

DISABILITY ISSUES IN THE 2009 LEGISLATURE FINAL REPORT

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PROTECTION AND ADVOCACY SYSTEM
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HIGHLIGHTS

Guardianship, Autism Bills Enacted. HB 161, a package of statutory changes that will improve oversight and accountability for guardians of incapacitated adults, passed the legislature unanimously and has been signed into law by Governor Richardson. The bill, sponsored by Rep. Bill O'Neill of Albuquerque, reflected the recommendations of a task force that has studied the state's guardianship system over the past two years.

SB 39, which requires state-regulated private health insurance policies to cover services for children with autism, was also signed into law. Passage of the bill, sponsored by Sen. Clint Harden, was a major breakthrough for the autism community.

As noted below, several other bills of interest to persons with disabilities also passed the legislature and have been signed into law, and an unusually large number of memorials were also passed.

Governor's Vetoes Undercut Disability Funding Gains. As highlighted in our recent post-session legislative report, there were a few bright spots for the disability community in this year's otherwise dismal state budget (HB 2). Unfortunately, Governor Bill Richardson used his line item veto power to eliminate one of those appropriations and limit the others.

A veto by the governor eliminated the \$175,000 appropriation that would have supported a pilot program in the Albuquerque area to monitor guardianships of adults with disabilities, including frail elders. This funding, so hard to come by in this tight budget year, had been added to the bill late in the legislative process by Senator Jerry Ortiz y Pino.

Other vetoes by the governor struck language that explained how certain other new money was to be used. The result is that the funds stay in the budget but can be used for purposes other than those intended by the legislature. The governor vetoed language regarding the \$5.4 million in new money for the Developmental Disabilities waiver, which had been earmarked by the legislature to serve some of the more than 4,000 people who are on the waiting list for the waiver. The veto of the language means that the money doesn't have to be spent to address the waiting list and can now be spent for ongoing costs of the waiver program, which is currently running a deficit. A separate \$10 million appropriation for the DD waiver that was approved last summer was reaffirmed but reduced to \$4 million in a bill (SB 79) that passed early in this year's legislative session. This funding also can be used either for services to those already on the waiver or to provide services to persons on the waiting list. It is now up to the Department of Health (DOH) to determine what portion of the total of \$9.4 million in new money will be used to take people off of the waiting list.

The legislature designated an extra \$300,000 in the budget for community outreach and interpreter services for deaf persons. The money remains in the budget, but more vetoes by the governor mean that the funding doesn't have to be used for this purpose.

Last but not least, the governor vetoed all language in the budget requiring state agencies to report or disclose to interim legislative committees information relating to Medicaid in general and specifically including managed long-term care (“CLTS”), as well as language establishing “benchmarks” for these and other Medicaid managed care programs such as average monthly enrollment and average cost per member per month. These vetoes were consistent with the governor’s action in vetoing separate bills (HB 130 and HB 544) that would have required the Human Services Department (HSD) to disclose information about Medicaid to the legislature and the general public.

Didn’t Make It Through. As always, there were many bills of interest to the disability community that didn’t make it all the way through the legislative process. The mental health Safe House proposal died for lack of action by the Senate on the final day of the session, while several memorials seeking to improve the mental health system died for lack of action in the House on that final day. An amendment to earmark \$2.50 from each “red light camera” fine for the Traumatic Brain Injury (TBI) Fund was defeated on the floor of the Senate earlier in the session. And the House defeated a Senate-passed bill that would have authorized stem cell research in New Mexico, a line of work believed to hold significant promise for addressing spinal cord injuries and other disabling medical conditions.

Other measures of general interest that failed during the session included the overhaul of the education funding formula, which would have significantly changed the way that special education is funded in the public schools; a bill to recognize domestic partners in New Mexico; and a bill that would have criminalized abuse or neglect of vulnerable adults living at home.

