



## DISABILITY RIGHTS NEW MEXICO

1720 Louisiana Blvd. NE, Suite 204 • Albuquerque, New Mexico 87110  
TEL/TTY: (505) 256-3100 • FAX: (505) 256-3184  
State-wide Toll Free 1-800-432-4682  
WEBSITE: [www.drn.org](http://www.drn.org) • EMAIL: [info@drnm.org](mailto:info@drnm.org)  
James Jackson, Executive Director

*Promoting and Protecting the Rights of Persons with Disabilities*

### DISABILITY ISSUES IN THE 2016 LEGISLATURE STATUS REPORT #1

Jim Jackson, Executive Director  
Disability Rights New Mexico  
January 25, 2016

#### **Coming Events at the Capitol:**

**Jan. 25 and 26 Disability Rights Awareness Days** Monday at the Drury Plaza Hotel Santa Fe, and on Tuesday at the State Capitol.

**Jan. 26** Multiple Sclerosis Action Day

**Jan. 27** Medicaid Advocacy Day

**Jan. 30** Behavioral Health Day

**Feb. 1** Deaf-blind Awareness Day

**Feb. 6** Justice for All Day

**Off to a fast/slow start.** The 2016 state legislative session started last Tuesday, with the usual State of the State address by Governor Susana Martinez. In the House, leadership put their top priority bills on a fast track, including proposals that address driver's licenses and compliance with federal Real ID requirements or that enhance various criminal penalties. As usual in a 30-day session, the House Appropriations and Finance Committee began meeting the week before the session began, working to develop a state budget proposal.

On the Senate side, the Finance Committee also started hearing agency budget requests before the session started and continues to meet almost daily in order to be prepared to act quickly once the state budget bill moves from the House to the Senate. Other Senate committees, though, have not yet met or have held only introductory meetings. The Senators (along with most House members) took this past Friday off – the usual practice in the first week of the legislative session.

**Hoping for a “message”.** The number of substantive bills already introduced in this year's session makes one wonder whether legislators remember that this is a 30 day session, limited to funding or tax bills and topics that the governor specifically requests legislation on. What it really means, of course, is that the sponsors of those bills hope that the governor will give them a “message” allowing them to try to move their bills through the short session. Some of the many proposals covered in this report that are dependent on a message from the governor include authorizing savings accounts for persons with disabilities (HB 61), limiting solitary confinement (HB 193, SB 140), involuntary outpatient commitment (HB 198, SB 113), public alerts for missing persons who have developmental disabilities (SB 21), limiting seclusion and restraint in public schools (HB 190) and many others.

**New money evaporates?** The continuing slide in the price of oil is leading key legislators to predict that there will be little if any new money for next year's state budget. Heading into the session, recommendations from the Legislative Finance Committee and the governor called for spending over \$230 million in additional funds that had been predicted for the coming fiscal year. Official projections for FY 2017 revenue won't come out until next week, but now predictions of gloom and doom abound. The jump in the price of oil in just the last few days may change the mood again, but look for especially fierce competition for whatever new money remains up for grabs when updated projections are issued. DRNM hopes your voice will be heard when these decisions are being made.

### **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 7 for a list of abbreviations used in this section. The deadline for introducing most bills is the half-way point of the session, which this year will be Wednesday, February 3<sup>rd</sup>. Since this is a "short" session of the legislature with a limited agenda, bills must be determined to be "germane" in order to move forward. Bills are germane if they deal with appropriations or taxation, or if the governor provides a "message" authorizing action on the topic. If bills in the list below show a referral to HRC (House Rules Committee) or SCC (Senate Committees Committee) it means that that committee will have to decide whether the bill can be acted on in the short session.

**HB 2 General Appropriations Act.** Rep. Larry Larrañaga. This is the state budget bill, providing funding for all state agencies for the year beginning July 1, 2016. The House Appropriations and Finance Committee is considering the budget recommendations from the interim Legislative Finance Committee and the governor, but the committee will make its own decisions on agency funding levels. Some of the state agency budgets of interest to the disability community include the following:

*Human Services Department.* In December, 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 the nearly 260,000 people who will be newly enrolled in Medicaid under the Affordable Care Act by the end of the coming 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 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. The LFC recommendation would increase Medicaid funding by a total of about \$56 million.

