



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 #4

By Jim Jackson, Executive Director
DISABILITY RIGHTS NEW MEXICO
February 11, 2013

Calendar

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.

This just in... Some of the new bills and memorials introduced this past week and newly listed in this week's report include:

SB 458 Calling on DOH to go back to the old version of the DD waiver

SJM 35 Asking DOH to train health care providers and first responders on DD awareness

SM 33 Asking the state to be more proactive in seeking federal mental health funds

HB 442 Requiring reporting of persons ineligible to purchase firearms due to mental illness

♥ This Thursday, February 14 is not only Valentine's Day; it's the half-way point in this year's 60-day session and thus the deadline for introducing new bills.

Disability memorial stirs debate, controversy. SJM 17, a memorial requesting public schools to cover disability history and awareness in school classes in October, designated as "Disability Awareness Month", led to a heated and controversial debate on the floor of the Senate last week. A few senators were very critical of the memorial (which is simply a request and does not have the force of law), calling it an unfunded mandate and an unnecessary imposition on already over-burdened school districts. In the end, though, freshman Republican Senator Lee Cotter was the only one to vote against the memorial, which passed on a vote of 37 - 1. Ironically, this debate occurred while the Disability Rights Awareness Day presentations were being made in the Rotunda.

Special education funding update. Legislators learned at the beginning of the session that New Mexico is at risk for having to pay back the federal government over \$40 million because the state had not met the maintenance of effort (MoE) requirement in FY 2010 and 2011. One of the conditions of receiving federal assistance for special education funding under IDEA (and for receiving supplemental

funds through the federal stimulus program – ARRA) is that states cannot cut state funding for special education and use the federal funds to make up for those cuts. Since New Mexico did cut state special education funding (along with all other education funding) in those years, it may see its current federal funding cut by \$40 million or more. The state is seeking a full or partial waiver of the penalty but is still facing a requirement to bring current funding levels up to the required amount. There has been no decision yet on the waiver request, and there is still a dispute about the exact amount of the current MOE requirement. In an attempt to resolve part of this problem, Rep. Mimi Stewart has introduced a bill – HB 459 – to separate special education funding from the rest of the state education funding process in order to clearly identify how much money is available for special education services. The bill was just introduced on Thursday and was pushed through the House Education Committee on Friday on a 7-6 party line vote.

Summary and Status of Bills and Memorials

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 77 Regulation of certain firearm sales. Rep. Miguel Garcia. This bill would regulate the purchase or voluntary transfer of ownership of firearms, including transactions at gun shows. The issue relevant to disability is that the bill would prohibit various categories of people from purchasing or receiving a firearm, including anyone who “has been adjudicated mentally incompetent or has been committed to a mental institution.” It would be a crime for any such person ever to purchase or receive a firearm. *DRNM believes this exclusion is overly broad as it could apply to someone who might have been committed to a facility 20 years ago and has long since recovered without further problem.* The bill is temporarily tabled in HJC while a substitute version is being prepared. HJC/HAFC.

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. Passed HHGIC, pending in 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.

HB 442 Reporting persons ineligible to purchase firearms. Rep. Paul Pacheco. This bill would require the state Administrative Office of the Courts to obtain and report to the FBI information about persons involuntarily committed to a mental health facility by court order or found by a court to be incapacitated and dangerous to themselves or others, in conjunction with the national data base used for background checks of persons seeking to purchase firearms. Persons reported through this bill would not be permitted to purchase firearms unless they successfully petitioned a court to restore their rights by demonstrating that they are not currently a danger to themselves or others and that restoration of this right would not be contrary to public interest. The bill makes the information transmitted confidential. Reporting of this type of information is required by federal law. 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 rated as average, below average, or failing by the Public Education Department. Passed SEC, pending in 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. A substitute bill is being developed. SPAC/SJC.

