



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 #3

By Jim Jackson, Executive Director
DISABILITY RIGHTS NEW MEXICO
February 4, 2013

Calendar

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.

Autism insurance bill flies through House. HB 22, which would assure that children of state employees and public school employees are covered for autism services on the same basis as families covered by most other individual and group insurance policies, passed the House by unanimous vote this past Friday. The bill was cleared for a final vote after it was passed in its first committee and then withdrawn from the House Appropriations and Finance Committee earlier in the week without a hearing. The bill now goes to the Senate, where it has been assigned to two Senate committees. The Senate will likely delay the bill's first committee hearing for a while in order to give preference to Senate bills that are waiting to be heard.

Other legislative action this week: There was a flurry of new bill introductions this week. Those affecting people with disabilities included several bills that would raise the rates paid to DD provider agencies; HB 323, to provide oral language services to hearing impaired children with cochlear implants; a memorial (SM 20) asking the Department of Health to develop a plan to significantly reduce the DD waiver wait list; HB 366, to bring the state's insurance code into compliance with the requirements of federal health care reform; and SB 320, to align the state's law on service animals with the provisions of the Americans with Disabilities Act.

A few bills that we're following began their journey through committees. SB 213, providing funding for additional autism services, passed the Senate Public Affairs Committee and now goes to the Senate Finance Committee. SB 156, providing protections against arbitrary increases in co-pays or

deductibles for prescription drugs, also cleared Public Affairs and will now be reviewed by the Senate Corporations Committee. SB 32, which funds behavioral support and other services for persons in subsidized housing, passed Public Affairs and is pending in the Senate Finance Committee.

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 dollar 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 federal Affordable Care Act will eliminate those annual dollar limits for most insurance plans in 2014. Senator Bill O'Neill has co-sponsored this bill. Passed the House 62-0; SPAC/SCORC.

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. Passed SPAC, pending in 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.

HB 287 McKinley County Behavioral Health Services. Rep. Ken Martinez. Appropriates \$500,000 to the Department of Health to provide behavioral health services to Native Americans in McKinley County. HHGIC/HAFC.

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 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. Passed SIAC, pending in 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 DDPC Office of Guardianship.
- 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~~ for 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.

Deaf/Hard of Hearing

HB 332 Early Childhood Deaf-Oral Education. Rep. Jimmie Hall. Appropriates \$503,000 to the Children, Youth and Families Department to provide oral language services to deaf and hard of hearing children with cochlear implants. HEC/HAFC.

- 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.

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.

HB 322 Restore DD Provider Rates. Rep. Ed Sandoval. Appropriates \$4.8 million to the Department of Health to restore the rates paid to DD provider agencies to the level that they were at before the 5% cut made in 2011. Identical to SB 323, below. HHGIC/HAFC.

HB 323 Increase DD Provider Rates. Rep. Ed Sandoval. Appropriates \$5.7 million to the Department of Health to increase reimbursements to provider agencies in the DD waiver program. Identical to SB 324, below. HHGIC/HAFC.

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.

SB 323 Restore DD Provider Rates. Sen. Carlos Cisneros. Identical to HB 322, above. SPAC/SFC.

SB 324 Increase DD Provider Rates. Sen. Carlos Cisneros. Identical to HB 323, above. SPAC/SFC.

SB 364 Restore DD Provider Rates. Sen. John Sapien. Identical to HB 322 and SB 323, above. SPAC/SFC.

SM 20 DD Waiting List Plan. Sen. William 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.

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 defining eligibility requirements for the categories of minimal, moderate, extensive and maximum special education

services (sometimes still referred to as levels A, B, C, and D). 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.

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 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

HB 366 Conform Insurance Code to ACA. Rep. Jeff Steinborn. This massive (266 pages) bill would amend the state insurance code to come into compliance with the provisions of the ACA. Some of these provisions are of particular importance to persons with disabilities, such as the prohibition of denial of coverage due to pre-existing conditions and disallowing higher premiums based on disability. HHGIC/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 before changing 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. Passed SPAC, pending in 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. Legislation is expected 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.

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. Passed SPAC, pending in 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.* HVEC/HJC.

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

SB 320 Service Animals. Senator Nancy Rodriguez. This 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 would be to limit state law coverage to service dogs and miniature horses, and to prohibit a person from claiming to have a service dog if the animal is not a trained, legitimate service dog. SPAC/SJC.

SB 291 Parental Notification. Sen. John Ryan. This bill would require notice to the parents of a minor child, or to the guardian of an adult woman found to be “incompetent”, prior to the performance of an abortion, unless a court exempts the woman from the notification requirement. *DRNM’s concern with this legislation is that New Mexico law provides for “limited” guardianships, so not all guardians have authority to make health care decisions for a protected person. And because bearing children is such a fundamental constitutional right, even plenary guardians may not have the authority to provide or withhold consent to an abortion. We note that a similar bill in the House, HB 177, does not cover adults with disabilities and thus does not raise these concerns.* 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.

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.

HB 396 College Logo for License Plates. Rep. Emily Kane. Under this bill, those who qualify for special license plates due to a mobility impairment could request plates that contain the logo of a public New Mexico university, provided that they pay a fee for such a plate. Standard plates for those with mobility impairments are free. HTPWC/HAFC.

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 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 remaining 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 legislative sessions. 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

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

H AFC	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
SIAC	Senate Indian Affairs 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
DOH	Department of Health
GCD	Governor's Commission on Disability
HSD	Human Services Department
PED	Public Education Department