



## 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.drn.org](http://www.drn.org) • EMAIL: [info@drnm.org](mailto:info@drnm.org)

James Jackson, Executive Director

*Promoting and Protecting the Rights of Persons with Disabilities*

### DISABILITY ISSUES IN THE 2014 LEGISLATURE STATUS REPORT #1

Jim Jackson, Executive Director

Disability Rights New Mexico

January 27 2014

#### **Mark your calendars:**

**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](http://arcnm.org))

**Off to a slow start.** This year's short session of the Legislature began last Tuesday, and started off with a quiet week. Over 250 bills had been "pre-filed" before the session began, and by the end of the week no other bills had been introduced in either the House or the Senate. Most legislative committees will hold their first meeting this week.

While the focus of the legislative session will be on the development and adoption of a state budget for the coming year, there will once again be plenty of discussion and debate around the governor's education proposals, which have yet to gain traction in the Legislature.

**House control hangs by a thread.** Although Democrats officially maintain a 37-33 edge in the House, two Democratic members - Rep. Phillip Archuleta and Ernest Chavez - are currently ill and not expected back until later in the session. With the appointment by the governor of Republican Vickie Perea to the seat previously held by the late Steven Easley, a Democrat from Santa Fe County, the defection of any one Democrat could prevent passage of any measure that might otherwise fall along party lines in the next week or two.

**Going down a different road.** Frustrated by the governor's power to veto bills, many Democrats in the Legislature are looking to constitutional amendments to implement their agenda. Such measures only require approval by a majority of the members of the House and the Senate and are not subject to a veto by the governor, though they do not go into effect unless approved by a majority of voters in a general election. Proposals already in play or expected in this year's session deal with increasing the minimum wage, returning to an elected state Board of Education, and using more of the state's permanent fund to support early childhood services.

**Disability issues on the agenda.** A number of disability-related bills have already been introduced, and more are expected in the next week. These include appropriations to provide services for children with autism, to reduce the waiting list for developmental disabilities waiver services, and to address mental health needs, as well as measures to expand access to services for persons with brain injuries, to "professionalize" home health care services, and to address the lack of oversight and consumer involvement in Medicaid-funded disability service systems.

### **The State Budget (HB 2)**

The House Appropriations and Finance Committee (HAFC) is already well underway in its efforts to create the budget bill to fund state government for the year beginning July 1, 2014 (FY 2015). There is nearly \$300 million in “new” money available in the coming year and the HAFC must decide how much of that to spend and on what purposes. The committee met every day in the week before the session even began, and it continues to hear and review budget recommendations for each state agency that have come from the governor and from the Legislative Finance Committee. Budget recommendations for agencies providing services to persons with disabilities (including state, federal and other funding sources) are as follows:

<u>Agency/Program</u>	<u>Current Year Budget</u>	<u>Governor’s FY 2015 Recommendation</u>	<u>LFC FY 2015 Recommendation</u>
Department of Health			
Developmental Disabilities	\$149.748 million	\$159.057 million	\$162.223 million
Human Services Department			
Medicaid general	\$4.065 Billion	\$4.341 Billion	\$4.331 Billion
Medicaid Behavioral Health	\$306.1 million	\$422.6 million	\$400.7 million
BHSD (non-Medicaid)	\$ 59.4 million	\$ 61.5 million	\$ 60.4 million
Div. of Vocational Rehabilitation			
Rehabilitation services	\$27.725 million	\$29.893 million	\$28.429 million
Independent Living	\$ 1.457 million	\$ 1.543 million	\$ 1.457 million
NM Commission for the Blind	\$12.353 million	\$12,837 million	\$12.837 million
NM Comm. for the Deaf & HH	\$ 3.753 million	\$ 3.700 million	\$ 3.703 million
Governor’s Comm. on Disability	\$ 1.525 million	\$ 1.554 million	\$ 1.598 million
DD Planning Council			
Federal program	\$ 1.287 million	\$ 1.431 million	\$ 1.288 million
Office of Guardianship	\$ 4.595 million	\$ 5.045 million	\$ 4.980 million

**Budget Notes:**

*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.

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.

