



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

2016 LEGISLATIVE SESSION PREVIEW

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Disability Rights New Mexico

January 6, 2016

30-Day Session begins: Tuesday, January 19, 2016. The session ends on Thursday, February 18.

Coming Events:

Jan. 9 Pre-Legislative-Session Forum DRNM and The Disability Coalition team up to present this update on major service system changes, a preview of state budget requests and disability-related issues in the 2016 session, and a legislative advocacy training. In Albuquerque at the Jewish Community Center at 5520 Wyoming Blvd. NE (new location this year). Info at drnm.org.

Jan. 25 - 26 Disability Rights Awareness Days in Santa Fe, on Monday, Jan. 25th at the Drury Plaza Hotel (another new location this year), and on Tuesday, Jan. 26th at the State Capitol. Registration available through The Arc of New Mexico (arcnm.org).

Jan. 26 Multiple Sclerosis Action Day at the Legislature

What to expect in the 2016 session

There is very little difference in the composition of the Legislature compared to last session.

Republicans picked up one more seat in the Senate when Governor Martinez appointed Ted Barela of Estancia to replace Phil Griego, who resigned his seat rather than face possible sanction or even expulsion over his role in facilitating the sale of state property when he had an undisclosed financial stake in the transaction. However, Democrats retain a clear majority, 24-18, in the Senate. On the House side, Idalia Lechuga-Tena has been appointed to the seat previously held by Stephanie Maez, who resigned her seat after criminal charges were filed against her son. Since each is a Democrat, the change does not affect the overall composition of the House, where Republicans have a 37-33 advantage.

With the entire Legislature up for election later this year, some expect this year's session to be particularly "political" and contentious. A former prosecutor, the governor is expected once again to promote a number of criminal justice initiatives, such as measures intended to deal with repeat offenders. Look for another round of battles over driver's licenses, retention of students who can't read by the end of third grade, and other "hot button" issues that have consumed recent sessions and often pitted the Republican House against the Democratic Senate. The state budget might just turn out to be one of the less controversial issues in the session.

The Budget Outlook

State revenue projections for FY 2017 – which begins July 1, 2016 – now indicate that there will be about \$232 million in “new” money available to the Legislature to spend, save, or give back through tax cuts or incentives. “New” money is the amount of state income that exceeds the amount of spending authorized in the current budget. For the current year, FY 2016, the Legislature authorized on-going spending of \$6.235 billion in state funds, and it is now estimated that state revenues in FY 2017 will total \$6.466 billion.

Last summer, the estimated amount of “new” money for FY17 was nearly \$300 million, but the downturn in the price of oil and natural gas, which generates a lot of the state’s income, has caused the estimate to drop, and some believe that the forecast will drop a bit more when new estimates are made during the session.

Governor Martinez has just released her recommended budget for FY 2017, and it calls for spending \$228 million of the \$232 million in estimated new money. The Legislative Finance Committee has not yet released its budget proposal but we expect that to come out any day now and it is expected to recommend a similar level of total spending.

Clearly, legislators will have over \$200 million available to provide additional funding to state agencies and programs, including Medicaid, public education and other programs that serve persons with disabilities. And the state began the current year with over \$500 million in its operating reserve funds (which are separate from the state’s large permanent reserve funds). So while some legislators will claim that “there’s just no money” for certain program increases, some of us will remind them that the real question is what their priorities are and which programs or interests will benefit from the new money.

DRNM hopes that your voice will be heard when these decisions are being made.

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. Now that the governor has released her official budget proposal, officials in most of those agencies will now support the governor’s proposal regardless of what they asked for back in September. Highlights of the agency requests, and the Governor’s recommendations where we know them, are noted briefly below. We don’t know yet what the LFC will recommend for these agencies.

Human Services Department. At a legislative hearing last month, HSD estimated that it will need an additional \$85 million in state funding to cover the cost of the Medicaid program in FY 2017. About \$41 million of that is the state’s 5% share, for half a year, of the costs for covering people who are newly eligible for Medicaid under the Affordable Care Act. HSD estimates that nearly 260,000 of these newly eligible adults will be enrolled by the end of the coming fiscal year. A similar amount of new money is needed to cover cost increases in the program due to higher medical costs and other factors. The requested budget increase will be partially offset by increased federal funding resulting from a small increase in the federal share of program costs and by implementation of “cost containment” steps such as reduced payment rates to the four Medicaid managed care companies.

The governor’s budget recommendation is for a total of \$69 million in new money, plus an extra \$20.7 million in supplemental funding for the current year. HSD’s total request for state funding of Medicaid in FY 17 is \$977 million. This level of state funding is projected to generate more than \$5.1 *billion* in federal funds coming to New Mexico.

