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SECOND REPRINT

A.B. 259

ASSEMBLY BILL NO. 259—ASSEMBLYWOMAN BROWN-MAY

MARCH 7, 2023

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing wages for persons with disabilities. (BDR 39-13)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to disabilities; requiring a provider of jobs and day training services to develop a plan to transition persons earning less than the state minimum wage to earning at least the state minimum wage or pursuing other services and assisting such persons to participate in certain activities; requiring a provider of jobs and day training services to submit a report relating to such a plan to the Aging and Disability Services Division of the Department of Health and Human Services; authorizing a recipient of jobs and day training services to have an advocate present at certain meetings; prohibiting any person from paying less than the state minimum wage to a person with an intellectual disability or developmental disability after a certain date; providing for the inclusion under Medicaid of certain services to assist such a person in pursuing competitive integrated employment; requiring the Department to seek a waiver of certain federal requirements governing the compensation of a recipient of prevocational services under Medicaid; making an appropriation and authorizing certain expenditures; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing state and federal law authorize a provider of jobs and day training
- 2 services to enter into a contract or other arrangement with an employer to provide
- 3 for the employment of a person with an intellectual disability or person with a
- 4 developmental disability for less than the state minimum wage if: (1) the person
- 5 was employed on July 22, 2016, and the employer holds a federal certification



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authorizing the employer to pay less than the state minimum wage; or (2) before the person began employment, the person received certain employment-related services and applied for federal vocational rehabilitation services. (29 U.S.C. § 794g; NRS 435.305) Existing federal law authorizes an employer to request a special certificate to employ a person impaired by age, physical or mental deficiency or injury at wages less than minimum wage. (29 U.S.C. § 214(c))

Section 8 of this bill prohibits a provider of jobs and day training services from entering into a contract that provides for a recipient of jobs and day training services to receive a wage that is less than the state minimum wage on or after January 1, 2025. **Sections 6 and 7** of this bill make conforming changes to remove references to such contracts. **Sections 9, 13 and 14** of this bill prohibit the payment of a wage that is less than the state minimum wage to a recipient of jobs and day training services on or after January 1, 2028. **Section 12** of this bill prohibits a person from employing a person under a special certificate at less than minimum wage on or after that date. **Section 3** of this bill requires a provider of jobs and day training services that holds a special certificate to annually submit to the Aging and Disability Services Division of the Department of Health and Human Services for approval a plan to: (1) transition the recipient earning less than the state minimum wage to earning at least the state minimum wage by January 1, 2028, or in obtaining competitive integrated employment, supported employment or community activities related to the goals of the person; and (2) assist the recipient in participating in unpaid activities that are not related to employment. **Section 3** requires the plan submitted by a provider of jobs and day training services to be accompanied by a report that includes certain benchmarks showing the progress the provider is making toward transitioning a recipient of jobs and day training services who is earning less than the state minimum wage to earning at least the state minimum wage.

Section 4 of this bill: (1) authorizes a person with a disability who is earning less than the state minimum wage to choose a person to advocate on his or her behalf at any meeting concerning employment with his or her employer or a member of the staff of a provider of jobs and day training services; and (2) requires the Division, upon the request of such a person, to assist the person in finding such an advocate. **Section 2** of this bill defines the term “competitive integrated employment” and **sections 5, 8 and 9** of this bill make conforming changes to indicate the proper placement of **sections 2-4** in the Nevada Revised Statutes.

Federal law authorizes states to receive federal financial participation to support the provision of certain home and community-based services, including habilitation services, for recipients of Medicaid who are elderly or disabled. (42 U.S.C. § 1396n(i)) Existing law requires the Department to apply to the Secretary of Health and Human Services for a waiver that provides such federal authorization. (NRS 422.396) **Section 11** of this bill requires the Department to amend its waiver to: (1) include as medical assistance under Medicaid certain habilitation services that are designed to provide persons assistance in pursuing competitive integrated employment; and (2) authorize the compensation of a recipient of Medicaid who is receiving prevocational services at a rate equal to or greater than the state minimum wage. **Section 11** also requires the Department to adopt necessary regulations to carry out the provisions of **section 11**. **Section 10** of this bill makes a conforming change to indicate the proper placement of **section 11** in the Nevada Revised Statutes.

