



DISABILITY RIGHTS NEW MEXICO

1720 Louisiana Blvd. NE, Suite 204 • Albuquerque, New Mexico 87110
TEL/TTY: (505) 256-3100 • FAX: (505) 256-3184
State-wide Toll Free 1-800-432-4682
WEBSITE: www.drnmm.org • EMAIL: info@drnm.org
James Jackson, Executive Director

Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2014 LEGISLATURE FINAL REPORT

Jim Jackson, Executive Director
Disability Rights New Mexico
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Session Review. This year's 30-day legislative session began on January 21 and ended on February 20. Although the annual state budget bill stalled in the House, the Senate developed its own version based on the House bill, and the Senate's proposal was approved by the Legislature in the last few days of the session. As noted on page 2 below, the new state budget includes a number of funding increases that will benefit persons with disabilities.

Although interim legislative committees spent a lot of time before the session discussing the highly controversial changes in the behavioral health service system resulting from the Human Service Department's determination of "credible allegations of fraud" by 15 provider agencies, no legislation addressing this issue was passed during this session. A bill (SB 55) that would have required the Department of Health to come up with a 5-year plan that would be updated annually, and would reduce waiting time for Developmental Disabilities waiver services to no more than three years, failed to pass.

Action by the Governor. Bills that pass the Legislature must be approved by the governor before they become law. Governor Martinez took the following action on disability-related bills that passed in this year's session. For a description of these bills, see page 3 below.

- SB 313 State budget: **Signed into law** with a variety of line-item vetoes that removed portions of the bill's language and some of the funding. None of the vetoes eliminated funding increases earmarked for disability services.
- HB 58 Expanding the definition of brain injury: **Signed into law**
- HB 63 Pilot project, inmate mental health: **Vetoed**
- HB 337 Native Americans in Centennial Care: **Vetoed**
- SB 75 Administration of emergency medications in public schools: **Signed into law**

Memorials that pass the Legislature do not require approval by the governor and are not subject to veto. However, memorials do not have the force of law. State agencies often follow up on or respond to memorials but they are not required to do so. Disability-related memorials that passed this year are described on pages 3-4.

Issues for the interim. Although the Legislature meets for only 30 or 60 days each winter, various committees meet regularly during the "interim" period between sessions. We expect that some of

these interim committees will be addressing issues that may then come up in the next (2015) regular session of the Legislature, including efforts to reduce the DD waiver waiting list and concerns over implementation of the new SIS-based budgeting and planning system; effectiveness of the new behavioral health agencies; adequacy of and accountability for special education funding; implementation of Centennial Care, including a new program intended to assist elders and persons with disabilities to get the long-term services they need; and guardianship reform.

Changes in store for 2015. There will be new leadership in key positions in the House next year and at least 10 new House members due to retirements by incumbent legislators. Majority Leader Rick Miera (D-Albuquerque) and Minority Leader Don Bratton (R-Hobbs) are among current members who have chosen not to run for re-election. Representatives Kiki Saavedra (D-Albuquerque), long-time chair of the House Appropriations and Finance Committee, and Ed Sandoval (D-Albuquerque), chair of the Taxation and Revenue Committee, are also retiring, as are Tom Taylor (R-Farmington), Ernest Chavez (D-Albuquerque), Bill Gray (R-Artesia), Nate Cote (D-Organ), Anna Crook (R-Clovis), and Jim White (R-Albuquerque). All of these retiring legislators have indicated that they will serve out the remainder of their term, which runs through December 31, 2014 and thus includes participation in legislative interim committees this year.

The New State Budget

SB 313 General Appropriations Act. Sen. John Arthur Smith. The final version of the state budget bill adopted by the Legislature and signed into law by the governor provides additional funding for a number of specific disability programs:

- \$5.1 million additional funding for the FIT program, and \$500,000 for rate increases for FIT provider agencies
- \$5 million for Medicaid rate increases for nursing homes and Personal Care Service providers
- \$3.3 million additional funding for the Developmental Disabilities (DD) waiver, intended to bring at least 175 people off of the wait list, plus \$500,000 for a pilot program of flexible supports for those at or near the top of the wait list, and another \$500,000 for rate increases for DD waiver provider agencies
- \$3 million more to the Public Education Department as needed to meet "maintenance of effort" for special education funding (in addition to contingency funds appropriated last year)
- \$260,000 more for legal services for low-income individuals, including persons with disabilities (Disability Rights New Mexico currently receives funding from this source)
- \$250,000 for autism services, including \$150,000 for evidence-based treatment practices for children with autism and \$100,000 to support the autism oversight team to facilitate the return to New Mexico of children in out-of-state treatment facilities
- \$250,000 for non-Medicaid psychiatric services [Governor Martinez vetoed language that would have restricted these funds to inpatient services in southern NM]
- \$150,000 for the fetal alcoholism prevention program at UNM,
- \$150,000 for the NMSU Mental Health Nurse Practitioner program,
- \$100,000 for a concussion needs assessment of student athletes and returning military veterans,
- \$75,000 to the Commission for the Blind to purchase and distribute magnification devices,
- \$50,000 for distribution of child safety helmets by the Brain Injury Advisory Council , and
- \$164,000 in supplemental funding for the Office of Guardianship in the current fiscal year.

