



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2017 LEGISLATURE STATUS REPORT #5

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Disability Rights New Mexico

February 20, 2017

Coming Events at the Capitol

Today:

- Votes in the House on HB 85, requiring state registration of board and care facilities, and HB 132, authorizing an accessibility emblem for specialty license plates for persons with disabilities.
- Possible vote in the Senate on SJM 6, calling for a task force regarding direct care workers
- HHHC hearing on HB 327, prohibiting sub-minimum wages for persons with disabilities

Thursday: Disability Rights Awareness Day activities at Drury Plaza Hotel

Friday: Disability Rights Awareness Day at the State Capitol. Rotunda events 11:30 to 1:00

House Budget Plan Taking Shape. The House Appropriations and Finance Committee is expected to approve a state budget bill this week that presumes that the Legislature will adopt measures to bring in about \$218 million in new state revenue in the coming year. Relying on an assumption of new funding measures that have not yet been signed into law is highly unusual, but without new income, the state faces a projected deficit of nearly \$100 million in the coming year.

A wide variety of proposals have been introduced that would bring in such additional revenue. A package proposed by House leadership includes collecting state tax on internet and mail order purchases to level the playing field with local businesses, a higher tax on large trucks crossing through New Mexico, increasing the excise tax on vehicle purchases (while still keeping the rate below our neighboring states of Arizona and Texas), and providing for uniform taxes on both non-profit and for-profit hospitals. That package will get its first hearing in the House Taxation and Revenue Committee today.

Even with the new revenue built into the HAFC budget, most state agencies would see little if any increase over their current funding levels. Most of the new money will simply eliminate the deficit and allow the state to build up the cash reserves needed to avoid downgrading the state's credit rating. If the House adopts the proposed budget, it will pass over to the Senate, where it is likely to be modified.

Seclusion/Restraint Bill Advances to House Floor. This past Friday, the House Judiciary Committee unanimously approved a revised version of a bill that would significantly limit the use of seclusion and restraint on students in public schools, including charter schools. The committee substitute for HB 75, sponsored by Rep. Jim Smith of Albuquerque, allows such techniques to be used only when there is

imminent danger of physical harm and less restrictive interventions appear insufficient to prevent that harm. Schools would have to notify parents within 24 hours of any incident involving restraint or seclusion, and if two such incidents occur within a 30-day period, they would have to convene an IEP meeting or other team meeting to consider how to avoid future incidents.

Although there was widespread support for the latest version of the bill, some advocates expressed hope that additional improvements will be made as the bill progresses through the legislative process.

In other action last week, bills that would prohibit the use of solitary confinement for persons with severe mental disabilities in jails and prisons (HB 175, SB 185) cleared their first committee hearings in the House and the Senate. SB 187, which would require boarding homes serving persons with mental illness or other disabilities to be licensed by the state and be subject to visitation by the Long-Term Care Ombudsman, passed its first committee assignment; the House version is expected to be voted on today by the full House. SB 171, clarifying the authority and limitations of the Ombudsman program, gained approval by the Public Affairs Committee.

New legislation introduced this week included proposals to establish an autism task force (HM 51 , SM 79), to ensure that there would be no annual dollar limits on autism services covered in health insurance policies (HB 367), and to move DVR from the Public Education Department to the Workforce Solutions Department (HB 433). Last Thursday was the last day for introduction of most new bills in this year's session.

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 7 for a list of abbreviations, including legislative committees, used in this section.

The FY 2018 State Budget

HB 2 General Appropriation Act of 2017. Rep. Patricia Lundstrom. HAFB is expected to adopt the budget bill this week and send it to the full House for a vote. The version likely to come out of the committee provides a slight increase (\$4 million) in the coming year for the Medicaid program, but this would still leave the program well short of the funding needed to avoid cuts to services, imposition of cost-sharing, or further cuts in provider rates. The budgets for most other state agencies will be little better than current funding. There is likely to be no new money in the bill for the DD waiver, which would mean that the waiting list for the program will probably grow to over 7,000 by the end of the coming year. The wait time for services is now at least 10 years.

