.82 Increase % (Max) -49% Note: This rate is lower than the current fee schedule rate. DDS does not intend to reduce any rates. The rate will remain flat, as PCG recommends holding this rate at the current level to prevent provider loss.</p>
7/27/2023	<p>A lot of information and sorting it is interesting to see the formula and exactly how these rates were calculated. Looking at current rates is not the rates I am seeing as rates. There is a lot of budgetary work so it will be interesting to see. I think the proposed rates are great. I just hope</p>	<p>Advisory Committee</p>	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>

	the budgetary issues are worked out.		
7/20/2023	We request copies of the Rate Calculation build up sheets, as demonstrated in Table 20 of the June 2023 HCBS Rate Study Recommendations report for all services.	Provider Organization	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/20/2023	ADDCP requests copies of the cumulative provider time study and cost reports that formed the basis for determining the service rates. It appears that the survey results have produced some inconsistent rate determinations.	Provider Organization	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/20/2023	The decision was made to increase service rates that already exceeded the Market average. The Market Average for DSPs was below the Market average and there was no increase in rates for Supported Living where DSP work is the most extensive. The rate study used a blended average rate of pay for proxy positions. The average rate for DSPs of \$17.11 would assume several positions were below the \$17.11 per hour. We request detailed information regarding the development of the \$17.11 rate. Did the \$17.11 rate buildup include overtime pay and bonuses? With HB 395 using 150% of the state minimum wage, that wage should have been \$18.00 per hour regardless of the	Provider Organization	The market analysis for direct care staff included the market wages for Community and Social Service Specialist at \$20.67 per hour, Home Health, and Personal Care Aide at \$12.08, and Social Human Service Assistant at \$18.57 an hour. These wages average out to \$17.11. Please refer to Appendix F on the report.

	wages of the proxy positions and BLS statistics.		
7/20/2023	<p>The Excel cost report workbook sent by PCG for data input in the cost/time study contained anomalies in its cell logic that impacted the calculations of waiver related costs for employees and subcontractors in the cost report. The PCG methodology used a standard number of annual work hours (i.e., 2080, equaling 40 hours per week X 52 weeks per year) as a fixed denominator in calculating percentages of time to allocate waiver related costs for each employee and contractor. This resulted in any part-time employee/contractor working less than 2080 annual hours actual costs to be understated, employees/contractors working more than 2080 hours actual costs to be overstated, and only those employees/contractors working exactly 2080 annual hours actual costs to be accurate. We request information on how this anomaly was addressed during the rate study calculations.</p>	Provider Organization	<p>If the hours were indicated as a portion of 2080, the wage and fringe calculations were adjusted for each accordingly. All costs were calculated in proportion to the number of hours reported.</p>

7/20/2023	<p>We request an explanation of the dollar percentage of the rate for the subcontractors in the rate buildup. It appears that if you divide the daily rate for the Supported Living Categories by the hourly rate you are effectively purchasing a range of 6.67 hours a day in Category 1 – 13.97 hours a day in Category 4. The standards require 12 hours of service to be paid the daily rate. That would seem to require an increase in the daily rate for Categories 1, 2 and 3. We request a rationale for the lack of an increase in those Categories. This seems to incentivize Family Living and In Home Living Supports over Supported Living. Is Supported Living being phased out of the Waiver?</p>	Provider Organization	<p>The reported average annual wages were \$14.02 per hour, so PCG instead relied on the higher BLS wage of \$17.11 per hour. A fringe rate of 23.76% was added to this. The buildup assumes that 55% of staff are employees and the remainder subcontractors. The subcontractor rate used was \$16.79 per hour. PCG combined the above and add 31.2% for admin and program support expenses (non-personnel factor based on cost reports). The mathematical result and recommended rate differ when the methodology would have otherwise resulted in a decrease. Supported Living is not being phased out of the waiver.</p>
7/20/2023	<p>We request an explanation of the recommended difference in rates for the Case Management-On Going rate in the DD Waiver and the Consultant rate in the Mi Via Waiver. The scope of service is seemingly the same. This seems to also incentivize Mi Via over the Traditional Waiver.</p>	Provider Organization	<p>The scope of these two services are not the same. Please refer to DD Waiver and Mi Via Waiver Service Standards for differences and nuances.</p>
7/20/2023	<p>Having the survey results would allow us to review the calculations of the percentage of DSPs representing employees and/or subcontractors. We would like to examine those computations to determine the percentage of</p>	Provider Organization	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>

