



## 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 POST-SESSION REPORT

Jim Jackson, Executive Director

Disability Rights New Mexico

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**Session comes to a quiet and peaceful end.** The 2014 legislative session came to an unusual end last Thursday at noon. There was no mad dash to complete as many as possible of the bills remaining on the calendar, no filibusters or other “meltdown” preventing action on controversial bills. In fact, there were long periods on the final day in both the Senate and the House when nothing was happening at all. When all was said and done, the state budget was adopted unanimously in the Senate and with only token opposition in the House. The controversial constitutional amendments – raising the minimum wage, eliminating the Public Education Department, raising more money from the permanent fund for early childhood programs – failed to pass. The governor’s controversial proposals – third-grade retention for students who can’t read at grade level, eliminating driver’s licenses for undocumented residents – didn’t fare any better.

Somewhat surprisingly to some of us, none of the bills addressing the drastic changes to the behavioral health landscape made it through the session either. Last year’s actions by the Human Services Department suspending Medicaid payments for 15 provider agencies, which resulted in most of the agencies going out of business without an opportunity to contest the action or correct their alleged errors, had been the focus of numerous hearings by legislative committees during the interim.

The list of disability-related bills and memorials that *did* pass begins on page 3 of this report; the list of those that *didn’t* make it through the process begins on page 5.

**Now it’s up to the governor.** Governor Martinez has 20 days from the end of the session – until March 12 – to review and act on bills passed in this year’s session. She can sign them into law or veto them. If she takes no action, the bill dies through a “pocket veto”. In the case of the state budget bill, SB 313, the governor can veto specific provisions while signing the rest of the bill into law. The governor cannot veto memorials or constitutional amendments.

If you would like to contact Governor Martinez about the budget or any other measure from the 2014 legislative session, see the last page of this report for contact information.

**We have a budget.** We often say that the final state budget bill is always HB 2, but this year is one of the rare exceptions. The final budget is SB 313, which was a back-up bill that took on a life of its own after HB 2 failed to pass in the House on a tie vote, leading the Senate to move its own version of the budget, which the House then agreed to. As noted in more detail below, the budget contains some additional funding for programs of interest to the disability community, including a major increase (\$5.6 million total) for the Family Infant Toddler (FIT) early intervention program and \$3.3 million for the DD waiver waiting list. In a compromise with the governor, the Legislature agreed to trim all state agency budgets by 0.275%, generating about \$17 million for a number of educational initiatives requested by the governor that had not been funded in the HB 2 version of the budget.

**DD waiting list bill delayed, falls by wayside.** SB 55, which called on the state to develop and then annually update a 5-year plan to significantly reduce the wait list for DD waiver services and which began with a \$25 million appropriation, got off to a good start by passing its first committee early in the session. However, the bill was then bottled up in the Senate Finance Committee, which didn't release it until the next to the last day of the session. At that time, the funding for the wait list was removed, a provision was added calling for the plan to reduce waiting time for services to no more than three years, and the bill passed the Senate on a party-line vote. On the final day of the session, the bill fell through the cracks when it apparently did not get to the House committee to which it had been referred and which could have passed it on for a vote by the full House in the final hours before adjournment.

### **The New State Budget (as passed by the Legislature; subject to line-item vetoes)**

**SB 313** General Appropriations Act. Sen. John Arthur Smith. The final version of the state budget bill adopted by the Legislature 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 inpatient psychiatric 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.

Funding levels for state agencies providing services to persons with disabilities (including state, federal and other funding sources) for the current year and for the coming year are shown in the table below. The amounts shown reflect the estimated effect of an across-the-board reduction (“sanding”) of 0.275% that was done to raise money for additional public education initiatives requested by the governor.

<u>Agency/Program</u>	<u>Current Year Budget</u>	<u>FY 2015 Budget per SB 313</u>
Department of Health		
Developmental Disabilities	\$149.748 million	\$162.674 million
Human Services Department		
Medicaid general	\$4.065 Billion	\$4.318 Billion
Medicaid Behavioral Health	\$306.1 million	\$393.0 million
BHSD (non-Medicaid)	\$ 59.4 million	\$ 60.75 million
Div. of Vocational Rehabilitation		
Rehabilitation services	\$27.725 million	\$28.451 million
Independent Living	\$ 1.457 million	\$ 1.538 million
NM Commission for the Blind	\$12.353 million	\$12.802 million
NM Comm. for the Deaf & HH	\$ 3.753 million	\$ 3.752 million
Governor’s Comm. on Disability	\$ 1.525 million	\$ 1.845 million
DD Planning Council		
Federal program	\$ 1.287 million	\$ 1.316 million
Office of Guardianship	\$ 4.595 million	\$ 4.983 million

### **Other Bills and Memorials 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.

**HB 63** Inmate Mental Health. Rep. James Roger Madalena. This bill calls 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, leaving an "unfunded mandate" to establish the program.

**HB 337** Prohibit Mandatory Native American Enrollment. Rep. James Roger Madalena. This bill clarifies 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. Since long-term services are available only through Centennial Care, most Native Americans with serious disabilities will likely enroll in the program even if this bill is enacted into law.

