



DISABILITY RIGHTS NEW MEXICO

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James Jackson, Executive Director

Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2012 LEGISLATURE STATUS REPORT #3

By Jim Jackson, Executive Director
DISABILITY RIGHTS NEW MEXICO
February 6, 2012

Calendar

Wednesday, Feb. 8: Behavioral Health Day at the Capitol

Slow and quiet. The pace of this year's legislative session seems to be a bit slower than usual. Relatively few bills have been passed by the House or the Senate, and the movement of bills through committees seems to be taking longer. While a few high profile issues such as driver's licenses and school retention have gotten a lot of public and press attention, most of the bills seem to be moving under the radar. In the remaining 10 days of the session, look for the pace to pick up as legislators try to get their bills through the process in a hurry.

Budget impasse resolved. A dispute between the governor and the Democratic leadership of the legislature that delayed action on the state budget has apparently been resolved. The governor had threatened to veto the bill because it would have eliminated funding for some of her new initiatives if state revenues turn out to be insufficient to fund all state programs in FY 2013. The House Appropriations and Finance Committee is expected to approve the revised version of HB 2 this morning and move it on for final action by the House.

As noted in last week's report, HB 2 provides enough money for the Medicaid program to meet HSD's projections for spending in the coming year. It also includes \$2.35 million for the DD waiver wait list, level funding for low-income legal services, \$400,000 in new funds for the Office of Guardianship, and several one-time appropriations of interest, including \$10,000 to the Brain Injury Advisory Council for children's bicycle helmets, funding for two Independent Living counselors at the Commission for the Blind, and a van for the Governor's Commission on Disability.

Working on the DD wait list. Sen. Tim Jennings has introduced a bill (SB 261) that would appropriate nearly \$130 million to DOH, which is more than enough to fund services to every one of the 5,500 individuals on the waiting list for the DD waiver program. Since the legislature is not likely to invest that level of funding, the senator has also introduced a memorial (SJM 39) calling on DOH to develop a 3-5 year plan to address the needs of persons on the wait list, set a

target for the number of persons to move into service in that time frame, and identify the amount of funding needed each year to reach the target.

Deadlock over legislative oversight of Medicaid. HB 173, calling for legislative approval before major changes to Medicaid can be made, is stuck in limbo. After a hearing in HHGAC, the committee – evenly split between Democrats and Republicans – could not agree either to table the bill or to send it on to its next committee. Unless a member changes his/her mind, the bill remains in the committee until the session ends. A similar bill in the Senate is not moving.

Watch for committee hearings. The schedule of committee hearings is posted each day on the legislature's web site, nmlegis.gov. Items of interest tomorrow include:

Tues. morning: HHGAC will hear HM 18 (integrated health program enrollment).

Tues. afternoon: HAFC will hear HB 172 (DD state-funded services), HM 38 (Basic Health Plan), HM 44 (autism plan) and HJM 16 (interim behavioral health committee).

HCPAC will hear HB 113, HB 207, and HB 235 (all on voter ID).

Summary and Status of Bills and Memorials

Autism

HB 148 Public employee insurance coverage. Rep. Bill O'Neill. This bill would require the insurance plans for state and public school employees to cover services needed by children with autism. Such coverage is mandated for most individual and group policies in New Mexico. *This bill has not received a "message" from the governor and will not move forward in this session. However, this issue is included within the language of HM 44 and SM 20, below.*

HM 44 Autism state plan. Rep. Ed Sandoval. This memorial calls for the state to develop a comprehensive plan that addresses the need for access to evaluations as well as a wide variety of services and benefits for children and adults with autism. HAFC. Hearing on Tuesday 2/7/12.

SM 20 Autism state plan. Sen. Jerry Ortiz y Pino. This memorial calls for the state to develop a comprehensive plan that addresses the need for access to evaluations as well as a wide variety of services and benefits for children and adults with autism. Same as HM 44, above. SRC/SPAC.

See also SB 221 and SB 254 in the section below on Education

Community Services

SJM 9 Implement Money Follows the Person. Sen. Linda Lopez. This memorial calls on the Human Services Department to fully implement the Money Follows the Person program, which supports the transition of individuals from nursing homes into home and community placements and increases the number of people receiving services in the community. This program was recently approved for additional federal funding. MFP has been required under state law since 2006 but has not been implemented in the manner intended. Passed the Senate; House committee assignments pending.

