



## 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 2018 LEGISLATURE FINAL REPORT

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Disability Rights New Mexico

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**Governor signs budget bill.** Governor Susana Martinez signed most of the \$6.3 billion state budget bill into law this past Wednesday, the last day for taking action on bills passed by the Legislature. Using her line-item veto authority, she cut nearly \$12 million out of the bill, though the final version still spends about \$250 million more than in the current fiscal year and should maintain the state's cash reserves at about 10% of the total state budget. Nearly half of the vetoed funding had been earmarked for boosting the cash reserves of school districts, which took a big hit in last year's budget. The additional \$2 million to take people off the DD waiver waiting list remained in the budget and will be available to the Department of Health this coming year.

**Fewer bills vetoed.** Out of 111 bills passed by this year's legislature, the governor signed 80, although she vetoed portions of a few of those. That 72% "success" rate for bills is a far cry from last year, when she signed fewer than half of the passed bills into law, and vetoed the entire higher education section of the budget bill. A special session of the legislature had to be convened to restore that funding. Disability-related bills signed into law by the governor this year included those dealing with guardianship reform, step therapy, and crisis triage centers. A bill to provide due process protections for Medicaid providers suspected of fraud was vetoed by the governor when she chose not to act on it by the deadline for such action. This type of veto is called a "pocket veto" and does not require the explanation a governor must provide when actively vetoing a bill.

**Quiet session still ends in controversy.** As noted in earlier reports, this year's session was a relatively low-key affair, with many bi-partisan initiatives and few flare-ups. Nonetheless, the governor managed to stir up controversy at the end of the post-session period. Native American legislators noted that \$2 million out of the \$12 million in services or projects vetoed by the governor was earmarked for the benefit of Native communities.

And although the governor signed into law HB 19, the "omnibus crime package", she used a line-item veto to delete portions of the bill. The state constitution provides the line-item veto authority only for bills appropriating money; HB 19 does not appropriate money, and its title does not include the provision "making an appropriation" that is required for all appropriation bills. The governor is apparently arguing that the bill's amendment of existing state law to add a new use of an existing state fund constitutes an appropriation. It remains to be seen whether legislative leaders, who are already involved in challenging the legality of some of the governor's vetoes of bills from the 2017 session, will pursue the issue.

## **Governor's Action on Bills that Passed in the 2017 Legislative Session**

### The State Budget

**HB 2** General Appropriation Act. Rep. Patty Lundstrom. **Signed into law with numerous line-item vetoes.** This is the state budget bill for FY 2019 that includes appropriations for all state agencies.

The Medicaid program received an increase of about \$18 million, which the Human Services Department projects will be enough to fully fund the program in the coming year. The additional funding includes \$2.3 million for rate increases for behavioral health providers, \$1.4 million for rate increases for nursing homes, and \$500,000 for rate increases for primary care providers.

The budget for the DD waiver in the Department of Health includes a net increase of \$5.4 million: \$2 million is earmarked for providing services to those on the waiting list; an additional \$3.4 million is provided to meet the higher costs of serving those already in the program but could also be used for the waiting list. HB 2 also includes an extra \$2 million in the current budget year to cover an expected shortfall due to higher average per-person costs in the waiver program.

Other new funding provided in HB 2 includes:

- \$500,000 to HSD to implement the provisions of HB 19 (omnibus crime package), calling for better screening for mental illness for those in jail or prison, and linking them as needed with Medicaid to facilitate care coordination and prompt access to available services.
- \$100,000 to the Human Services Department (HSD) for autism services
- \$100,000 to HSD for housing services to individuals with mental illness who are homeless or at risk of homelessness.
- \$300,000 to the Tourism Department for Special Olympics
- \$100,000 to UNM for suicide prevention and job development on tribal lands
- \$65,000 to the DD Planning Council for the Center for Self-Advocacy to purchase a ramp van.
- \$269,000 to the Department of Health to implement the annual audit of community DD programs on an internal basis (using DoH employees and contractors under their supervision). The annual review is required by the Jackson case.

**HB 19** Criminal Justice Omnibus Bill. Rep. Nate Gentry and Sen. Daniel Ivey-Soto. **Signed into law with partial veto.** This bill, which combines the provisions of a number of other bills, requires jails and prisons to screen inmates or detainees who are in the facility for 30 days or more for substance abuse or mental health issues. The facilities will be required to facilitate access to inmates or detainees by the Medicaid program staff or Medicaid managed care organization (MCO) staff for the purpose of Medicaid eligibility determinations. Medicaid care coordinators will have to assess the needs of inmates/detainees, and link eligible individuals to available services upon their release from the correctional facilities. None of these provisions were affected by the governor's line-item vetoes.