**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.

**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 or anaphylaxis.

**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**

#### Autism

**HB 69** Autism Services. Rep. Liz Thomson. Appropriated \$100,000 to the Department of Health to support the Autism Oversight Team (facilitating in-state services for persons currently placed out-of-state) and \$250,000 for clinical services for children with significant problem behaviors. *The state budget bill includes \$100,000 for the AOT and \$150,000 for clinical treatment services.*

**SB 109** Autism Services. Sen. Lisa Torracco. Same as HB 69, above.

#### Behavioral Health/Mental Health

**HB 44** Firearms Sales and Federal Mental Illness Reporting. Rep. Miguel Garcia. This bill required background checks for the purchase of firearms at gun shows, and required state reports to the FBI identifying individuals who have been found by courts to be mentally incapacitated and thus ineligible to purchase firearms.

**HB 61** Native American Youth Suicide Prevention. Re. James Roger Madalena. Appropriated \$300,000 to the Human Services Department to establish three prevention programs statewide.

**HB 243** Housing Assistance for the Homeless. Rep. Doreen Gallegos. This bill provided \$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.

**SB 35** NMSU Nurse Practitioner Program. Sen. Mary Kay Papen. This bill appropriated \$171,200 for the Mental Health Nurse Practitioner program at NMSU. *The state budget bill includes \$150,000 for this purpose.*

**SB 66** Infant Mental Health Services. Sen. Jerry Ortiz y Pino. This bill appropriated \$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 also prohibited the state from requiring providers of these services to be endorsed by a national organization in order to be reimbursed for services.

**SB 290** Behavioral Health Services in Lea County. Sen. Gay Kernan. This bill appropriated \$100,000 to the Children, Youth and Families Department to provide behavioral health services and supportive housing to pregnant and parenting teenagers in Lea County (southeastern NM).

**SB 321** Resolving Financial Claims Related to BH Audits. Sen. Howie Morales. This bill set up a process whereby the 15 provider agencies whose payments were suspended due to determination by the Human Services Department of "credible allegations of fraud", and their employees or contractors, could resolve claims against the state without having to pursue damage cases in court.

**SR 2** No Confidence in HSD Secretary Squier. Sen. Michael Sanchez. This Senate Resolution indicated 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. The resolution was never debated or voted on.

**SM 29** Behavioral Health Study. Sen. Jerry Ortiz y Pino. This memorial called for a study group to recommend changes needed to develop an effective and accountable mental health system.

#### Brain Injury

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

**HB 88** Certification of Personal Care Providers. Rep. Kelly Fajardo. This bill proposed a voluntary program of certification for individual providers of personal care, attendant care, homemaker or similar in-home services for pay. It was withdrawn by the sponsor, who instead introduced HJM 20.

**HJM 20** Oversight of Home Care Agencies. Rep. Kelly Fajardo. This memorial was introduced as an alternative to HB 88, above, and called for a group to look at oversight and regulation of home health agencies, some of which are not licensed by the state, in order to promote quality assurance.

**SB 14** Certification of Personal Care Providers. Sen. Michael Padilla. This bill was similar to HB 88 but *required* anyone providing personal care, attendant care, homemaker or similar in-home services for pay to be certified by the state. Certification would have required completion of a course of study, passing an exam, and accreditation by a national accrediting entity. The sponsor chose not to move the bill forward.

#### Developmental Disabilities

**HB 75** Rate Increase for DD Providers. Rep. Jimmie Hall. This bill appropriated \$2.65 million to the Department of Health to provide reimbursement rate increases to provider agencies for DD services funded by state general funds (did not apply to waiver services). Same as SB 249, below.

**HB 218** FIT rate increases. Rep. Liz Thomson. This bill appropriated \$4 million to the Department of Health to provide reimbursement rate increases to FIT provider agencies. Same as SB 188, below. *The state budget bill includes \$500,000 for such rate increases.*

**HB 319** Prevent Fetal Alcohol Syndrome. Rep. Liz Thomson. This bill appropriated \$100,000 to the Department of Health to fund a program at the University of New Mexico to prevent fetal alcohol syndrome. *The state budget bill includes \$150,000 for this purpose.*

**HB 354** DD Provider Rate Increase. Rep. Kelly Fajardo. This bill appropriate \$5.2 million to the Department of Health to provide “cost-of-living” increases to agencies providing DD waiver services. Same as SB 277, below. *The state budget bill includes \$500,000 for such rate increases.*

**SB 55** DD Waiver Waiting List Plan and Funding. Sen. Bill Soules. This bill required 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 and reduce waiting times to three years. An appropriation of \$25 million was removed from the bill in the course of the session.