Developmental Disabilities

HB 82 Family Infant Toddler funding. Rep. Danice Picraux. Appropriates \$2.1 million to the Department of Health to assure that there will be enough funding available to serve all young children who qualify for services, and to increase provider rates. Passed HCPAC on a 3-2 vote; pending in HAFC.

HB 172 Funding for state-funded DD programs. Rep. Jimmie Hall. Appropriates \$2.5 million to DOH for the DD services funded by state dollars (not the waiver program). The money would be used to increase payment rates and serve more people. Passed HHGAC; HAFC hearing 2/7/12.

SB 39 Mercury warning signs. Sen. Peter Wirth. Appropriates \$100,000 to the Department of Game and Fish to post warning signs at lakes and rivers where mercury levels may pose a risk to children and pregnant women. This is intended to prevent birth defects and health problems. Passed SCONC; pending in SFC.

SB 98 Family Infant Toddler funding. Sen. Howie Morales. Appropriates \$2.1 million to the Department of Health to assure that there will be enough funding available to serve all young children who qualify for services, and to increase provider rates. Passed SPAC; pending in SFC.

SB 114 Birth defect prevention and registry. Sen. Sue Wilson Beffort. Appropriates \$100,000 to DOH to fund the birth defects prevention and surveillance program. Passed SPAC; pending in SFC.

SB 133 FIT funding. Sen. Cynthia Nava. Appropriates \$3 million to DOH for the Family Infant Toddler program for higher rates and to serve more children. Passed SEC; pending in SFC.

SB 236 Funding for state-funded DD programs. Sen. Nancy Rodriguez. Appropriates \$2.5 million to DOH for the DD services funded by state dollars (not the waiver program). The money would be used to increase payment rates and serve more people. Passed SPAC; pending in SFC.

SB 261 Fully fund DD waiver wait list. Sen. Tim Jennings. This bill would appropriate \$129.7 million to DOH to fully fund the DD waiver program and serve everyone (about 5,500 individuals) currently on the waiting list for this program. SPAC/SFC.

SJM 39 DD waiting list plan. Sen. Tim Jennings. This memorial calls on the Department of Health to develop a 3-5 year plan to address the needs of persons on the wait list for the DD waiver program. The plan would include information about the age and location of those on the wait list, the cost of providing services to them and the amount of new funding needed each year to do so, and a target number of new persons to be served over the next 3-5 years. There are around 5,500 individuals now on the waiting list. SRC/SPAC.

Education

HB 65 Special needs student scholarships. Rep. Ray Begaye. This bill would authorize the creation of organizations to provide scholarships to the families of special needs students to pay for tuition in private schools, and would provide a tax credit for 90% of the amount contributed to such organizations by individual and corporate taxpayers, which means the taxpayers would pay the vast majority of the cost of the scholarships. Same as SB 31, below. *DRNM's concerns with this bill are 1) children voluntarily enrolled in private schools do not have most of the legal protections regarding special education that are provided under IDEA and state law, so families would have little recourse if the private school is not providing an appropriate education; 2) there is no requirement in the law that the private school provide appropriate special education or use qualified teachers to do so; and 3) we believe that it is not good public policy to divert public tax dollars to private schools and in the process reduce funding for public schools.* Passed HEC; tabled in HTRC.

HB 228 New public school funding formula. Rep. Patty Lundstrom. This bill would implement a new funding formula for public schools. The major elements of the new formula would take effect for the school year starting in 2013. Funding for special education students would be based on a flat rate of 16% of a school's enrollment, not the actual number of special education students. The bill would also create a separate fund to assist schools who are serving very high-cost special education students. HEC/HAFC.

HB 229 Funding formula changes. Rep. Patty Lundstrom. This bill makes a number of changes to the public school funding formula. One of the proposed changes would appear to severely limit funding for therapists and diagnosticians. HRC.

HB 308 Rep. Rick Miera. Appropriates a total of \$2.3 million to the Public Education Department to support behavioral health services and after-school suicide prevention and anti-bullying programs for students in schools that have received a D or F grade under the new school rating system. Same as SB 223, below, except a smaller appropriation. HEC/HAFC.

SB 31 Special needs student scholarships. Sen. Jerry Ortiz y Pino. This bill would authorize the creation of organizations to provide scholarships to the families of special needs students to assist them in attending private schools, and provide a tax credit. Same as HB 65, above. SEC/SFC.

