



DISABILITY RIGHTS NEW MEXICO

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James Jackson, Executive Director

Promoting and Protecting the Rights of Persons with Disabilities

2013 LEGISLATIVE SESSION PREVIEW

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Disability Rights New Mexico

January 7, 2013

60-Day Session begins: Tuesday, January 15, 2013. The session ends on Saturday, March 16.

Disability Rights Awareness Days: In Santa Fe on Monday, February 4, 2013, at a new location this year, the Hotel Santa Fe (corner of Paseo de Peralta and Cerrillos Rd.) and on Tuesday, February 5, at the State Capitol (corner of Paseo de Peralta and Old Santa Fe Trail).

Policy and Legislative Action Network (PLAN): Join your friends and colleagues in working to promote favorable action on issues of concern to people with disabilities and their families. Become part of the PLAN! We'll let you know when there are opportunities to speak out on bills in the Legislature and other key issues, and give you background info and talking points; you show the power of the disability community by following up with calls or emails to public officials. Sign up with DRNM's project coordinator, Leslye Sneider, at LSneider@drnm.org.

Legislative Leadership Changes. Due to retirements, the outcome of the November elections, and other factors, there are major changes this year in the leadership of both chambers of the Legislature. On the House side, Ken Martinez of Grants is expected to become the speaker; the position gives him the authority to appoint the chairs and other members of each House committee. He would replace Ben Lujan of Santa Fe, who chose not to run for re-election due to his declining health and who died just a few weeks ago. Rick Miera (Albuquerque) will be the new majority leader, while Antonio "Moe" Maestas will replace Sheryl Williams Stapleton (both from Albuquerque) as the Democratic whip. House Republicans have new leadership as well: Don Bratton (Hobbs) ousted Tom Taylor (Farmington) to become the new minority leader, and Nate Gentry (Albuquerque) succeeds Rep. Bratton as the new whip.

In the Senate, the defeat of President Pro Tem Tim Jennings of Roswell in November led to a scramble for the position, with five senators publicly campaigning to replace him. Senator Pete Campos of Las Vegas is the Democratic caucus candidate and thus likely to take over the position. However, we won't know for sure until the Senate convenes on January 15 and the entire chamber votes. Sen. Michael Sanchez of Belen will remain as the majority leader for the Democrats, and Tim Keller of Albuquerque will serve as the new whip. On the Republican side, Stuart Ingle (Portales) will continue to serve as minority leader and William Payne (Albuquerque) as whip.

New Faces Everywhere. The 2013 legislature will include an unusually large number of new members. In the House, "freshman" representatives will hold 20 of the 70 seats, or nearly 30% of the membership (although two of the freshmen are former representatives who were defeated in the 2010

elections but ran again and were elected in 2012). In the Senate there are 15 new senators, who will make up over 1/3 of the body. Two of these new members served in the House until their move to the Senate this year. Several of the new legislators are parents or family members of persons with disabilities, and one of them – Rep. Elizabeth Thomson of Albuquerque – is a former chairperson of the DD Planning Council.

The turnover in membership will be noticeable in many legislative committees, but it will be most apparent in the Senate Public Affairs Committee: not a single one of the eight members who served on the committee in 2012 is returning in 2013.

The Budget Outlook: Recent official forecasts have increased estimates for state income during state FY 2014 (the year that begins July 1, 2013) and now predict over \$5.9 billion in state revenue. This means that “new money” (the amount of revenue that exceeds the current level of state spending and thus will be available to spend, save, or to forgo by cutting taxes) is approximately **\$283 million**. While some of this will likely be used to shore up the state’s shaky pension funds for retired public employees, it’s clear that there is money available for programs or issues that the Legislature and the governor determine to be a priority. *Public input could make a difference in assuring that disability programs are included in their priorities.*

State Agency Budget Requests: Although the governor’s official budget proposal has not yet been released, we do know what the state agencies asked for in the budget requests they submitted to the Legislature in September.

Department of Health. DOH asked for \$5 million in state funding (to be matched with federal funds through Medicaid) to move about 227 people off the waiting list and into services in the DD waiver program, and requested \$1.1 million in state funding for administrative costs for this program that include additional staff and contracts for individual assessments (using the “SIS” process) to implement the newly re-designed waiver program. DOH is also asking for \$760 million in supplemental state funding for the current fiscal year (FY 13) for administration of the waiver program, along with \$2.25 million for costs associated with the *Jackson* lawsuit. Attorneys (including DRNM) for the *Jackson* class members generally prevailed in a week-long trial last year challenging DOH’s failure to comply with previous agreements and orders, so the state must now pay attorney fees as well as the cost of an independent administrator who will work with DOH to assure compliance in the case.