**HB 160** Services to Non-violent Youth and Adults. Rep. Sheryl Williams Stapleton. **Vetoed.** Required HSD, contingent on available funding, to create and evaluate a program to provide services to meet the behavioral health needs of non-violent youth and adults who are involved or at risk for involvement in the juvenile justice or criminal justice system.

**SB 2** Due Process for Medicaid Providers. Sen. Mary Kay Papen. **Pocket vetoed.** Provided procedural protections for Medicaid providers accused of fraud. The governor vetoed a similar bill last year.

**SB 11** Limitations on “Step Therapy”. Sen. Gay Kernan, Sen. Liz Stefanics, Rep. Liz Thomson and Rep. Monica Youngblood. **Signed into law.** Addresses the use of “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. The final version of the bill focuses on prompt appeal processes for patients and their doctors seeking to bypass step therapy requirements.

**SB 19** Uniform Guardianship and Conservatorship Code. Sen. Jim White, Rep. Gail Chasey and Sen. Daniel Ivey-Soto. **Signed into law.** The final version of this bill, which seemed to change shape every step of the way, makes a variety of changes to existing state law, but does not enact the new national model law as originally intended. The bill opens guardianship and conservatorship hearings to the public, requires notice of hearings to close family members, restricts the power of guardians to limit visitation by family members or to change the provisions of a power of attorney, and requires that all professional conservators post a bond.

**SB 220** Crisis Triage Centers. Sen. Mary Kay Papen. **Signed into law.** Changes the definition of these centers to include facilities connected to existing hospitals, and authorizes triage centers to provide residential as well as non-residential services. Licensed triage centers are eligible for Medicaid reimbursement. The bill has an “emergency clause”, allowing it to go into effect immediately.

### **Memorials that Passed in the 2018 Legislative Session**

These memorials are final and have gone into effect and did not require the governor’s approval.

**HM 8** Movement Disorders Center at UNM. Rep Debbie Armstrong. Calls on the Regents of the University of New Mexico to develop a plan to establish a Movement Disorders Center at UNM to provide services and support to persons with movement disorders (including Parkinson’s Disease, Huntington’s Disease, tremors and other disorders) and their caregivers. (Same as SM 4, below, which also passed.)

**HM 9** Study Possibility of Medicaid Buy-in Plan. Rep Debbie Armstrong. Calls for a study by the interim Legislative Health and Human Services Committee of the feasibility of allowing low/moderate-income individuals the opportunity to “buy in” to the state Medicaid program by paying a small monthly premium. (Same as SM 3, below, which also passed.)

**HM 64** Incentives for Physical Therapists. Rep. Liz Thomson and Rep. Debbie Armstrong. Calls on the secretary of the Higher Education Department to convene a task force to look at how the state’s financial incentives for health professionals could be used to incentivize physical therapists and assistants to practice in New Mexico, with the aim of developing the PT workforce to meet growing need for these services.

**HM 104** Study police lapel cameras and IPRA. Rep. Gail Chasey. Calls for a task force to review the issue of public access to police lapel camera videos of encounters between police officers and people who have mental illness or are victims of crime, looking to find the appropriate balance between the

public's interest in police conduct and the privacy interests of individuals involved in these encounters. (Same as SM 98, below, which also passed.)

**SJM 1** Veterans Suicide Prevention. Sen. Jeff Steinborn. Calls on the Veterans Services Department to convene a task force to hold hearings around the state to gather input on how to reduce the incidence of suicide among New Mexico veterans.

**SM 3** Study Possibility of Medicaid Buy-in Plan. Sen. Jerry Ortiz y Pino. Same as HM 9, above.

**SM 4** Movement Disorders Center at UNM. Sen. Jerry Ortiz y Pino. Same as HM 8, above.

**SM 98** Study police lapel cameras and IPRA. Sen. Sander Rue. Same as HM 104, above.

### **Bills and Memorials That Did Not Pass in This Year's Session**

#### Autism

**SB 161** Medicaid Coverage of Autism Services. Sen. Linda Lopez. Required Medicaid coverage of speech, occupational and physical therapy as well as applied behavioral analysis as treatments for autism spectrum disorder, without regard to an individual's age and without annual or lifetime limits on coverage. *Note: there is \$100,000 in HB 2 for Medicaid coverage of autism services.*

