



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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Disability Rights New Mexico

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All over for another year. The short 2016 legislative session ended quietly at noon last Thursday. Having reached agreements on the budget, driver's licenses, a constitutional amendment on conditions of bail, and a few crime bills, there was less rancor than some had predicted, and no melt-down in the final days. As expected, many hot-button issues fell by the wayside, but a significant number of bills and memorials managed to get through the process.

If the session was "routine" in some ways, it was not without its peculiarities. For a few days, the House appeared to question – for the first time in anyone's memory – whether bills determined to be germane and passed by the Senate would be allowed to proceed in the House or if the House would make its own germaneness determination on the Senate's bills. In an exceedingly rare (and possibly unprecedented) move, a senator's request to be assisted on the floor by an expert witness was denied. And the House Judiciary Committee took the unusual step of meeting much earlier than its announced time on the day before adjournment and cutting short bill presentations in what appeared to be an attempt to race through its agenda while all Republican members were present and before any Democrats entered the room.

Several disability-related bills passed. Last year, Sen. Bill Soules's bill requiring the Department of Health to issue an annual report on the DD waiver waiting list died because it wasn't brought up for a vote by the House before the session adjourned. This year, the bill had a House co-sponsor, Rep. Yvette Herrell of Alamogordo, who worked hard to make sure SB 36 was heard on the busy final morning, and it passed the House unanimously with well over an hour to spare.

Some of the other bills that passed the session included HB 61, allowing ABLE savings accounts for persons with disabilities; SB 21, authorizing public alerts for missing persons with developmental disabilities; SB 137, extending brain injury protection for student athletes; and HB 336, directing the state to report court adjudications of incapacity due to mental illness to the FBI data base. SB 113, allowing court-ordered involuntary outpatient treatment, also passed. A complete list and description of the bills and memorials that passed begins on page 2.

A few bills made it close to the finish line but in the end failed to pass, including HB 205, which would have moved the Division of Vocational Rehabilitation from the Public Education Department to the Workforce Solutions Department, and HB 25, providing accessible parking placards plates for cars operated by agencies serving persons with disabilities.

We have a budget – such as it is. In the final days of the session, the House agreed to the Senate version of the state budget, which reduces overall state spending in the coming year by about \$7 million. Medicaid, public education and a few other programs and agencies received increased funding, but most agencies will see small funding cuts (due to small across-the-board reductions known as “sanding”) up to about 4%. Larger budget reductions were avoided through passage of a companion measure, HB 311, transferring (“sweeping”) unspent balances in a variety of accounts to the state’s general fund, and through spending some of the state’s cash reserves, which are anticipated to drop from about 11% down to around 5½%. Although many legislators suggested measures to increase revenues to make up for the loss of income from the gas and oil industry, opposition from the governor and House Republicans doomed such efforts.

Now it’s up to the governor. Bills that passed the legislature are now under review by Governor Martinez. She can either sign them into law, veto them, or – in the case of the budget bill – veto specific appropriations or language and sign the rest of the bill into law. If she takes no action on a bill, it does not become law; this is called a “pocket veto”. Memorials and proposed constitutional amendments that passed are not subject to her review.

The governor has until March 9 to act on legislation. If you want to encourage her to sign or veto any bills that passed the legislature, you can reach the governor's office by phone at 505-476-2200 or send an email message through her website, governor.state.nm.us. Click on "Contact and Constituent Services" at the top of the page and then on "Contact the governor", and a form to fill out will come up on your screen to send your message to Gov. Martinez.

Bills and Memorials that Passed in the 2016 Legislative Session

This list is grouped by disability or subject matter and shows the bill or memorial number, sponsor, and a brief description. See page 6 for a list of abbreviations used in this report.

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 in state funds along with about \$12 million in other funds, this fell far short of the \$85 million that HSD projected the program would need. The shortfall will require HSD to institute a number of “cost containment” measures, including provider rate reductions as well as possible benefit cuts and monthly premiums and co-pays for services.

The budget reduces non-Medicaid behavioral health funding by about \$1.5 million compared to the current year. It 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 the “sanding” process and saw only slight reductions in the budget, primarily for contracts. Although not specified in the budget bill, 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.

Although the DD Planning Council’s general budget was reduced through the sanding process, the Office of Guardianship saw an increase of resources from Medicaid and other sources totaling nearly \$400,000, for personnel and for contracts for providers.