See You Later... There may be a special session of the legislature late this summer to review and revise the state budget. With the volatility of the economy and the uncertainty of the impact on the state of the federal stimulus bill, the governor and the legislative leadership are considering a special session to make sure that the budget for FY 2010 remains in balance. If the session happens, and deals with issues directly affecting people with disabilities, we’ll put out a Legislative Report to keep you informed. Otherwise, look for a preview and regular weekly reports next January. See you then!

Bills That Passed and Have Been Signed into Law

The State Budget for FY 2010:

HB 2 General Appropriation Act. This is the state budget for the fiscal year beginning this coming July 1. Many state agencies saw funding cuts of 10% or more in some of their programs. As noted above, vetoes by the governor eliminated \$175,000 for a pilot program of guardianship monitoring in Bernalillo County; allow the Department of Health to use \$5.4 million in new state funds for general operation of the DD waiver program rather than just for taking people off the waiting list; and eliminate the mandate for two state agencies to use \$300,000 in new funding on outreach and interpreter services for deaf persons.

Other items of interest in this bill to persons with disabilities include:

Medicaid: The budget appears to “fully fund” Medicaid. Although state funds were reduced by 25% to \$601 million, federal funds are increased by 18% to \$2.9 billion due to the federal stimulus bill. The total of \$3.5 billion is an increase of 7% over the current year.

Legal services: The program of legal services for low-income New Mexicans took one of the harder budget hits, with about \$600,000 cut from a \$2.6 million budget (i.e., nearly a quarter of

the total budget). The Senate Finance Committee indicated its intention that \$225,000 of that cut be inflicted specifically on the NM Center on Law and Poverty, apparently in retaliation for the Center having sued the state Medicaid agency over its autoclosure policy.

D&E Waiver: Again this year there is no new money for the Disabled and Elderly waiver waiting list.

SB 79 Adjustments to the FY 2009 Budget. This bill, part of the “solvency package” addressing the state budget crisis for the current fiscal year, reduces the \$10 million that was appropriated last August for the DD waiver to \$4 million. The legislature also added language clarifying its intent that a separate \$1.5 million in new money be used for behavioral health services for children enrolled in Medicaid, but the governor vetoed this language and the funds will simply be folded into the overall Medicaid budget.

Other Legislation signed into law:

H 161 Guardianship reform. Rep. Bill O’Neill. This package of amendments to several state laws will improve oversight and review of guardianship arrangements, strengthen consumer preference in the selection of guardians, and clarify the roles of substitute decision-makers such as guardians, mental health treatment guardians, agents under advance directives, etc. The bill reflects the recommendations of the Guardianship Task Force. P&A Executive Director Jim Jackson and Adult Protective Services attorney Gerald McBride were called on as expert witnesses on this bill throughout the legislative process.

H 189 Alternative deaf teacher assessment. Rep. Bobby Gonzales. Allows teachers who are deaf or hard of hearing to be assessed for licensure through a “portfolio review” rather than a traditional assessment procedure.

H 199 Special education services in Residential Treatment Centers. Rep. Tomas Garcia. Clarifies which school district is responsible for providing and paying for any special education services that may be needed by school-age children placed in RTCs.

H 438 Medicaid co-pays. Rep. Keith Gardner. This bill imposes co-pays on Medicaid recipients who use hospital emergency rooms, but are determined not to have emergency conditions. This bill drew substantial opposition on the Senate floor because it is likely to discourage many people from seeking needed care, and some of the co-pays exceed federally-imposed caps.

H 499 Adaptive driving program. Rep. Rhonda King. Allows individuals enrolled in an adaptive driving program offered by the state to drive accessible state vehicles as part of the training program. Generally, only state employees can drive state cars. Liability would be covered by considering such participants as state employees for this limited purpose. The program is being developed by the Governor’s Commission on Disabilities (GCD).

