



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

2015 LEGISLATIVE SESSION PREVIEW

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Disability Rights New Mexico
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60-Day Session begins: Tuesday, January 20, 2015. The session ends on Saturday, March 21.

Coming Events:

Jan. 10 - Pre-Legislative-Session Forum DRNM and The Disability Coalition team up to present this update on major service system changes, a preview of disability-related issues in the 2015 session, and a legislative advocacy training. In Albuquerque at UNM Continuing Ed. Info at drnm.org.

Jan. 28 Justice for All Day (civil legal services) at the Legislature

Jan. 28 Multiple Sclerosis Action Day at the Legislature

Feb. 2-3 Disability Rights Awareness Days on Monday, February 2nd at the Marriott Courtyard on Cerrillos Rd. in Santa Fe, and on Tuesday, February 3rd at the State Capitol. Registration available through The Arc of New Mexico (arcnm.org)

Moving into a new House. For the first time in 60 years, the New Mexico House of Representatives will be under the control of the Republican party, which will have a 37-33 majority in the chamber. In a symbolic reflection of this change, the parties are expected to switch sides of the floor, with Republicans moving to the seats on the right of the Speaker that Democrats have long occupied.

Presiding over the House will be a new Speaker, Rep. Don Tripp from Socorro. He'll be assisted by new Majority Leader Nate Gentry of Albuquerque and Majority Whip Alonzo Baldonado of Belen. The Speaker will be appointing a new chair and vice chair, drawn from the Republican membership, for each of the House committees that act on all legislation considered by the House. Those committee positions will probably not be announced until the Legislature convenes in January, though it's a good bet that Rep. Larry Larrañaga of Albuquerque will be the new chair of the powerful Appropriations and Finance Committee. The change in control of the House will also be reflected in new staff members for these committees and new people in other key positions such as Chief Clerk and Sergeant at Arms.

There will be new leadership for the Democrats as well, who will now be the minority party. Rep. Brian Egolf of Santa Fe was selected by his colleagues to serve as Minority Leader, as outgoing Speaker Ken Martinez stepped aside and former Majority Leader Rick Miera retired from the Legislature. Rep. Sheryl Williams Stapleton will be the Minority Whip.

The overall membership of the House is changing as well. There will be a total of 19 new members (11 Republicans, 8 Democrats) this year. Since there were also 20 new representatives elected or appointed in 2012, only four of whom were not re-elected, only half of the members of the House will have more than two years of experience and seniority in the legislature when it convenes in January.

Not much change on the Senate side. There will be only one new face in the Senate this year - Mimi Stewart, a long-time House member who was recently appointed to fill the vacancy created when Sen. Tim Keller was elected State Auditor. Senators serve four year terms and they were not up for election in 2014. Filling the leadership position previously held by Sen. Keller, Sen. Michael Padilla of Albuquerque will serve as the Majority Whip for the Democrats, who retain control of the Senate. Sen. Michael Sanchez of Belen will continue as Majority Leader and Sen. Mary Kay Papen from Las Cruces is expected to be re-elected as president pro tem.

The Budget Outlook. Official forecasts for the amount of "new money" available for fiscal year 2016, which begins on July 1, 2015, have dipped to only \$141 million, and are expected to drop further before the Legislature adopts the state budget for the coming year. While no significant cuts to state agency budgets are expected, a few high-profile programs such as Medicaid and public education are likely to receive most of the limited new money. It will be an uphill battle for those seeking more funding for disability services such as mental health or the DD waiver program, but legislators are known to respond to the expressed interests of their voters.

State Agency Budget Requests. There are a number of state agencies that provide services to persons with disabilities, and their budgets will be decided as the Legislature develops and approves the state budget for the coming year. These state agencies submitted their preliminary budget requests last September. Highlights of their requests are noted briefly below; we don't yet know what funding levels for the agencies will be officially requested by the governor or recommended by the Legislative Finance Committee.

Human Services Department. HSD's latest projection is that it will need an extra \$53 million in state funding to cover the cost of the burgeoning Medicaid program. The budget increase is largely due to higher costs for some drugs and other treatments, a decrease in drug rebates next year due to those amounts being collected in the current fiscal year instead, and increased enrollment of people who were already eligible for the program but enrolled only recently. Enrollment also has risen by 179,000 people due to the expansion of Medicaid eligibility under the Affordable Care Act ("Obamacare"), but the federal government is covering 100% of the costs of serving those individuals through 2016. HSD projects that by the end of June 2016, there will be a total of over 820,000 individuals on Medicaid – about 40% of the state's population.

