



## DISABILITY RIGHTS NEW MEXICO

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*Promoting and Protecting the Rights of Persons with Disabilities*

### DISABILITY ISSUES IN THE 2013 LEGISLATURE FINAL REPORT

By Jim Jackson, Executive Director  
DISABILITY RIGHTS NEW MEXICO  
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**Governor's Actions Write Final Chapter.** A festive signing ceremony held on Friday at the UNM Center for Development and Disability, at which Governor Martinez signed into law HB 22, marked the final day of action by the governor on bills passed by this year's regular legislative session. HB 22 provides insurance coverage for autism services for the children of public employees; such coverage is already required for those who have private insurance policies through their employers or as individuals. "This bill will provide some measure of relief to autistic New Mexicans and their families by expanding many health insurance plans to include Autism Spectrum Disorder," said the governor.

The majority of the disability-related bills that passed the legislature were signed into law by the governor. There were some notable exceptions, however. HB 155, which would have imposed a \$5 fee for disability parking placards, was vetoed while the legislature was still in session. SB 458, which directed the Department of Health to seek federal approval to return to the old DD waiver system and drop the new version that uses the Supports Intensity Scale (SIS) to determine budgets and services, was also vetoed. The governor also vetoed HB 588, which directed the Department of Health to establish "Community Engagement Teams" to encourage voluntary participation in mental health services. In her veto message, she agreed with DRNM's position that the definition of people "unlikely to live safely in the community" was vague, and that the authority for the program should have been given to the Human Services Department.

The governor on Friday signed into law the state budget bill, HB 2. Although she did use her line item veto authority to eliminate a few earmarked funds and to strike some of the language indicating how certain funds were to be used, none of these individual vetoes affected disability-related services. By contrast, when the governor signed the capital outlay bill (SB 60) into law, she vetoed funding for several disability-related projects, including a deaf culture center in Albuquerque, home accessibility modifications through the Governor's Commission on Disability, greenhouse equipment for day habilitation services in Albuquerque, and salvage of equipment and land at the former Dixon apple farm.

The following sections of this report cover the bills that have been signed into law, the memorials that were passed by the Legislature (which do not require action by the governor), and the bills that were vetoed by the governor. There is a very long list of bills and memorials that were introduced this year

but were not passed by the Legislature. For a list of those bills and memorials, see the March 20 Post-Session Legislative Report, which is posted on the DRNM web site, drnm.org.

### **Bills That Have Been Signed Into Law**

**HB 2** General Appropriation Act (State Budget). Rep. Kiki Saavedra. This is the annual funding bill for all state agencies. Items of particular interest to the disability community include \$4.6 million in new state funding to serve some of those on the waiting list for the DD waiver program, \$230,000 in new money for autism services, \$125,000 for education services to children with cochlear implants, and \$205,000 in increased funding for legal services for low-income New Mexicans, as well as a few supplemental and special appropriations for the DD Services Division and the DDPC Office of Guardianship. The bill also contains contingency appropriations to meet the state's "maintenance of effort" obligations in return for receiving federal special education funding.

One of the items in the bill that received a line item veto from the governor was a \$50,000 appropriation to the legislature for expenses of an interim legislative Disabilities Concerns committee. As noted below, the governor vetoed the bill (SB 171) that would have established the new committee. She also vetoed language that limited the use of a \$250,000 appropriation for non-Medicaid psychiatric services to a facility in southern New Mexico; with the veto, the funds are available for use state-wide, and not just for facility-based services.

**HB 22** Autism Insurance Coverage. Rep. Jim Smith. This bill requires the health insurance plans for state and local government employees and public school employees to cover services for children with autism. This coverage is already required for most individual and group health plans regulated by the state, but the current requirement does not apply to these public employee plans. The bill was amended at the request of state officials to delay the effective date to January 1, 2015.

**HB 130** Transfer Brain Injury Program to HSD. Rep. Larry Larrañaga. This bill moves the TBI Trust Fund and administration of the brain injury program from the Aging and Long Term Services Department to the Human Services Department.

**HB 131** Silver Alert for Missing Persons. Rep. Paul Pacheco. This bill authorizes a "Silver Alert" for a missing person over 50 years of age who is known to have a deterioration of mental capacity, such as dementia or a brain injury.

**HB 219** Adequate and accessible polling places. Rep. Nate Cote. This bill provides that when an election-day polling place is not part of a county-wide consolidated voting center, the polling place must have at least five voting booths, one of which must be accessible to voters with disabilities, it must have at least one voting machine that is accessible to voters with disabilities, and it must be in a building that is ADA-compliant and accessible to voters with disabilities. The bill allows any of these provisions to be waived by the Secretary of State upon request of a county clerk. *DRNM notes that most of these accessibility provisions are required by federal law and can't be waived by the state.*

**HB 227** Transfer BIAC to GCD. Rep. Gail Chasey. This bill transfers the Brain Injury Advisory Council (BIAC) from the DD Planning Council (DDPC) to the Governor's Commission on Disability (GCD). The BIAC provides advice to state agencies on issues affecting persons with brain injuries.