S 39 Private insurance coverage of autism. Sen. Clinton Harden. Requires private health insurance policies in New Mexico (but not public employee insurance) to cover services for children with autism up to age 19, or age 22 if still in high school, with annual service caps at \$36,000 and a lifetime benefit cap of \$200,000. The coverage includes applied behavioral analysis, and the benefit caps are indexed so they will rise annually with medical inflation rates.

S 178 Interstate mental health compact amendments. Sen. Howie Morales. Amends the existing interstate compact to clarify that the Behavioral Health Institute at Las Vegas, administered by the DOH, would be the lead agency in New Mexico. The change is needed in light of an earlier law that transferred the Behavioral Health Services Division from DOH to HSD.

S 232 Adaptive driving program. Sen. Tim Keller. Same as H 499, above. NOTE: Since this bill was signed before H 499, it is not officially “enacted”. H 499 becomes law instead.

S 519 Municipal nuisance ordinances. Sen. Michael Sanchez. Raises the maximum fine or penalty for “red light camera” violations to \$100, and clarifies that the limit does not apply to citations for illegally parking in or blocking designated accessible parking spaces. Such fines, when imposed as civil nuisance violations, would have to be between \$250 and \$500. An amendment to require that \$2.50 of each red light camera fine go to the TBI fund failed during debate on the bill in the Senate.

S 610 Time limit for parking. Sen. Cisco McSorley. Allows airport parking facilities to charge long-term parking fees for cars displaying a parking placard or license plate for persons with disabilities after the first 24 hours. Under current law, the drivers of such vehicles are exempted from parking fees in publicly-operated lots and can park for unlimited times, and the exemption is *not* limited to designated accessible spaces.

Bills Passed by the Legislature but Vetoed by the Governor

HB 130 Medicaid reporting and accountability. Rep. Mimi Stewart. Would have required HSD to publicly report data related to Medicaid enrollment and eligibility determinations, including the number of persons denied eligibility and the reasons for such denials.

H 544 Medicaid reporting and accountability. Rep. Danice Picraux. Like H 130, this bill called for transparency and reporting of information regarding the state’s Medicaid program, but it covered a broader range of information about Medicaid operations, including average cost data for various programs and population groups.

S 227 Family, Infant, Toddler funding formula. Sen. Jerry Ortiz y Pino. Would have created a formula for DOH to follow in order to determine how much funding to request for the FIT program each year. The approach was based on the public school funding formula; however, this bill would have affected only DOH’s budget request, not the distribution of whatever funds are actually provided for the FIT program each year.

Memorials That Passed the Legislature

Memorials generally call for studies or the establishment of task forces to review issues and recommend solutions, or they convey recommendations of the legislature. Memorials do not have the force of law and do not have to be signed by the governor. A joint memorial (“JM”) must pass both the House and the Senate to take effect; a simple memorial (“M”) reflects the action of only one chamber.

HJM 43 Definition and services for dyslexia. Rep. Ben Lujan. Calls upon the Public Education Department to adopt a definition of dyslexia, to include it as an eligibility category for purposes of the IDEA, and to establish intervention strategies for working with students with dyslexia. Same as SJM 48.

HJM 77 Risk of hybrid cars to blind persons. Rep. Janice Arnold-Jones. Asks the Department of Transportation and the Commission for the Blind to convene a task force to consider the risks presented to blind and other pedestrians by quiet hybrid cars that cannot easily be heard approaching an intersection, and to consider options and solutions.

HM 25 Vulnerable victims. Rep. Gail Chasey. Asks the interim Courts, Corrections and Justice Committee to hold hearings on the question of whether to establish a category in state law of

“vulnerable victims”, and whether this category might include persons with developmental disabilities. If such changes to law were made in the future, perpetrators of crimes against vulnerable victims might have their sentences lengthened.

HM 37 Credentialing of direct caregivers. Rep. Jeff Steinborn. Calls on the DD Planning Council to convene a task force to study, plan, and implement a training and education program leading to credentialing of direct caregivers who serve persons who are elderly or have disabilities as home health aides, personal care attendants, or other care providers.