For the Behavioral Health Services Division, HSD and the governor are requesting essentially a flat budget – about \$40 million in state funds. However, the division plans to expand services, as Medicaid expansion has yielded state savings because federal funds are now covering services previously paid for entirely with state funds. HSD plans to use some of the projected savings on piloting new services not covered by Medicaid, prevention services targeted to children, and the establishment of a Peer Empowerment center.

Department of Health. For the first time in recent years, DOH requested additional funds from the Legislature – \$3 million – to bring people off the waiting list and put them into the DD waiver program. The governor’s recommendation is for \$1 million – much less than the original DOH request but the first time since her first year in office that she has requested an increase. DOH did not request any funding for provider rate increases or for Family Infant Toddler services.

DOH is projecting that they will need significant additional funding in the current fiscal year to meet their obligations under the *Waldrop* lawsuit settlement. That agreement calls for DOH to provide and fund waiver services that are clinically justified, and to support an independent professional review of proposed service plans and budgets. In addition, DOH projects that it will need an increase in its budget for the current year, as well as a one-time special appropriation, to meet its *Jackson* lawsuit obligations. To meet these combined needs, the governor is requesting an additional \$3.52 million in state funds for FY 2016, which will raise the Department’s base (on-going) budget, as well as a one-time special appropriation of \$3.54 million. With federal matching funds, these additional appropriations would generate a total of \$6.02 million in supplemental base budget funding and \$5.69 million in one-time spending.

Division of Vocational Rehabilitation. DVR asked for \$876,000 in additional funds for FY 2017. More than half this total – \$466,000 – was to replace funding that has been previously transferred to DVR from the NM Commission on the Deaf and Hard of Hearing but which NMCDHH now wants to retain to meet their own needs. Another \$410,000 was requested in order to fully match the \$19.5 million in available federal funds. The governor’s budget recommendation includes only the \$466,000. DVR has noted that it is now required by federal law to spend at least 15% of its federal funds on transition of school age youth. In its original budget proposal, DVR indicated that if it does not get all of the additional funds it was requesting, the agency would have to reduce current service levels to adults to meet the new federal requirement.

DVR requested a supplemental appropriation of \$325,600 for FY 2016 in order to match all of the available federal funding, but this is not in the governor’s request. DVR did not request any additional funds for Independent Living services.

Governor's Commission on Disability. GCD’s original budget proposal requested extra funding to add one new staff position dealing with accessibility of new buildings, with an otherwise flat budget for other agency services. The governor’s budget omits the extra staff person and is a completely flat budget. The agency hopes to use some of its fund balance to begin supporting a program of home modifications for accessibility.

Developmental Disabilities Planning Council. The DDPC asked for funding for additional staff and for 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 guardianship program. The governor’s budget proposal includes an additional \$179,000 in state funds plus \$348,000 in other funding for the guardianship program, but it cuts \$51,000 in state funding out of other DDPC programs.

Anticipated Legislative Proposals: 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 Wednesday, February 3rd. Since this is a “short” session of the legislature with a limited agenda, a few of the bills listed here will not be “germane” – and therefore won’t move forward in the Legislature – unless the governor provides a “message” authorizing action on the topic.

Autism

Pre-Filed:

- **SB 62** Autism funding and EPSDT. Sen. Nancy Rodriguez. This bill would require HSD to assure that every child with a diagnosis of autism spectrum disorder have access to Medicaid EPSDT screening and services. The bill would also appropriate a total of \$11.5 million to the Department of Health and the Public Education Department for various programs and services for individuals with autism.

Behavioral Health/Mental Health

Pre-Filed:

- **HB 51** 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.
- **HB 88** Housing for the homeless. Rep. Tomas Salazar. This bill appropriates \$2.5 million to HSD for supportive housing, case management, skills training and other services to provide permanent housing for persons who are homeless, or at serious risk of homelessness, and who are mentally ill.
- **SB 24** EPSDT screening requirements. Sen. Jerry Ortiz y Pino. This bill requires HSD to issue regulations to ensure that all children on Medicaid get screened by age 5 for behavioral health, developmental disabilities and substance abuse. HSD would have to establish a schedule for such screenings to take place.
- **SB 66** Behavioral health training for EMTs. Sen. Jerry Ortiz y Pino. This bill appropriates \$100,000 to the Department of Health to provide behavioral health training to Emergency Medical Technicians (EMTs) around the state.
- **SB 67** Behavioral health apprenticeships. Sen. Jerry Ortiz y Pino. This bill would provide \$500,000 to NM Highlands University to create a program through which individuals, especially those from minority backgrounds, would serve as apprentices in behavioral health service agencies. The apprentices and the agencies they work for would provide behavioral health services to low income individuals.
- **SJM 1** Reconvene the J. Paul Taylor Task Force. Sen. Jerry Ortiz y Pino. This memorial calls for the re-establishment of the J. Paul Taylor task force, which for the past few years has developed recommendations for mental health services for infants and children.

