



DISABILITY RIGHTS NEW MEXICO

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James Jackson, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2017 LEGISLATURE STATUS REPORT #2

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Disability Rights New Mexico

January 30, 2017

Coming Events at the Capitol:

This Tuesday: HLELC hearing on HB 98, absentee voting procedures for blind voters; meeting begins at 1:30 p.m. in Room 315

This Wednesday: HEC hearing on HB 75, limiting seclusion/restraint in schools; meeting begins at 8:30 a.m. in Room 309

Feb. 15: Behavioral Health Day at the Capitol

Feb. 23-24: Disability Rights Awareness Days in Santa Fe. Thursday at the Drury Plaza Hotel and Friday at the State Capitol. Registration available through The Arc of New Mexico (arcnm.org).

Solvency package on governor's desk. Three bills have now been passed by the Legislature to address the budget shortfall for the current year and must be signed or vetoed (in whole or in part) by the governor early this week. The bills reduce funding for most public schools by about \$46 million, reduce spending in a few targeted programs, and sweep up unspent money in various government funds. This would generate about \$216 million for the state's checking account and leave less than 3% of annual state spending in reserve by June 30. A fourth solvency bill, to eliminate certain capital outlay projects and refinance others, has not yet cleared the legislature. There are no cuts in these bills to the Medicaid program or the Developmental Disabilities waiver program.

Although the bills passed the Senate with little if any opposition, the House split along party lines. Republicans strongly objected to a reduction in an economic development fund and to the school funding reduction, although the final cut to the public education budget was far less than originally proposed by Governor Martinez. The governor has the power to veto specific provisions in these solvency bills and could thus eliminate the cut to the development fund while signing other provisions into law. The likelihood of partial or entire vetoes appeared to increase after the governor vetoed an unrelated and hotly debated bill to fund the legislative session itself and provide emergency funding to the judiciary, increasing partisan tension in the House.

More disability-related bills introduced. Several new bills and a memorial of interest to the disability community were introduced last week. These included two proposals to regulate the "step therapy" requirements of many insurance policies, a bill to provide procedural protections for Medicaid providers who might be accused of fraud, two more proposals to prohibit solitary confinement of persons with severe mental illness (there are now three such bills), another bill to

regulate currently-unlicensed boarding homes, and a memorial to study issues affecting the direct care workforce. More bills of interest are expected over the next few weeks.

Bills and Memorials in the 2017 Session

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 6 for a list of abbreviations, including legislative committees, used in this section. The deadline for introducing most bills is the half-way point of the session, which this year will be February 16th.

The FY 2018 State Budget

HB 2 General Appropriation Act of 2017. Rep. Patricia Lundstrom. The House Appropriations and Finance Committee has begun hearings on state agency budgets, a process which will continue through the middle of February, when they will present to the House their final recommendations for HB 2, setting spending levels for all state agencies for the coming year (FY 2018).

The Human Services Department projects that it will need \$42 million in additional state funding to support the Medicaid program, a figure that assumes the department will save around \$12 million by imposing co-pays and premiums on certain Medicaid recipients. The request reflects less than a 5% budget increase and is about equal to the amount the state needs to cover the slight drop in the federal share of the cost of covering newly eligible adults pursuant to the Affordable Care Act. That federal share remains very high at 94.5% for state FY 18 - which means the feds pick up about \$19 of every \$20 spent for coverage of those individuals.

HAFC has made a preliminary decision to keep state funding for Medicaid at its current level, which will under-fund the Medicaid program by \$42 million. That may require HSD to impose additional co-pays and/or reduce benefits for most Medicaid participants – including eliminating most dental services for adults. Medicaid might also have to stop paying its share of assessments to cover individuals with serious medical conditions in the state’s high-risk pool and for operations of the health insurance exchange; these costs, the majority of which is picked up by the federal government when paid through Medicaid, would be shifted to the private insurance market, leading to higher premiums for everyone buying insurance in the state.

HAFC has also tentatively decided to transfer \$1 million in state funding out of the DD program at the Department of Health, as recommended by the governor. A slight increase in the federal share of program costs means that the department can maintain the current number of participants in the program while spending \$1 million less in state money. The Legislative Finance Committee had originally recommended keeping that money in the program and using it to move 62 people off of the waiting list and onto the waiver. That will not happen if the preliminary decision of the HAFC remains in the final version of the bill.