Section 12.5 of this bill makes an appropriation to and authorizes certain expenditures by the Aging and Disability Services Division of the Department of Health and Human Services for certain Medicaid benefit counseling services to assist persons with an intellectual disability or persons with a developmental disability.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 435 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2.** *“Competitive integrated employment” has the*
4 *meaning ascribed to it in 29 U.S.C. § 705(5).*

5 **Sec. 3. 1.** *On or before January 1 of each year, a provider*
6 *of jobs and day training services that holds a valid certificate*
7 *issued pursuant to 29 U.S.C. § 214(c) authorizing the provider of*
8 *jobs and day training services to pay less than the state minimum*
9 *wage in effect on that date shall submit to the Division for its*
10 *approval a plan detailing the manner in which the provider of jobs*
11 *and day training services will:*

12 *(a) Transition such persons from earning less than the state*
13 *minimum wage to earning at least the state minimum wage by*
14 *January 1, 2028, or support such persons in obtaining competitive*
15 *integrated employment, supported employment or community*
16 *activities related to the goals of the persons; and*

17 *(b) Assist such persons to participate in unpaid activities that*
18 *are not related to employment.*

19 **2.** *A plan submitted pursuant to subsection 1 must be*
20 *informed by evidence-based practices and models for providing*
21 *effective employment and align with any applicable federal laws*
22 *and regulations. Such a plan must be accompanied by a report*
23 *that contains for each person who is earning less than the state*
24 *minimum wage under a valid certificate issued pursuant to 29*
25 *U.S.C. § 214(c), measurable benchmarks to show the progress the*
26 *provider of jobs and day training services is making toward:*

27 *(a) Transitioning the person to earning at least the state*
28 *minimum wage or supporting the person in pursuing competitive*
29 *integrated employment, supported employment or community*
30 *activities related to the goals of the person; and*

31 *(b) Assisting the person to participate in unpaid activities that*
32 *are not related to employment.*

33 **3.** *If the Division determines that a plan submitted pursuant*
34 *to this section does not meet the requirements of this section or*
35 *will not make adequate progress towards the goals prescribed by*
36 *subsection 1, the Division shall require the provider of jobs and*
37 *day training services to submit a revised plan.*

38 **4.** *The Division may adopt any regulations necessary to carry*
39 *out the provisions of this section and section 4 of this act.*

40 **5.** *As used in this section, “supported employment” has the*
41 *meaning ascribed to it in 29 U.S.C. § 705(38).*



Sec. 4. 1. *A person with an intellectual disability or person with a developmental disability who is earning less than the state minimum wage under a valid certificate issued pursuant to 29 U.S.C. § 214(c) may choose a person, including, without limitation, his or her case manager, parent or legal guardian, to advocate on his or her behalf at any meeting concerning the employment with his or her employer or a member of the staff of the provider of jobs and day training services.*

2. *Upon request of a person with an intellectual disability or person with a developmental disability, the Division shall assist the person in finding an independent advocate to perform the functions described in subsection 1.*

Sec. 5. NRS 435.140 is hereby amended to read as follows:

435.140 As used in NRS 435.130 to 435.310, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 435.172, 435.176 and 435.179 *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 435.220 is hereby amended to read as follows:

435.220 1. The Administrator shall adopt regulations governing jobs and day training services, including, without limitation, regulations that set forth:

(a) Standards for the provision of quality care and training by providers of jobs and day training services;

(b) The requirements for the issuance and renewal of a certificate; and

(c) The rights of consumers of jobs and day training services, including, without limitation, the right of a consumer to file a complaint and the procedure for filing the complaint.

2. The Division may enter into such agreements with public and private agencies as it deems necessary for the provision of jobs and day training services. Any such agreements must include a provision stating that employment is the preferred service option for all adults of working age.

3. For the purpose of entering into an agreement described in subsection 2, if the qualifications of more than one agency are equal, the Division shall give preference to the agency that will provide persons with intellectual disabilities or persons with developmental disabilities with training and experience that demonstrates a progression of measurable skills that is likely to lead to competitive employment outcomes that provide employment that ~~is~~

~~—(a) is~~ *is* comparable to employment of persons without intellectual disabilities or persons without developmental disabilities ~~. is and~~



~~(b) Pays at or above the minimum wage set forth in NRS 608.250.]~~

Sec. 7. NRS 435.225 is hereby amended to read as follows:

435.225 1. A partnership, firm, corporation or association, including, without limitation, a nonprofit organization, or a state or local government or agency thereof shall not provide jobs and day training services in this State without first obtaining a certificate from the Division.

