

2010 LEGISLATIVE SESSION PREVIEW

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The 2010 session of the state legislature begins on January 19th, and it's expected to be a very difficult and contentious one. Even more than most 30-day sessions, the focus will be on the state budget for the fiscal year beginning on July 1. Current state spending, even after budget cuts imposed a year ago and again in last October's special session, exceeds expected income in the coming year by more than \$500 million. That shortfall is 10% of the state budget.

Since the budget deficit is based on a steep decline in revenues, many legislators and advocates for human services and education will be encouraging measures to bring in more revenue. This would avoid having to balance the budget solely through spending cuts, which would put the primary burden of budget-balancing on low-income New Mexicans, children, seniors and people with disabilities. Conservative legislators are reluctant to support tax increases and would prefer to see the budget significantly reduced. The session may come down to the simple questions of who will get cut and by how much.

Neither the governor nor the Legislative Finance Committee has released their recommendations for the FY 2011 budget yet, though each should be out very soon. These two competing proposals will be the starting point for the legislature and in particular for the House Appropriations and Finance Committee, which will have the first crack at developing the state budget bill.

The Disability Coalition's Position on the Budget

The Disability Coalition has adopted a consensus position statement¹ on the state budget which calls for revenue enhancements to avoid drastic cuts in programs, continued full funding for the Medicaid program, and favorable consideration for the budgets of vocational rehabilitation programs. Disability Rights New Mexico supports the Coalition's position.

Medicaid

HSD has already implemented a number of measures to cut Medicaid spending, including reductions in payment rates to providers and in certain benefits such as respite care under the Disabled & Elderly waiver. Nonetheless, the current year's state funding for Medicaid falls short of what's needed to maintain the program in the coming year by over \$300 million – a potential deficit equal to about 1/3 of the entire program. That's largely because state funding for Medicaid was drastically reduced this year – by around \$200 million. This was made possible by a temporary increase in federal Medicaid funding through the “stimulus” bill – because the federal government picked up a larger share of the cost of the Medicaid program, the state was able to shift money out of Medicaid and use it to shore up other parts of the budget. It is now time to restore those state funds to Medicaid. Other factors contributing to the funding shortfall are that enrollment in Medicaid is up due to the downturn in the economy, and some Medicaid

¹ Available on the DRNM web page, www.drn.org

programs such as PCO continue to grow because they meet a critical need. These factors combine to increase the funding needed to continue the program.

Unfortunately, HSD's response to the budget situation has been to propose a radical restructuring of the Medicaid program that would significantly reduce eligibility and benefits and dramatically reduce spending. As described in the agency's concept paper, the core portion of a revised Medicaid program would cover only federally-required populations (such as very low-income children, SSI recipients, etc.) and would provide only federally-required services (such as doctor and hospital services but not medications or attendant services, for example). Other individuals could "buy in" to the program if they paid premiums and co-pays for services. Although HSD states that the DD waiver program will not be directly affected by the proposed changes, the Department of Health has already indicated its intention of restructuring the program. Also, individuals on the DD waiver receive their regular health care services through the regular Medicaid program and will be subject to whatever cuts are made to that part of Medicaid.

DRNM has taken a position² in strong opposition to the HSD proposal. Since the Medicaid program provides health care coverage for so many people with disabilities and also covers behavioral health as well as long-term services through CoLTS, Mi Via and the DD waiver programs, it's inevitable that major cuts to Medicaid will significantly reduce services to frail elders and people with disabilities. The amount of state funding provided to Medicaid by the 2010 state legislature will have a profound impact on the level of services provided in the coming year.

Other State Agency Budget Issues

Department of Health: DOH's budget request last fall included only one funding increase - approximately \$8 million for the DD waiver program. Those additional funds would be used only to meet increased costs of the current program, not to serve anyone from the waiting list. DOH has already refused to use any of the \$9.4 million provided by the legislature this year to take anyone off of the waiting list and put them onto the waiver program.