Most other state agencies that primarily serve persons with disabilities saw small reductions in their budgets compared to current-year funding levels. This includes the Commission for the Deaf and Hard of Hearing, the Commission for the Blind, the Independent Living program administered by

DVR, and the Governor's Commission on Disability. The budget for DVR was essentially flat for state funding but included a significant reduction in federal funds.

- **HB 61** Accounts for Persons with Disabilities. Rep. Sheryl Williams Stapleton. Authorizes 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.
- **HB 70** Hearing Aids and Assistive Listening Systems. Rep. Carl Trujillo. Requires 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.
- **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 was a "dummy" bill, which was converted to this purpose through amendment on the House floor and which then bypassed the Senate Judiciary Committee on its way to final passage in the Senate.
- **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.
- **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.
- **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.
- **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.
- **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.
- **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.

Bills and Memorials that Did Not Pass

Note: The list below includes bills that were not found germane under the constitutional rules for short sessions and therefore never had a chance to move through the legislative process. The list also includes bills calling for appropriations, which rarely pass on their own because virtually all appropriations are made through the state budget bill, HB 2. With such a tight budget this year, no

additional funds associated with these bills were included in HB 2 with the exception of funding for Native American suicide prevention as called for in SB 250, as noted below.

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 mental illness to federal authorities for purposes of maintaining the federal data base of those who are prohibited from buying guns.
- **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.
- **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. This bill by the Speaker of the House 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.
- **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 who are awaiting licensure.
- **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 a clearinghouse and technical assistance 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. Directed 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. A similar bill, HB 336, did pass the legislature.

Brain Injury

- **HB 180** Student Athlete Appeals. Rep. Bill McCamley. Required 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 to appeal through the state activities association prior to seeking relief in state court.

- **HM 66** Brain injury insurance coverage. Rep. Deborah Armstrong. Called on the Governor's Commission on Disability to study the feasibility of requiring that insurance policies in New Mexico cover 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 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 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. Called on the Department of Health to include this condition within the definition of "developmental disabilities" so that such persons would be eligible for the DD waiver.

Education and Higher Education

- **HB 190** Prohibit Seclusion/Restraint in Schools. Rep. Jim Smith. Prohibited the use of seclusion/restraint in public schools, except in emergency situations, and in particular prevented the use of seclusion or restraint as a planned intervention in IEPs.
- **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 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.
- **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, and meet the instructional needs of, students with special needs in the classroom.
- **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 from the NM Commission for the Blind. Present law allows only ophthalmologists to do so.
- **HM 89** Early Hearing Loss Detection and Intervention. Rep. Terry McMillan. Called on the Department of Health to report on the extent to which newborns in New Mexico are screened and treated for hearing loss, and how the state compares to the national average for such screening and intervention.
- **SB 70** Hearing Aids and Assistive Listening Systems. Sen. Michael Padilla. Similar to HB 70, which passed the legislature, but also directed the relevant licensing board to adopt regulations requiring providers to offer such information.

Workforce Issues

- **HB 205** Move DVR to Workforce Solutions. Rep. Candy Spence Ezzell. Moved the Division of

Vocational Rehabilitation from the Public Education Department to the Department of Workforce Solutions. Changed various references to DVR in state law to reflect the new location in state government.

- **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, above.

Other

- **HB 25** Parking Placards for Agencies. Rep. Paul Pacheco. Allowed agencies to obtain accessible parking placards for vehicles they own or lease if those vehicles are primarily used to transport persons with significant mobility impairments.
- **HB 113** Specialty License Plates with Accessibility Logo. Rep. Sarah Maestas Barnes. Directed 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.
- **HB 312** Photo ID for voting. Rep. Nora Espinoza. Required a photo ID for voting in person or by absentee ballot, and provided for the issuance of free ID cards by the state for those without such an ID, if they could produce the documents needed and get to an office that would provide the ID.
- **HM 71** Service Verification to Deter Medicaid Fraud. Rep. Idalia Lechuga-Tena. Called on HSD to convene a diverse task force to look at systems such as explanation of benefit statements or telephonic or electronic visit verification systems that assure that Medicaid recipients, especially those with developmental disabilities or mental illness, are actually receiving the services that providers are billing for.
- **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, for one half of the costs of making accessibility modifications to a home, such as installing a ramp, widening doorways, installing grab bars, etc.
- **SB 278** Adverse determination appeals. Sen. Jacob Candelaria. Required the continuation of insurance coverage for prescription drugs while an appeal is in process, where the prescription was previously covered but further coverage has then been denied or terminated by the insurance company.

ABBREVIATIONS USED IN THIS REPORT

State Agencies

| | |
|-----|-----------------------------|
| 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 |