

DISABILITY ISSUES IN THE 2010 LEGISLATURE POST-SESSION REPORT

By Jim Jackson, Executive Director
DISABILITY RIGHTS NEW MEXICO
February 20, 2010

Train wreck: session ends without a state budget. The 2010 legislative session ended on Thursday without final action on a state budget for the year beginning July 1. House and Senate negotiators were unable to bridge the wide gap between the positions of the two chambers. The lack of final action on the budget means that, for now, there are no specific funding levels approved for any state agencies for FY 2011.

The budget bill passed by the House would have cut state spending by around \$70 million, and relied on around \$300 million in new tax revenue, which would come mostly from temporary increases in the gross receipts tax and income taxes on upper-income individuals. The Senate version cut an additional \$120 million from state spending, about \$85 million of which came from public education and higher education. The Senate version relied on a reinstatement of the gross receipts tax on many food items and an increase in the tax on cigarettes to generate around \$180 million in new revenue.

Medicaid and disability programs were treated relatively favorably in both versions of the proposed budget, but that doesn't guarantee that there won't be changes when a final budget is eventually adopted.

Special session looming? Governor Richardson responded to the failure to adopt a budget by quickly announcing that he would call legislators back to Santa Fe for a special session to begin this Wednesday, Feb. 24. Not surprisingly, legislators are reluctant to come back right away, especially if no agreement has been reached to resolve the current impasse. A special session will definitely be necessary to adopt a budget for FY 2011, but we'll have to wait and see whether it happens this week.

Crossing the finish line. Several bills of interest to the disability community did manage to pass in this year's legislature. These included bills to improve enforcement of accessible parking, create an interim legislative subcommittee on disability issues, repeal the misleading "guilty but mentally ill" verdict, protect high school athletes who may have suffered a concussion, and require public schools to identify and serve children with dyslexia. A constitutional amendment will be on the ballot in November that eliminates outdated prohibitions on voting by some persons with disabilities. And three memorials passed that emphasize the importance of Medicaid and the need for stakeholder involvement in planning any potential changes to the program. A more complete list of these and other bills and memorials that passed the legislature is shown below.

Bills and Memorials That Passed This Session

HB 201 Expand newborn screening. Rep Rhonda King. This bill expands the blood test

screening for newborns in New Mexico to screen for five additional conditions, including Niemann-Pick disease and globoid cell leukodystrophy.

HB 216 Medical Insurance Pool programs. Rep. Nick Salazar. This bill authorizes the NM Medical Insurance Pool to offer new insurance products that might be authorized by federal health care reform for state high-risk pools. The MIP offers health insurance to persons who are unable to obtain insurance in the private market due to pre-existing medical conditions.

HB 217 Abuse or neglect in homes. Rep. Nick Salazar. This bill amends the Resident Abuse and Neglect Act to apply to abuse or neglect of a person in their own home or the home of a caregiver, making these acts a criminal offense. The current law applies only to facilities such as nursing homes and group homes.

HB 230 Services to students with dyslexia. Rep. Mimi Stewart and Sen. Mary Jane Garcia. This bill defines dyslexia and requires public schools to address the needs of students with dyslexia through the Student Assessment Team process with appropriate accommodations and services.

HM 28 Medicaid importance and task force. Rep. Mimi Stewart. This memorial recognizes the importance of Medicaid in New Mexico, calls on HSD not to make substantial changes to the program without review by the legislature, and calls for the creation of a task force with diverse representation to review the Medicaid program and make recommendations for improvement. Generally the same as SM 27.

HJM 34 Adult residential facility licensure. Rep. Gloria Vaughn. This memorial calls on the Department of Health to review licensure issues for residential care facilities serving adults with mental illness. The aim is to consider an alternative in between a fully licensed facility and an unlicensed facility.

HJM 43 Native American Medicaid. Rep. Ray Begaye. This memorial recognizes the importance of Medicaid and calls for full funding without benefit cuts. It originally called for creation of a separate eligibility category for Native Americans, but this provision was removed.

SB 1 Sports concussions – Sen. Michael Sanchez. This bill prohibits 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. It also mandates training on concussions and similar injuries. This was the last bill passed by the House before adjournment.

