



DISABILITY RIGHTS NEW MEXICO

3916 Juan Tabo Blvd., NE • Albuquerque, New Mexico 87111

TEL: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: www.drn timer.org • EMAIL: info@drn timer.org

James Jackson, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2017 LEGISLATURE FINAL REPORT

Jim Jackson, Chief Executive Officer

Disability Rights New Mexico

April 10, 2017

Governor eliminates funding for Legislature, state universities. In a bid to force a special session of the Legislature, Governor Susana Martinez used her line-item veto power to eliminate all of next year's state funding for the Legislature and for every public institution of higher learning, including the University of New Mexico and New Mexico State University. The New Mexico School for the Deaf and the New Mexico School for the Blind are funded through the higher education section of the budget bill (HB 2), and she eliminated their funding as well. She signed the rest of the state budget bill into law with few other budget-cutting vetoes.

The revenue package (HB 202) that was passed by the Legislature to raise enough money to support the budget and build up the state's anemic savings account was also vetoed by the governor.

The governor appeared to justify her attack on colleges and universities by blaming the Legislature for not confirming all of her nominees to the Boards of Regents of the large universities during the 2017 session. However, the use of the veto to effectively eliminate targeted entities, most of which are enshrined in the state constitution, is likely unconstitutional – as is an attempt to completely de-fund the Legislature, a separate and co-equal branch of government. Legislative leaders are already considering a legal challenge to the governor's line-item vetoes.

There's no word yet from Governor Martinez on when she will call the legislators back for a special session, and it's not yet clear what the scope of such a special session will be. Will it focus on funding levels for higher education and the Legislature, and how to generate the funding needed to do so? Will she push the Legislature to reduce some of the spending levels for other state agencies that she has already signed into law? Although she has said she wants to keep the special session as short as possible, to keep down the cost to taxpayers, she has also indicated that she may add other, non-budget-related, measures to the agenda, as she did last fall when the Legislature stayed in session for a week to consider criminal law measures introduced at the governor's request. None of those bills passed, and her party lost seats in both the House and the Senate in the elections that followed.

Vetoes slash legislative gains. Governor Martinez's vetoes of a number of key bills laid waste to much of the Legislature's work of benefit to the disability community this year. Bills passed by the Legislature with strong support from self-advocates, family members, advocates and providers, but axed by the governor, include:

- HB 175, generally prohibiting the use of solitary confinement in jails and prisons for persons with severe mental disabilities, as well as for juveniles and pregnant women, while allowing for exceptions in the event of imminent harm.

- HB 85, requiring certain board and care facilities that typically house individuals with disabilities to register with the state, and making them subject to some state oversight. The homes have been totally unregulated since 2010. This bill had been amended in the Senate in order to address concerns that were raised by the Department of Health but it was vetoed by the governor anyway.
- SB 217, providing due process protections for Medicaid providers accused of fraud, in order to assure that there would be no repetition of the 2013 debacle in which 15 major mental health agencies were accused of fraud and many were put out of business, leaving many recipients of services in the lurch. All 15 agencies were eventually exonerated.
- HB 86, allowing employees of business that provide sick leave to use any such earned leave for the purpose of care-giving to families members in need.
- HB 527, expanding the scope of medical conditions that can make one eligible to receive medical marijuana and extending the period of certification of eligibility for permanent medical conditions.

Anyone with experience in the legislative process knows that it is not easy to get bills through the Legislature. Bills that pass have typically been reviewed and amended as they move through committees and floor debate, to address concerns that have been expressed. This was true of most of the bills listed above, and others vetoed by the governor, most of which had received significant bi-partisan support and passed by wide margins in their final form. Overall, Governor Martinez vetoed 52% of the bills passed by the Legislature, a new record surpassing even that of former Governor Gary Johnson, whose vetoes won him the nickname “Governor No”. But she vetoed 2/3 of the disability-related bills that passed. (These figures include bills that were “pocket vetoed” – that is, they were effectively vetoed when she took no affirmative action to either sign or veto them before the end of the 20-day period for her to act.)