#### Behavioral Health/Mental Health

**HB 20** Reducing Prison Recidivism. Rep. Nate Gentry and Sen. Daniel Ivey-Soto. Required jails and prisons to screen inmates or detainees for substance abuse or mental health issues, and to refer such individuals for case management and support services upon their release from the facility. *Note: similar provisions were included in HB 19, which passed.*

**HB 132** Rapid Re-housing. Rep. Tomas Salazar. Appropriated \$2 million to provide services and supports to homeless persons to help them obtain and maintain permanent housing. *Note: there is \$100,000 in HB 2 for housing for persons with mental illness who are homeless or at risk of homelessness.*

**HB 135** Interventions and Services for At-risk Youth. Rep Sheryl Williams Stapleton. Required HSD to create a program to provide services to meet the needs of non-violent youth and adults with behavioral health issues who are at risk for involvement in the juvenile justice or criminal justice system. The bill also created a fund to help counties cover the cost of transporting clients to behavioral health services. *Note: a similar bill, HB 160, which did not include the transportation fund, passed the Legislature but was vetoed by the governor.*

**HB 217** Reducing Prison Recidivism. Rep. Daymon Ely and Rep. Nate Gentry. Required jails and prisons to screen inmates or detainees for substance abuse or mental health issues, to refer such individuals for case management and support services upon their release, and to help them enroll in Medicaid as allowed by current state law. *Note: similar provisions were included in HB 19, which passed.*

**HB 221** Home Entry for MH Evaluation. Rep. James Strickler. Allowed a police officer to enter a building without a court order or permission from the owner or occupant of the building in order to detain and transport a person for an emergency mental health evaluation, based on a certificate issued by a mental health professional.

**HB 251** County BH Transportation Fund. Rep. Sheryl Williams Stapleton. Established a state fund to help counties provide for transportation of low-income persons to behavioral health services

**HJR 2** Tap Land Grant Fund. Rep. Daymon Ely. This constitutional amendment required more of the annual earnings of the Land Grant Permanent Fund to be spent on a variety of public safety programs, including behavioral health services.

**HJR 3** Tap Severance Tax Fund. Rep. Daymon Ely. This constitutional amendment required more of the annual earnings of the Severance Tax Permanent Fund to be spent on a variety of public safety programs, including behavioral health services.

**HJM 2** Inpatient Services in Southern New Mexico. Rep. Joanne Ferrary. Called on the Legislative Finance Committee to develop a plan to provide inpatient beds for mental health patients in southern New Mexico.

**SB 4** AOT Funding. Sen. Mary Kay Papen and Sen. Peter Wirth. Appropriated \$1 million to the Department of Health to assist cities or counties that implement an Assisted Outpatient Treatment (AOT) program.

**SB 73** Supportive Housing for Persons with Behavioral Health Issues. Sen. Howie Morales. Appropriated \$2.5 million to HSD to provide rental assistance, supportive services and other help to individuals with behavioral health disabilities who are homeless or at risk of homelessness. *Note: there is \$100,000 in HB 2 for housing for persons with mental illness who are homeless or at risk of homelessness.*

**SB 168** Mental Health and Suicide Prevention Info to Students. Sen. Mary Kay Papen. Required all higher education institutions to provide incoming students with information about available mental health and suicide prevention services provided by the school or affiliated programs.

**SB 172** Suicide Awareness Prevention Training. Sen. Jerry Ortiz y Pino. Required most public and private school personnel to receive one or two hours of training annually for suicide awareness and prevention.

#### Developmental Disabilities

**HB 107** DD Waiver Program Funding. Rep. Miguel Garcia. Appropriated an additional \$25 million for the DD waiver program. The funds could be used to provide additional services and take people off of the waiting list. *Note: there is \$5.4 million in new money in HB 2 for the DD waiver, of which \$2 million is specifically earmarked for taking people off the waiting list and moving them into services.*

**HB 176** Special Olympics Funding. Rep. Carl Trujillo. Appropriated \$300,000 for Special Olympics programs. *Note: there is \$300,000 in HB 2 for Special Olympics.*

**SB 6** Special Olympics Funding. Sen. Mary Kay Papen. Appropriated \$300,000 for Special Olympics programs. *Note: there is \$300,000 in HB 2 for Special Olympics.*

**SB 120** SGF Provider Rate Increases. Sen. Nancy Rodriguez. Appropriated \$345,000 to DOH for rate increases for providers of DD services funded by State General Funds.

**SB 121** FIT Provider Rate Increases. Sen. Nancy Rodriguez. Appropriated \$5.5 million to the Department of Health for rate increases for providers of Family Infant Toddler (FIT) services.

