



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2015 LEGISLATURE STATUS REPORT #1

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Disability Rights New Mexico
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Coming Events:

- 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.
- Feb. 16: Autism Day at the Legislature
- Mar. 11: Behavioral Health Day at the Legislature

Here we go again! The 52nd Legislature convened at the State Capitol last Tuesday, Jan. 20th. This year's session, which will last 60 days, was kicked off by the election of a new Speaker of the House - Rep. Don Tripp from Socorro - and the re-election of Sen. Mary Kay Papen of Las Cruces as the President Pro Tem of the Senate. Governor Susana Martinez presented the State of the State address, encouraging the legislature to support some of her signature initiatives. Before the session even started, there were 144 bills pre-filed in the House, and another 207 pre-filed in the Senate. That's more than twice as many as were pre-filed two years ago in the last 60-day session.

House reorganizes its committees. One of the first items of business taken up in the House, where Republicans are in the majority for the first time in 60 years, was the reorganizing and renaming of the standing committees that will review bills and memorials that are considered in the House. The new House rules that establish the committees were adopted on a party-line vote, with Democrats noting that references to "consumer", "labor", "voters" and "human resources" were deleted as the committee names were changed.

The new or re-established committees of particular interest to the disability community, and the Republican representatives who now lead them, are as follows:

- House Appropriations and Finance Committee (HAFC): Larry Larrañaga, chair; Jimmy Hall, deputy chair; Paul Bandy, vice-chair
- House Education Committee (HEC): Nora Espinoza, chair; Dennis Roch, vice-chair
- House Government, Elections, and Indian Affairs (HGEIC): Jim Smith, chair; Sharon Clahchischilliage, vice-chair
- House Health Committee (HHC): Terry McMillan, chair; Kelly Fajardo, vice-chair

- House Judiciary Committee (HJC): Zach Cook, chair; Paul Pacheco, vice-chair
- House Regulatory and Public Affairs Committee (HRPAC): Yvette Harrell, chair; Bob Wooley, vice-chair

Other House committees that might be involved in reviewing disability-related bills include the committees on Safety and Civil Affairs, Ways and Means, and Business and Employment.

Budget recommendations released. Shortly before the session started, both Governor Martinez and the Legislative Finance Committee (LFC) issued their recommendations for funding for all state agencies and the programs or services they provide. Total spending levels in the two plans are nearly identical, with each calling for spending about \$6.29 billion in state funds in the coming year (state fiscal year 2016, which runs from July 1, 2015 to June 30, 2016). This is about \$141 million more than was budgeted for the current year (FY 2015), based on a December projection of that amount of "new money" being available for FY 2016. However, it is widely anticipated that projected revenues will be lower when new numbers are released in early February.

Here are a few highlights of the budget recommendations related to programs of importance to the disability community:

- **Medicaid:** The Governor and the LFC both recommend essentially full funding of this very significantly expanded program, which is expected to cover over 820,000 people by the end of the coming year - about 40% of the state's population. Under the Affordable Care Act, the federal government is covering 100% of the costs this year for those who are newly eligible as a result of expansion of Medicaid eligibility to people with incomes up to 138% of the poverty level. The LFC recommends using more of the proceeds of the Tobacco Settlement Fund to help cover the state's share of costs.
- **Developmental Disabilities waiver program and waiting list:** The LFC recommends an additional \$1 million to take around 50 individuals off the waiting list, using savings to the state from a small increase in the federal matching rate for Medicaid services. Governor Martinez did not recommend any new funding earmarked for the waiting list or any increase in funding for the program as a whole. The LFC recommends an additional \$300,000 to provide rate increase for Family Infant Toddler (FIT) provider agencies, and another \$300,000 for rate increases for DD waiver service provider agencies; the governor did not recommend any funding for rate increases. The LFC also recommends allowing the Department of Health to carry over any money left over in the DD program at the end of the year, to use in the next year, rather than giving it back (reverting it) to the state treasury.
- **Behavioral Health:** The governor and the LFC both recognize that with the large increase in Medicaid enrollment, there will need to be growth in the behavioral health portion of the Medicaid budget. Beyond that, the governor recommends an additional \$1 million for a statewide crisis access line, transitional living services, and mental health services for veterans who are not covered by Medicaid. The LFC recommends a total of \$2.5 million in new money for regional crisis stabilization units, as well as \$1.5 million for transitional and supportive housing, \$1.2 million for intense coordination of physical and mental health services ("health homes"), and \$400,000 to support and publicize the existing HSD crisis and access phone line.