SB 112 School services to age 22. Sen. Howie Morales. This bill would amend existing law to clarify that special education students can continue to receive educational services through the end of the school year during which they have their 22nd birthday. This is current practice in New Mexico but our state law does not so clearly require this. SCC/SEC/SFC

SB 221 Autism center. Sen. Cynthia Nava. Appropriates \$220,000 for the Las Cruces Public school district to establish a Southern New Mexico Autism Spectrum Disorder Center. The Center would provide a wide variety of supports and assistance to school personnel, parents, and community organizations serving children and adolescents with autism. Passed SEC; pending in SFC.

SB 223 School behavioral health services. Sen. Mary Kay Papen. Appropriates \$4.3 million to the Public Education Department to support behavioral health services and after-school suicide prevention and anti-bullying programs for students in schools that have received a D or F grade under the new school rating system. Similar to HB 308, above. Passed SEC; pending in SFC.

SB 254 Autism services. Sen. Cynthia Nava. Appropriates \$220,000 for the Las Cruces Public schools, to be used for teacher training and for academic and behavioral support for teens with autism in the Las Cruces, Gadsden, and Hatch Valley school districts. SEC/SFC.

Employment

SB 267 Employment Services and Promotion. Sen. Howie Morales. Appropriates \$150,000 to GCD to overcome barriers to employment of persons with disabilities through education, advocacy, and positive reinforcement. SPAC/SFC.

Health Care and Medicaid

HB 17 Legislative approval of Medicaid changes. Rep. Eleanor Chavez. This bill is being deferred by the sponsor in favor of HB 173, below. HRC.

HB 173 Legislative approval of Medicaid changes. Rep. Eleanor Chavez. As amended, this bill requires legislative approval before HSD could apply for federal approval of changes to eligibility, benefits, or co-pay arrangements that would result in \$10 million or more of savings or additional spending in the Medicaid program. It appropriates \$35,000 to HSD to carry out this mandate. The intent is give the legislature a greater role in setting policy for the Medicaid program, and in particular more authority over the anticipated “global” 1115 waiver program called for under the “Medicaid modernization” initiative. Same as SB174, below. HHGAC/HAFC. Deadlocked in HHGAC on tied committee votes.

HB 192 GRT exemption for DME. Rep. Jim Trujillo. This bill would exempt durable medical equipment and medical supplies from gross receipts (sales) tax. Prescription drugs and oxygen are already exempted. Same as SB 188, below. *DRNM generally opposes further exemptions from GRT since this is a major source of the state revenue that funds disability programs and other state services. Exemptions from the tax reduce the number of people or entities paying the tax and result in a higher tax rate for those who do pay it.* HBIC/HTRC.

HB 271 Native American diabetes prevention. Rep. Sandra Jeff. Appropriates \$250,000 to DOH to coordinate with tribal and federal health care programs to develop and implement protocols that would prevent or mitigate diabetes in Native American youth. HHGAC/HAFC.

HJR 23 State health care system. Rep. Gail Chasey. This proposed constitutional amendment would recognize health care as a fundamental human right and direct the state to establish a health care system that is accessible and affordable for all residents of the state. Same as SJR 5, below. HCPAC/HVEC.

HM 18 Integrated enrollment system. Rep. Mimi Stewart. Calls on HSD and others to develop a streamlined, integrated system for enrollment in Medicaid, the new health insurance exchange, and the Basic Health Plan (if that option is implemented in New Mexico). HHGAC hearing 2/7/12.

HM 38 Study Basic Health Plan. Rep. Gail Chasey. This memorial calls on the LFC to review the benefit and feasibility of developing a Basic Health Plan, as provided for under federal health care reform, and asks HSD and the Office of Health Care Reform to develop an integrated enrollment program to facilitate enrollment in Medicaid, the Basic Health Plan, or private insurance available through a health insurance exchange. Same as SM 54, below. *See also* HM 18, above and SB 7, SM 42, below. HAFC hearing 2/7/12.

SB 6 Health Insurance Exchange. Sen. Dede Feldman. This bill would establish a health insurance exchange in New Mexico, as called for under federal health care reform. This is a revised version of a bill that passed last year but was vetoed by the governor. SCC/SPAC/SFC.

SB 7 Basic Health Plan. Sen. Dede Feldman. This would create a new health coverage program in New Mexico for persons with income above the new Medicaid eligibility level to be established under federal health care reform (138% of the federal poverty level) but no more than 200% of the poverty level. The program would likely provide greater benefits at lower cost than the insurance policies these individuals would be able to purchase through a health insurance exchange, even with the subsidy that they would otherwise get. The program would be funded entirely by federal funds. SCC/SPAC/SFC.