Other Disability-Related Bills Passed by the Legislature

HB 58 Expand Eligibility for Brain Injury Services. Rep. Jim Trujillo and Sen. Gay Kernan. This bill will amend the law establishing the Brain Injury Services Fund to eliminate its current limitation to those with “traumatic” brain injury. This change will provide eligibility for those whose acquired brain injury was caused by stroke or other non-traumatic causes, as long as the injury occurred after birth and was not caused by substance abuse. **Signed into law.**

HB 63 Inmate Mental Health. Rep. James Roger Madalena. This bill called for a pilot program in Grant, Luna and Hidalgo Counties (southwestern NM) to provide comprehensive behavioral health and support services to inmates of the county detention centers and to individuals who have been released from those facilities. The bill originally had an appropriation of \$563,180 but this was removed by amendment. **Vetoed by the governor.** Her veto message indicated that this was an "unfunded mandate", that the funds had been appropriated to the wrong state agency, and that this was not a state responsibility.

HB 337 Prohibit Mandatory Native American Enrollment. Rep. James Roger Madalena. This bill clarified that Native Americans who are eligible for Medicaid cannot be required to enroll in Centennial Care or any other Medicaid managed care program, although they could do so voluntarily. Currently, Native Americans can choose whether they want to enroll in a Centennial Care managed care organization (MCO), except for those who are "dual eligibles" (receiving both Medicaid and Medicare) and those receiving long-term services, who are required to be enrolled with an MCO. Since long-term services are available only through Centennial Care, most Native Americans with serious disabilities would likely have enrolled in the program even if this bill had been enacted. **Vetoed by the governor,** without explanation.

SB 75 Emergency Medications in Schools. Sen. Mark Moores. As amended, this bill allows (but does not require) school districts to stock albuterol and epinephrine medications in schools for use by nurses or other trained personnel, respectively, for students experiencing respiratory distress (such as severe asthma) or anaphylaxis (a severe allergic reaction). **Signed into law.**

Disability-Related Memorials Passed by the Legislature

HJM 4 Family Caregiver Study. Rep. Tomás Salazar. This memorial calls for appointment of a coalition or task force to review the needs of family members and friends who provide unpaid care and support to elders and others and to recommend policy changes to support these caregivers.

HM 9 Concussion Study. Rep. Jim Smith. This memorial asks the Brain Injury Advisory Council to conduct a study of the incidence of concussions in student athletes and returning veterans, and identify needs related to diagnosis and treatment of concussions. *The state budget bill includes a total of \$100,000 to conduct the study.*

HM 66 Medicaid and HIX Data. Rep. Roger Madalena. As amended, this memorial calls on the Human Services Department and the NM Health Insurance Exchange to report monthly a wide range of data involving successful as well as denied applications for healthcare coverage.

HM 69 Removing Barriers to Employment. Rep. Cathrynn Brown. This memorial calls on the New Mexico Congressional delegation to work to change federal rules that limit how much income a non-elderly nursing home resident with disabilities can earn while remaining eligible for Medicaid and that require most of the person's earnings to be turned over to the nursing home.

HM 84 Medicaid Services to Native Americans Data. Rep. Roger Madalena. Citing inadequate tribal consultation by the Human Services Department (HSD) and concerns over commercial managed care programs, this memorial calls on HSD to provide data comparing costs and satisfaction with services for Native Americans in managed care, fee-for-service, and Indian Health Service or tribal programs. Identical to SM 98, below.

HM 87 ADA Issues in Emergency Preparedness. Rep. Emily Kane. This memorial calls on the Governor's Commission on Disability to review the state's 2007 plan for dealing with emergencies and disasters to identify any barriers to equal protection and services for persons with disabilities and to make recommendations on any changes or improvements needed.

SJM 5 Oversight Council on Medicaid and Disability. Sen. Tim Keller and Rep. Liz Thomson. This memorial asks the legislative leadership to create a permanent council to provide oversight of Medicaid services for persons with disabilities. The Council would be made up of four legislators, five individuals who are persons with disabilities, representatives of or advocates for persons with disabilities, two service providers, and one representative each from the Human Services Department and the Department of Health.

SM 5 Early Childhood Task Force. Sen. Jerry Ortiz y Pino. This memorial asks UNM to reconvene a task force to continue working on improving collaboration among early childhood stakeholders, and to develop an infant and early childhood mental health action plan.

SM 8 Jaden's Way. Sen. Lisa Torraco. This memorial acknowledges the extraordinary challenges faced by individuals with multiple disabilities and their families, as exemplified by Jaden Fawver, who died recently at the age of 10.

SM 69 Educational Services. Sen. Bill O'Neill. This memorial calls for a task force to help the Public Education Department devise strategies and funding for providing educational services for students who have been suspended or expelled from school or referred to the juvenile justice system.

SM 79 BH Collaborative Task Force. Sen. Carlos Cisneros. This memorial calls on the Behavioral Health Planning Council and local collaboratives to establish a task force to identify strategies for expanding and improving behavioral health service delivery through community partnerships.

SM 98 Medicaid Services to Native Americans Data. Sen. Benny Shendo. Identical to HM 84, above.

Bills and Memorials That Failed to Pass

For a list of disability-related bills and memorials that were introduced but did not pass in this year's legislative session, see DRNM's Post-Session Report. It's posted on the DRNM web site, drnm.org.