Department of Health. The department requested the same amount for the DD Services Division as in the current year, with no increases for the waiver waitlist, provider rates, or the Family Infant Toddler program. In addition, the department has estimated that it will give back ("revert") more than half of the \$3.3 million in new money it got from the Legislature in 2014 to move people off the waiver waitlist and into services in the current fiscal year (FY2015). However, the department expects to enroll about 355 additional people into the DD waiver program in FY 2015, using that \$3.3 million and taking advantage of cost savings in the program generated by the way it uses SIS scores to drive individual budgets. To its credit, the department has stepped up new allocations to the program and expects that enrollment increases in 2014, 2015 and 2016 will mean that instead of reverting money again at the end of FY 2016, it will likely overspend the budget for the DD program for the first time in many years.

Division of Vocational Rehabilitation. As usual, DVR has submitted an essentially flat budget request, even though it has additional responsibilities under recently enacted federal law for supporting transition of high school students with disabilities into employment or higher education opportunities.

Governor's Commission on Disability. This agency grew last year as it absorbed the Technology Assistance Program from DVR and the Brain Injury Advisory Council (BIAC) from the DDPC. This year, GCD is requesting a relatively flat budget, but it is looking for enough new money to add one new staff position dealing with accessibility of new buildings and it eventually hopes to fund home modifications for persons who become disabled and need physical modifications such as wheelchair ramps or accessible bathroom facilities but lack the resources to make these changes.

Developmental Disabilities Planning Council. The DDPC asked for additional funding for a variety of purposes in the Office of Guardianship – to support two new staff positions (an intake worker and a contract monitor), to provide rate increases to its contractors (including guardianship providers, treatment guardians, guardians *ad litem* and others involved in the guardianship process), and to eliminate the waiting list for the program. These additional needs will require around \$750,000 in additional revenue.

New Mexico Commission for the Deaf and Hard of Hearing. The Commission is largely funded by revenues from telecommunications access surcharges, but those revenues have been decreasing in recent years for a variety of reasons. The Commission is looking to reduce the transfer of some of its income to the Division of Vocational Rehabilitation, and is seeking funding to hire a full time ASL interpreter on its staff.

New Mexico Commission for the Blind. The Commission is requesting a small increase in its budget, primarily to cover the costs of assistive technology devices to be used in its Independent Living program.

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 bills 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 19th.

Behavioral Health/Mental Health

- **HB 44** Gun show sales and reporting MI determinations. Rep. Miguel Garcia. This bill regulates the sale of guns at gun shows but also requires the state to report court findings of mental illness to federal authorities for purposes of maintaining the federal data base of those who are prohibited from buying guns. The bill provides for confidentiality of the data transmitted and opportunities to re-establish eligibility to purchase guns.
- **SB 43** Transfer Sequoyah to UNM. Sen. Jerry Ortiz y Pino. This bill would transfer the Sequoyah Adolescent Treatment Facility from the Department of Health to the University of New Mexico Psychiatry Department. In the past year, the facility has changed its approach to treatment and dramatically reduced the use of restraints and punitive techniques – a change that DRNM helped bring about - but some people believe that its somewhat more selective admission criteria have caused the facility to stray from its mission as a treatment facility of last resort for the state’s most troubled youth.
- **SB 44** Behavioral health in school based clinics. Sen. Jerry Ortiz y Pino. This bill appropriates \$16.56 million to be used over the next 5 years to provide behavioral health services in school-based health clinics around the state.

- **SB 45** Behavioral health “warm line” and resource center. Sen. Jerry Ortiz y Pino. This bill would appropriate \$1.9 million to UNM to be used over the next 5 years to develop a “warm line” and resource center that would link callers to available behavioral health services in their communities.
- **SB 48** Psychiatric nurse practitioner training. Senator Mary Kay Papen. This bill provides \$400,000 to New Mexico State University to expand its psychiatric nurse practitioner training program.
- **SB 53** Assisted Outpatient Treatment. Senator Mary Kay Papen. This bill would authorize court-ordered mental health outpatient treatment for persons with a history of mental illness who are considered likely to cause harm to themselves or others at some time in the future if they go without treatment. *DRNM has a number of concerns with this bill as currently drafted, including our belief that it is a human rights violation to force treatment on individuals who are legally competent to make their own decisions, not currently a danger to themselves or others, and not accused of any crime. The proposal is highly controversial and deeply divisive in the mental health community.*
- **SJM 4.** Alternative placements for some held in jail. Sen. Sander Rue. This memorial calls on the Association of Counties to form a task force to study alternative placements for people with mental illness in jail awaiting trial or pending an evaluation of their competence to stand trial.
- Supportive housing and related support services. Funding request of \$10.9 million to be used over the next five years for supportive housing initiatives in Las Cruces, Gallup, Farmington, Santa Fe, Albuquerque, based on the “Heading Home” model successfully piloted in Albuquerque over the past few years.
- Training primary care providers. This will be a \$12 million request over a 5 year period to train primary care providers such as doctors and nurses to screen for behavioral health needs, based on UNM’s Project Echo.
- Community Engagement Teams. We expect legislation to authorize the creation of Community Engagement Teams, which would be intended to reach out to individuals with mental illness to educate them about available services and encourage them to participate in such programs.
- Broaden mental health parity. This anticipated proposal would extend the state’s existing parity law to include substance abuse as well as mental health services, extend the scope of the law to individual as well as group health plans, and specifically require coverage of residential substance abuse treatment for adults.

