



# 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 #4

Jim Jackson, Chief Executive Officer

Disability Rights New Mexico

February 13, 2017

### Coming Events at the Capitol

#### Today:

- House votes on HB 87 (establishing diabetes committee) and HB 98 (absentee ballots by blind voters)
- HTRC hearing on HB 132 (accessibility icon on specialty license plates) and HB 283 (MVD disability registry)

**Tuesday:** SPAC hearing on SB 171, amendments to the Long-Term Care Ombudsman Act

**Wednesday:** Behavioral Health Day at the Capitol

**Thursday:** Deadline for introduction of most new bills

**Feb. 23-24:** Disability Rights Awareness Days in Santa Fe – Thursday at Drury Plaza Hotel and Friday at the State Capitol.

**Boarding home licensure bill gains momentum.** An effort to re-establish some level of state oversight of boarding homes serving persons with mental illness and other vulnerable adults took a major step forward on Friday when the House Judiciary Committee unanimously endorsed HB 85. The bill, sponsored by Rep. Debbie Armstrong, would require all such homes that provide personal assistance to their residents to register with the Department of Health. The homes would be subject to visits from the Long-Term Care Ombudsman, and complaints of abuse or neglect of residents would be subject to investigation by the Attorney General's Medicaid Fraud Unit.

The Mayor of Las Vegas, New Mexico, Tonita Gurule-Giron, spoke in favor of the measure, as did City Manager Richard Trujillo and other local officials. Las Vegas is home to a large number of these boarding homes, and their testimony helped persuade the committee. Amendments offered by Rep. Armstrong clarified that the bill would not set state standards for the homes, though cities or counties could in the future adopt standards that the homes would have to meet. The state had regulated such homes in some fashion from 1972 until 2010.

The House is expected to vote on HB 85 later this week. A companion measure in the Senate, SB 187 sponsored by Sen. Mary Kay Papen, has not yet been heard in its first committee.

**In other action last week ...** SB 38, requiring schools to provide information to student athletes about concussions, easily passed the Senate and is now in the House, where it has been referred to HEC and HHC. HB 86, allowing employees to use sick leave they have earned for caregiving for family members, passed the House and has been referred in the Senate to SPAC and SJC. Two memorials related to caregivers, SJM 6 and SM 1, each cleared the Senate Rules Committee and are now pending

in SPAC. And two bills to regulate and provide exemptions to “step therapy” each passed their first committee assignments despite opposition from MCOs, insurers, and pharmacy benefit managers. Step therapy policies, also referred to as “fail first”, generally require a patient to try a lower cost drug or treatment before an insurer will approve a more expensive drug or treatment.

### **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 16<sup>th</sup>.

#### The FY 2018 State Budget

**HB 2** General Appropriation Act of 2017. Rep. Patricia Lundstrom. The House Appropriations and Finance Committee continues to hold hearings on state agency budgets, a process that will continue through this week. The committee is expected to adopt the bill next week, setting spending levels for all state agencies in the coming year (FY 2018). HB 2 would then be voted on by the full House. The Senate Finance Committee is also holding hearings on state agency budgets even though HB 2 has not yet come over to the Senate.

The Human Services Department projects that it will need \$42 million in additional state funding to support the Medicaid program in the coming year. The HAFC has voted temporarily not to provide that funding, but will revisit that issue before taking final action on the bill. HSD’s projection assumes additional program cuts; without the new funding, those cuts will be even deeper, as noted in an earlier DRNM report.

An increase in federal funding for the DD waiver allows the state either to keep total spending level while using less state money or to spend the same amount of state funds and use the additional money to add more people to the waiver. HAFC has tentatively decided to take the first course of action and transfer \$1 million in state funds out of the program instead of using it for the waitlist. There are now almost 6,800 individuals on that list, and the wait is over 10 years.

