



## 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 2014 LEGISLATURE STATUS REPORT #2

Jim Jackson, Executive Director  
Disability Rights New Mexico  
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#### **Mark your calendars:**

**Feb. 17** Disability Rights Awareness Day at the Marriott Courtyard, 3347 Cerrillos Rd. in Santa Fe, 8:45 – 3:45. Keynote speaker: Congresswoman Michelle Lujan Grisham

**Feb. 18** Disability Rights Awareness Day at the State Capitol. Display tables all day. Program in the Rotunda 11:30 to 1:00. Keynote speaker: Hector Balderas, New Mexico State Auditor

**Taking the first steps.** A few bills have now made it through their first committee assignment. Many of these are funding requests which have been approved by a committee with an interest in the issue raised by the bill. Those bills now go to the Senate Finance Committee or House Appropriations and Finance Committee. In a few cases, some of the funding requested in these bills will be added to the state budget bill (HB 2) before its final passage in the legislature. Otherwise, these funding request bills will very likely go no further during the session and will “die” in those committees.

Two memorials we’re following that did not get assigned to a committee have already been discussed and have passed – they’re done! House Memorial 9 asks the Brain Injury Advisory Council to conduct a study of concussions among school athletes and veterans returning from combat. Senate Memorial 8 acknowledges the challenges faced by children with multiple disabilities who are not adequately served by existing service systems.

**Didn’t get out of the starting gate.** A number of disability-related bills were determined not to be “germane” and therefore will not be addressed further by the legislature. In a 30-day session, only those bills related to appropriation and taxation, or requested by the governor, can be considered. Some of the non-germane bills include SB 5 (American Sign Language counting toward high school language credit), SB 33 (due process protections for Medicaid providers), SB 52 (insurance coverage of brain injury services), HB 60 (Native American exemption from managed care), and SB 174 (CYFD authority over wilderness camps).

**No Confidence in HSD Secretary?** Senate Majority Leader Michael Sanchez has introduced Senate Resolution 2, which says that the Senate has no confidence in the ability of Sidonie Squier to fulfill her functions and obligations as secretary of the Human Services Department. The resolution cites the widely criticized manner in which HSD abruptly and arbitrarily suspended Medicaid payments to 15 behavioral health provider agencies and replaced them with companies based in Arizona, as well as her remarks indicating that there was no hunger problem in New Mexico. Squier was confirmed by the

Senate in 2011 shortly after her appointment by Governor Martinez. SR 2 has not yet been voted on, but it is on the President’s table in the Senate, which means that it can be taken up at any time. Veteran Roundhouse observers believe this may be the first time such a resolution has been introduced in the Senate.

**Almost half-way done.** This Wednesday, Feb. 5, marks the half-way point of the 30-day session, and that is the deadline for introduction of bills in this session. However, committee chairs and other legislative leaders will have available some generic bills (“dummy bills”) that can be converted into regular bills later in the session in the event that a new issue or need arises.

### **Bills, Memorials and Resolutions in the 2014 Legislative Session**

#### State Budget

**HB 2** General Appropriations Act. Rep. Kiki Saavedra. The House Appropriations and Finance Committee (HAFC) is expected to complete action this week on HB 2, the budget bill to fund state government for the year beginning July 1, 2014 (referred to as Fiscal Year 2015). Final decisions have not yet been made, but subcommittees have made recommendations that the full committee is likely to adopt. Funding recommendations of the subcommittee for several state agencies providing services to persons with disabilities (including state, federal and other funding sources) are included in the table below:

<u>Agency/Program</u>	<u>Current Year Budget</u>	<u>Governor’s FY 2015 Recommendation</u>	<u>LFC FY 2015 Recommendation</u>	<u>Tentative HAFC</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	\$12.837 million
NM Comm. for the Deaf & HH	\$ 3.753 million	\$ 3.700 million	\$ 3.703 million	\$ 3.753 million
Governor’s Comm. on Disability	\$ 1.525 million	\$ 1.554 million	\$ 1.598 million	\$ 1.625 million
DD Planning Council				
Federal program	\$ 1.287 million	\$ 1.431 million	\$ 1.288 million	\$ 1.326 million
Office of Guardianship	\$ 4.595 million	\$ 5.045 million	\$ 4.980 million	\$ 5.080 million

For additional background information or details about the budget requests and recommendations related to these agencies, please refer to Legislative Status Report #1 which was distributed last week and is available on our web page, [drnm.org](http://drnm.org).

#### 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. Passed HHGIC, pending in HAFC.

**SB 109** Autism Services. Sen. Lisa Torraco. Same as HB 69, above, appropriating \$350,000 to DOH for autism services. Passed SPAC, pending in SFC.

#### Behavioral Health/Mental Health

**HB 44** Firearms Sales and Federal Mental Illness Reporting. Rep. Miguel Garcia. This bill would require background checks for the purchase of firearms at gun shows, and would also require state reports to the FBI identifying individuals who have been found by courts to be mentally incapacitated and thus ineligible to purchase firearms. **The sponsor has decided not to move the bill forward.**

**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. Passed HHGIC, pending in HAFC.

**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. Passed HHGIC, pending in HAFC.

**HB 243** Housing Assistance for the Homeless. Rep. Doreen Gallegos. This bill provides \$500,000 to the Mortgage Finance Authority to provide supportive housing and support services to help homeless persons become more stable and move into housing. HBIC/HAFC.

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

**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 a national organization in order to be reimbursed for services. This provision is intended to continue or extend services to communities where there are few if any endorsed providers. Passed SPAC, pending in SFC.