Expansion of Medicaid eligibility under the Affordable Care Act means that federal funding is now covering behavioral health services for many New Mexicans who were not previously eligible for Medicaid, yielding about \$6 million in savings for the state. HSD proposed – and the governor's budget recommends – keeping those funds in the Behavioral Health Services Division budget to continue and expand a variety of behavioral health services. The LFC has recommended diverting all of those savings plus some other funds from BHSD to cover costs in the regular Medicaid program, for an \$8 million cut that HSD has indicated would reduce or eliminate these services.

*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. Both the governor and the LFC recommended about \$1.5 million for this, though the increase appears hidden in a base budget request that is lower than the current funding level. Neither the governor nor the LFC recommended new funding for provider rate increases or for Family Infant Toddler services.

DOH is also looking for additional funding in the current fiscal year to meet its 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.

*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 previously has been 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. The LFC recommendation would continue most of the current transfer of funds from NMCDHH to DVR and provide a small increase in other funding. Neither the governor nor the LFC recommended 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 and the LFC have recommended an essentially flat budget for the agency.

*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. The LFC recommends a smaller increase for the agency but also a smaller reduction in the other DDPC programs.

### Autism

- **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. SCC/SPAC/SFC.
- **SB 112** Autism Center at NMSU. Sen. Mary Kay Papen. This bill appropriates \$359,000 to New Mexico State University to establish an Autism Research, Testing, Training and Intervention Center. SCC/SPAC/SFC.

### Behavioral Health/Mental Health

- **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. HRC.
- **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. HHC/HAFC.

- **HB 193** Limiting Solitary Confinement. Rep. Antonio Maestas. This bill would prohibit the use of solitary confinement in detention or correctional facilities for individuals under 18 and for pregnant women. It would extend this prohibition, beginning in July 2017, to persons with a known serious mental illness. Beginning in July 2018, it would limit the use of solitary confinement for all other persons to no more than 15 days in a row and no more than a total of 60 days in any 12-month period. Identical to SB 140, below. HRC
- **HB 197** Infant Mental Health Services. Rep. Don Tripp. This bill by the Speaker of the House appropriates \$100,000 to CYFD to contract for the provision of infant mental health services. HHC/HAFC.
- **HB 198** Mandated Outpatient Treatment. Rep. Paul Pacheco. This bill is identical to SB 113, described below. HRC.
- **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. SCC/SPAC/SFC.
- **SB 26** School Based Health Services. Sen. Jerry Ortiz y Pino. This bill appropriates \$550,000 to the Department of Health for school based health services, including behavioral health. SEC/SFC.
- **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. SPAC/SFC.
- **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. SPAC/SFC.
- **SB 113** Mandated Outpatient Treatment. Senator Mary Kay Papen. This bill would authorize involuntary, court-ordered outpatient mental health treatment for persons with a history of mental illness who are not currently dangerous to themselves or others but who are considered “likely” to cause harm to themselves or others at some time in the future if they go without treatment. Identical to HB 198, above. *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.* SCC/SPAC/SJC.
- **SB 140** Limit Solitary Confinement. Sen. Mary Kay Papen. This bill is identical to HB 193, above. SCC/SJC/SFC.
- **SB 169** Behavioral Health Apprenticeships. Sen. Jerry Ortiz y Pino. This is a duplicate of SB 67. SCC/SPAC/SFC.
- **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. SRC/SPAC

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.

### Brain Injury

**HB 180** Student Athlete Appeals. Rep. Bill McCamley. This bill would require that any student wanting to appeal a coach's decision to temporarily hold the student out of athletic competition as a result of a brain injury would have to appeal such a decision through the state activities association prior to seeking relief in state court. HRC.

**SB 137** Extend Protections for Young Athletes. Sen. Michael Sanchez. This bill would extend the time a student athlete would be held out of further competition after a brain injury from one week to 10 days. The bill would also prohibit non-school youth athletic activities, such as club sports, from using school grounds or facilities unless the sponsor of such activities agrees to be bound by the same brain injury rules that apply to school athletic activities. SCC/SPAC/SJC.