Behavioral Health/Mental Health

- **HB 136** Rapid Re-housing. Rep. Tomás Salazar. Appropriates \$2 million to provide services and supports to homeless persons to help them obtain and maintain permanent housing. HAFC
- **HB 157** Occupational Health Coverage for Firefighters. Rep. Debbie Armstrong. Establishes a rebuttable presumption that professional firefighters who are newly diagnosed with mental illness

or post-traumatic stress disorder are eligible for worker's compensation health care.
HHHC/HLEDC

- **SB 83** Carve Out Behavioral Health. Sen. Jerry Ortiz y Pino. Prohibits HSD from providing Medicaid-funded behavioral health services through any managed care program. SPAC/SFC
- **SB 84** Add Members to BH Collaborative. Sen. Jerry Ortiz y Pino. Adds representatives of the behavioral health provider association, the NM Association of Counties and the Municipal League to the state Behavioral Health Purchasing Collaborative. SPAC/SFC

Brain Injury

- **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. Passed SPAC, pending in SEC

Caregivers - Professional and Family/Volunteer

- **HB 86** Use of Sick Leave to Provide Care. Rep. Debbie Armstrong. This bill would require private employers to allow employees with accumulated sick leave to use such leave to provide caregiving to family members in need of such assistance. Passed HHHC, pending in HJC
- **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. SRC/SPAC
- **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. SRC/SPAC
- **SJM 9** Issues Affecting Direct Care Workers. Sen. Jerry Ortiz y Pino. Identical to SJM 6, above, and appears to be an unintentional duplicate. SRC/SPAC

Criminal Justice

- **HB 72** Reinstate the Death Penalty. Rep. Monica Youngblood. Reinstates the death penalty in New Mexico for the murder of police officers or children. The bill establishes some exceptions for defendants with intellectual disabilities or mental illness though concerns remain regarding those provisions. HCPAC/HJC/H AFC
- **HB 175** Limiting Solitary Confinement. Rep. Moe Maestas. Prohibits the use of solitary confinement in jails or prisons for persons with severe mental illness, effective July 1, 2018. HCPAC/HJC
- **HB 242** Limiting Solitary Confinement. Rep. Liz Thomson. Identical to HB 175, above. HSIVC/HJC
- **SB 185** Limiting Solitary Confinement. Sen. Mary Kay Papen. Identical to HB 175 and HB 242, above. SPAC/SJC

Developmental Disabilities

- **SJM 2** Rett Syndrome. Sen. Michael Padilla. Calls on the Department of Health to include Rett Syndrome as a qualifying condition to be eligible for the DD waiver program. A person with Rett Syndrome would not typically qualify under current standards. SRC/SPAC

Education/Higher Education

- **HB 75** Prohibit Seclusion and Restraint. Rep. Jim Smith. Prohibits the use of seclusion/restraint in public schools except in emergency situations. HEC/HJC
- **HB 187** Funding for ENMU Special Services Program. Rep. Bob Wooley. Appropriates \$219,500 for the Special Services program at Eastern New Mexico University, which supports college students at ENMU with developmental disabilities. HEC/HAFC
- **SB 188** Lottery Scholarship Eligibility. Sen. Liz Stefanics. Makes 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. SEC/SFC

Healthcare/Medicaid

- **HB 87** Department of Health Diabetes Committee. Rep. Debbie Armstrong. Directs 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. HHC/HJC
- **HB 112** Limiting Changes to Insurance Policy Drug Coverage. Rep. Bobby Gonzales. Under this bill, insurance companies could not increase co-pays for a covered drug, drop a drug from their formulary, or impose a new requirement for prior authorization after the beginning of the annual period of the policy coverage. Insurers would have to provide at least 90 days notice before the beginning of a plan year if such changes are proposed for that plan year. HHC/HJC
- **HB 244** Step Therapy. Rep. Liz Thomson. Clarifies the process that health insurers must follow in implementing a “step therapy” protocol for services or medications, and requires granting of exceptions in numerous situations. Step therapy requires an individual to try common or lower-cost prescription drugs or medical treatments first and show that they don’t work before use of a more expensive drug or treatment is allowed. Identical to SB 179, below. HHC/HJC
- **SB 8** Medical Marijuana Changes. Sen. Cisco McSorley. Creates presumptive eligibility for the medical marijuana program for persons with chronic, debilitating health conditions, and extends the length of time for which a certification of eligibility is valid. SPAC/SJC
- **SB 179** Step Therapy. Sen. Liz Stefanics. Identical to HB 244, above. SPAC/SCORC

