



## 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 POST SESSION REPORT

Jim Jackson, Chief Executive Officer

Disability Rights New Mexico

March 20, 2017

**Regular session ends, but special session likely.** This year's regular 60 day session of the legislature ended at noon this past Saturday. The House passed 137 bills and the Senate passed 140, and each passed a significant number of memorials. The vast majority of bills that passed were approved in the last few days of the session, with lengthy floor sessions in the House and the Senate involving final votes and decisions to agree or disagree with amendments. But while much was accomplished, the governor is threatening to veto the state budget bill and the package of revenue enhancements needed to support it, so the prospect of the legislature being called back for a special session in the near future seems very likely.

**Key disability bills pass.** Other than the very disappointing budget situation, this was a successful session for the disability community. The list of disability bills and memorials that passed, starting on the next page of this report, is a long one. Among the many proposals that were approved by the legislature, and are now awaiting action by governor, are these critical bills:

- HB 75, prohibiting the use of seclusion or restraint on children in public schools, except in emergency situations, and requiring parental notification of any such incidents.
- HB 85, requiring board and care facilities that provide some level of personal assistance to residents to register with the state. The homes that are affected typically house individuals with disabilities, and the bill allows for visits by the Long-Term Care Ombudsman, and investigations by the Attorney General's Office if there are complaints of abuse or neglect.
- HB 175, restricting the use of solitary confinement in jails and prisons for persons with serious mental illness, brain injury or developmental disability (as well as pregnant women and juveniles).
- SB 217, providing due process protections for Medicaid providers accused of fraud. The lack of such protections resulted in many long-established mental health providers being put out of business even though they were later exonerated, and in serious service disruptions for consumers.

Governor Susana Martinez now has to decide whether to sign or veto these and other bills passed by the legislature. Her deadline for action is April 7, and any bills that she does not sign or veto by noon that day will be "pocket vetoed" and will not become law. If you want to encourage the governor to sign or to veto any legislation, you can contact her as follows:

- Call her office at 505-476-2200
- Send an email message through her website, [www.governor.state.nm.us](http://www.governor.state.nm.us). Click on "Contact and Constituent Services" at the top of the page and then on "Contact the governor", and a form to fill out will come up on your screen to send your message to Gov. Martinez.
- Send a letter to her at:  
 Gov. Susana Martinez  
 State Capitol – Room 400  
 490 Old Santa Fe Trail  
 Santa Fe, New Mexico 87501

**Budget and revenue package approved, but will they survive?** Last week, the House approved the Senate changes to the budget bill and its accompanying revenue package and sent these bills to the governor for action. After two legislative sessions in which state agency budgets were cut significantly, this year’s budget authorizes a very small (less than ½%) increase in spending, though only a few state programs will see an increase. Since state revenue is down for various reasons, the budget assumes that the accompanying revenue package will be enacted in order to balance the budget. However, Governor Martinez has indicated she is likely to veto both proposals.

**Didn’t get the message.** When the governor vetoes bills, she does so by sending official messages to the House or the Senate indicating that she has done so. The messages usually indicate reasons for the veto, but this year, the messages on several bills that she vetoed while the Legislature was in session contained no explanation; they simply informed the House or Senate of the veto. However, the state constitution provides that if the governor vetoes a bill, she must state her objections to it. The majority leadership in both the House and the Senate have stated that since the messages in question did not cite any reasons, the vetoes are not valid and the bills in question have become law. It will probably be up to the state courts – and ultimately the state Supreme Court – to sort this out.

### **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. The version approved by the legislature provides a very slight increase in total spending compared to the current year’s budget. However, projected revenue under current law will not be enough to support this level of spending, so the Legislature also passed a companion bill, HB 202, that would increase state revenue, in order to balance the budget and increase the amount of the state’s cash reserves.

With respect to the programs and agencies of interest to the disability community, the only notable change to current spending levels is the tentative addition of \$26 million to the Medicaid program. However, that funding is contingent on the revenue package passing, and even that won’t be enough to deter the Human Services Department (HSD) from pursuing additional “cost containment” measures. The department is already moving to implement co-pays for participants, and may consider reductions in benefits in order to reduce costs. Due to the state’s very favorable federal match, the state has to cut \$5 in total spending to save \$1 in state funds.

As noted above, the governor has indicated that she is likely to veto this budget and some or all parts of the bill that provides the revenue needed to support it.

- **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.
- **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 the Department of Health (DOH). The original version of the bill would have required these facilities to be licensed by DOH, but this was changed to a more limited registration process. Facilities will be subject to visitation by the Long-Term Care Ombudsman, and the Attorney General will be authorized to investigate complaints of abuse, neglect or financial exploitation of residents, which would be criminal offenses.
- **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.
- **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.
- **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.
- **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.
- **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.
- **HB 175** Limiting Solitary Confinement. Rep. Moe Maestas. Generally 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. The prohibition on pregnant women and persons with mental disability does 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. All of the provisions related to mental disability are effective July 1, 2018.
- **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.
- **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.

- **HB 527** Medical Marijuana Changes. Rep. Nate Gentry. Adds 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.
- **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.
- **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.
- **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 to transport individuals with disabilities.
- **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.
- **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.
- **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.
- **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 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.
- **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.
- **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. These protections are currently provided for under the Affordable Care Act (ACA); the bill would have preserved them in state law in the event the ACA is repealed.
- **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 in order to promote successful re-integration into the community 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. As amended, the bill also called for the members of the Behavioral Health Planning Council to be appointed by the Collaborative rather than the governor.
- **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 exceptions for persons with intellectual disabilities or mental illness, but concerns remained regarding those provisions.
- **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.
- **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 appears to require the Department of Health to use an unspecified amount of DD funds to help support this program.*
- **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. Federal law permits those reduced wages but allows states to bar them, as this bill would have done.
- **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 compliance with minimum wage requirements for employees with disabilities and that identify any disability population group that should be exempted from a minimum wage.

### Healthcare/Medicaid

- **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.
- **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. 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.
- **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.
- **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.
- **SB 291** Limiting Changes to Insurance Policy Drug Coverage. Sen. Liz Stefanics. Identical to HB 112.

### 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. Failure to use the adult’s available resources for needed support and maintenance, resulting in neglect, was included as a crime.
- **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 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. The Commission for the Blind, which is also a vocational rehabilitation agency, was not included in the transfer; the bill provided for a later determination of the appropriate location for the state Independent Living program, which is currently administered through DVR.
- **SB 187** Licensure and Oversight of Board and Care Facilities. Sen. Mary Kay Papen. Similar to HB 85, which passed.

#### 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.