



## 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 #2

By Jim Jackson, Executive Director  
DISABILITY RIGHTS NEW MEXICO  
January 28, 2013

#### **Calendar**

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

Wednesday, Feb. 13: Autism Day at the Capitol

**Policy and Legislative Action Network (PLAN):** Join the PLAN and we'll let you know when there are opportunities to speak out on bills in the Legislature and other key issues. We give you background information 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).

**Process beginning to move.** After a slow start, the legislative session is really beginning to get underway. Over 500 bills have now been introduced and assigned to committees in the House and the Senate. Those committees are just now starting to meet. This report includes all of these newly introduced bills. HB 22, which requires the health insurance plans for state and public employees to cover services for children with autism, is one of the few bills to have been heard in committee: it received a favorable vote in the House Health Committee and now moves on to the House Appropriations and Finance Committee.

The 35 new members of the legislature have been going through an extensive orientation program through which they are learning about the legislative process and to broad range of issues that the Legislature has to address. In addition, there have been joint sessions of the House and the Senate to explore health care reform, pension plans and other challenging topics.

**Nominations for Cabinet Secretary positions.** The governor has just announced the nomination of Retta Ward to serve as secretary of the Department of Health. Ward, who is currently the secretary of the Aging and Long Term Services Department, was previously a high school teacher in Arizona. The governor has nominated Gino Rinaldi, deputy secretary of ALTSD, to replace Ward as the department's secretary. These appointments are subject to confirmation by the Senate.

## **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. The current 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. Passed HHGIC, pending in HAFC.

**HB 209** Autism services. Rep. Elizabeth Thomson. Appropriates \$2 million to the Department of Health to support diagnostic evaluations and services to children and adults with autism and for the families of children with autism, and for training for professional staff who work with adults with autism. Identical to SB 213, below. HHGIC/HAFC

**SB 213** Autism services. Sen. Mary Kay Papen. This bill is identical to HB 209, above. SPAC/SFC.

### Behavioral Health/Mental Health

**HB 174** Native American suicide prevention. Rep. Sharon Clahchischilliage. Appropriates \$155,000 to the Veterans Services Department for a youth suicide prevention program in northwestern New Mexico, using Native American veterans as counselors. Identical to SB 162, below. HHGIC/HAFC.

**HB 208** Choice of mental health counselors. Rep. Miguel Garcia. This bill would put into law the right of insured persons to choose their own mental health therapist from among those therapists who are part of their insurance company's provider network. HHGIC/HJC.

**HB 217** Native American youth suicide prevention. Rep. James Roger Madalena. Appropriates \$300,000 to the Human Services Department to support three Native American youth suicide prevention programs at \$100,000 each, in rural, frontier and urban communities. HHGIC/HAFC.

**HB 220** Involuntary mental health evaluations. Rep. Jane Powdrell-Culbert. Under current state law, a peace officer may detain and transport an individual involuntarily to a mental health facility for evaluation if a psychiatrist or psychologist certifies that the individual, as a result of mental disorder, presents a likelihood of serious harm to self or others and that immediate detention is necessary to prevent such harm. This bill would allow certain additional licensed mental health practitioners to provide the certification that would authorize involuntary evaluation. HHGIC/HJC.

**HJM 19** Children's Mental Health task force. Rep. Gail Chasey. Calls for a task force to improve and promote early childhood services and specifically to develop an early childhood mental health plan. HEC.

**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.

**SB 162** Native American suicide prevention. Sen. John Pinto. This bill is identical to HB 174, above. SIAC/SFC .

**SB 271** Involuntary mental health evaluations. Sen. Mary Kay Papen. This bill is similar to HB 220, above, dealing with the question of which professionals can authorize an involuntary pick-up for a mental health evaluation. This bill would allow *any* independently licensed mental health practitioner, such as a social worker, nurse, counselor or therapist, to provide the certification that would authorize an involuntary evaluation at a mental health facility. SPAC/SJC.

- 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. HHGIC/HAFC.

**HB 227** Transfer BIAC to GCD. Rep. Gail Chasey. This bill would transfer 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. The primary rationale for the move is that, as a cross-disability agency, the GCD has a mission that is more compatible with the BIAC than that of the DDPC, which focuses on issues related to developmental disabilities. HHGIC/HJC.

#### Developmental Disabilities

**HB 230** COLA for state-funded provider agencies. Rep. Jimmie Hall. Appropriates \$2.65 million to the Department of Health for cost of living increases to DD provider agencies for state-funded services (not Medicaid waiver services). HHGIC/HAFC.

**HB 249** DD Wait List Plan. Rep. Elizabeth Thomson. This bill 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. The plan would also include information about the number of people on the waiting list and the number moved off of the waiting list due to previous funding provided for this purpose by the legislature. HHGIC.

