



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

2017 LEGISLATIVE SESSION PREVIEW

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Disability Rights New Mexico

January 3, 2017

60-Day Session begins: Tuesday, January 17, 2017. The session ends on Saturday, March 18.

Coming Events:

Jan. 7 Pre-Legislative-Session Forum DRNM and The Disability Coalition team up to present this update on major service system changes, political changes in Washington and Santa Fe, the state budget outlook, and a preview of disability-related issues expected in the 2017 session. The Forum also includes an afternoon legislative advocacy training. In Albuquerque at the Jewish Community Center at 5520 Wyoming Blvd. NE. Info at drnm.org.

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

Leadership and committee changes for the 2017 session

Democrats will be back in charge of the House this year, having picked up 5 seats as a result of the November elections for a 38-32 edge. Rep. Brian Egolf of Santa Fe is slated to be the new Speaker, with Rep. Sheryl Williams Stapleton of Albuquerque serving as the majority leader and Rep. Doreen Gallegos of Las Cruces as majority whip. House Republicans, back in the minority after two years in the majority, have selected Rep. Nate Gentry of Albuquerque as minority leader and Rep. Rod Montoya of Farmington as minority whip. Lisa Ortiz McCutcheon has been reported to be in line for appointment as the next Chief Clerk, replacing Denise Ramonas.

Due to the new Democratic majority, there will be new chairs for all House committees and there may be some restructuring of those committees. It's expected that Rep. Patty Lundstrom of Gallup will become the chair of House Appropriations and Finance, while Rep. Stephanie Garcia Richard of Los Alamos appears likely to become the chair of the Education Committee and Rep. Debbie Armstrong of Albuquerque the chair of a Health and Human Services Committee. The Safety and Civil Affairs Committee is likely to be abolished and a new Labor and Economic Development Committee created, while the Government, Elections and Indian Affairs Committee is proposed to be split in two, creating one committee focused on local government, elections, and other matters and another committee dealing with state government, Indian and veteran issues.

In the state Senate, Democrats experienced a net gain of two seats and increased their majority to 26-16. Sen. Peter Wirth of Santa Fe has been selected as the new majority leader, replacing Michael Sanchez of Belen who was defeated in the November election by Republican Greg Baca. Sen. Michael

Padilla of Albuquerque will again be the majority whip. Republicans retained their existing leadership team of Senators Stuart Ingle of Portales and Bill Payne of Albuquerque as minority leader and whip, respectively.

The Budget Outlook

FY 2017: We are now half way through the current state fiscal year, which ends on June 30, 2017. Although the recent special session of the Legislature resulted in a reduction in authorized state spending in this year by over \$200 million, it is now projected that there is still a gap (deficit) of \$223 million between the new authorized spending level and the amount of income the state expects to receive. Even if every dollar of the state's \$146 million in reserve funds were to be applied to the shortfall, the state would still face a \$69 million deficit. Since the state constitution does not allow for such deficits, one of the first things the 2017 Legislature will need to do is balance the current year budget and provide for at least a small cash reserve. That can be done by finding and using unspent fund balances in special accounts, by further reducing state spending, or by increasing state revenues – or some combination of the three.

FY 2018: For the coming fiscal year, which begins July 1, 2017, the projected gap between estimated revenues (\$5.929 billion) and the current authorized spending level (\$6.022 billion) is a deficit of \$93 million. If the solution to the FY 17 deficit relies mainly on short-term fixes, such as using unspent balances in special earmarked funds, then the Legislature will have to come up with either further budget cuts or income increases (or both) of at least \$93 million just to balance the budget. On the other hand, if the FY 17 deficit is resolved by raising revenues or further budget cuts, the budget deficit for FY 18 could be reduced or eliminated because those revenues or budget cuts could continue into the coming year.

Governor Susana Martinez has indicated that she is opposed to any new taxes, and so far she has not indicated any openness to changing that position. At the same time, she and her department secretaries have not identified any programs or agencies that should have their budgets cut. Democrats in the Legislature appear reluctant to cut state programs further than they have already been cut, and many are looking at potential sources of new or additional state revenues. With Democratic majorities in both the House and the Senate, we may see serious conflict between the governor and the legislature as they grapple with the budget challenge.

State Agency Budget Requests.

In light of the gloomy financial outlook, most state agencies are once again requesting “flat” budgets (i.e., no increase in funds) for the coming year. Here's a quick look at a couple of the large agencies that provide services to persons with disabilities.

Human Services Department. HSD estimates that it will need an additional \$82 million in state funding to cover the cost of the Medicaid program in FY 2018. The primary reasons for the increase are the state's slightly larger share (5.5% in state FY 18) of the cost of covering the Medicaid expansion population, growth in enrollment in traditional categories of enrollment, and the reinstatement of a federal insurer fee that was waived this past year. Some of these increased costs will be offset by an increase in the federal share of expenses for traditional Medicaid populations. The \$82 million request is also based on an assumption that HSD will reduce state expenses in the program by another \$16 million, on top of the \$26 million or more in state spending cuts that it has already implemented through provider rate reductions. The further spending cuts are likely to come from adding co-pays for prescriptions and medical services, and possible benefit cuts. HSD is already moving to implement co-pays even though these charges will cause some consumers to go without the

care they need; while this will save money for the program in the short run, it will be damaging to people's health and is likely to raise costs in the longer term. So far, no specifics are available regarding possible benefit cuts.

