



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2012 LEGISLATURE STATUS REPORT #4

By Jim Jackson, Executive Director
DISABILITY RIGHTS NEW MEXICO
February 13, 2012

The final days. This year's 30-day legislative session comes to an end at noon this Thursday, Feb. 16. Most of the bills that were introduced this year are no longer moving, having been determined not relevant in the short session or tabled in one committee or another. A few memorials have already been passed. In the final days there will be a scramble to move the remaining bills and memorials through all the steps needed for final passage – or to stop them. The priority for legislative leaders will be on final action on the state budget for the coming year, as provided for in HB 2, and we expect further changes in that bill before final passage.

What's still moving? In addition to questions about final funding levels for disability programs in HB 2, the following bills and memorials tracked in this report (and further explained below) are still in play:

- HB 65 Special education scholarship tax credits. Awaiting final vote in the House.
- SB 39 Mercury warning signs. Passed Senate; pending in HAFAC.
- SB 110 Office of Guardianship fund. Passed Senate; referred to HCPAC/HJC.
- SB 196 State school capital outlay for NM School for the Deaf and NM School for the Blind and Visually Impaired. Passed Senate; pending in HEC.

- HJM 8 Behavioral health needs of veterans. Passed House; pending in SPAC.
- HJM 16 Interim legislative behavioral health committee. Passed House; awaiting Senate vote.
- SM 20 Autism state plan - Awaiting final Senate vote.
- SJM 9 Implement Money Follows the Person. Passed Senate; pending in HCPAC.
- SJM 10 Report on health insurance exchange grant. Awaiting final Senate vote.
- SJM 18 Behavioral health needs of veterans. Passed Senate; pending in HHGAC.
- SJM 34 Interim legislative behavioral health committee. Awaiting final Senate vote.
- SJM 39 DD Waiting list plan. Passed Senate; pending in HHGAC.

State budget being reviewed in the Senate. The House approved its version of the state budget bill, HB 2, by a unanimous vote. The Senate Finance Committee has made amendments to the

DRNM is New Mexico's designated Protection and Advocacy System

bill that will slightly increase state spending. These include raising the amount appropriated for the Developmental Disabilities waiver waiting list, to bring it back to the \$2.7 million originally included in the legislative budget recommendation. The SFC also inserted language to limit the costs of experts, attorney's fees and other court expenses in the Jackson case to \$100,000. Many of those costs support DOH's efforts to achieve compliance with court orders. Similar language in previous years was fully or partially vetoed by Governor Martinez and by then Governor Richardson.

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. **PASSED.**

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. Awaiting final Senate vote.

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; HCPAC.

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. 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. HAFC.

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 the Senate; HAFC.

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. 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. 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. 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. 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. 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. Passed the Senate; HHGAC.

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 and passed narrowly out of HTRC; awaiting final House vote.

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. Tabled in SEC.

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. 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. 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. 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 to 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.* 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. 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. Passed HCPAC and HVEC but has now been referred to HAFC.

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). **PASSED.**

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. **PASSED.**

HM 52 Report on progress toward health insurance exchange. Rep. Miguel Garcia. Asks the state Office of Health Care Reform to periodically report on progress toward establishing a health insurance exchange, pursuant to the \$34 million grant recently received by the state, and to consult with the Legislative Health and Human Services Committee. **PASSED.**

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.* SFC.

SB 278 Health Insurance Exchange. Sen. George Muñoz. 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. Awaiting final Senate vote.

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; pending in 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 the House; awaiting Senate vote.

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. 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 the Senate; HHGAC.

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. Pending final Senate vote.

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. Tabled in HCPAC.

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. Tabled in HCPAC.

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. Tabled in HCPAC.

Other

HB 51 Parental notification. Rep. Alonzo Baldonado. 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.* Tabled in HCPAC.

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.**

HM 61 Guardianship oversight study. Rep. Gail Chasey. Requests the Administrative Office of the Courts (AOC) to determine the resources and procedures that would be needed to inventory all guardianship cases in the courts statewide, provide oversight to assure annual reports by all guardians are submitted, require background checks on guardians, and other measures to improve oversight of guardians of incapacitated adults. Awaiting final House vote.

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 the Senate; HCPAC/HJC.

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.

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. Passed the Senate; HEC.

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

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

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)