



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2016 LEGISLATURE POST SESSION REPORT

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Governor takes action. This past Thursday, March 9 was the deadline for the governor to act on bills passed by the legislature in the session that ended on February 18. Most of the disability-related bills that made it through the legislative process were signed into law by Governor Martinez, but she vetoed two of them. For a list and description of these bills, see page 2. A recap of disability-related bills that did not pass begins on page 3.

Budget bills approved. The governor signed the state budget bill (HB 2) with very few line-item vetoes, none of which directly affected disability programs. Due to the state's bleak revenue outlook, HB 2 reduces overall state spending in the coming year by about \$7 million. Medicaid, public education and a few other programs and agencies received small increases in funding, but most agencies will see budget cuts up to about 4%. The governor also approved HB 311, which enabled the state to avoid larger budget reductions by transferring unspent balances in a variety of accounts to the state's general fund.

Several disability-related bills signed into law. Governor Martinez signed HB 61, which authorizes persons with disabilities to save up money in special savings accounts without losing their eligibility for SSI or other benefit programs for low-income individuals. She also approved bills extending protections for student athletes to reduce brain injuries, and authorizing public alerts when a person with developmental disabilities goes missing and their health or safety is at risk. As expected, the governor also approved SB 113, a bill opposed during the session by DRNM that will authorize court-ordered outpatient mental health treatment.

Doomed by the veto pen. SB 36, which required the Department of Health to provide an annual report on the DD waiver and the waiting list for that program, was vetoed by the governor even though DOH did not oppose it during legislative committee hearings. In her veto message, the governor noted that the department secretary is available to provide any information the legislature needs. HB 70, requiring that individuals getting hearing aids be given information about connections with assistive listening systems, was also vetoed.

Looking ahead. During the "interim" period before the next legislative session, various legislative committees will be meeting. Of particular interest to the disability community will be the Health and

Human Services Committee, the Disability Concerns Subcommittee, and the Legislative Finance Committee. You can find information about the membership and meeting schedule of these and other committees on the legislature's web site, nmlegis.gov.

Looking further ahead, 2016 is an election year, and all seats in both the state Senate and House of Representatives are up for election. Primary elections will occur in June, with the general election to be held in early November. If you're not already registered to vote, do it now! You can register on-line or in person at a wide variety of locations. To register on-line, go to the Secretary of State's website at sos.state.nm.us, scroll down the homepage to the "2016 Election Information" section, and click on "Online Voter Registration". If you need information on how or where to register to vote in person, contact DRNM.

Bills and Memorials that Passed in the 2016 Legislative Session

The state budget

HB 2 General Appropriations Act. Rep. Larry Larrañaga. This is the state budget bill, providing funding for all state agencies for the fiscal year beginning July 1, 2016 (FY2017). Although the Medicaid program received an increase of \$22 million from the state general fund, this fell far short of the \$85 million increase that HSD projected the program would need. In addition, Medicaid funding in the current year will fall short because HSD did not get the full amount of the supplemental appropriation it asked for to meet the expected deficit. The cumulative shortfall for the two years comes to more than \$85 million in state funding – over \$400 million total when federal matching funds are included. That's a significant funding shortage, which will require HSD to institute a number of "cost containment" measures, including reductions in provider rates, increased costs to consumers in the form of monthly premiums and co-pays for services, and possible benefit cuts.

The budget reduces non-Medicaid behavioral health contract services by about \$2.5 million compared to the current year, and earmarks \$1 million of available funding for spending in behavioral health "investment zones", \$250,000 for inpatient psychiatric services, and \$100,000 for Native American suicide prevention.

At the Department of Health, the DD waiver program was spared from budget cuts, and there is apparently about \$800,000 in the budget that is intended to move about 40 people off of the waiting list and into the waiver program.

The DD Planning Council's Office of Guardianship saw a funding increase from Medicaid and other sources totaling nearly \$400,000, for personnel and for contractors who petition for guardianship or serve as court visitors or guardians ad litem when guardianship is proposed, or who act as guardians or treatment guardians when guardianships are established.

Most other state agencies that primarily serve persons with disabilities saw small reductions in their budgets compared to current-year funding levels.

