

DISABILITY ISSUES IN THE 2010 LEGISLATURE

STATUS REPORT #2

By Jim Jackson, Executive Director
DISABILITY RIGHTS NEW MEXICO
January 31, 2010

This Wednesday, February 3, marks the half-way point of the 30-day session. That is also the deadline for the introduction of bills, so many new proposals are expected in the next few days.

Budget bill taking shape. The House Appropriations and Finance Committee has just taken final action on HB 2, the state budget bill, so debate and a final vote by the House are expected early this week. In putting together its version of the bill, the HAFC looks at the funding recommendations for each state agency made by the governor and the Legislative Finance Committee and generally adopts whichever one is lower. The HAFC appropriation levels for Medicaid and for the DD waiver would require that further spending cuts be made in these programs in the coming year. Once it's adopted by the House, the budget bill will move to the Senate Finance Committee for further work.

Action last week. SB 34, a bill sponsored by Sen. Tim Keller of Albuquerque that would prohibit reductions in benefits or services this coming year to persons on Medicaid or on the DD waiver, made it through the Senate Public Affairs Committee and is now assigned to the Senate Finance Committee. HB 94, which would have eliminated the Aging and Long Term Services Department and transferred its programs to the Human Services Department, was tabled in the House Consumer and Public Affairs Committee.

Two memorials were introduced that emphasize the importance of Medicaid to the state, oppose the dramatic restructuring of Medicaid that was proposed in a recent concept paper issued by the Human Services Department, and call for the appointment of a task force to review Medicaid and come up with recommendations to improve the program. House Memorial 28 is sponsored by Rep. Mimi Stewart of Albuquerque; Senate Memorial 27 is sponsored by Sen. Mary Kay Papan of Las Cruces.

Disability Rights Awareness Day a success. Around 150 persons with disabilities, family members, advocates and agency representatives made it through the snow to attend the disability community's annual event in Santa Fe on January 29 and 30, which was organized by The Disability Coalition. After a keynote address by Sen. Clinton Harden of Clovis, there were workshops on the legislative process, a discussion of the current budget situation and its effect on disability programs, and topical sessions. On Saturday, an enthusiastic crowd in the Capitol Rotunda enjoyed a performance by the Arcistatics from Santa Fe, and received a status report on the budget and legislative action. The Arc of New Mexico and Sen. Tim Jennings of Roswell presented the Patty Jennings Spirit award to Polly Arango for her long-time advocacy efforts on behalf of people with disabilities. Rep. Kiki Saavedra and Sen. Clinton Harden received Legislative Champion awards from The Disability Coalition for their efforts on behalf of people with disabilities over the past year.

HB 2 – The State Budget

The Disability Coalition has adopted a consensus position statement 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: The H AFC version of HB 2 includes \$602 million in general fund state match for Medicaid programs in the Human Services Department, and adds around \$20 million more from the Tobacco Settlement Fund. This makes the total appropriation about \$11 million higher than the governor's recommendation, but still at least \$15 million short of what HSD believes it would need to maintain the program at its current level. Including federal matching dollars, that means that \$75 million more would have to be cut from the program, on top of cuts already made in the current fiscal year.

Cost containment measures already imposed this year will cut Medicaid program expenditures by \$200 million through reductions in provider rates and benefits, in addition to a \$100 million drop in projected expenses in the State Coverage Insurance program due to a freeze on most new enrollment. Those numbers include about \$60 million in state funding and approximately \$240 million in federal match dollars that New Mexico is leaving on the table because the state hasn't put up its share to draw down the federal money. According to estimates by the Bureau of Business and Economic Research at the University of New Mexico, the state's failure to provide the \$60 million share needed to get the federal funds will lead to the loss of some 3,000 jobs in New Mexico, in addition to the loss of services to Medicaid and SCI participants.

Developmental Disabilities: The H AFC recommendation for the DD waiver reduces state funding but, as in the rest of the Medicaid program, projects extra federal funding to cover most of this reduction. The result is a relatively flat budget that does not address increased program costs over the past year and into the coming year. This funding level would very likely prompt DOH to impose a variety of cuts to the program in the form of rate reductions and cuts in services.

The LFC had originally recommended \$2 million in new funding to take some individuals off of the waiting list, but the H AFC version of the budget does not include any new funds for this purpose.

Non-Medicaid Behavioral Health: The H AFC budget reduces state funding in this area by 2%, but a significant drop in federal funds (including the end of the "transformation" grant) will result in the elimination of 26 staff positions in the Behavioral Health Division, which is 40% of the division's total staff.

Other Bills and Memorials

Abuse/Neglect

HB 217 Abuse or neglect in homes. Rep. Nick Salazar. This bill amends the Resident Abuse and Neglect Act to make abuse or neglect of a person in their own home, or in the home of a

caretaker, a criminal offense. The current law applies only to facilities such as nursing homes and group homes. HCPAC/HJC.

Accessible Parking

HB 176 Accessible parking. Rep. Jeff Steinborn. This bill would authorize the Governor's Commission on Disability to provide training to law enforcement officers on accessible parking issues, require renewal of parking placards every four years, and allow police officers to ticket or tow vehicles illegally parked in accessible parking spaces. Same as SB 209. HCPAC/HJC.

SB 205 License plate fee waiver. Sen. Jerry Ortiz y Pino. This bill would waive the usual auto registration fee for one vehicle for a person with a disability who qualifies for an accessible parking ("handicapped") license plate. SCC/SCORC/SFC.

SB 209 Accessible parking amendments. Sen. Jerry Ortiz y Pino. Same as HB 176, above. SPAC/SJC.

Behavioral Health

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. HAFB.