### Developmental Disabilities

- **HB 61** Accounts for Persons with Disabilities. 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. HRC.
- **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. SCC/SPAC/SJC.
- **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. SCC/SPAC/SFC.
- **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. SPAC/SFC.
- **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. SPAC/SFC.
- **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. SPAC/SFC.

### Education

- **HB 190** Prohibit Seclusion/Restraint in Schools. Rep. Jim Smith. This bill would prohibit the use of seclusion/restraint in public schools, except in emergency situations, and in particular prevent the use of seclusion or restraint as a planned intervention in IEPs. HRC.
- **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 they are not pushed into the juvenile justice system. The programs would promote the use of positive behavioral supports and better collaboration between the juvenile justice system and public schools. SCC/SPAC/SFC.

- **SB 87** Training for School Staff. Sen. Linda Lopez. This bill appropriates \$150,000 to PED to provide training for all teachers and school staff to work with, and meet the instructional needs of, students with special needs in the classroom. SCC/SPAC/SFC
- **SM 25** Transition Planning for Youth with Disabilities. Sen. Michael Padilla. This memorial calls on the DD Planning Council and the Center for Development and Disability at UNM to convene a task force to look at ways to improve the transition of youth with disabilities from school to work. SEC/SPAC.

### Sensory Impairments

- **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. HRC
- **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. HRC.
- **SB 70** Hearing Aids and Assistive Listening Systems. Sen. Michael Padilla. This bill is similar to HB 70, but also directs the relevant licensing board to adopt regulations requiring providers to offer such information. SCC/SPAC/SFC.

### Other

- **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. HRC.
- **HB 113** Specialty License Plates with Accessibility Logo. Rep. Sarah Maestas Barnes. This bill would direct the Motor Vehicle Division to offer an accessibility emblem on other kinds of specialty license plates for people who qualify for a traditional accessibility license plate. This would allow them to display the specialty plate but also include the accessibility emblem so they could park in accessible parking spots. HRC.
- **HB 205** Move DVR to Workforce Solutions. Rep. Candy Spence Ezzell. This bill would move the Division of Vocational Rehabilitation from the Public Education Department to the Department of Workforce Solutions, and transfer all programs and facilities of the New Mexico School for the Blind and Visually Impaired that address the needs of blind individuals over the age of 18 to the relocated DVR. Various references to DVR in state law would be changed to reflect the new location in state government. HRC.
- **SB 126** Disability Dance Program. Sen. Linda Lopez. This bill appropriates \$50,000 to the Governor’s Commission on Disability to fund a dance program for individuals with disabilities. SCC/SPAC/SFC.

### 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 would 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

You can find out who your legislators are and get their contact information on the Legislature's "Find Your Legislator" web page: [http://www.nmlegis.gov/lcs/legislator\\_search.aspx](http://www.nmlegis.gov/lcs/legislator_search.aspx).

To find your state representative from this web page, take these steps:

- Under the heading "House of Representatives", click on the link to "Search by Name, District or Address"
- Click on the link "OR Search by Address" near the top of the page.
- Enter your complete address (street, city, state and zip code) in the box provided
- Click on the "Find District" button, and in a few moments you'll see the name (and a picture) of your representative and the number of the House district. 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.

During the session, each legislator has an office in the Capitol. You can reach any legislator's office by calling the Capitol switchboard at 986-4300 and asking for your legislator. We encourage you to bring the voice of the disability community to the Legislature!

**Policy and Legislative Action Network (PLAN):** Join your friends and colleagues in working to promote favorable action on issues of concern to people with disabilities and their families. Become part of the PLAN! We'll let you know when there are opportunities to speak out on bills in the Legislature and other key issues, and give you background info and talking points; you show the power of the disability community by following up with calls or emails to public officials. Sign up with DRNM's project coordinator, Katie Gordon, at [KGordon@drnm.org](mailto:KGordon@drnm.org).

### **ABBREVIATIONS USED IN 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
HRC	House Rules 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

SCC Senate Committees 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