



DISABILITY RIGHTS NEW MEXICO

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James Jackson, Executive Director

Promoting and Protecting the Rights of Persons with Disabilities

2014 LEGISLATIVE SESSION PREVIEW

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Disability Rights New Mexico

January 6, 2014

30-Day Session begins: Tuesday, January 21, 2014. The session ends on Thursday, February 20.

Mark your calendars:

Jan. 11 - Pre-Legislative-Session Forum Review of major system changes in disability services and preview of disability-related issues to be addressed in the 2014 legislative session.

Jan. 22 Justice for All Day (civil legal services) at the Legislature

Jan. 29 Multiple Sclerosis Day at the Legislature

Jan. 31 Behavioral Health Day at the Legislature

Feb. 17-18 Disability Rights Awareness Days on Monday, February 17 at the Marriott Courtyard on Cerrillos Rd. in Santa Fe, and on Tuesday, February 18 at the State Capitol. Registration available through The Arc of New Mexico (arcnm.org)

Short Session. This year's 30-day session is limited by the state constitution to bills dealing with state budget issues (appropriations and tax measures), issues that the governor asks the Legislature to address, and bills vetoed by the governor in the previous legislative session. If a bill is introduced that is not in one of those categories, it will not be considered "germane" and will not be allowed to move through the process. However, this limitation does not apply to proposed constitutional amendments, which can be introduced in any legislative session, require only a majority vote in both chambers, and are not subject to approval or veto by the governor. A number of such amendments are expected this year, in an effort to bypass the governor and earn approval directly from the state's voters, who must approve amendments in a general election in order for them to take effect. Memorials and resolutions are also allowed in the short session and plenty of these can be expected as well.

The Budget Outlook: According to recent official forecasts, recurring state income will rise in the coming year (FY 2015) to nearly \$6.2 billion, the highest level ever. The amount of "new money" available this year - the amount of income that exceeds current spending levels - is \$292 million. Decisions about how much to spend and on which programs and agencies will be the principal focus of the 30-day session.

The Legislative Finance Committee (LFC) has just released its budget recommendations for the coming year, and it recommends total spending of \$6.15 billion in state funds, an increase of \$253.5 million over the current year. The lion's share of the new spending - \$183 million - would go to public schools and higher education. The governor has not yet released her budget recommendations but is expected to do so this week.

State Agency Budgets: There are a number of state agencies that provide services to persons with disabilities, and their budgets will be decided upon as the Legislature develops and approves the state budget for the coming year. These state agencies submitted their preliminary budget requests last September. Their requests and the LFC recommendations for these agencies are noted briefly below; we don't yet know what funding levels will be requested by the governor.

Human Services Department. HSD's request for state funding for the Medicaid program in FY 2015 is actually \$22.5 million *less* than the current year appropriation. HSD expects overall spending in the program to go up by \$370 million to serve more than 100,000 new participants due to Medicaid expansion, but additional federal funding and other revenues will cover all of the extra spending and then some. The LFC budget recommendation is in line with HSD projections.

HSD estimates that 15,000 of the 25,000 clients who currently receive behavioral health services from non-Medicaid funding sources will become eligible for Medicaid due to eligibility expansion. As a result, total spending on Medicaid behavioral health is projected to grow from \$306 million to \$400 million, with federal funding covering all of the increase, and saving the state \$15 million. HSD wants to reinvest \$12 million of those savings in additional services. The LFC is generally supportive of this request, but recommends language that would prohibit HSD from contracting with a managed care company to manage the non-Medicaid component of behavioral health services.

Department of Health. DOH requested an additional \$5.15 million for the FIT early intervention program, an additional \$2 million to cover costs for compliance efforts in the Jackson case, and 12 new staff positions. However, the department did not request *any* new funding earmarked for moving people off of the DD waiver waiting list and into services. The LFC recommends an additional \$4.1 million for the DD waiver waiting list (enough to serve 225 more people), and an additional \$5.2 million for FIT. The LFC supports an additional \$685,000 for Jackson compliance costs, and 6 new staff positions. The LFC also recommends \$125,000 for oral deaf education for children with cochlear implants or hearing aids.

Division of Vocational Rehabilitation. DVR requested \$471,000 in additional state funding and a total of over \$2 million in additional total funds for its rehabilitation services, reflecting their nearly 4 to 1 match for federal funds and an attempt to match all available federal funding. The LFC supports a total increase of about \$700,000, noting that DVR seriously underspent its budget in FY 2013 and still has a staff vacancy rate of 24% as of September 2013. DVR also requested an increase in funding of \$184,000 for Independent Living services to be provided by the IL centers around the state, but the LFC recommends no increase for this program.