**HB 628** Special Education MOE Funding. Rep. Ken Martinez. In the event that the appropriations already included in the state budget bill are not enough to meet the state's federal "maintenance of effort" requirement for special education funding, this bill authorizes the expenditure of \$20 million more in FY 2013 and \$16 million more in FY 2014.

**SB 60** Capital Outlay Projects. Sen. Carlos Cisneros. This is the bill that finances building projects around the state. The governor vetoed a number of items where the amount funded by the bill was substantially less than 10% of the funds needed for a project. These included \$60,000 toward a Deaf Culture Center in Albuquerque (from a \$1 million request), and \$90,000 (from a \$1.9 million request) toward a buy-out of assets and equipment at the former Dixon apple orchard, a potential employment project for persons with disabilities. The governor also vetoed \$100,000 of bond funding for accessibility home modifications needed for low-income persons with disabilities, which would have been done through the Governor's Commission on Disability. Funding of \$183,000 toward a highly accessible, "all-inclusive" park in Rio Rancho remained in the bill.

**SB 152** Non-reversion of Funds for the Office of Guardianship. Sen. Michael Padilla. As amended, this bill allows the Office of Guardianship at the DD Planning Council to retain from year to year any donations or gifts it might receive, and interest earned on those funds. Permission to carry over state appropriations must still be provided through the annual state budget bill (HB 2).

**SB 156** Continuity in Access to Prescription Drugs. Sen. Jacob Candelaria. The original version of this bill would have prohibited health insurers from making. As amended, this bill provides that health insurers can make changes to their prescription drug formulary no more than three times per year if the change results in higher co-pays or deductibles for a drug, unless a generic version of the drug is available.

**SB 163** Extension of Certain Licensing Boards. Sen. Carlos Cisneros. This bill re-authorizes the existence of several state licensing boards but makes the sign language interpreting board permanent by deleting any future "sunset" review.

**SB 221** Health Insurance Exchange. Sen. Benny Shendo. The bill establishes a health insurance exchange in New Mexico to meet the requirements of the Affordable Care Act (ACA). The bill calls for a 13-member board of directors reflecting New Mexico's ethnic, cultural and geographic diversity, with the insurance superintendent as chair and the remaining appointments split evenly between the governor and the legislature. The board will have limited authority over exchange operations, since the rules governing those operations will be issued by the superintendent, not the board. The board will have no power to set standards for health plans, to negotiate with insurance companies for the best deals, or to take steps to ensure a healthy market that best serves the individuals and small businesses buying insurance on the exchange. The bill provides for navigator services to help people enroll in coverage but does not direct the navigators to assist with Medicaid enrollment.

**SB 271** Authority for Police Pick-up for Involuntary Mental Health Evaluations. Sen. Mary Kay Papan. This bill expands the types of professionals who can certify that a person presents a likelihood of harm to himself or others and that immediate detention is needed to prevent such harm, thereby authorizing an involuntary pick-up by a police officer for a mental health evaluation. It allows social workers, advance practice nurses, mental health counselors, and marriage and family therapists to make this certification if they are licensed for independent practice and if they are affiliated with a community mental health program. The bill does not change the provision of current law that only a physician or psychologist can authorize admission to a mental health evaluation facility.

**SB 296** Prompt Prior Authorization for Prescriptions. Sen. Mary Kay Papen. As amended, this bill calls for development of one common form to be used by all health insurance companies for the purpose of requesting prior authorization if needed for prescription drugs, and requires the companies to respond to a request for prior authorization within three business days.

**SB 320** Service Animals. Senator Nancy Rodriguez. This bill renames New Mexico's Assistance Animal Act to be the Service Animal Act and aligns its provisions with federal regulations under the Americans with Disabilities Act. The major changes limit state law coverage to service dogs and miniature horses (thereby excluding other animals and excluding "comfort" or "support" animals), and prohibit a person from claiming to have a service dog if the animal is not a trained, legitimate service animal.

**SB 447** Native American Suicide Prevention Council. Sen. Benny Shendo and Rep. Sandra Jeff. This bill establishes an advisory council to the state behavioral health purchasing collaborative to provide advice to the state clearinghouse for Native American suicide prevention. The council will be made up of representatives from the various Native American communities in New Mexico.

### **Memorials That Passed the Legislature**

**HM 75** Children's Mental Health Task Force. Rep. Gail Chasey. This memorial calls for a task force to improve and promote early childhood services, including development of an early childhood mental health plan.