	employees (75%) versus contractors (25%). We believe there was a large number of hours reported for the "Subcontractor" classification in both therapists and Family Living Providers.		
7/20/2023	This rate study will be used to determine the FY 25 Health Care Authority Department's legislative budget request. It is our understanding that the transfer of DDS and DHI to the Health Care Authority will be effective July 1, 2024. The FY 25 budget request will have DDS in the Health Care Authority Department. We want to ensure that the DD Waiver rates are sufficient to support and stabilize the system.	Provider Organization	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.
7/20/2023	The rate increases from the FY 24 \$10.2 million DOH appropriation request be published and implemented immediately or as soon as possible. The 5% temporary rate increase from the ARPA funds be continued until June 30, 2024. The estimated cost to "end the waiting" list (approximately \$35,000,000 State General Fund) be included in the Health Care Authority Department's (HCAD) FY 25 budgetary request. The estimated expenditure for DD Waivers increases from FY 23 \$635,691,000 to FY 24 \$776,372,000. The HB 395 calculation in the PCG Rate study (approximately \$15,000,000 State General	Provider Organization	The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.

	<p>Fund) be included in the HCAD FY 25 budgetary request. The PCG rate study should be revised to remove the HCBS Contractor impact from the rate recommendations for the Supported Living Categories 1 - 4. (It is our understanding that the classification as Independent Contractors of DSPs who are working regularly scheduled shifts is illegal and not in compliance with Labor Department and IRS regulations.) Use of potentially illegal classifications should not be considered in rate study recommendations.</p>		
7/20/2023	<p>We want to ensure that the DD Waiver rates are sufficient to support and stabilize the system across all waivers. The current information request needs to be provided and any remaining questions need to be discussed and resolved prior to the adoption of the PCG Rate Study.</p>	<p>Provider Organization</p>	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>
7/20/2023	<p>We look forward to ongoing collaborative discussions with DDSD and the Health Care Authority Department to ensure the valuable and necessary services provided through the waivers to New Mexicans, their families and communities will be available well in to the future.</p>	<p>Provider Organization</p>	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>

<p>7/21/23 clarification 8/29/23</p>	<p>Some unnamed providers of the DDW system have suggested that Family living and Respite Care "can often be appropriately classified as independent contractors." We strongly that to be a mischaracterization of federal Fair Labor Standards Act law and also state law, SB85. Most Respite Care workers we know should not be considered contractors because they are told by their agency when, where, and how to perform their job. The agency they work for also sets the rate of pay these workers. We request that DDSD ask US Department of Labor to determine if certain providers that use independent contractors - especially those that bill for Homemaker or Respite Care - should indeed be classified as contractors as opposed to employees. A proper determination of contractors vs. employees would tell the field how much variation exists among both DSPs and particular provider agencies. NMCC has written previously that NM HSD legal counsel has no authority to name a particular position as one appropriate for classifying as an independent contractor; that determination is conducted by only the U.S. Department of Labor according to a five-part</p>	<p>Provider Organization</p>	<p>The Developmental Disabilities Supports Division has received and evaluated your comments. Thank you for your feedback.</p>
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test.

There is discrepancy in the slide deck that PCG used when presenting major points of the rate study (dated June 28, 2023). The chart of recommended rates for Mi Via on page 39 shows Homemaker/DSP as currently \$7.50 - \$14.60/hour. The PCG-recommended rate range recommended is also \$7.50 - \$14.60/hour. Yet the chart on page 44, considering HB395 at 150% of minimum wage is recommended as \$14.60. This rate would not comply with HB395.