Governor's Commission on Disability. This agency grew this past year as it absorbed the Technology Assistance Program from DVR and the Brain Injury Advisory Council (BIAC) from the DDPC. GCD requested an additional \$370,000 for home accessibility modifications and additional staff. The LFC supports the addition of one new staff position dealing with accessibility of new buildings but no funding for home modifications or the additional administrative staff position requested by GCD. The LFC budget level includes support for adaptive driving, youth leadership, and sponsorship of the Southwest Conference on disabilities. The BIAC program requested level funding; the LFC recommends level funding but also a one-time appropriation of \$100,000 for a concussion needs assessment study.

Developmental Disabilities Planning Council. The DDPC asked for an increase of \$480,000 for Council-related programs, but the LFC recommends level funding for that program. The Office of Guardianship at the DDPC requested an additional \$1 million to keep up with its growing caseload; the LFC recommended an increase of \$385,000 and encouraged the agency to look at other funding sources. The LFC supports a \$164,000 supplemental appropriation to the Office for the current year.

New Mexico Commission for the Deaf and Hard of Hearing. The Commission requested level funding in the coming year (at \$3.753 million) but the LFC recommends that their budget be decreased by \$50,000.

New Mexico Commission for the Blind. The Commission requested an additional \$484,000 in total funding, and the LFC supports that increase, noting the successful track record of the agency.

Civil Legal Services Commission. The Commission, which provides funding to a number of non-profit agencies (including Disability Rights New Mexico) that provide legal services to low-income persons, did not request additional funding, but the LFC recommends an increase of \$100,000 for the Commission.

Anticipated Legislative Proposals: Some of the disability-related issues that we expect the Legislature to address this year are listed below. Listed first in each category are those that have been “pre-filed” and have already been assigned a bill number. These bills will be introduced officially once the legislative session begins. The deadline for introducing most bills is the half-way point of the session, which this year will be February 5th.

Autism

- Autism services. Rep. Liz Thomson and Sen. Lisa Torracco plan to introduce legislation appropriating \$100,000 for an Autism Oversight Team and \$250,000 for clinical services for children with significant problem behaviors.

Behavioral Health/Mental Health

- **HB 44** Firearms sales and federal mental illness reporting. Rep. Miguel Garcia. This bill will require background checks for the purchase of firearms at gun shows, and will also require state reports to the FBI identifying individuals who have been involuntarily committed by court order to a mental health institution or who have been determined by a court to be “mentally defective”. The language in the bill tracks the federal law that prohibits certain persons from purchasing firearms and asks the state to report the identities of such persons to the background check data base.
- **SB 35** NMSU nurse practitioner program. Sen. Mary Kay Papen. This bill appropriates \$171,200 for the Mental Health Nurse Practitioner program at NMSU.
- Inmate mental health. This bill would appropriate \$563,180 to establish a pilot program in Grant, Luna and Hidalgo County (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.
- Infant mental health services. This bill will appropriate \$2 million to the Children, Youth and Families Department to provide infant or early childhood mental health services that are not covered by Medicaid. The bill would also prohibit the state from requiring providers of these services to be endorsed by or hold membership in any particular organization in order to be reimbursed for services.

Brain Injury

- **SB 52** Insurance coverage for brain injury services. Sen. Tim Keller. This bill would require most individual and group health insurance policies in New Mexico to cover a number of treatment services and community reintegration services for persons with brain injuries.
- Expand eligibility for brain injury services. This bill would amend the law establishing the Brain Injury Services Fund to eliminate its current limitation to those with “traumatic” brain injury. This would 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.

Community-based Services

- **SB 14** Certification of personal care providers. Sen. Michael Padilla. This bill would require anyone providing personal care, attendant care, homemaker or similar in-home services for pay to be certified by the state. Certification would require completion of a course of study, passing an exam, and accreditation by a national accrediting entity. A companion measure is likely to be introduced in the House by Rep. Kelly Fajardo.

Developmental Disabilities

- **SB 55** DD waiver waiting list plan and funding. Sen. Bill Soules. This bill would require the Department of Health and the Human Services Department to develop a 5-year plan, to be updated annually, to address the waiting list for the DD waiver program. The plan would identify the total number of people on the waiting list, a target for the number of new people to be served during the five-year period covered by the plan, and the amount of funding needed each year to meet the target. The bill would also appropriate \$25 million to the Department of Health in the coming year to serve some of those currently on the waiting list.
- Rate increase for DD Providers. This bill will appropriate \$2.65 million to the Department of Health to provide reimbursement rate increases to provider agencies for DD services funded by state general funds (would not apply to waiver services).

Education

- **HB 53** School medications. Rep. Yvette Harrell. This bill would allow school children to carry and self-administer emergency medication for the treatment of asthma, respiratory distress or anaphylaxis.
- **SB 5** ASL as language credit. Sen. Carlos Cisneros. This bill would allow a course in American Sign Language to count as a language credit when calculating total credits needed for high school graduation requirements.