2. A natural person other than a person who is employed by an entity listed in subsection 1 shall not provide jobs and day training services in this State without first obtaining a certificate from the Division.

3. For the purpose of issuing a certificate pursuant to this section, if the qualifications of more than one applicant are equal, the Division shall give preference to the natural person who, or the nonprofit organization, state or local government or agency thereof that, will provide persons with intellectual disabilities or persons with developmental disabilities with training and experience that demonstrates a progression of measurable skills that is likely to lead to competitive employment outcomes that provide employment that

~~is~~ ~~(a) Is]~~ **is** comparable to employment of persons without intellectual disabilities or persons without developmental disabilities

~~is; and~~

~~(b) Pays at or above the minimum wage set forth in NRS 608.250.]~~

4. Each application for the issuance or renewal of a certificate issued pursuant to this section must include a provision stating that employment is the preferred service option for all adults of working age.

Sec. 8. NRS 435.305 is hereby amended to read as follows:

435.305 1. Except as otherwise provided in subsection 3, a provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, **and sections 2, 3 and 4 of this act** may enter into a contract or other arrangement with any person or governmental entity to provide for the employment of a person under 25 years of age under which the person will be paid less than the state minimum wage if the person was **employed** :

(a) Employed on July 22, 2016, by an entity that holds a valid certificate pursuant to 29 U.S.C. § 214(c) ; or ~~is; before]~~

(b) Before beginning such employment, the person has:

~~(a)]~~ **(1)** Received preemployment transition services available under the provisions of 29 U.S.C. § 733 or transition services under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.;



~~(b)~~ (2) Received career counseling, information and referrals to federal and state programs and other resources in the geographic area in which the person resides that offer services and supports that are designed to enable the person to attain competitive integrated employment and meet the requirements of subsection 2; and

~~(c)~~ (3) Applied for vocational rehabilitation services under the provisions of 29 U.S.C. §§ 720 to 751, inclusive, and been found:

~~(1)~~ (I) Ineligible for such services; or

~~(2)~~ (II) Eligible for such services and ~~is~~

~~(i) Has~~ *has* an individualized plan for employment pursuant to 29 U.S.C. § 722 ~~is~~

~~(ii) Has~~ *, has* been working, with appropriate supports and services, toward an employment outcome specified in that plan without success ~~is~~ and

~~(iii) The~~ *the* person's vocational rehabilitation case has been closed.

2. Counseling, information, referrals, services and supports provided pursuant to *subparagraph (2) of* paragraph (b) of subsection 1 must not be provided to a person for the purpose of obtaining employment compensated at less than the state minimum wage.

3. A provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, *and sections 2, 3 and 4 of this act* shall not enter into a contract or other arrangement described in subsection 1 ~~[with a local educational agency.] on or after January 1, 2025.~~

4. Except as otherwise provided in subsection 5, if a provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, *and sections 2, 3 and 4 of this act* enters into a contract or other arrangement described in subsection 1:

(a) The Division shall, at least once every 6 months for the first year of such employment and annually thereafter for the duration of the employment, provide the person employed pursuant to the arrangement with career counseling, information and referrals as described in *subparagraph (2) of* paragraph (b) of subsection 1 in a manner that facilitates independent decisions and informed choice; and

(b) The employer of the person shall, at least once every 6 months for the first year of such employment and annually thereafter for the duration of the employment, inform the person of opportunities in the geographic area in which the person resides to receive training concerning self-advocacy, self-determination and peer mentoring that is provided by a person or entity that does not have a financial interest in the employment outcome of the person.



5. If a provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, **and sections 2, 3 and 4 of this act** enters into a contract or other arrangement described in subsection 1 with a business with fewer than 15 employees, the business may satisfy the requirements of subsection 4 by referring a person employed pursuant to the arrangement to the Division for the services described in that subsection at least once every 6 months for the first year of such employment and annually thereafter for the duration of the employment.

