



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.drnmm.org • EMAIL: info@drnm.org

James Jackson, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2017 LEGISLATURE STATUS REPORT #7

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Disability Rights New Mexico

March 6, 2017

Committee Hearings This Week

Today:

- SEC hearing on HB 75 (limiting seclusion/restraint in schools)
- SJC hearing continues on SB 185 (solitary confinement)
- SRC hearing on SM 79 (autism task force)
- HHHC hearing on SB 84 (membership of BH collaborative), SB 88 (lottery scholarships for students with disabilities educated out of state)
- HJC hearing on HB 112 (limiting coverage changes in insurance policies), HB 346 (exempting persons with serious mental illness from prosecution for assault on health care worker)

Tuesday:

- SIVC hearing on HB 433 (transferring DVR from PED to Workforce Solutions)
- SPAC hearing on HB 85 (registration and oversight of boarding homes), HB 86 (use of sick leave for care-giving)

Countdown to adjournment: There are now only two weeks left to this session of the legislature. It comes to an end at noon next Saturday, March 18.

Halfway home – disability bills reach second chamber. Several disability-related bills were approved this week in the chamber they started in, and are now beginning the second half of their journey through the legislature. In order to become law, a bill must first be approved by both the House and the Senate in the same form, and is then subject to approval or veto by the governor.

The House passed HB 75, prohibiting seclusion or restraint in public schools, including charter schools; as noted above, the bill will be heard in the Senate Education Committee today. The House also passed HB 244, regulating “step therapy” and creating exemptions from the process intended to assure prompt access to drugs and treatments known to be effective for the individual patient.

The Senate passed SB 217, providing due process protections for Medicaid providers who may be accused of fraudulent practices. It also passed SB 171, amending the Long-Term Care Ombudsman Act to comply with recent changes to federal law.

In other action last week, HB 175, limiting the use of solitary confinement for persons with mental illness or developmental disabilities, narrowly passed the House Judiciary Committee and will soon be subject to a final vote in the House. HB 403, eliminating age limits and annual expenditure caps on covered autism services in Medicaid, passed HHC and will now be considered in HAFC. HB 306, directing HSD to develop jail diversion services when funding is available, passed HJC and is awaiting a final vote in the House. HB 86 (allowing use of sick leave to provide care-giving to family members) was heard in SPAC but held over for additional amendments.

The usual – and unusual – twists and turns. There are rules and typical processes followed in the legislature, but events of the past week demonstrate that exceptions often seem to be the rule. The Senate version of the step therapy bill, SB 179, passed SCORC, which was its final Senate committee, but somehow picked up an additional referral to the Senate Finance Committee. Last week's scheduled SPAC hearing on HB 85 (requiring registration with limited oversight for board and care facilities) was postponed at the request of state agency officials seeking amendments – a request made and granted without the knowledge of the bill's sponsor. HB 326, addressing financial exploitation of vulnerable adults, was amended and passed in HJC, but was soon afterward removed from the calendar for final passage in the House and sent back to HJC. And in what may have been the week's most unusual event, the Senate Judiciary Committee began a hearing on Friday on SB 185, which limits the use of solitary confinement, but ended it after hearing only from a few opponents and without any opportunity for supporters to speak. The committee's chairman, Sen. Richard Martinez, instead directed the sponsor (Senate President Pro Tem Mary Kay Papen) to work on additional amendments to satisfy the opponents. The hearing will continue today.

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 8 for a list of abbreviations, including legislative committees, used in this report.

The FY 2018 State Budget

HB 2 General Appropriation Act of 2017. Rep. Patricia Lundstrom. The current version of the budget bill that sets state spending levels for the coming year provides a very small increase for a few programs such as Medicaid and public schools, while reducing the budgets of other agencies and programs, and ends up holding total state spending at about the same level as the current year budget. With very little new money for the Medicaid program, the state is likely to impose more co-pays and rate cuts and to consider reductions in services. There is no additional money for the DD waiver program, so the waiting list is likely to grow to over 7,000 by the end of the coming year. Passed the House 37-32; under review in SFC.

The budget bill also assumes that the legislature will pass measures that will produce at least \$200 million in additional revenue in the coming year. Some such revenue-enhancement bills are making some progress in the session. The Senate has passed an increase in the gasoline tax and an increase in the tax on sales of automobiles. The House has passed a package of revenue measures that facilitate tax on internet sales, eliminate a tax exemption on non-profit hospitals, increase the annual permit fee for trucks passing through New Mexico, and increase the tax on auto purchases. The governor has expressed opposition to most of these proposals.