*Department of Health.* The governor and the LFC support DOH's request for an additional \$5.15 million for the FIT early intervention program. However, the governor did not request *any* new funding earmarked for moving people off of the DD waiver waiting list and into services, while the LFC recommends an additional \$4.1 million - enough to serve 225 more people. The LFC also recommends \$125,000 for oral education for children with cochlear implants or hearing aids – an approach emphasizing speech and spoken language more than sign language.

*Division of Vocational Rehabilitation.* DVR, which gets a nearly 4 to 1 federal funds match, requested \$471,000 in additional state funding to match all available federal funding and yield a total of over \$2 million for rehabilitation services. The LFC supports a lower state appropriation that would yield a total increase of about \$700,000, noting that DVR seriously underspent its budget in FY 2013 and still had a staff vacancy rate of 24% as of September 2013. DVR also requested an increase in funding of \$184,000 for Independent Living services through the IL centers around the state, which would restore funding for this program to 2009 levels. DVR has stated that the centers are operating on a shoestring budget and that it is critical to restore this funding. The governor supports an increase of nearly \$90,000, 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.

*Developmental Disabilities Planning Council.* The DDPC asked for an increase of \$480,000 for Council-related programs; the governor is supporting an increase of \$144,000 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 governor has recommended a \$450,000 increase while 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 fiscal 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 and the governor both recommended that their budget be decreased by \$50,000. It looks like that funding will be restored by the Legislature to maintain level funding in FY 2015.

*New Mexico Commission for the Blind.* The Commission and the governor requested an additional \$484,000 in total funding. The governor included this amount in her budget recommendation and the LFC supports that increase, noting the agency's successful track record.

*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.

## **Other Bills and Memorials Introduced**

### Autism

**HB 69** Autism Services. Rep. Liz Thomson. Appropriates \$100,000 to the Department of Health to support the Autism Oversight Team (planning and promoting in-state services for persons currently placed out-of-state) and \$250,000 for clinical services for children with significant problem behaviors.

**SB 109** Autism Services. Sen. Lisa Torracco. Same as HB 69, above, appropriating \$350,000 to DOH for autism services.

### 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.

**HB 61** Native American Youth Suicide Prevention. Re. James Roger Madalena. Appropriates \$300,000 to HSD for the Behavioral Health Purchasing Collaborative to establish three prevention programs statewide.

**HB 63** Inmate Mental Health. Rep. James Roger Madalena. 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.

**SB 35** NMSU Nurse Practitioner Program. Sen. Mary Kay Papen. This bill appropriates \$171,200 for the Mental Health Nurse Practitioner program at NMSU.

**SB 66** Infant Mental Health Services. Sen. Jerry Ortiz y Pino. 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

**HB 58** 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.

**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.

**SB 52** Insurance Coverage for Brain Injury Services. Sen. Tim Keller and Rep. Liz Thomson. 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.

### 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. *Ruled “not germane” and will not be pursued further in this 30-day session unless the governor provides a “message” that she wants the Legislature to address this issue.*

**HB 88** Certification of Personal Care Providers. Rep. Kelly Fajardo. This bill is similar to SB 14, but a critical difference is that under this bill certification would be voluntary. The sponsor is hoping for a message from the governor that would make the bill germane for the short session. That would also "resurrect" SB 14, above.

#### Developmental Disabilities

**HB 75** Rate Increase for DD Providers. Rep. Jimmie Hall. 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).

**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.

**SM 8** Jaden's Way. Sen. Lisa Torracco. 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.

#### 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

**HB 60** Native American Opt-in for Centennial Care. Rep. James Roger Madalena. 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 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, but in that case they would not have access to the long-term home- and community-based services, called the "Community Benefit", that are available only through Centennial Care.

**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 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, and one representative each from HSD and DOH. SRC/SPAC.

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.

Contacting your Legislators

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](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](mailto:KGordon@drnm.org).

ABBREVIATIONS USED IN LEGISLATIVE REPORTS

Legislative Committees

HAFC	House Appropriations and Finance Committee
HAGC	House Agriculture and Water Resources 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  
HTRC House Taxation and Revenue 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