6. The Division, in consultation with the Department of Education, shall adopt regulations prescribing the manner in which compliance with the requirements of subsections 1 and 4 may be documented.

7. An employer who employs a person pursuant to a contract or other arrangement described in subsection 1 shall:

(a) Before the employment begins, verify that the person meets the requirements of subsection 1 by reviewing the documentation prescribed for that purpose pursuant to subsection 6;

(b) For the duration of the employment:

(1) Verify that the person has received the services required by subsection 4 by reviewing the documentation prescribed for that purpose pursuant to subsection 6; and

(2) Maintain on file a copy of the documentation reviewed pursuant to subparagraph (1) and paragraph (a).

8. The Division may inspect the documentation maintained pursuant to subparagraph (2) of paragraph (b) of subsection 7 as necessary to ensure compliance with the requirements of this section.

~~9. As used in this section:~~

~~—(a) “Competitive integrated employment” has the meaning ascribed to it in 29 U.S.C. § 705.~~

~~—(b) “Local educational agency” has the meaning ascribed to it in 20 U.S.C. § 1401(19).]~~

Sec. 9. NRS 435.310 is hereby amended to read as follows:

435.310 A provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive ~~§ 1~~, **and sections 2, 3 and 4 of this act**:

1. Except as otherwise provided in subsection 2, may enter into contracts with authorized county and school officials and public and private agencies to give care and training to persons with intellectual disabilities or persons with developmental disabilities who would also qualify for care or training programs offered by the public schools or by county welfare programs.

2. ~~[Except as otherwise provided in NRS 435.305, shall]~~ **Shall** not enter into a contract or other arrangement with any person or



governmental entity to provide for the employment of a person ~~under 25 years of age~~ where the person will be paid less than the state minimum wage.

Sec. 10. NRS 232.320 is hereby amended to read as follows:

232.320 1. The Director:

(a) Shall appoint, with the consent of the Governor, administrators of the divisions of the Department, who are respectively designated as follows:

(1) The Administrator of the Aging and Disability Services Division;

(2) The Administrator of the Division of Welfare and Supportive Services;

(3) The Administrator of the Division of Child and Family Services;

(4) The Administrator of the Division of Health Care Financing and Policy; and

(5) The Administrator of the Division of Public and Behavioral Health.

(b) Shall administer, through the divisions of the Department, the provisions of chapters 63, 424, 425, 427A, 432A to 442, inclusive, 446 to 450, inclusive, 458A and 656A of NRS, NRS 127.220 to 127.310, inclusive, 422.001 to 422.410, inclusive, **and section 11 of this act**, 422.580, 432.010 to 432.133, inclusive, 432B.6201 to 432B.626, inclusive, 444.002 to 444.430, inclusive, and 445A.010 to 445A.055, inclusive, and all other provisions of law relating to the functions of the divisions of the Department, but is not responsible for the clinical activities of the Division of Public and Behavioral Health or the professional line activities of the other divisions.

(c) Shall administer any state program for persons with developmental disabilities established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.

(d) Shall, after considering advice from agencies of local governments and nonprofit organizations which provide social services, adopt a master plan for the provision of human services in this State. The Director shall revise the plan biennially and deliver a copy of the plan to the Governor and the Legislature at the beginning of each regular session. The plan must:

(1) Identify and assess the plans and programs of the Department for the provision of human services, and any duplication of those services by federal, state and local agencies;

(2) Set forth priorities for the provision of those services;



(3) Provide for communication and the coordination of those services among nonprofit organizations, agencies of local government, the State and the Federal Government;

(4) Identify the sources of funding for services provided by the Department and the allocation of that funding;

(5) Set forth sufficient information to assist the Department in providing those services and in the planning and budgeting for the future provision of those services; and

(6) Contain any other information necessary for the Department to communicate effectively with the Federal Government concerning demographic trends, formulas for the distribution of federal money and any need for the modification of programs administered by the Department.

(e) May, by regulation, require nonprofit organizations and state and local governmental agencies to provide information regarding the programs of those organizations and agencies, excluding detailed information relating to their budgets and payrolls, which the Director deems necessary for the performance of the duties imposed upon him or her pursuant to this section.

(f) Has such other powers and duties as are provided by law.

2. Notwithstanding any other provision of law, the Director, or the Director's designee, is responsible for appointing and removing subordinate officers and employees of the Department.