**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. SRC/SPAC.

**SR 2** No Confidence in HSD Secretary Squier. Sen. Michael Sanchez. This Senate Resolution indicates that the state Senate has “no confidence” in the ability of Sidonie Squier to carry out her duties as Secretary of the Human Services Department. *We include this Resolution in the behavioral health section of this Legislative Report because Secretary Squier’s handling of the abrupt suspension of Medicaid funding for 15 major behavioral health agencies last year is the principal (though not the only) basis cited for proposing the Resolution.* Awaiting action by the full Senate.

#### Brain Injury

**HB 58** Expand Eligibility for Brain Injury Services. Rep. Jim Trujillo and Sen. Gay Kernan. 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. HHGIC/HAFC.

**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. **PASSED.**

**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. **Determined “not germane” and will not be pursued further in this session unless the governor requests such action.**

#### 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. **Determined “not germane” by the Senate, although the governor later provided a “message” for a similar bill in the House (HB 88).**

**HB 88** Certification of Personal Care Providers. Rep. Kelly Fajardo. This bill is similar to SB 14, but proposed a voluntary program of certification. With a “message” from the governor, the bill was determined germane to the short session. However, the bill was tabled in HHGIC at the request of the sponsor, who plans to introduce a memorial that would call for a group to develop recommended legislation for a future session.

**HJM 3** and **HJM 4** Family Caregiver Study. Rep. Tomás Salazar. These two similar memorials call 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. The DD Planning Council and the Governor's Commission on Disability would be members of the task force established under HJM 4. Both memorials are pending in HCPAC.

#### 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). Same as SB 249, below. Passed HHGIC, pending in HAFC.

**HB 218** FIT rate increases. Rep. Liz Thomson. This bill appropriates \$4 million to the Department of Health to provide reimbursement rate increases to Family Infant Toddler (FIT) provider agencies as called for in a rate study conducted in 2003. Same as SB 188, below. HHGIC/HAFC.

**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. As amended in SPAC, the bill would also appropriate \$10 million to the Department of Health in the coming year to serve some of those currently on the waiting list. Passed SPAC, pending in SFC.

**SB 188** FIT rate increases. Sen. Howie Morales. This bill appropriates \$4 million to the Department of Health to provide reimbursement rate increases to Family Infant Toddler (FIT) provider agencies as called for in a rate study conducted in 2003. Same as HB 218, above. SPAC/SFC.

**SB 249** Rate Increase for DD Providers. Sen. Nancy Rodriguez. 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. Same as HB 75, above. SPAC/SFC.

**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. **PASSED.**

#### 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. Since this is generally already allowed by law (22-5-4.3 NMSA 1978), the sponsor has decided not to move this legislation further in this session.

**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. **Determined “not germane” and will not be pursued further in this session unless the governor requests such action.**

#### 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. **Determined “not germane” and will not be pursued further in this session unless the governor requests such action.**

**HB 267** Nursing Home Rate Increases. Rep. Lucky Varela. This bill appropriates \$8 million to HSD to increase payment rates for nursing homes in the coming year. It also directs HSD to change the formula used to calculate future payment rates to assure that they fully cover the costs incurred by nursing homes in serving their residents. HHGIC/HAFC.

**SB 33** Due Process for Medicaid Providers. Sen. Mary Kay Papen and Rep. James Roger Madalena. 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. **Determined “not germane” and will not be pursued further in this session unless the governor requests such action.**

**SB 126** Due Process for Medicaid Providers. Sen. Bill O’Neill. This bill addresses some of the same issues as SB 33 but provides a more comprehensive approach to defining Medicaid fraud as well as providing procedural protections to Medicaid service provider agencies. **Determined “not germane” and will not be pursued further in this session unless the governor requests such action.**

**SB 181** Funding Due Process. Sen. Bill O’Neill. This bill provides \$500,000 to HSD to cover the cost of affording additional due process protections for Medicaid providers. Since the bills that would have created additional due process protections for Medicaid providers have been determined 'not germane' in this session, it seems unlikely that this bill will proceed very far. SJC/SFC.

**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. Passed SRC, pending in SPAC.

#### Other

**HB 217** Elder and Disability Court. Rep. Liz Thomson. This bill appropriates \$200,000 to the state district court in Albuquerque (2<sup>nd</sup> Judicial District) to create a special court for seniors and persons with disabilities. HJC/HAFC.

**HB 265** Reporting Child Abuse. Rep. Gail Chasey. This bill clarifies that, with a few exceptions, any person who knows or reasonably suspects that a child is being abused or neglected has a duty to report the matter to local law enforcement, Child Protective Services, or a comparable tribal entity. The bill is a response to a court case last year that held that only certain persons such as teachers, doctors, social workers or others are required to report. *DRNM notes that children with disabilities are more frequently the victims of abuse or neglect than other children.* Pending in HRC while awaiting a possible message from the governor that would make the bill germane.

**SB 50** Changes to Procurement Code. Sen. Tim Keller and Rep. Eliseo Alcon. This bill would limit 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. **Determined “not germane” and will not be pursued further in this session unless the governor requests such action.**

**SB 174** CYFD Oversight of Residential Programs. Sen. Sue Wilson Beffort. This bill would clarify that the Children Youth and Families Department, and its Child Protective Services Division, have authority to investigate allegations of abuse or neglect at any facility that provides residential placement for children for more than 60 days in any 12-month period. The operator of a “wilderness camp” had contested CYFD’s authority to provide oversight or investigations at its facility last year. *DRNM notes that some of the children served in such programs may have been placed there because of their behavioral challenges.* **Determined “not germane” and will not be pursued further in this session unless the governor requests such action.**

#### 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.

Each legislator has 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)
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##### State Agencies

ALTSD	Aging and Long Term Services Department
CYFD	Children, Youth and Families Department
DDPC	Developmental Disabilities Planning Council
DOH	Department of Health
GCD	Governor’s Commission on Disability
HSD	Human Services Department
PED	Public Education Department