**SB 281** FIT provider rate increases. Sen. Howie Morales. Appropriates \$6.9 million to the Department of Health to increase the rates paid to provider agencies in the Family Infant Toddler (FIT) program, pursuant to a 2003 rate study. SPAC/SFC.

#### Education

**HB 158** Educational funding formula changes. Rep. Patricia Lundstrom. Provisions in this bill that affect special education include the following: First, it specifically includes funding to serve children age 3 - 4 who are “developmentally delayed”; services for these children are currently funded pursuant to a PED rule but not by state law. Second, it calls for PED to adopt rules this year specifically defining eligibility requirements for the categories of minimal, moderate, extensive and maximum special education services. Third, it calls on PED to adopt rules setting the maximum caseload for therapists and other “ancillary” personnel who are also funded through the formula. HEC/HAFC.

**SB 256** Special education coordinators. Sen. Michael Padilla. This bill would require all public school districts, within three years, to employ one “special education coordinator” for every 250 students enrolled in the district. The coordinator would have to be a level 3 licensed special education teacher with at least 6 years teaching experience, and would oversee the day to day operations of special education programs in the schools and oversee and arrange IEP meetings. The requirement is to be phased in over 3 years, and the bill includes an appropriation of \$3 million for the first year. SEC/SFC.

- 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.

**HM 168** Health Insurance Exchange. Rep. Mimi Stewart. This bill would establish a health insurance exchange in New Mexico that meets 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 New Mexico Attorney General has issued a formal opinion that the existing law authorizing the Alliance does not comply with the requirements of the ACA. This bill sets up a non-profit board to operate the exchange, and the new entity would replace the Health Insurance Alliance. Identical to SB 221 (below). HGIAC/HJC

**SB 156** Continuity in access to prescription drugs. Sen. Jacob Candelaria. This bill would prohibit health insurers from making changes to their prescription drug formulary during a plan year if the change would result in higher co-pays or deductibles for a drug, unless a generic version of the drug is available. It would also require 60 days notice to enrollees of any plans to change the tier level or co-pays for a drug in the next 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. SPAC/SCORC.

**SB 221** Health Insurance Exchange. Sen. Jerry Ortiz y Pino. This bill is identical to HB 168 (above). SPAC/SCORC/SFC

- 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. A similar bill may also be introduced in the House. Governor Susana Martinez recently announced her support for Medicaid expansion and her intention of implementing this change in New Mexico.

#### 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.*

**HB 155** Fees for accessible parking placards. Rep. Miguel Garcia. This bill would impose a \$5 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.* HTPWC/HJC/HAFC

**HB 231** Exemption from MVD fee. Rep. Miguel Garcia and Sen. Linda Lopez. Under this bill, a low-income person with certain physical disabilities or a brain injury would be exempt from the motor vehicle registration fee for one vehicle. HTPWC/HJC/HAFC.

**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

**SJM 17** Disability awareness. Sen. Jerry Ortiz y Pino. This memorial designates October as Disability History and Awareness Month and requests that all public schools provide instruction to promote greater understanding and awareness of people with disabilities. This memorial was developed and is being promoted by the Youth Leadership group; it has not been referred to a committee but is pending on the President's table, which means it could be voted on by the full Senate at any time.

- **Service Animals.** Senator Nancy Rodriguez is expected to 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. HHGIC/HJC.

**HB 272** Free elk hunting licenses for veterans with disabilities. Rep. Phillip Archuleta. This bill directs the state Game and Fish Department to set aside at least five elk-hunting licenses each year for veterans with a service-related disability of at least 50%. HHGIC.

**SB 152** Non-reversion of funds for the Office of Guardianship. Sen. Michael Padilla. This bill would create a fund at the Office of Guardianship at the DD Planning Council, to receive state appropriations for the program as well as donations, grants, and other income. It would allow the Office of Guardianship at the DDPC to carry over to the next year any funding that might be left over in the fund at the end of a state fiscal year. For most state agency programs, any such left-over state money at the end of a year must go back ("revert") to the state general fund. SPAC/SFC

**SB 171** Disabilities concerns subcommittee. Sen. Nancy Rodriguez. This bill would establish 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 sessions of the legislature. Currently, a similar committee functions as a subcommittee of the Legislative Health and Human Services Committee. SRC/SPAC

**SB 172** Sign language licensing board. Sen. Nancy Rodriguez. This bill simply continues the state board that licenses and oversees sign language interpreters. Without the extension, the board would "sunset" and would go out of business in July. SPAC/SJC

- **Deaf Culture Center.** Sen. Nancy Rodriguez is expected to 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
HEC	House Education Committee
HHGIC	House Health, Government and Indian Affairs Committee
HJC	House Judiciary Committee
HTPWC	House Transportation and Public Works Committee

SCORC	Senate Corporations 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)
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#### State Agencies

ALTSD	Aging and Long Term Services Department
DDPC	Developmental Disabilities Planning Council
GCD	Governor's Commission on Disability
HSD	Human Services Department
PED	Public Education Department