#### 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. Passed HHHC with amendments, pending in 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. Moved out of SPAC “without recommendation”, pending in 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. Passed SPAC, pending in SFC
- **SB 90** Changing Requirements for Prescribing Psychologists. Sen. Mary Kay Papen. Expands the pool of medical professionals who can supervise psychologists who are going through training to

become authorized to prescribe medications. The bill also makes some technical changes to the law allowing trained psychologists to prescribe medications. Passed SPAC, pending in SJC

#### 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 the Senate 31-7; referred to HEC/HHHC

#### Caregivers - Professional and Family/Volunteer

- **HB 86** Use of Sick Leave to Provide Care. Rep. Debbie Armstrong. Requires private employers to allow employees with accumulated sick leave to use that leave to provide caregiving to family members in need of such assistance. Passed the House 47-18; referred to SPAC/SJC
- **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. Passed SRC, pending in 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. Passed SRC, pending in SPAC

#### Criminal Justice

- **HB 72** Reinstate the Death Penalty. Rep. Monica Youngblood. Re-establishes the death penalty in New Mexico for the murder of police officers or children. The bill provides for some exceptions for persons with intellectual disabilities or mental illness though concerns remain regarding those provisions. HCPAC/HJC/HAFC
- **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
- **HB 346** Exemption for Mental Illness. Rep. Angelica Rubio. Exempts persons with severe mental illness from prosecution for the crime of assault on a health care worker. HHHC/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. Passed SRC, pending in 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. Passed HEC, pending in 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. Passed SEC, pending in SFC

### Employment

- **HB 327** Eliminate Sub-Minimum Wages. Rep. Joanne Ferrary. Repeals the provision in state law allowing rehabilitation agencies to pay less than the minimum wage to workers with disabilities. Federal law permits those reduced wages but allows states to bar them, as this bill would do. HHHC.

### 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. Passed HHHC and HJC, awaiting final vote in the House
- **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. Identical to SB 291, below. HHHC/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. Passed HHHC; pending in HJC
- **HB 367** Removing Limitations on Autism Coverage. Rep. Liz Thomson. Removes some of the limitations in current state law mandating health insurance coverage of occupational, physical and speech/language therapies and applied behavioral analysis for persons with autism. The bill would remove the age limitations and dollar caps on annual coverage. Those limitations are currently barred by the Affordable Care Act but remain in New Mexico’s statutes; removing them makes state law consistent with federal law and preserves these protections in the event the ACA is repealed. Similarly, the bill provides that any co-pays or deductibles for these services must be consistent with similar charges for physical health care services, as required by the ACA’s provisions mandating parity in coverage of physical and mental health care. HHHC/HCPAC
- **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. HEC
- **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. Passed SPAC, pending in SCORC
- **SB 291** Limiting Changes to Insurance Policy Drug Coverage. Sen. Liz Stefanics. Identical to HB 112, above. SPAC/SJC

### 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. Passed HHHC; further referrals to 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. Identical to SB 252, below. *This controversial proposal is generating considerable attention and debate. A workshop on this bill will be offered on the first day of Disability Rights Awareness Day.* Passed HHHC, pending in HJC
- **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. HBIC/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 intended to assure compliance with recent changes to the federal Older Americans Act. SPAC/SJC
- **SB 252** Aid in Dying. Sen. Liz Stefanics. Identical to HB 171, above

### 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, must register with DOH 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. Passed HHHC and HJC with clarifying amendments, awaiting final vote in the House.
- **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 of fraud by the Attorney General. Passed SJC, pending in SFC

### Voting rights

- **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. Passed HLELC and HJC, awaiting final vote in the House

### 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. Passed HHHC, pending in HTRC
- **HB 283** Automobile Communication/Disability Registry. Rep. Liz Thomson. Authorizes 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 be based only on information provided voluntarily through the regular process of registering a vehicle; it would be available to law enforcement agencies but not subject to public disclosure. HBIC/HTRC

### 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](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](mailto: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