**SB 188** FIT rate increases. Sen. Howie Morales. Same as HB 218, above. *The state budget bill includes \$500,000 for such rate increases.*

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

**SB 277** Rate Increase for DD Providers. Sen. Carlos Cisneros. Same as HB 354, above. *The state budget bill includes \$500,000 for such rate increases*

#### Education

**HM 97** NMSD as 4-Year College. Rep. Moe Maestas. This memorial called for a task force to explore the possibility of establishing a bilingual (English/American Sign Language) college on the campus of the NM School for the Deaf in Santa Fe.

**SB 5** ASL as Language Credit. Sen. Carlos Cisneros. This bill allowed a course in American Sign Language to count as a language credit when calculating total credits needed for high school graduation requirements.

**SB 280** Fostering School Friendships. Sen. Howie Morales. This bill appropriated \$100,000 to the Public Education Department to support programs in mid schools and high schools that promote friendships between students with and students without developmental disabilities.

### Medicaid and Health Care

**HB 52** Emergency Medications in Schools. Rep. Yvette Herrell. This bill allowed school districts to stock albuterol and epinephrine medications in schools for use by nurses or other trained personnel, respectively, for students experiencing respiratory distress or anaphylaxis. The Senate version of the bill, SB 75, did pass the Legislature.

**HB 60** Native American Opt-in for Centennial Care. 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. The bill was determined “not germane”. However, a similar proposal, HB 337, did pass the Legislature.

**HB 267** Nursing Home Rate Increases. Rep. Lucky Varela. This bill appropriated \$8 million to HSD to increase payment rates for nursing homes in the coming year. *The state budget bill includes \$5 million for rate increases for nursing homes and Personal Care Services providers.*

**SB 33** Due Process for Medicaid Providers. Sen. Mary Kay Papen and Rep. James Roger Madalena. This bill gave provider agencies a right to appeal in court if they were referred to the Attorney General for investigation based on an allegation of fraud, and clarified that unintentional billing errors do not constitute fraud.

**SB 126** Due Process for Medicaid Providers. Sen. Bill O’Neill. This bill addressed some of the same issues as SB 33 but provided a more comprehensive approach to defining Medicaid fraud as well as providing procedural protections to Medicaid service provider agencies.

**SB 181** Medicaid Due Process. Sen. Bill O’Neill. This bill was similar to SB 126, above, but also included an appropriation of \$500,000 to HSD to cover the cost of affording additional due process protections for Medicaid providers.

**SB 284** Native American Opt-in. Sen. Benny Shendo. This bill exempted most Native Americans from mandatory enrollment in Centennial Care. The House version of this bill, HB 337, did pass the Legislature.

**SJM 22** Equal Due Process. Sen. Howie Morales. This memorial called on the Human Services Department to give all Medicaid providers the same due process protections that the five new behavioral health agencies from Arizona are entitled to under their contracts with HSD.

**SM 59** Health Care Transitions. Sen. Jerry Ortiz y Pino. This memorial called on the Children’s Medical Services program at the Department of Health and the Center for Development and Disability at UNM to convene a group to make recommendations to improve the transition of persons with special health care needs from pediatric systems to adult health care providers and systems.

**SM 89** Medicaid and HIX Data. Sen. Jerry Ortiz y Pino. This memorial called 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. The House version of this memorial, HM 66, did pass the House.

### Other

**HB 43** Car Registration Fee Exemption. Rep. Miguel Garcia. This bill exempted low-income persons with disabilities from the usual Motor Vehicle Division fee for car registration for one vehicle.

**HB 217** Guardianship Oversight. Rep. Liz Thomson. This bill appropriated \$200,000 to the state district court in Albuquerque (2<sup>nd</sup> Judicial District) to fund the court’s initiative to review and

monitor guardians and guardianship arrangements for adults who have been determined to lack capacity to make their own decisions.

**HB 265** Reporting Child Abuse. Rep. Gail Chasey. This bill clarified 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 an appropriate agency. This was 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.

**HB 334** Reporting Child Abuse. Rep. Nate Gentry. This bill addressed the same issue as HB 265, above, and eliminated any exception to the reporting requirement.

**HB 342** CYFD Oversight of Wilderness Youth Programs. Rep. Rudy Martinez. This bill clarified that the Children Youth and Families Department has authority to license and regulate certain residential wilderness programs serving youth. Same as SB 174, below.

**SB 50** Changes to Procurement Code. Sen. Tim Keller and Rep. Eliseo Alcon. This bill limited the ability of state agencies to avoid competitive bid processes when contracting for audits or arranging for services after suspending payments to agencies based on allegations of fraud. This was a response to the way the Human services Department dealt with 15 behavioral health agencies in 2013.

**SB 174** CYFD Oversight of Residential Programs. Sen. Sue Wilson Beffort. Same as HB 342, above.

**SB 312** Assessment Exemption for Disabled Veterans. Sen. Michael Sanchez. This bill exempted the property of military veterans with 100% disability or their surviving spouses from any financial assessments by certain governmental bodies such as conservancy or flood control districts.

#### Contacting the governor

**Through her website:** Go to the website at [governor.state.nm.us](http://governor.state.nm.us) and click on “Contact and Constituent Services” in the upper right corner. Scroll down to find a form you can fill out to send a message to the governor electronically.

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