Human Services Department. HSD requested about \$50 million in new state funding for the Medicaid program. The largest piece of this request (\$19 million) is to replace funding that in recent years has been taken from the Tobacco Settlement Fund as a temporary measure while state revenues were down due to the national economic downturn. Most of the remaining new money is to cover the costs of implementing federal health care reform and the state’s Medicaid redesign (“Centennial Care”). It’s noteworthy that HSD currently projects that only about \$3 million in new money is needed for changes in enrollment, service utilization and other typical on-going program costs – this is less than one tenth of one percent of the entire program budget. It is clear that program costs are *not* “out of control” or on an “unsustainable path” as often claimed by the current leadership of the department.

The Office of Guardianship at the DD Planning Council is seeking an increase of \$400,000 in its budget for FY 2014 to keep up with the increased demands for guardianship services and related services such as filing petitions, arranging for visitors who assess the situation of persons believed to be in need of a guardian, and training mental health treatment guardians. The office is also asking for a \$300,000 supplemental appropriation for the current fiscal year to cover its current caseload, which continues to grow.

Other State Agencies. Most other state agencies, at the direction of the governor, have requested generally “flat” budgets that do not involve expansion of programs.

Medicaid eligibility expansion. As of this date, Governor Martinez has not yet announced whether she supports adoption of the expansion of eligibility for Medicaid that is authorized under the Affordable Care Act. The federal government will pay the full cost of covering the newly eligible enrollees for the first three years (2014-16), with the federal share then phasing down to 90% and staying there for 2020 and beyond. With the huge amount of new federal money this will bring into the state, Medicaid expansion would result in much more revenue than it would cost in new expenses. In fact, the latest projections by staff of the Legislative Finance Committee are that the state would **gain more than \$440 million** over the first 6½ years (2014-20) of the Medicaid expansion, including almost \$33 million in FY 2014, the budget year to be considered in the 2013 legislative session. HSD projects that around 150,000 currently uninsured adults would gain Medicaid coverage if the expansion is adopted. *DRNM believes that a significant percentage of those expected to enroll are persons with disabilities who currently are not eligible for Medicaid through SSI or other programs.*

We expect that legislation to mandate the expansion of Medicaid as authorized under the ACA will be introduced in the 2013 session.

Anticipated Legislative Proposals: Here are some of the disability-related issues that we expect the Legislature to address in the 2013 legislative session:

Autism

- HB 22 – Autism coverage for children of public employees. Rep. Jim Smith has pre-filed this bill so it already has a number assigned. The bill would require the health insurance plans for state employees and public school employees to cover services for children with autism, without an annual limit. This coverage is already required for most individual and group health plans regulated by the state, thanks to a law passed a few years ago that was sponsored by then-Senator Clint Harden, but that law does not apply to these public employee plans. That state-mandated coverage is limited to a maximum of \$36,000 per year, but the Affordable Care Act will eliminate those annual dollar limits for most insurance plans in 2014. Senator Bill O'Neill, who co-sponsored a bill on this subject with Rep. Smith last year, is expected to lead the effort when the bill goes to the Senate.

Behavioral Health/Mental Health

- The task force created by HM 45 two years ago is expected to recommend changes to the Mental Health Code that would create "community engagement teams" to facilitate the provision of mental health services to persons at risk of harm to themselves or others, and to seek treatment guardianships for those lacking capacity to consent to treatment.
- A memorial is expected that would call for a plan to transfer authority for filing petitions for involuntary civil commitment from local district attorneys to the Office of Guardianship at the DDPC.
- The governor is expected to request legislation that would require that information on persons adjudicated as incapacitated due to mental illness be reported to the national registry used for background checks related to gun purchases. This information is currently being provided by the state as called for by federal law but there is no state law requiring this.
- There may be an effort to secure an appropriation to support the local behavioral health collaboratives, which identify local and statewide needs and provide advice to the state purchasing collaborative (which controls spending of all publicly funded mental health services)

Developmental Disabilities

- Wait list funding: It's likely that there will be proposals to appropriate additional funds to the Department of Health to serve some who are now on the waiting list for the DD waiver program.
- State plan: We expect legislation that would require the Department of Health to develop a five-year plan to serve everyone who is now on the waiting list, and to update the plan on an annual basis.
- Loan fund: There may be an appropriation request for \$125,000 to create a micro-enterprise loan fund to help at least five individuals with disabilities start their own business.