Approval of seclusion and restraints bill a beacon among the rubble. The governor did, however, sign into law HB 75, which will prohibit the use of seclusion or restraint in public schools except in emergencies. This new law is an important accomplishment, and New Mexico now joins about 35 other states with similar protections. Also signed into law were SB 38, calling for training of student athletes on concussion and brain injury issues; HB 98, allowing for independent absentee voting by blind individuals, and SB 411, extending the telephone surcharge to other communication technologies to support the deaf relay program.

Governor’s Action on Bills and Memorials that Passed in the 2017 Legislative Session

- **HB 2** General Appropriation Act of 2017. Rep. Patricia Lundstrom. This is the bill that sets state spending levels for the coming year for all state agencies. As passed by the Legislature, the budget authorized a very slight increase in total spending compared to the current year. With respect to the programs and agencies of interest to the disability community, there were no major changes to their funding. For example, the Medicaid program required an additional \$42 million in state funding just to maintain the current program, even after the Human Services Department implements an additional \$16 million worth of “cost containment” measures on top of those implemented last year. However, the budget bill provided only about \$2 million in new money, creating a \$40 million deficit. Due to the state’s very favorable federal match, the state will have to cut \$200 million in total spending to save that \$40 million in state funds. There was an extra \$26

million in HB 2 for Medicaid, earmarked for an increase to hospital reimbursement rates, but that funding was vetoed by the governor.

Since projected revenue under current law was not going to be enough to support the level of spending called for in HB 2, the Legislature also passed a companion bill, HB 202, that would have increased state revenue, in order to balance the budget and increase the amount of the state's cash reserves. As noted above, the governor vetoed the revenue bill as well as the sections of HB 2 that provide funding for state colleges and universities as well as for the Legislature. There were very few other line-item vetoes that cut funding from the budget. If legislators are successful in challenging the major vetoes, the resulting budget for the year would not look very different from the one passed by the Legislature.

- **HB 75** Prohibit Seclusion and Restraint. Rep. Jim Smith. Prohibits the use of seclusion/restraint in public schools except in emergency situations. The bill requires notice to parents within 24 hours of any use of seclusion or restraint on their child, and requires schools to convene team meetings to review services to children who are subject to restraint or seclusion more than once in any 30 day period. **Signed into law.**
- **HB 85** Licensure and Oversight of Board and Care Facilities. Rep. Debbie Armstrong. Made clear that boarding homes that provide personal assistance to their residents, including assistance with taking or managing prescription drugs, must register with the Department of Health (DOH). Facilities would be subject to visitation by the Long-Term Care Ombudsman, and the Attorney General would be authorized to investigate complaints of abuse, neglect or financial exploitation of residents, which would be criminal offenses. **Vetoed.**
- **HB 86** Use of Sick Leave to Provide Care. Rep. Debbie Armstrong. Required private employers to allow employees with accumulated sick leave to use that leave to provide caregiving to family members in need of such assistance. **Vetoed.**
- **HB 87** Department of Health Diabetes Committee. Rep. Debbie Armstrong. Directed DOH to convene an inter-agency committee to identify goals and benchmarks to reduce the incidence of diabetes, improve diabetes care, and control complications of the condition. **Vetoed.**
- **HB 98** Paper Ballot for Blind Voters. Rep. Tomás Salazar. Requires the Secretary of State to establish procedures for a blind or visually impaired voter to complete a paper ballot either at a polling place or by absentee ballot. Such a process is typically available now at polling places but not for absentee voting. Extensive amendments were added to this bill that address a variety of other unrelated changes to update the state election code. **Signed into law.**
- **HB 132** Accessibility Logo on Specialty License Plates. Rep. Sarah Maestas Barnes. Allowed auto owners with a disability to obtain a specialty license plate of their choice that would also feature the logo that allows for parking in designated accessible parking spaces. **Vetoed.**
- **HB 157** Occupational Health Coverage for Firefighters. Rep. Debbie Armstrong. Established a rebuttable presumption that professional firefighters who are newly diagnosed with post-traumatic stress disorder are eligible for worker's compensation health care. **Vetoed**
- **HB 175** Limiting Solitary Confinement. Rep. Moe Maestas. Generally prohibited the use of solitary confinement in jails or prisons for children, pregnant women, and persons with serious mental illness or intellectual disabilities with functional impairments. The prohibition on pregnant women and persons with mental disability would not apply in the first five days of confinement. After that, persons with mental disability who pose a threat of harm to themselves or others could be held in solitary confinement for up to 48 hours, or longer if they pose an extreme threat of harm to others. **Vetoed**
- **HB 306** Interventions for Non-Violent Offenders. Rep. Sheryl Williams Stapleton. Directed HSD, subject to funding available, to address the behavioral health needs of non-violent adult and