SB 153 Legislative approval of Medicaid changes. Sen. Dede Feldman. Requires legislative approval before HSD could apply for federal approval of significant changes to the Medicaid program, including but not limited to the “global” 1115 waiver program called for under the Medicaid redesign (or “modernization”) initiative. Same as HB 17, above. SCC/SPAC/SFC.

SB 174 Legislative approval of Medicaid changes. Sen. Dede Feldman. Requires legislative approval before HSD could apply for federal approval of significant changes to the Medicaid program, including but not limited to the “global” 1115 waiver program called for under the “Medicaid modernization” initiative. Appropriates \$35,000 to HSD to carry out this mandate. Same as HB 173, above. SCC/SPAC/SFC.

SB 188 GRT exemption for DME. Sen. Mary Kay Papen. This bill would exempt durable medical equipment and medical supplies from gross receipts (sales) tax. Prescription drugs and oxygen are already exempted. Same as HB 192, above. *DRNM generally opposes further exemptions from GRT since this is a major source of the state revenue that funds disability programs and other state services. Exemptions from the tax reduce the number of people or entities paying the tax and result in a higher tax rate for those who do pay it.* SCORC/SFC.

SB 278 Health Insurance Exchange. Sen. George Munoz. This bill would establish the structure, scope and governance of a health insurance exchange in New Mexico, as called for under federal health care reform. The exchange would provide a way for people without health insurance to compare available plans, access subsidies for purchasing coverage, and apply for

Medicaid coverage if eligible. Exchanges must be in operation by January 1, 2014. The bill is similar but not identical to a bill passed by the 2011 legislature but vetoed by the governor. SCC/SPAC/SFC.

SJM 10 Report on health insurance exchange grant. Sen. Linda Lopez. This memorial calls on HSD to report to the legislature on its use of the first \$1 million federal grant to the state to begin planning a health insurance exchange. The state has also recently received a much larger second grant to begin developing the exchange. Passed SRC; pending in SPAC.

SJM 33 Health Care Reform Oversight Committee. Sen. Dede Feldman. Requests that the Legislative Council create an interim legislative committee to address the implementation of health care reform in New Mexico. SRC/SPAC.

SJR 5 State health care system. Sen. Jerry Ortiz y Pino. This proposed constitutional amendment would recognize health care as a fundamental human right and direct the state to establish a health care system that is accessible and affordable for all residents of the state. Same as HJR 23, above. SRC/SJC.

SM 42 Integrated enrollment system. Sen. Howie Morales. Calls on HSD and others to develop a streamlined, integrated system for enrollment in Medicaid, the new health insurance exchange, and the Basic Health Plan (if that is implemented in New Mexico). Same as HM 18, above. SRC/SPAC/SFC.

SM 54 Study Basic Health Plan. Sen. Michael Sanchez. This memorial calls on the LFC to review the benefit and feasibility of developing a Basic Health Plan, as provided for under federal health care reform, and asks HSD and the Office of Health Care Reform to develop an integrated enrollment program to facilitate enrollment in Medicaid, the Basic Health Plan, or private insurance available through a health insurance exchange. Same as HM 38, above. *See also* HM 18, SB 7, SM 42, above. SRC/SPAC.

Mental Health/Behavioral Health

HJM 8 Study veterans' mental health needs. Rep. Rudy Martinez. Calls on a variety of state agencies and other organizations to study the unmet health care and behavioral health needs of veterans in southwestern New Mexico. Passed the House; SRC/SPAC.

HJM 16 Interim Behavioral Health Committee. Rep. Dennis Kintigh and Sen. Mary Kay Papan. This memorial requests the Legislative Council to establish an interim committee that would meet monthly to address behavioral health issues. Passed HHGAC; pending in HAFC.

SB 95 Native American suicide prevention. Sen. Linda Lovejoy. Appropriates \$150,000 to UNM for a clearinghouse and technical assistance program to provide prevention, intervention and other assistance related to suicide among Native Americans. Passed SIAC; pending in SFC.

SB 179 Civil commitment responsibility. Sen. Jerry Ortiz y Pino. This bill would clarify that it is the responsibility of the local district attorney to file a civil commitment petition when a

treating physician determines that an individual meets the criteria for involuntary in-patient treatment. As drafted, a petition could be filed when the physician determines that commitment would be in the "best interest" of the patient, but an amendment is expected that would eliminate that provision. SCC/SPAC/SJC.