SB 216 Repeal GBMI verdict. Sen. Peter Wirth. This bill would eliminate the verdict of "guilty but mentally ill" in criminal cases. This plea or verdict was intended to require that individuals who were found guilty of a crime and were known to have a mental illness receive treatment while in jail or prison. Although the verdict is rarely used, it appears that some juries have assumed that it would require such treatment. In fact, there is no such requirement, and persons with such a verdict are no more or less likely to receive treatment than any other prisoner or detainee with mental illness. SPAC/SJC.

SB 219 Eliminate behavioral health managed care contract. Sen. Jerry Ortiz y Pino. This bill would delete the current requirement that the Behavioral Health Collaborative contract with a managed care entity to administer all publicly funded mental health services. Value Options had this contract for four years and Optum Health is now the contractor. Under this bill, the Collaborative would contract directly with local or regional providers, or provide services directly through its own staff. SCC/SPAC/SFC.

Deaf Issues

SB 143 Communication with deaf individuals. Sen. Nancy Rodriguez. Requires every state agency to establish protocols to assure adequate communication with deaf individuals, including the employment of a liaison familiar with deaf cultural and communication issues. SCC/SRC/SPAC.

Developmental Disabilities

SB 173 Jackson attorney fees 2010. Sen. Rod Adair. This bill would prohibit the Department of Health from paying for any more fees or expenses for plaintiff's attorney fees in the *Jackson* lawsuit in FY 2010. It does not address fees paid to the state's attorneys or the consultants or contractors used by DOH in its efforts to comply with its obligations in the case. SJC/SFC.

SB 174 Jackson attorney fees 2011. Sen. Rod Adair. Identical to SB 173 except that it prohibits DOH from paying Jackson attorney fees in FY 2011. SJC/SFC.

Education

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. HEC.

SJM 13 Study seclusion/restraint. Sen. Mary Jane Garcia. This memorial calls on the Public Education Department to form a work group to study issues related to seclusion and restraint in public schools. The work group would include representatives from PED, public schools, advocates for the rights of children and others. SRC/SEC.

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. SRC/SEC

Employment

HB 235 Exceptions to State Use Act. Rep. Danice Picraux. This bill would allow state agencies to follow the standard requirements of the state Procurement Code when seeking professional services, rather than having to obtain such services through the State Use Act (SUA). The SUA requires state agencies to obtain any needed contractual services from individuals with disabilities and non-profit organizations employing persons with disabilities if they are registered with the SUA Council, unless the services are not available or would be more expensive through the Council. Professional services often require specialized expertise or background. HRC.

SB 168 Amendments to State Use Act. Sen. George Munoz. The bill would exempt non-profit organizations providing health care services from the provisions of the Act, which requires state agencies to purchase certain services through vendors that employ persons with disabilities. SCC/SPAC/SFC.

SB 187 ADA-related amendments to Human Rights Act. Sen. David Ulibarri. This bill amends 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. SCC/SPAC/SJC.

Health Care

HB 41 Night-care services under D&E waiver. Rep. Jim Trujillo. This bill would require coverage under the Disabled and Elderly waiver program for “night care” services to individuals with dementia. The bill would appropriate \$100,000 to fund the needed supervision and case management. HAFC.

HB 96 Prohibit insurance exclusion of pre-existing conditions. Rep. Danice Picraux. This bill would prohibit health insurance companies from permanently excluding coverage for pre-existing medical conditions. However, insurers could still establish “waiting periods” for up to 6 months during which coverage could be excluded. HHGAC/HBIC.

HB 216 Medical Insurance Pool programs. Rep. Nick Salazar. This bill would authorize 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. HCPAC/HHGAC.

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. Passed the House. SRC/SPAC.

Medicaid

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. Same as SM 27. H AFC.

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 that might be made by the 2010 state legislature. SFC.

SM 27 Medicaid importance and task force. Sen. Mary Kay Papen. Same as HM 28, above. SRC/SPAC.

Traumatic Brain Injury

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. SCC/SEC/SPAC.

Other

HB 94 Merge ALTSD into HSD. Rep. Al Park. This bill would abolish the Aging and Long-Term Services Department and transfer its functions and programs to the Human Services Department. This was one of the recommendations recently made by the government efficiency committee appointed by the governor. Same as SB 118. Heard and tabled in HCPAC.

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

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. SRC/SJC.

REFERENCE INFORMATION

Contacting Your Legislators. You can contact your senator or representative during the session:

Telephone: 505-986-4300. This is the Capitol switchboard operator: ask for your legislator by name and they will route your call to his/her office.

E-mail: To find your legislator’s e-mail address, log on to the Legislature’s “Find Your Legislator” web site, <http://www.nmlegis.gov/lcs/legislatorsearch.aspx>, and click on the “Alpha List” for either the House or the Senate. Not all legislators have listed email addresses.

U.S. Mail: Legislator’s name, NM State Capitol Bldg., Santa Fe, NM 87503

Don’t know who your legislators are? It’s easy to find out through the internet but you’ll probably need your full 9-digit zip code. If you don’t know that number, you can get it through the postal service

using this link: <http://zip4.usps.com/zip4/welcome.jsp>. Then log on to the state legislature’s “Find Your Legislator” web page, <http://www.nmlegis.gov/lcs/legislatorsearch.aspx>. Under either the House of Representatives or Senate, click on the link to “Search by Name, District or Zip Code”. You’ll see a page with the photos and names of all the Representatives or Senators, with a search box near the top to search by zip code. Enter your five-digit zip code and click “Search”. If you get a list including more than one Representative or Senator, you’ll also get a search box at the bottom where you can enter the full 9-digit zip code. That search will result in a page that shows your specific Representative and Senator.

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
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)