Education

- Funding formula changes: There may be legislation again this year to set the level of special education funding for each school district based on a fixed percentage of the total school enrollment rather than on the number of individual children in special education, in order to eliminate the incentive to “over-identify” children as needing special education and thus generate extra funding for the district.
- We expect the re-introduction of legislation that would require school districts to identify (and limit) the circumstances in which they could call in police or juvenile authorities to deal with misbehavior in the schools. This bill, intended to decrease the number of children - many of whom have disabilities - who end up unnecessarily in the juvenile justice system, was passed in 2011 but pocket vetoed by the governor.
- We'll be on the lookout for proposals to provide "special education scholarships" to private schools, funded by tax credits to donors. *DRNM opposes these thinly disguised voucher bills because they divert public monies to private schools while imposing no requirements on the private schools to create and follow individualized education plans (IEPs) or even to provide special education at all.*

Health Care

- Health Insurance Exchange. There may be legislation that would establish or regulate a health insurance exchange in New Mexico so that it would meet the requirements of the federal Affordable Care Act (ACA). Legislation on this topic was passed in 2011 but vetoed by the governor, who has now designated the Health Insurance Alliance to run the exchange. The governor has no plans to seek legislation to authorize the new exchange, although the state's Attorney General has issued a formal opinion that existing law authorizing the Alliance does not comply with the requirements of the ACA.
- Medicaid eligibility expansion. Legislation is expected to be introduced that would mandate the expansion of Medicaid eligibility for adults up to 133% of the federal poverty level as called for under the ACA.
- Specialty tier medications. This expected proposal would prohibit health insurers from moving certain unusual and expensive medications into a higher co-pay “tier” during a plan year, and would require 60 days notice to those with on-going prescriptions for such medications of any plans to change the co-pays for a new plan year. Many people with chronic health care conditions choose an insurance plan based on its drug formulary and co-pay costs, and this bill is intended to protect them from sudden and unforeseen price increases.

Self-Determination and Community Integration

- Service Animals. We expect a bill that would align the provisions of New Mexico's Assistance Animal Act with federal regulations for service animals under the Americans with Disabilities Act.
- Guardianship. Under current law, any guardianship arrangement for an adult with a disability ends at the moment that a protected person dies. A bill is expected that would extend certain limited powers of a guardian for up to one year after the protected person's death, for the purpose of making funeral arrangements, closing out accounts, and otherwise wrapping up the affairs of the protected person.
- Voter ID. There may be a proposal to impose stronger voter identification requirements, such as a picture ID, in order to vote. *DRNM has concerns about such measures since some people with disabilities (including some seniors with disabilities) are eligible and legally entitled to vote but do not have such IDs and couldn't easily get them.*

OTHER

- Non-reversion of funds for the Office of Guardianship. This bill would allow the Office of Guardianship at the DDPC to carry over to the next year any funding that might be left over at the end of a state fiscal year. For most state agency programs, any such left-over money at the end of a year must go back ("revert") to the state general fund.
- Placard fees. The Governor's Commission on Disability will be promoting legislation that would impose a fee on those applying for accessible ("handicapped") parking placards; most of the proceeds of the fees collected would go in to the disability services fund maintained by the GCD. *DRNM is concerned that a parking permit fee that is imposed only on persons with disabilities may be discriminatory, and while we support the good work that the GCD could do with the additional funds, we question whether the fund should be financed by a tax on persons with disabilities and/or their families who drive them around.*
- Disability awareness. GCD will also be promoting a memorial calling on public schools to include a brief segment on disability history and awareness as part of their regular curriculum in recognition of October as Disability Awareness Month.
- Deaf Culture Center. We expect an appropriation request to support the purchase of land upon which a Deaf Culture Center could eventually be constructed in the Albuquerque area. The center would offer a variety of services to the deaf community.

Contacting your Legislators

Before the session starts on January 15, you can still contact your legislators in their home communities. You can find out who your legislators are and get their contact information on the legislative website at www.nmlegis.gov. Click on "Members" and then on "Find Your Legislator". There's also an "alpha list" (in alphabetical order) of House and Senate members that gives their addresses and phone numbers.

Once the session starts, each legislator will have an office in the Capitol. To reach a legislator's office during the session, call the Capitol switchboard at 986-4300 and ask for your legislator. We encourage you to bring the voice of the disability community to the Legislature!