Medicaid

- **SB 33** Due process for Medicaid providers. Sen. Mary Kay Papen. This bill establishes a definition of "credible allegation of fraud", and gives providers a right to appeal in court if they are referred to the Attorney General for investigation based on such an allegation. The bill also clarifies that simple or inadvertent errors in billing do not constitute fraud. The bill is a response to HSD's actions in 2013, when 15 agencies were referred for investigation based on such allegations, leading to suspension of their funding and the replacement of 12 of the agencies by companies headquartered in Arizona, without the original agencies getting information about exactly what they allegedly did wrong and without an opportunity to challenge the determination in an administrative hearing or in court.
- **SJM 5** Oversight council on Medicaid and disability. Sen. Tim Keller. 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, and one representative each from HSD and DOH.
- Coverage of community health workers. Governor Martinez has announced that she will seek legislation to have Medicaid cover (and pay for) services provided by community health workers, such as promotoras, when they are supervised as part of a larger medical practice.

- Medicaid denials. There may be a bill or memorial asking HSD to collect and post statistical information about the reasons for denials of Medicaid eligibility (e.g. how many denials are due to not meeting income levels, not being a legal resident, failure to provide needed documents, etc).
- Native American opt-in for Centennial Care. This bill would clarify 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 eligible" (receiving both Medicaid and Medicare) and those receiving community-based long-term services, who are required to be enrolled with an MCO. It appears that under this bill, Native Americans with significant disabilities would not have to enroll in Centennial Care even if they are dual-eligibles or receive long-term services. If they chose not to do so, they probably would have access to traditional state plan services such as the personal care option (PCO), but not to some of the other long-term services that are available through Centennial Care.

Other

- **SB 50** Changes to procurement code. Sen. Tim Keller. This bill would curtail the ability of state agencies such as HSD to avoid competitive bid processes when contracting for audits or arranging for services after suspending payments to agencies based on allegations of fraud. This is another legislative response to the way that HSD dealt with 15 behavioral health agencies in 2013.
- HIX to follow procurement code. This bill will require the New Mexico Health Insurance Exchange (HIX) to follow the Procurement Code when contracting for products or services. The law that established the exchange, which was enacted in 2013, exempts the exchange from the Procurement Code.
- Child abuse reporting. This bill would clarify that anyone who suspects child abuse is required to report the alleged abuse to the relevant authorities. A recent court case in New Mexico limited this requirement only to certain professionals such as doctors and teachers.
- Licensure of wilderness camps. There may be legislation introduced to require wilderness camps where youth are in residence for more than a very short time to be licensed and subject to state oversight. A camp in New Mexico was in the news spotlight in 2013 after allegations of neglect were made, the camp contested the authority of CYFD to investigate, and all the youth were suddenly off the main grounds of the camp when police arrived to investigate.

Issues NOT likely to come up this year

Although there has been some discussion of the following items as potential issues for the legislature, it appears that they will probably not be addressed this year:

- Changes to the public school funding formula that would affect how school districts generate money to serve special education students; the changes were recommended prior to the session by the Legislative Finance Committee.
- Establishing a requirement that school districts track the state money that they generate for special education, and demonstrate that the funds were actually used for services to special education students. There is currently no such requirement in state law.
- Probate Code changes. The task force appointed pursuant to Senate Memorial 94 in 2013 made recommendations for certain limited amendments to the Probate Code, primarily to address decision-making authority in the immediate aftermath of the death of a protected person. This issue will probably be deferred until the 2015 session. Another proposal affecting guardianship, to clarify the role of the guardian ad litem in guardianship proceedings, is also likely to be deferred until the 2015 session.

Contacting your Legislators

Before the session starts on January 21, you can still contact your legislators in their home communities. You can find out who your legislators are and get their contact information on the legislature's "Find Your Legislator" web page: http://www.nmlegis.gov/lcs/legislator_search.aspx.

To find your state representative from this web page, take these steps:

- Under the heading "House of Representatives", click on the link to "Search by Name, District or Address"
- Click on the link "OR Search by Address" near the top of the page.
- Enter your complete address (street, city, state and zip code) in the box provided
- Click on the "Find District" button, and in a few moments you'll see the name (and a picture) of your representative and the number of the House district.

To find your state senator, go to the same starting web page and choose the "Search by Name, District or Address" link for the Senate.

Once the session starts, each legislator will have an office in the Capitol. To reach a legislator's office during the session, call the Capitol switchboard at 986-4300 and ask for your legislator. We encourage you to bring the voice of the disability community to the Legislature!

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, Katie Gordon, at KGordon@drnm.org.