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 insurance 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. Passed HHHC, pending in 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-pays. Passed HHHC, pending in 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. Passed HEC, awaiting final House vote
- **SM 79** Autism Task Force. Sen. Linda Lopez. Identical to HM 51, above. SRC/SPAC. *Scheduled for hearing in SRC today (3/6).*

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 post-traumatic stress disorder are eligible for worker's compensation health care. The original bill included "other mental health disorders" but that provision has been deleted from the bill. Passed House 54-14; passed SCORC, pending in SJC
- **HB 306** Interventions for Non-Violent Offenders. Rep. Sheryl Williams Stapleton. Directs 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. Passed HHHC and HJC, 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. Passed HHHC; pending in 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. As amended, the bill also calls for the members of the Behavioral Health Planning Council to be appointed by the Collaborative rather than the governor. Passed Senate 37-0; HHHC/HSIVC. *HHHC hearing scheduled for today (3/6).*
- **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; HHHC

- **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. Passed SPAC, pending in 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; passed HEC, pending in 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. *SPAC hearing scheduled for Tuesday, 3/7.*
- **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 the Senate 35-0.
- **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 the Senate 32-4; referred to HHHC

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. Heard and tabled in HCPAC.
- **HB 175** Limiting Solitary Confinement. Rep. Moe Maestas. Prohibits 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, effective July 1, 2018. Identical to HB 242 and SB 185, below. Passed HCPAC and HJC, awaiting final House vote.
- **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. Passed HHHC; *hearing in HJC scheduled for today (3/6).*
- **SB 185** Limiting Solitary Confinement. Sen. Mary Kay Papen. Identical to HB 175 and HB 242, above. Passed SPAC without recommendation; still pending in SJC after limited initial hearing. A new version will be proposed that addresses concerns raised by a representative of the county governments that operate jails. *Scheduled to be heard in SJC today (3/6).*

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 the Senate 35-0; referred to HHHC

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 the House 58-0; SEC/SJC. *SEC hearing scheduled for today (March 6)*.
- **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, tabled 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; HHHC/HAFC. *HHHC hearing scheduled for today (March 6)*
- **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. Heard in SEC, but no action taken and no further action likely.
- **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. 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. Held over in HHHC pending potential amendment; *scheduled to be heard on Wednesday (3/8)*.

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; passed SPAC, pending in 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. Revised version passed HHHC; pending in HJC. *Scheduled to be heard in HJC today (3/6)*
- **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 the House 35-30; not yet assigned to Senate committees.

- **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. Passed HHHC, pending in HSIVC.
- **SB 177** 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. Passed the Senate 29-11; passed HHHC, pending in HJC
- **SB 179** Step Therapy. Sen. Liz Stefanics. Identical to HB 244, above. Passed SPAC and SCORC, but a new referral has sent the bill to SFC.
- **SB 190** Equal Treatment for All DME Providers. Sen. Mary Kay Papen. Identical to HB 389, above. Passed SPAC, pending in SJC.
- **SB 291** Limiting Changes to Insurance Policy Drug Coverage. Sen. Liz Stefanics. Identical to HB 112, above. SPAC/SJC. Held over in SPAC after hearing.

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. HHHC/HJC/HAFC. Passed HHHC; heard and temporarily tabled in HJC.
- **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. Passed HHHC; a revised version, which includes additional procedural protections for persons known or believed to have mental illness or developmental disabilities, has been heard and debated at length in HJC but a final committee vote has not yet been taken.
- **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. Passed HBIC; passed HJC but then taken off House calendar and sent back to HJC for potential amendments.
- **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 in most circumstances. The bill is intended to assure compliance with recent changes to the federal Older Americans Act. Revised version passed Senate 39-0; HHHC/HJC.
- **SB 252** Aid in Dying. Sen. Liz Stefanics. Identical to the original version of HB 171, above. Passed SPAC, pending in SJC. Amendments similar to or identical to those added to the House bill are likely when the bill is heard in 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. The original version of the

bill had required these facilities to be licensed by DOH, but this has been changed to a more limited registration process. Facilities will 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. Passed the House 65-0; referred to SPAC/SJC. *SPAC hearing scheduled for Tuesday (3/6), and additional technical amendments are expected.*

- **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 the House 66-0; passed SCORC, pending in SPAC
- **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. *HSIVC hearing scheduled for Tuesday, March 7.*
- **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 and SPAC, awaiting final Senate vote.
- **SB 187** Licensure and Oversight of Board and Care Facilities. Sen. Mary Kay Papen. Identical to the original version of HB 85, above, and does not include the amendments made to the House version. 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 the Senate 31-9; HHC/HJC

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 HHC, 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 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. Passed SCORC, pending in SFC.

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