**SJM 17** Disability Awareness. Sen. Jerry Ortiz y Pino. This memorial, which was developed and promoted by the Youth Leadership group, designates October as Disability History and Awareness Month and requests that all public schools provide instruction in that month for their students, to promote greater understanding and awareness of people with disabilities.

**SJM 44** Over-Medication of Children. Sen. Sue Wilson Beffort. This memorial warns of the significant increase in the use of prescription medication to deal with children's behavioral issues and calls on an interim committee of the Legislature to hold a hearing on this issue and consider changes to state law that would promote healthier outcomes for children.

**SM 20** DD Waiting List Plan. Sen. Bill Soules. This memorial calls on the Department of Health to create a subcommittee of the Advisory Council on Quality (the department's advisory committee on developmental disabilities issues) to develop strategies for reducing the length of time people spend on the waiting list for DD waiver services. It further asks the department to develop a report by October 1, 2013, detailing what would need to be done so that, by 2018, no one would have to wait more than three years before getting waiver services.

**SM 33** Taking Advantage of Federal Mental Health Funds. Sen. Jacob Candelaria. This memorial points out that under the Affordable Care Act, hundreds of millions of dollars have been made available for behavioral health and substance abuse prevention and treatment, but New Mexico has received very little of this funding. The memorial calls upon the state to become more proactive in seeking such funds to improve and expand these services.

**SM 72** Preventing Truancy and Drop-Out. Sen. Gay Kernan. This memorial notes the correlation of school truancy and dropping out with the "school to jail pipeline", and calls for a task force to recommend steps to reduce truancy and dropping out that do not involve arrest or incarceration of students.

**SM 94** Guardianship/Conservatorship Task Force. Sen. Jerry Ortiz y Pino. This memorial calls for the DD Planning council to convene a task force to recommend changes to the Probate Code that would increase family member access to information regarding decisions by guardians and conservators, and to address the powers that might be needed by a guardian or conservator after the death of a protected person.

**SM 102** Treatment Guardian Task Force. Sen. Mary Kay Papen. This memorial calls on the Office of Guardianship in the DD Planning Council to convene a group to consider potential changes to the treatment guardianship provisions of the MH/DD Code, and to plan for the transfer of state responsibility for filing treatment guardianship petitions from the district attorneys to the Office of Guardianship, based on special commissions from the Attorney General.

### **Bills That Were Vetoed by the Governor**

**HB 155** Fees for Accessible Parking Placards. Rep. Miguel Garcia. This bill would have imposed a \$5 fee on those applying for accessible ("handicapped") parking placards; most of the proceeds of the fees collected were to go into the disability services fund maintained by the Governor's Commission on Disability.

**HB 588** Linkage to Mental Health Services Through Community Engagement Teams. Rep. Rick Miera. After extensive amendments, this bill directed the Department of Health to initiate and oversee pilot programs for "community engagement teams" (CETs) to work with persons with mental illness who are believed to be "unlikely to be able to live safely in the community" but are not presenting an immediate danger to themselves or others. The CET would have encouraged involvement in available mental health treatment services and other needed community resources. CET services would have been voluntary and could not be forced on anyone. *DRNM supported such pilot projects but was concerned that the definition of the target group was vague, and responsibility for the projects was given to the Department of Health rather than HSD, where the Behavioral Health Division is housed and which has oversight of the Behavioral Health Collaborative and the mental health services to be provided through Centennial Care, the state's proposed Medicaid re-design.*

**SB 65** Pre-release Medicaid Assistance. Sen. Gerald Ortiz y Pino. As amended, this bill required the Human Services Department to suspend, rather than terminate, Medicaid eligibility for those entering a correctional or detention facility for a period expected to be less than one year, and to facilitate reinstatement upon release from the facility. It also required the state to assist individuals in such facilities to determine likely eligibility for Medicaid, and to apply for Medicaid as appropriate, in advance of their scheduled discharge from such facilities.

**SB 171** Disabilities Concerns Subcommittee. Sen. Nancy Rodriguez. This bill established a permanent interim committee of the Legislature to address issues of concern to people with disabilities. Interim committees meet on a regular basis in between the regular annual legislative sessions. The new committee would have replaced the interim Health and Human Services Committee's Disability Subcommittee; with the veto, that subcommittee will continue.

**SB 172** Sign Language Licensing Board. Sen. Nancy Rodriguez. This bill made this board “permanent” by deleting the requirement for a periodic “sunset” review. With the enactment of SB 163, this bill was unnecessary.

**SB 458** DD Waiver Changes. Sen. Nancy Rodriguez. This bill required the Department of Health and the Human Services Department to seek federal approval to return to the previous version of the developmental disabilities waiver program, and thus abandon the new version that uses the results of the Supports Intensity Scale (SIS) to place participants into categories with defined levels of services and budgets. The bill also required the departments to obtain legislative approval before making future changes to the waiver program that would change eligibility or level of service determinations.