- **HB 61** Accounts for Persons with Disabilities. Rep. Sheryl Williams Stapleton. Authorizes tax-free savings accounts for persons with disabilities that 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). The savings could be used for disability-related purposes such as home modifications, education, transportation and job training. **Signed into law.**
- **HB 70** Hearing Aids and Assistive Listening Systems. Rep. Carl Trujillo. Required 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. **Vetoed.**

- **HB 336** Reporting MH Adjudications to FBI Database. Rep. Nate Gentry and Sen. Daniel Ivey-Soto. Directs the state Administrative Office of the Courts to report to the FBI’s national instant background check system information from court determinations of mental incapacity. This bill moved through the legislature in an unusually expedited process late in the session and did not go to the Senate Judiciary Committee as would have been expected. **Signed into law.**
- **SB 21** “Brittany” Alerts. Sen. Jacob Candelaria. Modeled on existing “Amber” alerts for missing children and “Silver” alerts for missing elders, this bill authorizes 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. **Signed into law.**
- **SB 36** DD Waiver Waiting List Report and Funding. Sen. Bill Soules. Requires the Department of Health to issue an annual report regarding the waiver program and the wait list, including projections of how much it would cost over the next five years to get the waiting time down to three years or less. An appropriation of \$25 million to the Department of Health that was originally included in the bill was removed. **Vetoed.**
- **SB 113** Mandated Outpatient Treatment. Senator Mary Kay Papen. Authorizes 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. **Signed into law.**
- **SB 137** Extend Protections for Young Athletes. Sen. Michael Sanchez. Extends 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. **Signed into law.**
- **SJM 1** Reconvene the J. Paul Taylor Task Force. Sen. Jerry Ortiz y Pino. Calls for 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. **Passed.**
- **SM 25** Transition Planning for Youth with Disabilities. Sen. Michael Padilla. 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. **Passed.**

Bills and Memorials that Did Not Pass

Autism

- **SB 62** Autism Funding and EPSDT. Sen. Nancy Rodriguez. Provided for EPSDT screening and services for all children on the autism spectrum, plus \$11.5 million for various autism services.
- **SB 112** Autism Center at NMSU. Sen. Mary Kay Papen. Appropriated \$359,000 to New Mexico State University to establish an Autism Research, Testing, Training and Intervention Center.

Behavioral Health/Mental Health

- **HB 51** Gun Show Sales and Reporting MI Determinations. Rep. Miguel Garcia. Required the state to report court findings of incapacity due to mental illness to federal authorities.
- **HB 88** Housing for the Homeless. Rep. Tomas Salazar. Appropriated \$2.5 million to HSD for supportive housing and other services for homeless persons with mental illness. Identical to SB 140, below.
- **HB 193** Limiting Solitary Confinement. Rep. Antonio Maestas. Prohibited the use of solitary confinement for persons with a known serious mental illness.

- **HB 197** Infant Mental Health Services. Rep. Don Tripp. Appropriated \$100,000 to CYFD for infant mental health services.
- **HB 198** Mandated Outpatient Treatment. Rep. Paul Pacheco. Identical to SB 113, which passed.
- **HB 246** Services to Reduce Incarceration. Rep. Sheryl Williams Stapleton. Appropriated \$250,000 to HSD for services to non-violent juveniles and adults with behavioral health issues.
- **HB 287** Behavioral Health Services for Veterans, Homeless. Rep. Idalia Lechuga-Tena. Provided \$2 million to HSD for behavioral health services to veterans and homeless individuals statewide.
- **SB 24** EPSDT Screening Requirements. Sen. Jerry Ortiz y Pino. Required HSD to ensure that all children on Medicaid get screened for behavioral health and developmental disabilities. *Although SB 24 did not pass, HB 2 calls attention to this issue by stating that there is sufficient funding in the Medicaid program budget for these screenings to occur.*
- **SB 26** School Based Health Services. Sen. Jerry Ortiz y Pino. Appropriated \$550,000 to the Department of Health for school-based health services, including behavioral health.
- **SB 66** Behavioral Health Training for EMTs. Sen. Jerry Ortiz y Pino. Appropriated \$100,000 to DOH to provide behavioral health training to Emergency Medical Technicians (EMTs).
- **SB 67** Behavioral Health Apprenticeships. Sen. Jerry Ortiz y Pino. Provided \$500,000 to NM Highlands University for a service program using newly-trained professionals.
- **SB 140** Limit Solitary Confinement. Sen. Mary Kay Papen. Identical to HB 193, above.
- **SB 202** Hate Crimes Against Homeless. Sen. Bill O’Neill. Amended the existing hate crimes law to include crimes against homeless persons.
- **SB 250** Native American Suicide Prevention. Sen. George Munoz. Appropriated \$150,000 to UNM for suicide prevention for Native Americans. *HB 2 includes \$100,000 for this purpose.*
- **SB 331** Reporting MH Adjudications to FBI Database. Sen. Daniel Ivey-Soto. Similar to HB 336, which passed the legislature and was signed into law.