Other state agency budget recommendations. There are a number of smaller 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.

Division of Vocational Rehabilitation. As usual, DVR submitted an essentially flat budget request last fall, 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. Neither the governor nor the LFC has recommended any increase in funding for DVR or for the Independent Living programs that DVR funds.

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 requested a small increase to add one new staff position dealing with accessibility of new buildings. However, neither the governor nor the LFC is recommending increased funding for the agency. The recommendations for the BIAC are also for level funding.

Developmental Disabilities Planning Council. The DDPC asked for substantial new funding - about \$1.5 million - 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. The governor recommended level funding for the DDPC; the LFC recommends an increase of about \$188,000.

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 asked for funding to hire a full time ASL interpreter on its staff. The LFC recommended approval for \$47,000 toward the expense of an interpreter, but without increasing the general fund appropriation to the commission. The governor recommends a reduction in total funding of about \$149,000.

New Mexico Commission for the Blind. The Commission requested a small increase in its budget, primarily to cover the costs of assistive technology devices to be used in its Independent Living program. However, the governor recommended no increase in state funding and a reduction in other funds of \$88,000. The LFC recommends an increase in state funds of \$64,000 but a reduction in overall spending of about \$23,000. Much of the commission's budget comes from federal revenues.

Bills and Memorials Introduced or Expected

This list is grouped by disability or subject matter and shows the bill number, sponsor, a description of the bill and the current committee assignments or action taken on the bill or memorial. See page 8 for a list of abbreviations used in this section.

Autism Services

- **HB 103** Autism License Plates. Rep. David Gallegos. This bill would authorize a specialized license plate to promote autism awareness. The plate would cost \$35, and \$25 of the fee would go to the Department of Health to support autism research, outreach and education. Awaiting committee assignments.

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. HRPAC/HJC.
- **HB 108** Priority zones for BH services. Rep. Patty Lundstrom. This bill would require the Behavioral Health Purchasing Collaborative to divide the state into “zones” based on the combined

incidence of mortality related to alcohol use, drug overdose and suicide, and give priority in funding behavioral health services to zones with the highest levels of such mortality. Local governments would be required to provide 25% match for state funding. The state would be required to provide regular reports on behavioral health funding and services to the Legislature. Awaiting committee assignments.

- **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. SEC/SPAC.
- **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. SEC/SFC.
- **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. SPAC/SFC.
- **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. SEC/SFC.
- **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.* SPAC/SJC/SFC.
- **SB 154** BH training for medical professionals. Sen. Sue Wilson Beffort. This bill provides \$12 million over a five-year period to UNM for Project Echo, to train primary care providers to screen and treat (or refer) for behavioral health issues. SPAC/SFC.
- **SB 155** Recruitment of health care professionals. Sen. Sue Wilson Beffort. This bill provides \$300,000 to the Department of Health to recruit medical, dental and behavioral health providers in New Mexico. SPAC/SFC.
- **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. SRC/SJC.

Expected legislation, not yet introduced:

- 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.
- 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.

Brain Injury

Expected legislation, not yet introduced:

- Legislation that would require Medicaid and most private insurance policies to cover certain services for persons with brain injuries.

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. SPAC/SFC.

Expected legislation, not yet introduced:

- DD Waiver waiting list plan II. There will 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 any new 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.
- Enable the ABLE Act. This bill would authorize the establishment of special savings accounts for persons with significant disabilities that occur before the age of 26. The accounts would not be counted toward the usual resource limits in determining eligibility for public benefit programs such as SSI. The recently-enacted federal ABLE Act allows the accounts but there must be state legislation authorizing them before they can be established.
- Memorial designating March as DD Awareness Month.

Education

- **HB 53.** No mandatory psychotropic medications in schools. Rep. Nora Espinoza. This bill would prohibit schools from requiring administration of psychiatric medications for students as a 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. HHC/HSCAC/HJC

Expected legislation, not yet introduced:

- 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.