Self-Determination and Protective Services

- **HB 146** Financial Exploitation of Vulnerable Adults. Rep. Yvette Herrell. Makes financial exploitation of a vulnerable adult a misdemeanor or felony crime, depending on the severity of the case. Failure to use the adult’s available resources for needed support and maintenance, resulting in neglect, is included as a crime. HHC/HJC/HAFC
- **HB 171.** Aid in Dying. Rep. Debbie Armstrong. This bill enacts the End of Life Options Act, which would allow physicians to prescribe a lethal dose of medication that a competent adult with a terminal illness could use. *This controversial proposal is expected to generate considerable attention and debate, and a workshop on this bill will be offered on the first day of Disability Rights Awareness Day.* HHC/HJC
- **SB 171** Limiting Referrals by LTC Ombudsman. Sen. Gay Kernan. Prohibits the Long-Term Care Ombudsman from referring suspected cases of abuse or neglect to Adult Protective Services without consent from the resident or the resident’s surrogate decision-maker. The bill is supported by the Aging and Long-Term Services Department and is intended to assure compliance with recent changes to the federal Older Americans Act. SPAC/SJC

Service Provider Issues

- **HB 85** Licensure and Oversight of Board and Care Facilities. Rep. Debbie Armstrong. Makes clear that boarding homes that provide personal assistance to their residents, including assistance with taking or managing prescription drugs, have to be licensed by the Department of Health and will be subject to visitation by the Long-Term Care Ombudsman. The bill includes provisions making it a criminal offense to abuse or neglect residents of such homes. Identical to SB 187, below. HHC/HJC
- **HB 132** Accessibility Logo on Specialty License Plates. Rep. Sarah Maestas Barnes. Allows 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. Passed without recommendation by HTPWC, pending in HTRC.
- **SB 69** License Plates for Disability Agencies. Sen. Sander Rue. Allows 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 for the purpose of transporting individuals with disabilities. SCORC/SPAC
- **SB 187** Licensure and Oversight of Board and Care Facilities. Sen. Mary Kay Papen. Identical to HB 85, above. SPAC/SJC
- **SB 217** Due Process Protections for Medicaid Providers. Sen. Mary Kay Papen. Provides due process protections for Medicaid providers who are suspected of fraud, and clarifies the definition of fraud. This bill is in response to HSD's actions in 2013 that put many long-time behavioral health provider agencies out of business; all of those providers have since been exonerated by the Attorney General with respect to fraud allegations. SJC/SFC

Voting rights

- **HB 98** Paper Ballot for Blind Voters. Rep. Tomás Salazar. Requires the Secretary of State to establish procedures whereby a blind or visually impaired voter could 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. HLELC/HJC

Other Disability Issues

- **HB 222** Increase Adoption Tax Credit. Rep. Alonzo Baldonado. Increases the state tax credit for families that adopt a special needs child from \$1,000 to \$1,500. HHC/HTRC
- **SM 3** Patrick Grange ALS Awareness Day. Sen. Clemente Sanchez. Promotes public awareness of ALS by declaring Feb. 6 as "Patrick Grange ALS Awareness Day", in honor of the late UNM soccer player. Awaiting action by the full Senate.

Contacting your Legislators

You can find out who your Senator and Representative are and get their contact information on the Legislature's web page: https://www.nmlegis.gov/Members/Find_My_Legislator.

From this page, choose "Search by Name, District or your Address" for either the House of Representatives or the Senate. Then ...

- Enter your full home address in the box provided under "Your Address" and click on "Go".
- Scroll down to find a picture of your Representative or Senator.
- Click on his or her name to get contact information.
- From the same page with the picture you can choose a different political body to find out who else represents you in Santa Fe or in the U.S. Congress.

Each legislator has an office in the Capitol. You can find the office phone number in the contact information provided through the Find My Legislator function, or you can call the Capitol switchboard at 986-4300 and ask to be put through to the office of any 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.

ABBREVIATIONS USED IN THIS REPORT

Legislative Committees

HAFC	House Appropriations and Finance Committee
HCPAC	House Consumer and Public Affairs Committee
HEC	House Education Committee
HHHC	House Health and Human Services Committee
HJC	House Judiciary Committee
HLEDC	House Labor and Economic Development Committee
HLELC	House Local Government, Elections, Land Grants and Cultural Affairs Committee
HTPWC	House Transportation and Public Works Committee
HTRC	House Taxation and Revenue 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