

DISABILITY ISSUES IN THE 2010 LEGISLATURE

STATUS REPORT #3

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Raise revenues, or cut programs further? That is the question facing the state Senate as it begins consideration of the state budget bill passed on to it by the House. On virtually a straight party-line vote, the House passed a budget bill (HB 2) this week that relies on raising about \$300 million in additional revenues. The House very narrowly passed bills to raise the necessary funding through a temporary increase of the state gross receipts tax by ½%, and a temporary 1½% income surtax on those in the top 2% of income in the state. A measure to eliminate a tax advantage for those who itemize deductions, which would have raised an additional \$90 million this calendar year, was rejected on a 33-34 vote.

The House version of HB 2 appears to provide just enough funding to keep the Medicaid program at its current (but significantly reduced) level in the coming year without further cuts. Unfortunately, it does not adequately fund the DD waiver program, so there would continue to be budget pressure on DOH to move ahead with significant cuts to rates and/or benefits. And if the Senate rejects the tax measures approved by the House, further budget cuts in the range of 5% to 10% may be in store for these and other state programs.

Medicaid restructuring rejected. HSD announced this week that it would no longer be pursuing a plan to drastically alter the Medicaid program. A “concept paper” issued by the department in December had proposed eliminating all services except those required by federal law, and providing those services only to the groups required by federal law. The latest statement from HSD acknowledges that many if not most of the “optional” benefits under Medicaid are critical to those on Medicaid. It goes on to indicate that there are no plans to roll back eligibility criteria for those who currently qualify for regular Medicaid benefits. This is a major victory for human services advocates who had strongly protested the earlier proposal.

New business. A few new disability-related proposals were introduced this past week, just before the official Wednesday deadline. They include a bill (SB 264) to create a permanent subcommittee of the Legislative Health and Human Services Committee that would focus on disability issues, and a memorial (SJM 45) calling on the Behavioral Health Collaborative to look for ways to provide crisis-related mental health services so that fewer individuals end up detained in local jails.

“Waiting list” in Senate Rules. A proposed constitutional amendment and a number of Senate memorials are stacked up waiting for a hearing in the Senate Rules Committee. With only about 10 days left in the session, the committee’s focus on confirmation hearings has left many of these proposals short on the time it will take them to clear the committee, pass the Senate and, in some cases, work their way through the House as well. The constitutional amendment (SJR 6) would update voting rights provisions to eliminate archaic and offensive language relating to persons with disabilities. SM 27, calling for a task force to review any proposals for major changes in

Medicaid before they are pursued by HSD, is among the other measures awaiting a hearing in SRC.

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, including the DD waiver; and favorable consideration for the budgets of vocational rehabilitation programs. Disability Rights New Mexico supports the Coalition's position.

Medicaid: According to the latest projections by the Human Services Department, the version of HB 2 recently passed by the House 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, including 3% provider rate cuts, a freeze on most new enrollments into the State Coverage Insurance program, and other targeted reductions in certain benefits. These continuing budget cuts reduce annual spending in Medicaid by a total of nearly \$300 million in combined state and federal funds.

There has been confusion among legislators, advocates, and state agency staff about the projections and appropriations levels. It now appears that the state funding approved in the budget bill (which is higher than the governor's request) will be sufficient to maintain the program at its current level in the coming fiscal year when combined with two other funding sources: a one-time appropriation to Medicaid of funds for the DD waiver that were not spent by DOH this year, and a guess that the state will avoid certain disallowances proposed by the federal government. The result is a Medicaid budget that more or less balances expenses and revenues.

HB 2 currently includes \$602 million in general fund state match for Medicaid programs in the Human Services Department, plus an additional \$20 million more from the Tobacco Settlement Fund, and a one-time appropriation of over \$5 million to address some of the shortfall in the current (FY 10) budget.

Developmental Disabilities: The funding level for the DD waiver in HB 2 has been reduced significantly compared to last year's budget. The \$5.4 million added to the budget last year to serve people on the waiting list, which was not used by DOH, has been cut out of the budget, and there is no new money for the waitlist in HB 2 this year. Relying on a temporary increase in federal Medicaid funds, another \$3 million in state funds has also been cut. This leaves only \$58.3 million in state funds for the program, compared to the original FY 10 appropriation of nearly \$67 million and DOH's budget request for the coming year of over \$76 million.

The result is a budget that does not address increased program costs over the past year, which are expected to grow further in 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.

Cuts amounting to nearly 15% of the program were announced by DOH in January, but were soon withdrawn after the legality of the process was challenged by DRNM and the NM Center on Law and Poverty.

Other Disability-Related Budgets.

- HB 2 reduces state funding for non-Medicaid behavioral health 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.
- 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. Independent Living services funded through DVR are down to the FY 2009 level, which is \$45,000 less than originally budgeted for FY 10.
- Contract services at the Office of Guardianship are around \$100,000 less than the original budget for FY 10. This is substantially less than what the agency projected it needed in FY 2011 to keep up with increased demands for services from the courts, Adult Protective Services, and other referral sources.

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 spaced. Same as SB 209. Awaiting final vote in the House.

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. Sen. Jerry Ortiz y Pino. Same as HB 176, above. Passed SPAC, pending in SJC.

Behavioral Health

HB 249 Autism program in Dexter. Rep. Candy Ezzell. Appropriates \$25,000 to a community program in Dexter to provide services to children with autism. H AFC.

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. Passed the House; awaiting Senate committee assignments.

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 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. 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. Passed SPAC, pending in 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 contact directly with local or regional providers, or provide services directly through its own staff. SCC/SPAC/SFC.

SJM 25 Study autism services in public schools. See listing under Education, below.

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

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. Tabled in SJC.

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. Tabled in SJC.

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. Passed the House; awaiting Senate committee assignments.

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. Awaiting final Senate vote.

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. HHGAC.
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 - General

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. It appears that the state has agreed to address the issue that prompted this bill and it may not be moved forward any further.

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. Passed HCPAC, pending in 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. HAFC.

HJM 43 Native American Medicaid. Rep. Ray Begay. This memorial recognizes the importance of Medicaid, calls for full funding without benefit cuts, and calls for establishment of a separate eligibility category for Native Americans. Awaiting final vote in the House.

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.

SJM 50 Native American Medicaid. Sen. John Pinto. Same as HJM 43, above. SRC/SIAC.

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. 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.

SB 264 Disability Subcommittee of LHHS. Sen. Nancy Rodriguez. This bill would establish 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. SPAC.

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
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)