Expected:

- The SJM 4 Task Force has recommended an appropriation to expand the Linkages program. This is a supported housing voucher program for persons with severe mental illness who are homeless or at risk of homelessness. The Mortgage Finance Authority administers the rental assistance portion of the program. There will likely be a bill introduced to provide this funding, or an effort to insert such funding into HB 2, the state budget bill.
- Sen. Jerry Ortiz y Pino is expected to introduce a bill appropriating \$550,000 for school based health services, including behavioral health.

- Senator Mary Kay Papen is expected to introduce again a bill that would authorize court-ordered outpatient mental health 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 opposed this bill in the 2015 session, noting that it could apply to individuals who are legally competent to make their own decisions, not currently a danger to themselves or others, and not accused of any crime.*

Developmental Disabilities

Pre-Filed:

- **HB 61** Authorizing ABLE accounts in New Mexico. Rep. Sheryl Williams Stapleton. This bill would authorize the establishment of tax-free savings accounts for persons with disabilities. It would allow individuals to accumulate savings of up to \$100,000 while still remaining eligible for public benefits such as SSI (which currently has a resource limit of just \$2,000), and use those savings for disability-related purposes such as home modifications, education, transportation and job-training.
- **SB 21** “Brittany” Alerts. Sen. Jacob Candelaria. Modeled on existing “Amber” Alerts for missing children and “Silver” Alerts for missing elders, this bill would authorize the issuance of public alerts when a person with developmental disabilities goes missing in circumstances where there is concern for the person’s health or safety.
- **SB 36** DD waiver waiting list report and funding. Sen. Bill Soules. This bill would require the Department of Health 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. 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.
- **SB 50** Rate increases for SGF providers. Sen. Nancy Rodriguez. This bill would provide \$5 million for increases in reimbursement rates to providers of direct services to persons with developmental disabilities, when the services are funded only by state general fund dollars.
- **SB 51** Rate increases for SGF providers. Sen. Nancy Rodriguez. This bill provides \$5 million for rate increases for agencies that provide Family Infant Toddler services.
- **SB 54** Rate increases for SGF providers. Sen. Nancy Rodriguez. This bill provides \$5 million for rate increases for agencies that provide DD waiver services.

Education

Pre-Filed:

- **SB 39** Pilot project for educational justice. Sen. Howie Morales. This bill appropriates \$150,000 to the Children Youth and Families Department to establish a pilot program in at least two counties that would increase school-based supports for students with disabilities so that they are not pushed into the juvenile justice system. The pilot programs would promote the use of positive behavioral supports and better collaboration between the juvenile justice system and the public schools.

Expected:

- Rep. Jim Smith will introduce a bill to restrict use of seclusion/restraint in public schools. The bill would limit use of restraints to emergency situations and prevent the use of seclusion or restraint as a planned intervention in IEPs.
- There may be a memorial introduced calling for the Division of Vocational Rehabilitation, the Public Education Department and the public schools to work together to assure implementation of new federal requirements for transition planning for youth with disabilities beginning at age 14.

Sensory Impairments

Pre-Filed:

- **HB 21** Optometrists certifying blindness. Rep. Jimmie Hall. This bill would authorize optometrists to diagnose and certify people as blind, for purposes of establishing eligibility for services from the NM Commission for the Blind. Present law allows only ophthalmologists to certify blindness for this purpose.
- **HB 70** Hearing aids and assistive listening systems. Rep. Carl Trujillo. This bill would require audiologists and hearing aid dispensers to provide information about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems.

Other

Pre-Filed:

- **HB 25** Parking placards for agencies. Rep. Paul Pacheco. This bill would allow agencies to obtain accessible parking placards for vehicles that they own or lease if those vehicles are primarily used to transport persons with significant mobility impairments.

Expected:

- There may be a bill introduced to provide a tax credit of up to \$5,000 for expenditures on home modifications for persons with disabilities who need to make their home accessible. The National MS Society is promoting this initiative.
- The “Direct Care Workforce Act” is expected to be introduced. This would create a permanent, governor-appointed Commission that would assure the fair implementation of new federal rules dealing with minimum wage and overtime protections for direct care workers, and work to make the state’s direct care program a model for the country.
- There may be legislation to allow for continuation of benefits (such as prescription drugs or particular medical treatments) during an insurance appeal process. If an insurer determines that an individual no longer needs or qualifies for a medication or treatment, the insurer would have to provide advance notice of such a decision, and to continue coverage while any appeal of the decision is underway.

Contacting your Legislators

Before the session starts on January 19, 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. 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.