Autism Services

- **HB 367** Removing Limitations on Autism Coverage. Rep. Liz Thomson. Amends existing state law to remove the age limits and dollar caps on coverage of occupational, physical and speech/language therapies and applied behavioral analysis for persons with autism. 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

- **HB 403** Medicaid-funded Autism Services. Rep. Liz Thomson. Mandates Medicaid coverage of autism services without age or annual cost limitations and without co-pay requirements. HHHC/HAFC
- **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. Identical to SM 79, below. HEC
- **SM 79** Autism Task Force. Sen. Linda Lopez. Identical to HM 51, above. SRC/SPAC

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 and HLEDC with amendments, awaiting final House vote.
- **HB 395** Tri-county Behavioral Services Project. Rep. Rudy Martinez. Appropriates \$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 in order to promote successful re-integration into the community and reduce recidivism. HHHC/HAFC
- **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 Senate 37-0; referred in the House to HHHC/HSIVC
- **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. Revised version passed Senate 37-0; House committee assignments pending.
- **SB 273** Housing and Support Services. Sen. Howie Morales. Appropriates \$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. 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 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, hearing in SPAC scheduled for Tuesday, Feb. 21st
- **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 and SPAC, awaiting final Senate vote.

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. Identical to HB 242 and SB 185, below. Passed HCPAC, pending in HJC
- **HB 242** Limiting Solitary Confinement. Rep. Liz Thomson. Identical to HB 175, above, and SB 185, below. 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. HHC/HJC. HHC hearing scheduled for Monday, Feb. 20th.
- **SB 185** Limiting Solitary Confinement. Sen. Mary Kay Papen. Identical to HB 175 and HB 242, above. Passed SPAC, pending in 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. Passed SRC and SPAC, awaiting final Senate vote.

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. Revised version passed HEC and HJC, awaiting final House vote.
- **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. Passed HEC, pending in 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 the Senate 38-0; HHC/HAFC
- **SB 397** Support Services for Students with Disabilities. Sen. Linda Lopez. Requires schools to take a variety of steps to address the needs of students with disabilities affecting their behavior: adoption of “school support plans”; adoption of policies requiring that, after a first offense of violating school codes of conduct and prior to making any referral to juvenile justice or law enforcement, the school screen the child for adverse childhood experiences and develop a plan of preventive and support services for the child; and adoption of policies prohibiting seclusion and restraint except in emergencies. SEC/SJC

- **SB 399** Training School Staff re Special Needs Students. Sen. Linda Lopez. Appropriates \$250,000 to PED to train all teachers, educational aides and other school staff on how to work effectively with students with special needs. SEC/SFC. SEC hearing scheduled for Monday, Feb. 20th.

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 hearing scheduled for Monday, Feb. 20th.

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 the House 67-0; SPAC/SFC
- **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 389** Medical Equipment Sole-Source Contracts. Rep. Rebecca Dow. Requires health care insurers that cover durable medical equipment to contract with any company offering such equipment and to reimburse all DME providers at the same rates. Identical to SB 190, below. HHHC/HSIVC
- **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 190** Equal Treatment for All DME Providers. Sen. Mary Kay Papen. Identical to HB 389, above. SPAC/SJC. The bill was heard in SPAC but was not moved forward to its next committee.
- **SB 291** Limiting Changes to Insurance Policy Drug Coverage. Sen. Liz Stefanics. Identical to HB 112, above. SPAC/SJC. SPAC hearing scheduled for Tuesday, Feb. 21st.

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, temporarily tabled in HJC, which is expected to review a revised version of the bill later this week.
- **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. Revised version passed SPAC, pending in SJC
- **SB 252** Aid in Dying. Sen. Liz Stefanics. Identical to HB 171, above. 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, 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 House vote.
- **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 HTPWC and HTRC, awaiting final House vote.
- **HB 433** Move DVR to Workforce Solutions. Rep. Candy Ezzell. Transfers the Division of Vocational Rehabilitation from the Public Education Department to the Workforce Solutions Department. The bill is intended not to affect the Commission for the Blind, which is also a vocational rehabilitation agency, and it provides for a later determination of the appropriate location for the state Independent Living program. HSIVC/HAFC
- **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. Passed SCORC, pending in SPAC
- **SB 187** Licensure and Oversight of Board and Care Facilities. Sen. Mary Kay Papen. Identical to HB 85, above. Passed SPAC, pending in 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 the House 66-0; SRC/SJC

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
- **SB 411** Extending Assessment Base for Relay Funding. Sen. Nancy Rodriguez. Provides that the "tax" assessment 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 land lines. Funding for the relay service has been decreasing as businesses and consumers have switched to these new technologies.

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
HSIVC	House State Government, Indian and Veterans 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