juvenile offenders and connect them with resources such as housing and medical assistance, in order to reduce recidivism. **Vetoed**

- **HB 326** Financial Exploitation of Vulnerable Adults. Rep. Sarah Maestas Barnes. Requires those involved in buying or selling securities to notify Adult Protective Services and the Securities Division of the state Regulation and Licensing Department if they suspect that someone is engaged in financial exploitation of a senior citizen or an incapacitated adult. The bill also authorizes a broker or investment adviser to delay payments out of an account belonging to an elder or incapacitated adult when financial exploitation is suspected, pending a review by the state agencies. **Signed into law.**
- **HB 527** Medical Marijuana Changes. Rep. Nate Gentry. Added a significant number of medical conditions for which medical marijuana can be prescribed, and extends the eligibility certification period from one year to two years in most cases. **Vetoed**
- **SB 38** Student Athlete Training. Sen. Bill Soules. Requires schools to provide information to their student athletes about concussions and the need to protect against potential brain damage. **Signed into law.**
- **SB 69** License Plates for Disability Agencies. Sen. Sander Rue. Allowed agencies providing services to persons with disabilities to obtain accessibility license plates for their agency-owned vehicles as long as those vehicles are used primarily to transport individuals with disabilities. **Pocket Vetoed.**
- **SB 90** Changing Requirements for Prescribing Psychologists. Sen. Mary Kay Papen. Expanded the pool of medical professionals who can supervise psychologists who are going through training to become authorized to prescribe medications. The bill also made some technical changes to the law allowing trained psychologists to prescribe medications. **Pocket Vetoed.**
- **SB 171** Limiting Referrals by LTC Ombudsman. Sen. Gay Kernan. Requires volunteers or staff of the Long-Term Care Ombudsman to obtain consent from residents of long-term care facilities, or their representatives, before referring suspected cases of abuse or neglect to Adult Protective Services or law enforcement, with certain exceptions. The bill is intended to assure compliance with recent changes to the federal Older Americans Act. **Signed into law.**
- **SB 188** Lottery Scholarship Eligibility. Sen. Liz Stefanics. Made students with disabilities who had to attend an out-of-state high school in order to receive an appropriate education eligible for lottery scholarships to New Mexico universities. **Vetoed**
- **SB 217** Due Process Protections for Medicaid Providers. Sen. Mary Kay Papen. Provided due process protections for Medicaid providers who are suspected of fraud, and clarifies the definition of fraud. This bill was in response to actions by the Human Services Department (HSD) in 2013 that put many long-time behavioral health provider agencies out of business; all of those providers have since been exonerated of fraud by the Attorney General. **Pocket Vetoed.**
- **SB 411** Extending Assessment Base for Relay Funding. Sen. Nancy Rodriguez. Provides that the surcharge on telephone service, which funds the relay service for persons with hearing impairments, is extended to Voice Over Internet Protocol and other arrangements that are based on newer technologies rather than traditional telephone service. Funding for the relay service has been decreasing as businesses and consumers have switched to these new technologies. **Signed into law.**

Memorials that Passed in the 2017 Legislative Session

Memorials are not subject to approval or veto by the governor, but do not have the force of law. The following memorials of particular interest to the disability community were passed this year.