Sec. 11. Chapter 422 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Department shall apply to the Secretary of Health and Human Services to amend its home and community-based services waiver granted pursuant to 42 U.S.C. § 1396n. The waiver must be amended, in addition to providing coverage for any home and community-based service which the waiver covers on January 1, 2025, to authorize:

(a) The Department to include as medical assistance under Medicaid the funding of habilitation services designed to provide persons with intellectual disabilities or persons with developmental disabilities assistance in pursuing competitive integrated employment, including, without limitation:

(1) Benefit counseling to assist a person with an intellectual disability or person with a developmental disability in earning a higher income while retaining any benefits or services that the person may be receiving.

(2) Job coaching and job development. To the extent authorized by the Federal Government, the services described in this subparagraph must not be subject to authorization limits.

(b) The compensation of a recipient of services under the waiver described in subsection 1 who is receiving prevocational



services at a rate equal to or greater than the state minimum wage, including, without limitation, by waiving the requirement prescribed by 42 C.F.R. § 440.180(c)(2)(i)(B) that a person receiving prevocational services be compensated at less than 50 percent of the minimum wage.

2. The Department shall:

(a) Cooperate with the Federal Government in amending the waiver pursuant to this section;

(b) If the Federal Government approves the amendments to the waiver, adopt regulations necessary to carry out the provisions of this section, including, without limitation, the criteria to be used in determining eligibility for the habilitation services designed to provide assistance to persons pursuing competitive integrated employment pursuant to subsection 1; and

(c) Implement the amendments to the waiver only to the extent that the amendments are approved by the Federal Government.

3. As used in this section, "competitive integrated employment" has the meaning ascribed to it in 29 U.S.C. § 705(5).

Sec. 12. NRS 608.250 is hereby amended to read as follows:

608.250 1. Each employer shall pay to each employee of the employer a wage of not less than:

(a) Beginning July 1, 2019:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$7.25 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$8.25 per hour worked.

(b) Beginning July 1, 2020:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$8.00 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$9.00 per hour worked.

(c) Beginning July 1, 2021:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$8.75 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$9.75 per hour worked.

(d) Beginning July 1, 2022:



(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$9.50 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$10.50 per hour worked.

(e) Beginning July 1, 2023:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$10.25 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$11.25 per hour worked.

(f) Beginning July 1, 2024:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$11.00 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$12.00 per hour worked.

2. It is unlawful for any person, *including, without limitation, a person who employs a person under a special certificate issued pursuant to 29 U.S.C. § 214(c)*, to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by this section.

Sec. 12.5. 1. There is hereby appropriated from the State General Fund to the Aging and Disability Services Division of the Department of Health and Human Services the sum of \$395,729 for the funding of Medicaid program benefit counseling services to assist a person with an intellectual disability or a person with a developmental disability in earning a higher income while retaining any benefits or services that the person may be receiving pursuant to section 11 of this act.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2025, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 19, 2025, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 19, 2025.



3. There is hereby authorized the expenditure of \$670,351 not appropriated from the State General Fund or State Highway Fund during Fiscal Year 2024-2025 by the Aging and Disability Services Division of the Department of Health and Human Services for the same purpose as provided in subsection 1.

Sec. 13. 1. Any contract or other arrangement entered into pursuant to NRS 435.305 between a provider of jobs and day training services and a person or governmental entity that provides for the employment of a person under which the person will be paid less than the state minimum wage must expire or terminate on or before December 31, 2027.

2. As used in this section, “jobs and day training services” has the meaning ascribed to it in NRS 435.176.

Sec. 14. NRS 435.305 is hereby repealed.

Sec. 15. 1. This section and section 13 of this act become effective upon passage and approval.

2. Section 12.5 of this act becomes effective on July 1, 2024.

3. Sections 1 to 8, inclusive, 10 and 11 of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2025, for all other purposes.

4. Sections 9, 12 and 14 of this act become effective on January 1, 2028.

5. Sections 2, 3 and 4 of this act expire by limitation on December 31, 2027.

LEADLINE OF REPEALED SECTION

435.305 Conditions under which provider of services may enter into arrangement to provide for employment of person under 25 years of age for less than state minimum wage; regulations concerning documentation.