HM 46 Accommodations at DMV offices. Rep. Tom Anderson. Calls on the Motor Vehicle Division to study what additional accommodations would be useful for persons who are elderly and/or disabled who have to wait for long periods or are confused about the process in MVD offices.

HM 94 Medicaid maximization. Rep. Danice Picraux. Directs the interim Legislative Health and Human Services Committee to make recommendations on how to take maximum advantage of the extra funding for Medicaid and SCHIP made available through the recent federal stimulus package and SCHIP reauthorization.

HM 97 End the Jackson lawsuit. Rep. Miguel Garcia. Calls on P&A and DOH to work together to bring the *Jackson* litigation to an end. The memorial claims that the case has caused DOH to issue rules that are “burdensome” to providers and assumes that if DOH didn’t have to spend \$4 million per year on experts, monitoring, attorney fees and administrative costs it could use this money to give rate increases to provider agencies and serve more people in the DD waiver. *P&A’s long-standing position is that the way to bring the case to an end is for the state to achieve the objectives it already agreed to meet.* HM 97 is the same as HJM 5, and was introduced when it became clear that the joint memorial was not likely to get through the Senate by the end of the session.

HM 105 Interim disability committee. Rep. Kiki Saavedra. Calls on the Legislative Council Service to establish an interim disabilities concerns committee, to consist of legislators and public members, to advise the legislature on disability issues. Same as SM 41.

HM 107 Behavioral health screening, intervention and referral services. Rep. Lucky Varela. Calls on the BHS Purchasing Collaborative to convene a team of stakeholders to explore ways to maintain a program of screening, brief intervention and referral for behavioral health treatment (“SBIRT”) in community and school-based settings. The program has been funded with federal funds for the past 5 years but that funding is ending.

HM 111 Accessible parking task force. Rep. Jeff Steinborn. Requests that the Governor’s Commission on Disability convene a task force to study issues related to accessible parking, including availability and enforcement. The task force would include The Disability Coalition, DD Planning Council, Center on Development and Disability and many other agencies and groups.

SM 21 Safe driver task force. Sen. Peter Wirth. Calls on the Attorney General’s Office to convene a task force to look at the issue of drivers whose skills may deteriorate due to advanced age or disability, keeping in mind the barriers to independence and social mobility that can be created by loss of driving privileges. The task force would include, among others, advocacy groups representing the interests of elders and persons with disabilities.

SM 41 Interim disability committee. Sen. Eric Griego. Calls on the Legislative Council Service to establish an interim disabilities concerns committee, to consist of legislators and public members, to advise the legislature on disability issues. Same as HM 105.

SM 79 Stimulus funding for triage center. Sen. Mary Kay Papen. This memorial calls on the governor to seek funding made available through the federal economic stimulus legislation for a mental health triage center in Dona Ana County.

