



## DISABILITY RIGHTS NEW MEXICO

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James Jackson, Executive Director

*Promoting and Protecting the Rights of Persons with Disabilities*

### DISABILITY ISSUES IN THE 2013 LEGISLATURE STATUS REPORT #1

By Jim Jackson, Executive Director  
DISABILITY RIGHTS NEW MEXICO  
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#### Calendar

- Wednesday, Jan. 23: Behavioral Health Day at the Capitol  
Friday, Jan. 25: Justice for All Day at the Capitol  
Wednesday, Jan. 30: Multiple Sclerosis Day at the Capitol  
Monday, Feb. 4: Disability Rights Awareness Day at the Hotel Santa Fe  
Tuesday, Feb. 5: Disability Rights Awareness Day at the Capitol

**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](mailto: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. Ken Martinez of Grants is the new Speaker of the House; Rick Miera (Albuquerque) is the new majority leader, and Antonio "Moe" Maestas (Albuquerque) is the Democratic whip. Don Bratton (Hobbs) is the new minority leader, and Nate Gentry (Albuquerque) is the Republican whip.

In a surprise move, Sen. Mary Kay Papen of Las Cruces was unanimously elected as the Senate President Pro Tem. Sen. Papen is well known to regular readers of the DRNM Legislative Reports as a long-standing champion for the needs of persons with mental illness. Michael Sanchez of Belen remains the majority leader for the Democrats, and Tim Keller of Albuquerque is their new whip. Stuart Ingle (Portales) continues as minority leader and William Payne (Albuquerque) as the Republican whip.

Change has also occurred in leadership of committees that often deal with disability legislation. Here's the new line-up where chairs have changed:

House Health, Government and Indian Affairs: James Roger Madalena (Jemez)

House Consumer and Public Affairs: Eliseo Alcon (Milan/Grants)

House Judiciary: Gail Chasey (Albuquerque)

House Education: Mimi Stewart (Albuquerque)

Senate Public Affairs: Jerry Ortiz y Pino (Albuquerque)

Senate Education: John Sapien (Rio Rancho/Corrales)

**State Agency Budget Requests.** The legislature begins this week to hold hearings on the budget proposals from the governor and from the Legislative Finance Committee.

*Department of Health.* Governor Susana Martinez has requested \$5 million in state funding (to be matched with federal funds through Medicaid) to move people off the waiting list and into services in the DD waiver program. This is the largest such request by a governor in New Mexico history. The LFC also supports a \$5 million increase to address the waiting list, with \$4.6 million in new money and \$400,000 in savings from a more favorable federal matching rate. The governor also requested \$1 million in new state funding for administrative costs for this program that include additional staff positions and contracts for individual assessments (using the "SIS" process) to implement the newly re-designed waiver program. The LFC recommends less money for this purpose. The governor and the LFC are both recommending \$760 million in supplemental state funding for the current fiscal year (FY 13) for administration of the waiver program, and a special appropriation of \$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.* The governor's budget request reflects her recent decision to expand Medicaid eligibility, pursuant to the Affordable Care Act. Since this will actually save the state money in the second half of the fiscal year, her request is an increase of only \$27 million in state funding. The LFC recommendation is for an additional \$37 million, but this apparently does not reflect the Medicaid expansion decision. Most of the new money will cover replacing Tobacco Settlement funds temporarily used for Medicaid, costs of implementing other aspects of federal health care reform, and implementing the state's Medicaid redesign ("Centennial Care").

*Public school special education.* A recent ruling by the federal government determined that New Mexico had not met its "maintenance of effort" requirement in 2010 and 2011. In those years, all states received extra funding for special education as part of the ARRA program but in return were required not to reduce state spending levels. The state is appealing the ruling, but in the meantime the governor has requested \$20 million to offset the potential penalty the state would have to pay this year.

*The Office of Guardianship.* The governor's budget requests about \$450,000 in new funding for this program at the DD Planning Council, to keep up with the increased demands for guardianship services and related services. The LFC includes about \$300,000 in its recommendations. The governor and the LFC agree on a \$112,000 supplemental appropriation for the current fiscal year to cover the office's 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, and there are few significant discrepancies between the governor's request and the LFC recommendations.

## **Bills and Memorials Introduced or Expected**

### Autism

**HB 22** Autism insurance coverage. Rep. Jim Smith. This 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 has co-sponsored this bill and will lead the effort when the bill goes to the Senate. HHGIAC/HAFC.

- Adult autism services. Sen. Mary Kay Papen is expected to introduce a bill that would appropriate \$2 million to the Department of Health to support diagnostic evaluations and services to adults with autism, and training for professional staff who work with adults with autism.

### Behavioral Health/Mental Health

**SB 19** School-based behavioral health. Sen. Mary Kay Papen. Appropriates \$2.5 million to the Department of Health to support behavioral health services to students in grades 6 through 12 in schools that have been rated as average, below average, or failing by the Public Education Department. SEC/SFC.