Medicaid enrollment has grown significantly in the past few years. As of the end of November, there were about 888,000 New Mexicans covered by Medicaid, including over 258,000 adults who became eligible due to the state's adoption of Medicaid expansion under the Affordable Care Act. By the end of the coming fiscal year (June 30, 2018) HSD expects total enrollment to hit 955,400, including 274,000 in the newly eligible adult category. Those figures represent approximately 46% and 13% of the current state population, respectively. This enrollment growth means more money is needed to maintain the program, although the federal government still pays the large majority of the cost of Medicaid and almost all of the cost of coverage for the expansion enrollees. Also, it is important to note that despite increases in the costs of services, per person spending in New Mexico's Medicaid program is actually lower than it was in the previous year. So while the program is growing, it is definitely *not* "out of control".

The Behavioral Health Division of HSD, which focuses on services and populations not covered by Medicaid, is requesting an essentially flat budget for FY 18. Funding for the division has been reduced compared to a few years ago because many adults with mental illness are now covered by Medicaid as a result of the expansion, which means the federal government pays for most of their behavioral health services, with resulting savings to the state. While the department had hoped to retain more of their state funding to provide services or serve populations not covered by Medicaid, the Legislature has refused to make those funds available in these tight budget times.

Department of Health. This is the agency that administers the Developmental Disabilities waiver programs, including the *Mi Via* self-directed program, as well as the Family Infant Toddler early intervention program. It also funds some services for persons with autism and a limited "flexible supports" program. The FY 18 budget request for those programs is the same as the approved FY 17 budget. Although there are now around 6,500 individuals on the waiting list for the DD waiver program, DOH has not requested any new funds to reduce the waiting list.

However, the department is requesting one-time funding for the DD Supports Division in the amount of \$8.8 million to cover the costs of complying with the requirements of the *Jackson* and *Waldrop* lawsuits as well as the costs of a provider rate study, an expansion of the existing dental clinic and compliance with the new CMS rules on integrated settings and person-centered planning.

Anticipated Legislative Proposals: The disability-related issues that we expect the Legislature to address this year are listed below. Listed first in each category are bills that have been "pre-filed" and have already been assigned a bill number. These bills will be introduced officially once the legislative session begins. The deadline for introducing most bills is the half-way point of the session, which this year will be Thursday, February 16th.

Behavioral Health/Mental Health

Expected:

- Rep. Moe Maestas is likely to introduce legislation that would prohibit the use of solitary confinement in jails or prisons for persons with severe mental illness
- There may be a memorial addressing the issue of family members of adults with mental illness seeking enough information to be involved with assistance and support for their family member and the confidentiality provisions of state and federal law that prohibit disclosure without consent.

Brain Injury

Pre-Filed:

SB 38 Student athlete training. Sen. Bill Soules. This bill would require schools to provide information to their student athletes about concussions and the need to protect against potential brain damage.

Developmental Disabilities

Pre-Filed:

SJM 2 Rett Syndrome. Senator Michael Padilla. This memorial 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.

Expected:

- The Association of Developmental Disabilities Community Providers (ADDCP) may be promoting legislation that would limit the liability of DD provider agencies and offer some protection against certain lawsuits.

Education

Expected:

- A bill to restrict use of seclusion/restraint in public schools is expected. The bill would limit use of restraints to emergency situations and prevent the use of seclusion or restraint as a planned intervention in IEPs.
- There may be a memorial introduced calling for the Division of Vocational Rehabilitation, the Public Education Department and the public schools to work together to assure implementation of new federal requirements for transition planning for youth with disabilities beginning at age 14.

Healthcare/Medicaid

SB 8 Medical marijuana changes. Senator Cisco McSorley. This bill would create presumptive eligibility for the medical marijuana program for persons with chronic, debilitating health conditions and extend the length of time for which a certification of eligibility is valid.

Expected:

- A proposal to limit or prohibit “step therapy” or “fail first” requirements in health insurance policies, whereby an individual has to try common or lower cost prescription drugs first and show that they don’t work before use of a more expensive drug is allowed.

Self-Determination and Protective Orders

Expected:

- A bill will be introduced that is intended to make it harder for guardians to deny visitation between family members and a protected person under guardianship. Other changes to the guardianship or conservatorship provisions in state law may be proposed as well.
- Rep. Debbie Armstrong is expected to introduce legislation authorizing “Aid in Dying”. It would allow physicians to prescribe a lethal dose of medication for competent adults with a terminal illness. The controversial proposal is expected to generate considerable attention and debate; DRNM will be looking closely at how the proposal would affect persons with disabilities.
- There may be a proposal to provide for criminal penalties for the financial exploitation of vulnerable adults.

Service Provider Issues

Expected:

- Rep. Debbie Armstrong is expected to introduce a bill to make it clear that boarding homes that provide personal assistance to their residents, including assistance with taking or managing prescription drugs, will have to be licensed by the Department of Health and will be subject to visitation by the Long Term Care Ombudsman. The bill may include provisions making it a criminal offense to abuse or neglect residents of such homes.
- Senator Michael Padilla has expressed interest in introducing legislation to set minimum physical plant standards for boarding homes and other facilities that provide housing or day services to elders and persons with disabilities.
- A memorial is expected that would call 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.
- Another attempt will be made at legislation to provide due process protections for Medicaid providers who are suspected of fraud, in response to HSD's actions in 2013 that put many long-time providers out of business. All of those providers have since been exonerated with respect to fraud allegations by the Attorney General. A related bill may be introduced to specifically prohibit HSD from using extrapolation as a method for determining how much a provider may have over-billed the state when billing errors (whether intentional or not) are discovered.
- It's likely we will see another proposal to transfer the Division of Vocational Rehabilitation (DVR) from the Public Education Department (PED) to the Department of Workforce Solutions.

Contacting your Legislators

Before the session starts on January 17, you can still contact your legislators in their home communities. 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.

Once the session starts, each legislator will have 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.