Developmental Disabilities

- **SB 19** 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 also would appropriate \$25 million to the Department of Health in the coming year to serve some of those currently on the waiting list.
- DD Waiver waiting list plan II. There may be a separate proposal that would simply require DOH to issue an annual report regarding the waiver program and the wait list, with projections of how much it would cost to address the waiting list over a 5-year period.
- Flexibility in use of DD waiver funds. We expect the Department of Health to request language in the state budget bill that would allow them to use a certain small percentage of DD waiver funds

for related purposes such as planning, needs assessment, infrastructure development etc, in order to avoid giving back unspent money at the end of the year.

- Rate increases for DD providers. We expect DD provider agencies once again to seek funding to support rate increases for the waiver program, the Family Infant Toddler program and state-funded DD services.

Education

- **HB 53.** No mandatory psychotropic medications in schools. Rep. Nora Espinosa. This bill would prohibit schools from requiring administration of psychiatric medications for students as condition for attending school, and make it clear that parental refusal to consent to such medications cannot be grounds for removing children from a parent's custody.
- Restrict use of seclusion/restraint in public schools. This bill, expected to be carried by Sen. Bill O'Neill, would strictly limit the use of seclusion or restraints on students in public schools.
- Sharing info on students in state custody. This proposal, expected to be carried by Rep. Gail Chasey, would require PED and CYFD to share information between agencies regarding children in state custody in order to improve their educational outcomes. It would also require annual status reports on the educational outcomes of these youth, as a group (not individuals).
- Transition planning. We expect a bill that would require CYFD to do transition planning for youth in their custody to improve educational and employment outcomes for these youth.
- Disability awareness and history. We expect a funding request to support a pilot program of disability awareness and disability history training in 5 school districts.

Housing

- **HB 47** Homeless assistance. Rep. Tomas Salazar. This bill provides \$1 million to DFA for services and supports for homeless persons. A large percentage of homeless individuals are persons with mental illness.
- **SB 88** Homeless assistance. Sen. Nancy Rodriguez. Same as HB 47

Medicaid

- **SB 42** Medicaid eligibility in jails and prisons. Sen. Jerry Ortiz y Pino. This bill would require HSD to assist residents of jails and prisons to apply for Medicaid if they are likely to qualify and are not already enrolled, and to maintain Medicaid eligibility for recipients who enter jail or prison, in order to facilitate the delivery of Medicaid services once such persons are released. Medicaid cannot pay for medical services provided in jails or prisons, but residents of such facilities are still allowed by federal law to apply for and be found eligible for Medicaid; doing this before release would help to ensure that services are available without delay upon release from incarceration.
- **SB 55** Medicaid due process. Sen. Mary Kay Papen. This bill establishes a definition of "credible allegation of fraud" as applied to Medicaid providers, and builds in due process protections for providers who may be accused of fraud. It clarifies that simple and inadvertent errors in billing do not constitute fraud. The bill is a response to HSD's actions in 2013, when 15 agencies had their funding halted and many went out of business without an opportunity to contest the allegations.

Voting Rights

- **HB 61** Voter ID and other voting procedures. Rep. Jim Smith. This lengthy bill would, among other things, require persons who vote in person to provide identification, which could either be a government-issued photo ID, a federally issued or tribal ID for Native Americans, a photo of the voter contained in the state voter data base with an accompanying statement from the voter, or an

accurate statement by the voter of the voter's birth date and Social Security number. The bill would preempt more restrictive provisions by cities or counties.

Other

- **SB 36** Elder and Disability Court in 2nd District. Sen. Michael Padilla. It appears that the intent of this bill is to provide additional funding for the state court in Albuquerque to provide oversight of guardianship arrangements for elders and persons with disabilities.
- **HB 36** Interest rate cap on loans. Rep. Gail Chasey. This bill would limit the interest rate on all types of consumer loans to an annual rate of 36%, and would apply to “pay day”, “title” and other loan companies. Same as SB 72, below.
- **HB 29** Child abuse reporting. Rep. Brian Egolf. 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.
- **SB 72** Interest rate cap on loans. Sen. Bill Soules. Same as HB 36.

Contacting your Legislators

Before the session starts on January 20, 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. If you hit the “back” button or arrow to return to the previous screen, you can click on the picture of your representative to find the member's address and other contact information.

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. This year, most House members will be in new offices. 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.