SB 209 Accessible parking. Sen. Jerry Ortiz y Pino. This bill authorizes the Governor’s Commission on Disability to provide training to law enforcement officers on accessible parking issues, requires renewal of parking placards every four years, and allows police officers to ticket or tow vehicles illegally parked in accessible parking spaces.

SB 216 Repeal GBMI verdict. Sen. Peter Wirth. This bill eliminates the verdict of “guilty but mentally ill” in criminal cases. This plea or verdict was intended to assure that individuals who were found guilty of a crime and were known to have a mental illness receive treatment while in

jail or prison. However, the reality is that such persons are no more or less likely to receive treatment than any other prisoner or detainee with mental illness, so the verdict was misleading and confusing to juries.

SB 264 Disability Subcommittee of LHHS. Sen. Nancy Rodriguez. This bill establishes a Disabilities Subcommittee as a permanent part of the interim Legislative Health and Human Services Committee. The 6-member subcommittee would review legal and service issues affecting persons with disabilities and make an annual report and recommendations to LHHS.

SJM 25 Study autism services in public schools. Sen. Clinton Harden. Calls on the PED to study methods of providing services to children with autism in the public schools and develop a plan to provide appropriate services through qualified personnel.

SM 27 Medicaid importance and task force. Sen. Mary Kay Papen. Generally the same as HM 28.

SJR 6 Amend constitutional language on voter disqualification. Sen. Howie Morales. This proposal would delete existing language in the state constitution that prohibits voting by “idiots and insane persons”. The language is offensive and not consistent with current legal requirements. The proposed new language would allow all qualified electors to vote unless a court had found that they were unable to cast a ballot and unable to communicate their choices on a ballot. The proposal will be on the general election ballot in November and must be approved by a majority of the voters.

HB 2 – The State Budget That Didn’t Happen

The legislature did *not* adopt a state budget for the coming year, so we still don’t know what the final appropriations will be for the coming year. Here’s a quick review of how things stood as the budget was considered by the House and the Senate:

Medicaid: The House and the Senate included \$602 million in general fund state match for Medicaid programs in the Human Services Department, plus an additional \$22 million more from the Tobacco Settlement Fund and a one-time appropriation of \$5.5 million to address some of the shortfall in the current year (FY 10) budget. These funds were appropriated last year for the DD waiver (\$4 million) and behavioral health services for children (\$1.5 million) but were not spent for those purposes. According to the latest projections by the Human Services Department, this should come very close to the amount needed to continue the program in its current form in state FY 2011, without requiring further reductions in benefits or payment rates. These projections do include continuation of cost containment measures that have already been imposed in the program that save an estimated \$300 million in combined state and federal funds.

Developmental Disabilities: The Senate version of the state budget bill included \$2.25 million in new state funds to serve persons who are on the waiting list for the DD waiver, and an extra \$65,000 for a summer camp for children with autism (Camp Rising Sun, sponsored through the UNM Center on Development and Disability). The base funding level for the DD waiver in both versions of HB 2 was reduced to \$58.3 million in state funds to remove funds appropriated last

year that DOH did not spend for the waiver and account for a higher level of federal matching dollars. Legislative staff believe this is enough to continue services for current waiver recipients, but DOH disagrees and is likely to consider significant service or rate cuts this year.

Other Disability-Related Budgets. In both the House and the Senate versions:

- State funding for non-Medicaid behavioral health was cut by 2%, but a significant drop in federal funds (including the end of the “transformation” grant) will result in elimination of 26 staff positions in the Behavioral Health Division, which is 40% of the division’s total staff.
- Total funding for DVR is down 6.6% from the original funding level for this year, although only around \$300,000 less than what the agency requested last fall. This is not enough to match all available federal money. Independent Living services funded through DVR were reduced to the FY 2009 level – \$45,000 less than originally budgeted for FY 10.
- Contract services at the Office of Guardianship are around \$300,000 less than the original budget for FY 10. This is substantially less than what the agency projected it would need in FY 2011 to keep up with increased demands for services from the courts, Adult Protective Services, and other referral sources.

Bills and Memorials That Failed to Pass

HB 41 Night-care services under D&E waiver. Rep. Jim Trujillo. Required coverage under the D&E waiver program for “night care” services to individuals with dementia. HSD agreed to address the issue that prompted this bill.