Vocational Rehabilitation: State spending on services provided by the Division of Vocational Rehabilitation (DVR) and the NM Commission for the Blind (NMCB) is matched on a 4:1 basis by the federal government. This is the same match rate as the Medicaid program this year. Every dollar spent by the state on job training and placement for persons with disabilities generates \$4 from the feds. And as with Medicaid, in order to save \$1 in state spending, these programs have to be cut by \$5 because of the federal match. These state agencies are looking to take full advantage of all available federal funding for these programs, but they can do so only if the state provides adequate funding for its share.

Special Education: New Mexico received around \$90 million in extra federal funds for special education, which has been a factor in preventing major budget cuts to public schools. There may be significant battles in the legislature over whether to cut public school funding, which accounts for about 45% of the entire state budget, in the coming fiscal year. The amount earmarked for special education funding will be based on the total amount appropriated for the schools, which in turn will determine the per-student "unit value". However, it is important to remember that

² DRNM's handout on Medicaid and the HSD restructuring concept is also on the DRNM web site, www.drnm.org

state funding generated through special education enrollment is not required to be spent on special education, and that schools are required to provide a free, appropriate special education to eligible children regardless of the level of appropriation.

Pre-filed Bills and Memorials.

Legislators are now allowed to “introduce” bills and memorials before the session officially begins, and a few of the measures filed so far involve issues of interest to the disability community.

HJM 2 Medical Home – Rep. Danice Picraux. Calls on all of the state’s contract managed care organizations to adopt the “medical home” model to improve preventive care, manage chronic medical conditions, etc.

SB 1 Sports Concussions – Sen. Michael Sanchez. Would prohibit school athletic coaches from a) allowing students to play in athletic contests on a day when they have been diagnosed with a concussion or similar head injury or are displaying behavioral signs of such an injury, and b) using such a player until they have a medical release to do so. The bill also mandates training on concussions and similar injuries.

SB 34 No Medicaid Cuts – Sen. Tim Keller. Would “hold harmless” anyone already enrolled in Medicaid or the DD waiver from any program or funding cuts that might be made by the 2010 state legislature.

Other Legislative Proposals Expected

There will likely be several other bills or memorials affecting persons with disabilities in this year’s session. Among the proposals to look for:

*Medicaid: A memorial opposing HSD’s proposed restructuring of the Medicaid program, and calling on HSD to work with consumers, providers, legislators and others in developing options based on federal health care reform as well as long-range funding projections.

*Accessible parking: A bill to improve enforcement of restrictions on accessible parking, and to earmark some of the money derived from accessible parking violations for home accessibility modifications and other disability services.

*Autism: A memorial calling on the Public Education Department and others to study ways to improve public school services to children with autism.

*Interim Disability Task Force: A bill to establish a continuing disability task force, to be comprised of consumers, family members, advocates, and possibly legislators and others. The task force would meet in the interim between legislative sessions to recommend changes in law or policy to the legislature and to state agencies providing services to persons with disabilities.

Not on the Agenda

A few items that we expected to be considered by the legislature this year now appear to be delayed until next year’s 60-day session. These items include:

*"Kendra's law": Authorizing involuntary commitment to outpatient mental health services for persons who meet the criteria to be established.

*Guardianship reform: While major improvements were enacted last year, a few issues were not included in last year's bill and may be considered in the future – but not this session.

*Seclusion and restraints: A memorial calling for a study or task force on the use of seclusion and restraints in the public schools was being considered, but the Public Education Department has already committed to convening a task force, and federal legislation on this topic is likely to pass in the near future which would require state standards and processes.

Contacting your Legislators

Before the session starts, you can still contact your legislators in your home communities. You can find out who your legislators are and get contact information on the legislative website at www.nmlegis.gov. Click on "Members" and then on "Find Your Legislator". There's also an "alpha list" of House and Senate members that will give their addresses and phone numbers.

Once the session starts, each legislator will have an office in the Capitol. The best way to reach them at that time is to call the switchboard at 986-4300 and ask for your legislator.