Health Care – General

- **HB 139** Voluntary lay aftercare providers. Rep. Tomas Salazar. This bill would allow hospitalized patients to designate one volunteer lay care provider to be involved in discharge planning and to receive training on meeting some of the care needs of an individual once discharged from the hospital back to the patient's home. Awaiting committee assignments.

Expected legislation, not yet introduced:

- Continuity of medication coverage pending appeal. This bill would require MCOs and other insurance providers to continue to cover certain prescriptions when a consumer is pursuing an appeal of a decision by the insurer to discontinue such coverage.

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. Same as SB 88. HHC/HAFC.
- **SB 87** Housing Trust Fund. Sen. Nancy Rodriguez. This bill would provide \$5 million to the Mortgage Finance Authority to expand housing opportunities under the Housing Trust Fund. SCORC/SFC.
- **SB 88** Homeless assistance. Sen. Nancy Rodriguez. Same as HB 47. SPAC/SFC.

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. SPAC/SFC.
- **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. SPAC/SJC.
- **SB 139** Medicaid for former foster children. Sen. Michael Padilla. This bill would require the state to provide Medicaid up to age 26 for young adults who were formerly in foster care, regardless of which state they lived in while in foster care. Under the ACA, people who age out of foster care are eligible for Medicaid until they turn 26 – a parallel to the ACA rule allowing young adults to stay on their parents' insurance until that age – but New Mexico has chosen to provide

such coverage only to young people who were in the New Mexico foster care system and not to those from other states. SPAC/SFC.

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. Awaiting committee assignments.

Other

- **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. HSCAC/HJC.
- **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. HRPAC/HWMC.
- **HB 72** Tax credit for LTC insurance. Rep. Christine Trujillo. This bill would provide an income tax credit for persons with a private long-term care insurance policy, equal to the annual premium for the policy (but not to exceed the total amount of a person's income tax liability). Awaiting committee assignments.
- **HB 77** Accessibility license plates for transportation agencies. Rep. Paul Pacheco. This bill would allow agencies that regularly transport clients or other persons with disabilities to obtain distinctive license plates for vehicles they own that provide such transportation so that the vehicles could legally park in designated accessible ("handicap") parking spaces. Awaiting committee assignments.
- **SB 36** Elder and Disability Court in 2nd District. Sen. Michael Padilla. 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. SJC/SFC.
- **SB 72** Interest rate cap on loans. Sen. Bill Soules. Same as HB 36. SCORC/SJC.
- **SB 181** Funding for civil legal services. Sen. Nancy Rodriguez. This bill would provide an additional \$2 million for the Civil Legal Services Commission to provide more legal services to low-income New Mexicans. *DRNM is one of many non-profit agencies that receive CLSC funding.* SJC/SFC.
- **SB 188** Regulation of youth wilderness programs. Sen. Sue Beffort. This bill would clarify that CYFD has jurisdiction to regulate and monitor wilderness programs for youth. The state's authority to regulate these programs, which often serve young adults with behavioral issues, was challenged recently. SPAC/SJC.
- **SM 3** End the marriage penalty. Sen. Jerry Ortiz y Pino. This memorial calls on the U.S. Congress to eliminate the "marriage penalty" for persons with disabilities on SSI. When two individuals on SSI get married, they are treated as a couple and their total benefits are reduced by 25% compared to their two individual benefits, and the amount of resources they are allowed to keep is also reduced by 25%. Addressing this problem will require Congressional action and the memorial calls on Congress to do so. SRC/SPAC

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.

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.

Each legislator has an office in the Capitol. This year, most House members are 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 speaking out 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.

ABBREVIATIONS USED IN THIS REPORT

Legislative Committees

HAFC	House Appropriations and Finance Committee
HEC	House Education Committee
HGEIC	House Government, Elections, and Indian Affairs Committee
HHC	House Health Committee
HJC	House Judiciary Committee
HRPAC	House Regulatory and Public Affairs Committee
HSCAC	House Safety and Civil Affairs Committee
HTPWC	House Transportation and Public Works Committee
HWMC	House Ways and Means Committee
SCORC	Senate Corporations Committee
SEC	Senate Education Committee
SFC	Senate Finance 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