HB 94 Merge ALTSD into HSD. Rep. Al Park. Would have abolished the Aging and Long-Term Services Department and transferred its functions and programs to HSD. Same as SB 118.

HB 96 Prohibit insurance exclusion of pre-existing conditions. Rep. Danice Picraux.

HB 176 Accessible parking. Rep. Jeff Steinborn. Same as SB 209, which did pass.

HB 235 Exceptions to State Use Act. Rep. Danice Picraux. Would have created a specific appeal procedure under the State Use Act, and allowed state agencies to obtain professional services through the Procurement Code rather than through the State Use Act.

HB 249 Autism program in Dexter. Rep. Candy Ezzell. Would have appropriated \$25,000 to a community program in Dexter to provide services to children with autism.

HJM 2 Medical home. Rep. Danice Picraux. Called 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 34 No Medicaid Cuts – Sen. Tim Keller. Would “hold harmless” anyone already enrolled in Medicaid or the DD waiver from any benefit or funding cuts made by the 2010 state legislature.

SB 118 Merge ALTSD into HSD. Sen. John Arthur Smith. Same as HB 94.

SB 143 Communication with deaf individuals. Sen. Nancy Rodriguez. Required every state agency to establish protocols to assure adequate communication with deaf individuals.

SB 168 Amendments to State Use Act. Sen. George Munoz. Exempted non-profit health care providers from the provisions of the State Use Act.

SB 173 Jackson attorney fees 2010. Sen. Rod Adair. Prohibited DOH from paying for any more fees or expenses for plaintiff’s attorneys in the *Jackson* lawsuit in the current fiscal year (FY10).

SB 174 Jackson attorney fees 2011. Sen. Rod Adair. Identical to SB 173 except that it prohibited DOH from paying Jackson attorney fees in FY 2011. *A provision limiting attorney fees and*

all other court-related expenses in this case to \$100,000 in FY 2011 was inserted into the Senate version of the state budget but this was not enacted.

SB 187 Amendments to Human Rights Act. Sen. David Ulibarri. Amended the state Human Rights Act to make it consistent with the current provisions of the federal Americans with Disabilities Act with respect to employment discrimination.

SB 205 License plate fee waiver. Sen. Jerry Ortiz y Pino. Waived the registration fee for one vehicle for a person who qualifies for an accessible parking (“handicapped”) placard or plate.

SB 219 Eliminate behavioral health managed care contract. Sen. Jerry Ortiz y Pino. Deleted the current requirement that the Behavioral Health Collaborative contract with a managed care entity to administer all publicly funded mental health services.

SJM 13 Study seclusion/restraint. Sen. Mary Jane Garcia. Called on the Public Education Department to form a work group to study issues related to seclusion and restraint in public schools. Passed the Senate but just missed being voted on by the House on the final day of the session.

SJM 45 Alternatives to detention in jails. Sen. Sue Wilson Beffort. This memorial called on the Behavioral Health Collaborative and its member state agencies to develop crisis services for persons with mental illness to reduce use of jails as holding centers or treatment programs.

SJM 50 Native American Medicaid. Sen. John Pinto. Same as HJM 43, which did pass.

ABBREVIATIONS USED IN THIS REPORT

State Agencies

ALTSD	Aging and Long Term Services Department
CYFD	Children, Youth and Families Department
DDPC	Developmental Disabilities Planning Council
DFA	Department of Finance and Administration
DOH	Department of Health
HSD	Human Services Department
PED	Public Education Department

Legislative Committees

HAFC	House Appropriations and Finance Committee
HCPAC	House Consumer and Public Affairs Committee
HEC	House Education Committee
HHGAC	House Health and Government Affairs Committee
HJC	House Judiciary Committee
HTPWC	House Transportation and Public Works Committee
HTRC	House Taxation and Revenue Committee

SEC	Senate Education Committee
SFC	Senate Finance Committee
SIAC	Senate Indian Affairs Committee
SJC	Senate Judiciary Committee
SPAC	Senate Public Affairs Committee
SRC	Senate Rules Committee

LFC Legislative Finance Committee (joint House-Senate committee that meets during the interim between legislative sessions)

LHHS Legislative Health and Human Services Committee (interim committee)