SB 447 Native American Suicide Prevention Council. Sen. Benny Shendo and Rep. Sandra Jeff. This bill would establish an advisory council to the state behavioral health purchasing collaborative to

provide advice to the state clearinghouse for Native American suicide prevention. The council would be made up of representatives from the various Native American communities in New Mexico. SIAC/SPAC.

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 such services. SRC/SPAC.

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. Passed HHGIC, pending in 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. Passed HEC, pending in HAFC.

SB 163 Extension of certain licensing boards. Sen. Carlos Cisneros. This bill “extends the life” of several state licensing boards, including the state board that licenses sign language interpreters. Without the extension, this board would “sunset” (i.e. be eliminated) no later than July 1, 2014. SB 163 would extend the authority of this board to operate until 2020, and set up another “sunset” review in 2019 to determine whether the board should be continued. SRC/SFC.

SB 172 Sign Language Licensing Board. Sen. Nancy Rodriguez. This bill would also extend the life of this state licensing board, but it would do so by simply deleting the requirement for this board to go through a periodic “sunset” review. There would be no scheduled “sunset” for the board. Passed SPAC, pending in SJC

Deaf Culture Center. Sen. Nancy Rodriguez has requested \$1 million in capital outlay funding for the purchase of land upon which a Deaf Culture Center and apartment complex 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.

HB 469 FIT Provider Rate Increases. Rep. Liz Thomson. Same as SB 281, 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. Identical to HB 469, above. 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.

SB 458 DD waiver changes. Sen. Nancy Rodriguez. This bill would require 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 would also require the departments to obtain legislative approval before making future changes to the waiver program that would change eligibility or level of service determinations. SPAC/SJC.

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. SRC/SPAC.

SJM 35 Training for health care providers and first responders. Sen. Linda Lopez. This memorial recites a wide range of problems that persons with developmental disabilities have experienced in interacting with first responders and health care providers. It asks the Department of Health to develop a comprehensive training curriculum for such providers, and urges all agencies that employ or oversee the licensing of such persons to require them to receive such training. SRC/SPAC.

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.

HB 459 Separate special education equalization fund. Rep. Mimi Stewart. This bill separates special education funding from all other components of the current basic school funding system. It does not change the process for calculating the funding that each public school district receives based on the number of its special education students or their level of need, but it does allow the state to clearly identify (and adjust) the total amount of state funding made available to the districts for special education services. The bill comes in response to a federal ruling that the state has not met its “maintenance of effort” requirement because it reduced state spending for special education (and all other education) in 2010, and a related dispute about how much money the state provides for special education. 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

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). HHGIAC/HJC. Scheduled for hearing in HHGIC on Tuesday morning.

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.

HB 480 Clarifying scope of coverage for inborn errors of metabolism. Re. Stephanie Garcia Richard. This bill makes some technical changes to existing law that requires insurance companies to cover special diets needed to prevent disabilities that would otherwise occur due to metabolic disorders, such as PKU. The bill would make sure that co-pays for the special foods are based on a one-month supply of food rather than per meal or per day. HHGIC/HBIC.

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. Substitute version passed SPAC, pending in SJC.

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.

HB 414 Alternative Medical Certifications. Rep. Nate Cote. This bill would authorize advance practice nurses, certified nurse mid-wives and physician assistants to certify or attest to certain things that now must be certified by a physician, if it falls within the scope of practice of these other medical professionals. For example, this bill would allow those other medical providers to certify the existence of a mobility impairment for those seeking an accessible parking placard due to their disability. This certification must currently be done by a physician. HHGIC/HJC.

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. Substitute version passed SPAC, pending in 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 that month for their students, to promote greater understanding and awareness of people with disabilities. The memorial was developed and is being promoted by the Youth Leadership group. Passed the Senate (after long and controversial debate) 37 -1; it is on the Speaker’s Table in the House, meaning that it could be brought up for a final vote 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. Passed HHGIC, pending in 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. Passed SPAC, pending in 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

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
HBIC	House Business and Industry 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)

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