- 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)

### Brain Injury

**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. HHGIAC/HAFC.

- A bill is expected that would transfer the Brain Injury Advisory Council (BIAC) from the DD Planning Council (DDPC) to the Governor's Commission on Disability (GCD). The primary rationale for the move is that, as a cross-disability agency, the mission of the GCD is more compatible than that of the DDPC, which focuses on issues related to developmental disabilities. The BIAC provides advice related to the TBI Trust Fund as well as more generally on issues affecting persons with brain injuries.

### Developmental Disabilities

- State waiting list plan: We expect legislation that would require the Department of Health to develop a five-year plan to serve everyone on the waiting list, and to update the plan on an annual basis. Implementation of the plan would depend on annual appropriations being made for that purpose.
- Loan fund: There may be an appropriation request for \$125,000 to create a micro-enterprise loan fund to help individuals with developmental disabilities start their own business. That initial amount would be enough for loans to at least five people; repayment would create a “revolving fund” that would continue to make loans over time.

### 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. The intent is to eliminate the incentive to “over-identify” children as needing special education and thus generate extra funding for the district.
- We expect the 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, often involving students with disabilities. A similar bill, intended to decrease the number of children 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

**SB 65** Pre-release Medicaid assistance. Sen. Gerald Ortiz y Pino. This bill would require the state to assist individuals in detention or correctional facilities to determine likely eligibility for Medicaid, and to apply for Medicaid as appropriate, in advance of their scheduled discharge from such facilities. SPAC/SJC.

- Health Insurance Exchange. Rep. Mimi Stewart is expected to introduce legislation that would establish 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. Sen. Jacob Candelaria is expected to introduce a bill that would mandate the expansion of Medicaid eligibility for adults up to 133% of the federal poverty level as called for under the ACA. Governor Susana Martinez recently announced her support for Medicaid expansion and her intention of implementing this change in New Mexico.
- Specialty tier medications. Sen. Candelaria will also sponsor a proposal that 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.

### Housing

**SB 32** Support services for long-term housing. Sen. Richard Martinez. Appropriates \$500,000 to the Mortgage Finance Authority for support services such as case management for homeless persons with disabilities, mental illness or substance abuse to assist them in obtaining and maintaining housing. SPAC/SFC.

### Self-Determination and Community Integration

**HB 103** Voter ID requirements. Rep. Cathrynn Brown. This bill would require all voters, including absentee voters, to provide a picture ID or tribal enrollment document in order to vote. The bill provides for issuing ID cards for those who do not have them. *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 wouldn't be able to easily obtain them.*

**SB 112** Extending certain guardianship powers. Sen. Gerald Ortiz y Pino. Under current law, any guardianship arrangement for an adult with a disability ends at the moment that the protected person dies. This bill would extend certain limited powers of a guardian for up to one year after the death of a protected person, for the purpose of making funeral arrangements, closing out accounts, and otherwise wrapping up the affairs of the protected person. SPAC/SJC

- Service Animals. Senator Nancy Rodriguez will introduce 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. The major changes will be to limit state law coverage to service dogs, and to prohibit a person from claiming to have a service dog if the animal is not a trained, legitimate service dog.

### OTHER

**HB 131** Silver alert for missing persons. Rep. Paul Pacheco. This bill would authorize 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. HHGIAC/HJC.

- Non-reversion of funds for the Office of Guardianship. Sen. Sue Wilson Beffort and/or Sen. Michael Padilla are the anticipated sponsors of a bill that 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. The Youth Leadership group will 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. Sen. Nancy Rodriguez will request capital outlay funding for the purchase of land upon which a Deaf Culture Center could eventually be constructed in the Albuquerque area. The center would offer a wide variety of services to the deaf community.

### Contacting your Legislators

We encourage you to bring the voice of the disability community to the Legislature! Here’s how you can reach legislators during the session:

**Telephone:** Call the Capitol switchboard at 505-986-4300 and ask for your legislator by name.

**E-mail:** To find your legislator’s e-mail address, log on to the Legislature’s “Find Your Legislator” web site, <http://www.nmlegis.gov/lcs/legislatorsearch.aspx>, and click on the “Alpha List” for either the House or the Senate. Not all legislators have listed email addresses.

**U.S. Mail:** [Legislator’s name], NM State Capitol Bldg., Santa Fe, NM 87503

Don’t know who your legislators are? You can find out through the legislative website using your zip code. If you don’t know your full 9-digit zip code, you can get it through the postal service’s website at <http://zip4.usps.com/zip4/welcome.jsp>. Then go to the Legislature’s “Find Your Legislator” web page at <http://www.nmlegis.gov/lcs/legislatorsearch.aspx> to search for your legislators.

### ABBREVIATIONS USED IN THIS REPORT

#### Legislative Committees

HAFC	House Appropriations and Finance Committee
HHGIAC	House Health, Government and Indian Affairs Committee
SEC	Senate Education Committee
SFC	Senate Finance Committee
SJC	Senate Judiciary Committee
SPAC	Senate Public Affairs Committee
LFC	Legislative Finance Committee (joint House-Senate committee that meets during the interim between legislative sessions)