

DISABILITY ISSUES IN THE 2010 LEGISLATURE

STATUS REPORT #1

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The 2010 legislative session began last Tuesday, and as expected the focus is on the state's budget for the coming year. There is a potential budget deficit of over \$500 million in the coming year – that's 10% of the state budget. The governor and the Legislative Finance Committee are recommending that the gap be closed by further budget cuts (on top of the reductions already imposed in the current fiscal year), reallocation of state funds, and raising around \$200 million in additional revenue. If no new revenue measures pass, that \$200 million would have to be made up through even deeper budget cuts, which would mean further reductions in state services.

The legislature took notice of proposed cuts to the DD waiver program announced earlier this month by the Department of Health. On Thursday, the Senate Finance Committee held a hearing on the waiver program and the Department's current and future plans. The hearing lasted for over four hours, with more than two dozen family providers, consumers, advocates and others providing testimony to the Committee about the impact of substantial cuts to family living providers and to individual participant budgets that were recently announced by DOH. Senate President Pro Tem Tim Jennings of Roswell was particularly critical of DOH's decision not to use any of the \$9.4 million in funding provided by the legislature to take people off of the lengthy waiting list for this program in the current fiscal year. *[Note: Disability Rights New Mexico and the Center for Law and Poverty challenged the legality of implementing the proposed cuts without following proper procedures, and DOH has temporarily withdrawn the changes in order to hold public hearings on at least some parts of the proposal.]*

The House Appropriations and Finance Committee – which is putting together the first version of the state budget bill – held a hearing on the Medicaid budget this past week. There appears to be strong support for Medicaid in the Committee, but the current recommendations for funding still fall short of what's needed to keep the program going at its current level, even taking into account the cost-saving measures that have already been put into place which cut \$300 million in state and federal spending from the program.

Several bills and memorials related to disability issues have now been introduced, although the number of bills in the first week is lower than usual. These include bills that would prevent service reductions in Medicaid and the DD waiver program, require state agencies to employ liaisons to the deaf community to assure effective communication, and merge the Aging and Long Term Services Department into the Human Services Department. These and other proposals are described briefly later in this report.

State Budget Issues

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 Human Services Department estimates that the state needs about \$800 million in total state match to keep all current Medicaid programs (including the DD waiver, managed long-term services through CoLTS, managed behavioral health through the BHS Collaborative, and other programs) going at their current levels. This estimate assumes a continuation of recent cost containment measures that should produce \$200 million in savings as well as a \$100 million drop in projected expenses in the State Coverage Insurance program due to a freeze on most new enrollment. (Those numbers include both state and federal funds.) It also assumes that the supplemental funding from last year's economic stimulus bill (ARRA) will be extended, giving the state an additional \$160 million in federal money in the coming year, although Congress has not yet given final approval to that extension.

The governor's funding recommendation for all Medicaid programs combined comes to about \$770 million, which would leave a shortfall of \$30 million in state funds (\$150 million when the federal match is included). The LFC recommendation is higher at \$782 million, and relies on additional funding from the Tobacco Settlement Fund. Many legislators and advocates for human services programs are pushing for additional funding.

Developmental Disabilities: The DD budget is still being sorted out. The LFC originally recommended about a 1% increase in funding over last year's level; this is about \$10 million less than what DOH projected it would need, but the expected extension of extra federal matching funds will reduce the amount of state funding needed. The governor's recommendation for the DD Division takes the additional federal funding into account, but calls for reducing state funding by 5.4% compared to last year's budget. It seems clear that if the governor's proposal is accepted DOH will have no choice but to proceed with budget cutting plans like those it recently announced and then temporarily suspended. The department has also been working on revisions to the DD waiver that would substantially reduce individual participant budgets, and it appears that they will proceed with these plans regardless of the amount of funding they receive.

Non-Medicaid Behavioral Health: The budget recommendations call for state funding for behavioral health services for those who do not qualify for Medicaid to remain at about the same level as in the current year. However, federal funds will drop significantly due to the ending of several grants. Without additional state funds to make up some of this loss, total funding for non-Medicaid behavioral health is anticipated to drop by over 13% under both the LFC's and the governor's budget.

Vocational Rehabilitation/Independent Living: DVR will be losing the supplemental federal funding it received under ARRA, and will not be receiving any additional state funds to make up for that loss. The LFC recommendation for DVR is about \$70,000 less than what DVR requested last fall and the governor's recommendation is \$180,000 less than DVR's request. These funding levels are not adequate to earn all of the federal revenue available to DVR (which comes at almost a 4:1 match rate, like Medicaid). It may even result in a federal penalty for failure to maintain the current level of effort.

DVR requested level funding for Independent Living services; the governor's request reduces funding by 3%, consistent with recent cost-cutting efforts, while the LFC recommends a cut of over 7% compared to last year's funding level.

Other Bills and Memorials

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. HHGAC.

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. HCPAC/HHGAC/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.

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. HHGAC.

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

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. SCC/SEC/SPAC

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

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.

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

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.

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.

*Interim Disability Subcommittee: A memorial to establish a subcommittee of the interim Legislative Health and Human Services Committee that would focus on disability issues. Such a committee was established last year on a one-time basis.

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)