Substantive Bills or Memorials That FAILED to Pass the Legislature

- H 21** Domestic partnerships. Rep. Mimi Stewart.
- H 110** Limiting exclusion of insurance coverage for pre-existing condition, banning gender discrimination in premium rates. Rep. John Heaton.
- H 155** Insurance coverage of autism. Rep. Joni Gutierrez.
- H 168** Restroom access for persons with medical conditions. Rep. Tom Anderson.
- H 192** Pharmacist initiation of prior approval. Rep. Gail Chasey.
- H 212** Repeal Guilty But Mentally Ill verdict. Rep. Gail Chasey.
- H 267** Establishing a Health Care Authority. Rep. Mimi Stewart.
- H 270** DOH to provide annual rate increases to DD waiver providers. Rep. Bobby Gonzales.
- H 331** Public school funding formula. Rep. Mimi Stewart.
- H 339** Health Security Act for universal coverage. Rep. Bobby Gonzales.
- H 343** Penalties for unlawful parking in accessible spaces. Rep. Thomas Anderson.
- H 346** Funding to implement the proposed new education funding formula. Rep. Mimi Stewart.
- H 361** Complaints against the Office of Guardianship. Rep. Antonio “Moe” Maestas.
- H 372** DOH budget requests to include cost-of-living adjustments (COLAs) for DD providers. Rep. Bobby Gonzales.
- H 523** Continue behavioral health screening, intervention and referral. Rep. Lucky Varela.
- H 537** Behavioral health safe houses. Rep. Nate Cote.
- H 584** Exemption from jury service for physical hardship. Rep. Debbie Rodella.
- H 597** Print disability access act. Rep. Joseph Cervantes.
- H 641** Require hybrid vehicles to produce sounds. Rep. Janice Arnold-Jones.
- H 751** Insurance coverage of autism, DD, behavioral health. Rep. Karen Giannini.
- H 758** Red light camera fines as moving violations, not “nuisances”. Rep. Janice Arnold-Jones.
- H 779** Health Care Partnership. Speaker Ben Lujan.
- H 814** Death with Dignity Act. Rep. Karen Giannini.
- H 829** Behavioral health safe house fund. Rep. Nate Cote.
- H 839** Abuse/neglect in individual homes. Rep. Nick Salazar.
- HJR 25** Proposed constitutional amendment to provide property tax exemption for low income persons with disabilities. Rep. Miguel Garcia.
- HJM 5** Bring an end to the *Jackson* case. Rep. Miguel Garcia. Same as HM 97, which passed.
- HJM 46** Study licensed and unlicensed residential facilities. Rep. Gloria Vaughn.
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- S 12** Domestic partnerships. Sen. Cisco McSorley. Failed by a 25-17 vote in the Senate.
- S 34** Medicaid coverage of autism services. Sen. Clinton Harden. HSD has indicated that it will pursue this without putting the requirement in statute.
- S 77** Stem cell research in NM. Sen. John Ryan. Failed by a 30-38 vote in the House.
- S 101** “Red light camera” fines to TBI Fund. Sen. Dede Feldman.
- S 121** Parental/guardian notification prior to abortion. Sen. William Sharer.
- S 147** Extended jail detention period, with treatment. Sen. Sue Wilson Beffort.
- S 197** DOH mortality review confidentiality. Sen. David Ulibarri.
- S 198** Mortality review immunity for DOH. Sen. David Ulibarri.
- S 238** Prohibit managed care contracts for behavioral health. Sen. Jerry Ortiz y Pino.
- S 281** Health Security Act. Sen. Carlos Cisneros.
- S 332** Transfer Health Policy Commission to DOH. Sen. Clinton Harden.
- S 412** Funding to implement the proposed education funding formula. Sen. Cynthia Nava.

- S 439 Optional health insurance coverage for domestic partners. Sen. Peter Wirth.
- S 448 Require DOH to request COLA increases for DD contractors. Sen. Howie Morales.
- S 473 Continue behavioral health screening, intervention and referral. Sen. Sue Wilson Beffort.
- S 481 Continue behavioral health screening, intervention and referral. Sen. Sue Wilson Beffort.
- S 605 Diversion of some domestic violence offenders to treatment centers. Sen. Sander Rue.
- SJR 12 Constitutional amendment to remove archaic and offensive language prohibiting voting by “idiots and insane persons”. Sen. Howie Morales.
- SJM 11 Education services to children with autism. Sen. Clinton Harden.
- SJM 26 Behavioral health information and report. Sen. Mary Kay Papen.
- SJM 35 Behavioral health strategies study. Sen. Mary Kay Papen.
- SJM 48 Definition and services for dyslexia. Sen. Cynthia Nava.
- SJM 53 Developing a mental health early intervention plan. Sen. Mary Kay Papen.
- SJM 64 Study risks of hybrid cars to blind pedestrians. Sen. Eric Griego.
- SM 13 Develop broad-based behavioral health plan. Sen. John Sapien.
- SM 48 Medicaid reporting of enrollment, termination data. Sen. Dede Feldman.
- SM 70 Medicaid maximization task force. Sen. Dede Feldman.