- **HM 51** Autism Task Force. Rep. Liz Thomson. Calls on the UNM Center for Development and Disability to convene a task force to develop recommendations to better serve older youth and adults with autism, with a focus on developing funding mechanisms and in-state facilities and resources.
- **SJM 2** Add Rett Syndrome to DD Waiver List. Sen. Michael Padilla. Calls on the Department of Health to include Rett Syndrome as a qualifying condition for eligibility for the Developmental Disabilities waiver program.
- **SJM 6** Issues Affecting Direct Care Workers. Sen. Jerry Ortiz y Pino. Calls for a task force to review and make recommendations regarding issues affecting direct care workers, including implementation of federal protections under the Fair Labor Standards Act and promoting a stable and adequate workforce to meet the needs of growing populations of seniors and persons with disabilities in New Mexico.
- **SM 1** Recognizing Family Caregivers. Sen. Bill O’Neill. Recognizes the contributions of caregivers and calls for support of measures to assist or compensate them for their services.
- **SM 79** Autism Task Force. Sen. Linda Lopez. Identical to HM 51, above.

Bills and Memorials that Did Not Pass

Autism Services

- **HB 367** Removing Limitations on Autism Coverage. Rep. Liz Thomson. Amended existing state law to remove the age limits and dollar caps on insurance coverage of certain therapies for persons with autism, and required any co-pays to be consistent with other covered health services.
- **HB 403** Medicaid-funded Autism Services. Rep. Liz Thomson. Mandated Medicaid coverage of autism services without age or annual cost limitations and without co-pays.

Behavioral Health/Mental Health

- **HB 136** Rapid Re-housing. Rep. Tomás Salazar. Appropriated \$2 million to provide services and supports to homeless persons to help them obtain and maintain permanent housing.
- **HB 395** Tri-county Behavioral Services Project. Rep. Rudy Martinez. Appropriated \$235,000 for a program serving Grant, Luna and Hidalgo Counties to provide support services to persons with mental illness in the criminal justice system to promote re-integration and reduce recidivism.
- **SB 83** Carve Out Behavioral Health. Sen. Jerry Ortiz y Pino. Prohibited HSD from providing Medicaid-funded behavioral health services through any managed care program.
- **SB 84** Add Members to BH Collaborative. Sen. Jerry Ortiz y Pino. Added representatives of the behavioral health provider association, the New Mexico Association of Counties and the Municipal League to the state Behavioral Health Purchasing Collaborative.
- **SB 273** Housing and Support Services. Sen. Howie Morales. Appropriated \$2.5 million to HSD to provide and housing and support services to persons with behavioral health disabilities who are homeless or at risk of homelessness.

Criminal Justice

- **HB 72** Reinstate the Death Penalty. Rep. Monica Youngblood. Re-established the death penalty in New Mexico for the murder of police officers or children. The bill provided for some limited exceptions for persons with intellectual disabilities or mental illness.

- **HB 242** Limiting Solitary Confinement. Rep. Liz Thomson. This bill was not pursued by the sponsor, in favor of a similar bill, HB 175, which passed but was vetoed.
- **HB 346** Exemption for Mental Illness. Rep. Angelica Rubio. Exempted persons with severe mental illness from prosecution for the crime of assault on a health care worker.
- **SB 185** Limiting Solitary Confinement. Sen. Mary Kay Papen. Identical to the original version of HB 175.

Education/Higher Education

- **HB 187** Funding for ENMU Special Services Program. Rep. Bob Wooley. Appropriated \$219,500 for the Special Services program at Eastern New Mexico University, which supports college students at ENMU with developmental disabilities. *HB 2 contained language directing the Department of Health to use an unspecified amount of DD funds to help support this program, but this language was vetoed by the governor.*
- **SB 397** Support Services for Students with Disabilities. Sen. Linda Lopez. Required schools to take a variety of steps to address the needs of students with disabilities affecting their behavior.
- **SB 399** Training School Staff re Special Needs Students. Sen. Linda Lopez. Appropriated \$250,000 to the Public Education Department to train all teachers, educational aides and other school staff on how to work effectively with students with special needs.