Brain Injury

- **HB 180** Student Athlete Appeals. Rep. Bill McCamley. Limited appeals of decisions to hold students out of athletic competition temporarily as a result of a brain injury.
- **HM 66** Brain injury insurance coverage. Rep. Deborah Armstrong. Called for a study of possible insurance coverage of a continuum of services for persons with brain injuries.

Developmental Disabilities

- **SB 50** Rate Increases for SGF Providers. Sen. Nancy Rodriguez. Provided \$5 million for rate increases for service providers funded by state general fund dollars.
- **SB 51** Rate Increases for FIT Providers. Sen. Nancy Rodriguez. Provided \$5 million for rate increases for agencies that provide Family Infant Toddler services.
- **SB 54** Rate Increases for DD Waiver Providers. Sen. Nancy Rodriguez. Provided \$5 million for rate increases for agencies that provide DD waiver services.
- **SB 246** Rate Increases for ICF/DD Providers. Sen. Nancy Rodriguez. Provided \$250,000 for rate increases for agencies that provide ICF/DD services.
- **SM 81** Classify Rett Syndrome as DD. Sen. Michael Padilla. Called on the Department of Health to include this condition within the definition of “developmental disabilities”.

Education and Higher Education

- **HB 190** Prohibit Seclusion/Restraint in Schools. Rep. Jim Smith. Prohibited use of seclusion and restraint in public schools, except in emergency situations.
- **HB 251** ENMU-Roswell Disability Program. Rep. Nora Espinoza. Appropriated \$219,500 for the special services department at ENMU-Roswell. Identical to SB 208, below.

- **SB 39** Pilot Project for Educational Justice. Sen. Howie Morales. Appropriated \$150,000 to CYFD to help divert students with disabilities from the juvenile justice system.
- **SB 87** Training for School Staff. Sen. Linda Lopez. Appropriated \$150,000 to PED to provide training for all teachers and school staff to work with students with special needs.
- **SB 208** ENMU-Roswell Disability Program. Sen. Stuart Ingle. Identical to HB 251, above.

Sensory Impairments

- **HB 21** Optometrists Certifying Blindness. Rep. Jimmie Hall. Authorized optometrists to diagnose and certify people as blind, for purposes of establishing eligibility for services.
- **HM 89** Early Hearing Loss Detection and Intervention. Rep. Terry McMillan. Called for a report on the extent to which newborns in New Mexico are screened and treated for hearing loss.
- **SB 70** Hearing Aids and Assistive Listening Systems. Sen. Michael Padilla. Similar to HB 70, which passed the legislature, but was vetoed by the governor.

Workforce Issues

- **HB 205** Move DVR. Rep. Candy Spence Ezzell. Moved the Division of Vocational Rehabilitation from the Public Education Department to the Department of Workforce Solutions.
- **HB 263** Direct Care Workforce Subcommittee. Rep. Sarah Maestas Barnes. Established a Direct Care Workforce Subcommittee of the interim Legislative Health and Human Services Committee.
- **SB 222** Direct Care Workforce Subcommittee. Sen. Michael Padilla. Identical to HB 263.

Other

- **HB 25** Parking Placards for Agencies. Rep. Paul Pacheco. Allowed disability service agencies to obtain accessible parking placards for vehicles they own or lease.
- **HB 113** Specialty License Plates. Rep. Sarah Maestas Barnes. Directed the Motor Vehicle Division to offer an accessibility emblem on other kinds of specialty license plates.
- **HB 312** Photo ID for voting. Rep. Nora Espinoza. Required a photo ID for voting in person or by absentee ballot.
- **HM 71** Service Verification. Rep. Idalia Lechuga-Tena. Called for a task force to consider visit verification systems to prevent payment for services billed but not provided.
- **SB 126** Disability Dance Program. Sen. Linda Lopez. Appropriated \$50,000 to the Governor’s Commission on Disability to fund a dance program for individuals with disabilities.
- **SB 225** Tax Credits for Home Modifications. Sen. Gay Kernan. Provided for an income tax credit up to \$5,000 toward the costs of making accessibility modifications to a home.
- **SB 278** Adverse determination appeals. Sen. Jacob Candelaria. Required continuation of insurance coverage for prescription drugs while an appeal is in process.

ABBREVIATIONS USED IN THIS REPORT

State Agencies:

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| CYFD | Children Youth and Families Department |
| DOH | Department of Health |
| HSD | Human Services Department |
| PED | Public Education Department |

Other Terms:

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| DD | Developmental Disabilities |
| DVR | Division of Vocational Rehabilitation |