Funding Requests That Did Not Pass the Legislature

- H 32 Statewide quick response behavioral health teams - \$1 million. Rep. Nathan Cote.
- H 35 Native American adolescent mental health - \$50,000. Rep. Ray Begaye.
- H 113 State Alzheimer’s disease plan - \$25,000. Rep. Patty Lundstrom.
- H 162 Early childhood programs in Lincoln, Otero Counties - \$18,000. Rep. Gloria Vaughn.
- H 169 Behavioral health safe houses - \$4.1 million. Rep. Nate Cote.
- H 183 Low-income legal services - \$1 million. Rep. Joseph Cervantes.
- H 221 Behavioral health screening and intervention - \$800,000. Rep. Danice Picraux.
- H 222 Continue children’s enrollment in Medicaid - \$10 million. Rep. Danice Picraux.
- H 247 “State Use Act” implementation/enhanced employment - \$150,000. Rep. Miguel Garcia.
- H 264 “Quality of life” grants through GCD - \$500,000. Rep. Ken Martinez.
- H 310 DD waiver provider rate increases - \$3.3 million. Rep. Gail Chasey.
- H 385 Rate equity for state-funded DD providers - \$1.5 million. Rep. Jimmie Hall.
- H 398 Behavioral health services in McKinley County - \$600,000. Rep. Ray Begaye.
- H 424 FIT funding - \$5.9 million. Rep. Danice Picraux.
- H 445 Dona Ana County athletic program - \$30,000. Rep. Joni Gutierrez.
- H 551 Española-area TBI services - \$100,000. Rep. Jim Trujillo.
- H 579 Pre- and post-deployment TBI screening - \$100,000. Rep. Keith Gardner.
- H 711 Las Vegas area Special Olympics - \$75,000. Rep. Richard Vigil. ***NOTE: HB 2 includes \$15,000 for this purpose.***
- H 746 Community mental health support services - \$25,000. Rep. Gail Chasey.
- H 747 Birth defects surveillance program - \$150,000. Rep. Zach Cook.
- H 880 Suicide prevention in northern NM - \$35,000. Rep. Tomas Garcia.

- S 43 Voluntary autism registry - \$200,000. Sen. Dede Feldman.
- S 53 NMSU therapy services - \$250,000. Sen. Mary Kay Papen.
- S 66 Dona Ana County mental health triage services - \$4.5 million. Sen. Mary Kay Papen.
- S 125 Mental health courts in three judicial districts - \$532,000. Sen. Peter Wirth.
- S 207 Autism spectrum disorder services - \$3 million. Sen. Clinton Harden.
- S 211 Housing Trust Fund appropriation - \$15 million. Sen. Nancy Rodriguez.
- S 301 Rate equity for state-funded DD providers - \$1.5 million. Sen. Bernadette Sanchez.
- S 347 Outreach services to deaf persons - \$100,000. Sen. Nancy Rodriguez. ***NOTE: HB 2 included \$300,000 for this purpose, but the governor vetoed language regarding how the funds are to be used so the money is no longer earmarked for this use.***
- S 381 Jail diversion in southwestern NM - \$200,000. Sen. Howie Morales.
- S 407 FIT funding - \$5.9 million. Sen. Cynthia Nava.
- S 409 ICF/MR rate increases - \$2.1 million. Sen. Mary Kay Papen.
- S 449 DD waiver provider rate increases - \$3.3 million. Sen. Howie Morales.
- S 543 Behavioral health services in eastern Navajo - \$600,000. Sen. Lynda Lovejoy.
- S 545 Behavioral health services, in eastern Navajo - \$600,000. Sen. John Pinto.
- S 642 Guardianship handbook - \$50,000. Sen. Phil Griego.