Employment

- **HB 327** Eliminate Sub-Minimum Wages. Rep. Joanne Ferrary. As amended, this bill repealed the provision in state law allowing rehabilitation agencies to pay less than the minimum wage to workers with disabilities, effective July 1, 2020.
- **HM 93** Facilitate Transition Away from Sub-minimum Wages. Rep. Joanne Ferrary. Called on the DD Planning Council to convene a group to make recommendations that facilitate transition to the elimination of authority to pay sub-minimum wages to employees with disabilities and that identify any disability population group that should be exempted from a minimum wage. This memorial, and the related bill above (HB 327), were scheduled for votes by the full House but were then withdrawn from the House schedule and given a new referral to the House Judiciary Committee. No committee hearing was held on either one, so they could not advance.

Healthcare/Medicaid

- **HB 112** Limiting Changes to Insurance Policy Drug Coverage. Rep. Bobby Gonzales. Prohibited insurance companies from increasing co-pays for a covered drug, dropping a drug from their formulary, or imposing a new requirement for prior authorization after the beginning of the annual period of the policy coverage.
- **HB 244** Step Therapy. Rep. Liz Thomson. Clarified the process that health insurers must follow in implementing a “step therapy” protocol for services or medications, and required granting of exceptions in numerous situations.
- **HB 389** Medical Equipment Sole-Source Contracts. Rep. Rebecca Dow. Required health care insurers that cover durable medical equipment (DME) to contract with any company offering such equipment and to reimburse all DME providers at the same rates.
- **SB 177** Medical Marijuana Changes. Sen. Cisco McSorley. Created presumptive eligibility for the medical marijuana program for persons with chronic, debilitating health conditions, and extended the length of time for which a certification of eligibility is valid. A similar but more limited bill, HB 527, did pass but was vetoed by the governor.
- **SB 179** Step Therapy. Sen. Liz Stefanics. Identical to HB 244, above.

- **SB 190** Equal Treatment for All DME Providers. Sen. Mary Kay Papen. Identical to HB 389, above.
- **SB 291** Limiting Changes to Insurance Policy Drug Coverage. Sen. Liz Stefanics. Identical to HB 112, above.

Self-Determination and Protective Services

- **HB 146** Financial Exploitation of Vulnerable Adults. Rep. Yvette Herrell. Made financial exploitation of a vulnerable adult a misdemeanor or felony crime, depending on the severity of the case.
- **HB 171** Aid in Dying. Rep. Debbie Armstrong. This bill allowed physicians to prescribe a lethal dose of medication that a competent adult with a terminal illness could use. The bill was amended to include additional procedural protections for persons known or believed to have mental illness or developmental disabilities.
- **SB 252** Aid in Dying. Sen. Liz Stefanics. The final version of this bill was very similar to the revised House version, HB 171, and included extra attention to determining the mental capacity of those with mental illness or developmental disability. This Senate bill made it through two committees and was debated extensively by the full Senate, but was narrowly defeated on a 20-22 vote.

Service Provider Issues

- **HB 433** Move DVR to Workforce Solutions. Rep. Candy Ezzell. Transferred the Division of Vocational Rehabilitation (DVR) from the Public Education Department to the Workforce Solutions Department but did not affect the Commission for the Blind.
- **SB 187** Licensure and Oversight of Board and Care Facilities. Sen. Mary Kay Papen. Similar to HB 85, which passed but was vetoed.

Other Disability Issues

- **HB 222** Increase Adoption Tax Credit. Rep. Alonzo Baldonado. Increased the state tax credit for families that adopt a special needs child from \$1,000 to \$1,500.
- **HB 283** Automobile Communication/Disability Registry. Rep. Liz Thomson. Authorized the Motor Vehicle Division to maintain a registry of persons whose documented disability may affect a driver's or passenger's ability to communicate with or respond appropriately to a law enforcement officer. The registry would have been based only on information provided voluntarily through the regular process of registering a vehicle.