**SB 122** DD Waiver Provider Rate Increases. Sen. Nancy Rodriguez. Appropriated \$5.1 million to the Department of Health for rate increases for providers of DD Waiver services.

**SB 130** Special Olympics Funding. Sen. John Sapien. Appropriated \$310,000 to support participation in Special Olympics by individuals receiving DD waiver services. *Note: there is \$300,000 in HB 2 for Special Olympics.*

**SB 139** DD Waiver Report and Waiting List Funding. Sen. Bill Soules. Provided \$25 million to DOH to greatly reduce the waiting list for the DD waiver, and required DOH to issue an annual report on the waiver waiting list, including estimates of the funding needed to gradually eliminate the wait list. The bill was found not “germane” to the 30-day session and did not move forward.

**SB 190** DD Waiver Waiting List Funding. Sen. Jerry Ortiz y Pino. Appropriated \$25 million to the Department of Health to provide DD Waiver services to persons who are currently on the waiting list for such services. *Note: there is \$5.4 million in new money in HB 2 for the DD waiver, of which \$2 million is specifically earmarked for taking people off the waiting list and moving them into services.*

**SB 223** DD Waiver Waiting List Funding. Sen. Bill Soules. Appropriated \$25 million to the Department of Health to provide DD Waiver services to persons who are currently on the waiting list for such services. *Note: there is \$5.4 million in new money in HB 2 for the DD waiver, of which \$2 million is specifically earmarked for taking people off the waiting list and moving them into services.*

#### Education

**HB 341** Michael’s Law & School Care & Restraints. Rep. Stephanie Garcia Richard. Required planning, services and procedural protections for students with disabilities or a record of adverse childhood events, limited use of restraints and seclusion, and called for notice to parents. Substantially similar to SB 233, below. This bill was introduced in the final days of the session, using an “emergency bill” allowing for introduction past the usual deadline, after the governor issued a late message authorizing it to be considered in the short session. It was never heard in committee and did not pass.

**SB 233** School Services for Children in Need of Accommodations. Sen. Linda Lopez. Required schools to provide screenings, needs assessments and service plans for any child upon their first violation of school rules in an attempt to avoid referrals to police or juvenile justice authorities. Substantially similar to HB 341, above.

#### Employment and Employment Services

**HB 92** Transfer DVR to DWS. Rep. Candy Ezzell. Transferred the Division of Vocational Rehabilitation from the Public Education Department to the Department of Workforce Solutions. Same as SB 58, below.

**HM 16** Minimum Wage Task Force. Rep. Joanne Ferrary. Called for the DDPC to convene a diverse task force to study the issue of sub-minimum wages to employees with disabilities and recommend solutions. *Note: The DDPC has indicated to the sponsor that it is willing to convene such a task force even though the memorial did not pass.*

**SB 58** Transfer DVR to DWS. Sen. Michael Padilla. Same as HB 92, above.

Healthcare/Medicaid

**HB 42** Limitations on “Step Therapy”. Rep. Liz Thomson and Rep. Monica Youngblood. Imposed some restrictions on (but did not 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. *Note: a similar bill, SB 11, passed the legislature.*

**SB 77** Family Members as Paid Caregivers. Sen. Bill O’Neill. Required HSD to allow family members to serve as paid caregivers to other adults in the family, including spouses. *Note: New Mexico’s Medicaid program already allows payment to family members who aren’t legally responsible for an individual’s care, and federal law bars payment to legally responsible family members such as spouses except in limited circumstances.*

Other Disability Issues

**HB 101** Mobility License Plates. Rep Sarah Maestas Barnes. Directed the Motor Vehicle Division to develop an accessibility emblem or decal that could be affixed to any other specialty license plate. HRC.

**HB 120** Sentencing Enhancements. Rep. “Moe” Maestas and Rep. Monica Youngblood. Added three years to the sentence served by people convicted of felonies in which a person with a disability or a person at least 60 years of age was seriously injured.

**HB 171** Blind Parents’ Rights. Rep. Jane Powdrell-Culbert. Prohibited use of a parent’s blindness as a rationale for limiting the person’s parental rights.

**HB 230** Disabled Veterans License Plates. Rep. Rick Little. Allowed veterans who are at least 50% disabled as a result of their military service to receive two free specialty license plates instead of one.

**SM 61** Sexual Assaults on Persons with Disabilities. Sen. Jerry Ortiz y Pino. Called for a task force to study the high rate of sexual assaults on individuals with disabilities and recommend legislation to address this problem. The task force would have included, among many others, the Statewide Independent Living Council, The Arc of NM, and Disability Rights NM.