SJM 18 Study veterans' mental health needs. Sen. Richard Martinez. Calls on a variety of state agencies and other organizations to study the unmet health care and behavioral health needs of veterans in New Mexico. Passed SRC; pending in SPAC.

SJM 34 Interim Behavioral Health Committee. Sen. Bernadette Sanchez. This memorial requests the Legislative Council to establish an interim committee that would meet monthly to address behavioral health issues. Same as HJM 16, above. SRC/SPAC

See also SB 223, behavioral health in schools, in the Education section above.

Voting Rights

HB 113 Voter ID requirement. Rep. Cathrynn Brown. This bill would require a picture ID (or proof of tribal enrollment) in order to register to vote and to vote in state elections. The bill would waive the usual fee for obtaining a picture ID from the Motor Vehicle Division if the ID is needed for voting. *DRNM's position is that such requirements pose a barrier to voting for some elders and persons with disabilities who are entitled to vote but may not have a picture ID and for whom it would be a hardship or even an impossibility to obtain one in person from the MVD.* HCPAC/HVEC/HJC. HCPAC hearing 2/7/12.

HB 207 Voter ID. Rep. Jim Smith. This bill tightens up voter identification requirements but does not require a photo ID; it would allow a voter to submit a signed form at the polling place indicating the person's Social Security number and date of birth, which would have to match the information in the state voter data base. HCPAC/HVEC/HJC. HCPAC hearing 2/7/12.

HB 235 Voter identification. Rep. Dianne Hamilton. This bill would require a photo ID or proof of tribal enrollment in order to register to vote and to vote in an election. HCPAC/HVEC/HJC. HCPAC hearing 2/7/12.

Other

HB 136 Guardianship fund. Rep. Rhonda King. Creates an Office of Guardianship fund to hold appropriations, contributions, grants or other funds earmarked for the guardianship program, use such funds in accordance with the purpose of the Office, and retain any balance in the fund from year to year. Same as SB 110, below. HRC.

HB 254 Motor vehicle fees to GCD Disability Fund. Rep. Miguel Garcia. This bill would add \$5 to all motor vehicle registration fees, and earmark \$4 of these fees for the Disability Fund of the Governor's Commission on Disability, to support services and activities approved by the GCD. The remaining \$1 of the new fee would go to the Motor Vehicle Division. HRC.

HM 11 Disability Rights Awareness Day. Rep. Eleanor Chavez. This memorial recognizes the value and dignity of persons with disabilities, notes the problems of bullying and domestic violence and their impact on persons with disabilities, and declares January 24 to be Disability Rights Awareness Day in New Mexico. **Passed.**

SB 110 Office of Guardianship Fund. Sen. Sue Wilson Beffort. As amended, creates a fund to hold contributions, grants or similar funds earmarked for the guardianship program, and retain any balance in the fund from year to year. Annual legislative appropriations would not go into the fund and would still be subject to reversion at the end of the year. Similar to HB 136, above. Passed SPAC; pending in SFC.

SB 157 Parental notification. Sen. William Sharer. This bill would require notice to the parents of a minor child, or to the guardian or conservator of an adult woman found to be “incompetent”, prior to the performance of an abortion, unless a court exempts the woman from the notification requirement. *DRNM’s concerns with this legislation are that under New Mexico law, a conservator has no authority to approve or refuse an abortion, and a guardian’s authority to approve or refuse an abortion for an adult is questionable at best. Some of the terminology in the bill is not consistent with New Mexico statutes.* SPAC/SJC. Tentatively scheduled for 2/7/12.

SB 196 Capital outlay for state facilities. Sen. Cynthia Nava. This bill would clarify that the School for the Deaf and the School for the Visually Impaired qualify for construction and improvement funding under the state school capital outlay program, and waives the usual requirement for local matching funds in some circumstances. SEC/SFC.

SB 210 Interim disabilities committee. Sen. Nancy Rodriguez. This bill would create a permanent interim legislative committee to address disability issues, with a total of six legislators as members. SCC/SRC/SFC.

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

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| 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 |
| GCD | Governor's Commission on Disability |
| HSD | Human Services Department |
| PED | Public Education Department |

Legislative Committees

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|-------|---|
| 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 |
| HVEC | House Voters and Elections Committee |
| SCC | Senate Committees Committee |
| SCONC | Senate Conservation Committee |
| SCORC | Senate Corporations Committee |
| SEC | Senate Education Committee |
| SFC | Senate Finance Committee |
| SICAC | Senate Indian and Cultural 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) |