



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 2015 LEGISLATURE STATUS REPORT #2

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Disability Rights New Mexico
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Coming Events:

Today: Disability Rights Awareness Day at the Marriott Courtyard
Tomorrow (Feb. 3): Disability Rights Awareness Day at the State Capitol.
Feb. 16: Autism Day at the Legislature
Mar. 11: Behavioral Health Day at the Legislature

Surge in new bills. With the introduction of new proposed legislation over the past 10 days, there are now nearly 800 bills, memorials and resolutions under consideration in this year's legislative session. Although the Senate has fewer members than the House (42 in the Senate, 70 in the House), the Senate accounts for more than half of these proposals. A few of the new bills of interest to the disability community include:

- SB 216 (Sen. Bill Soules) – Requires the Department of Health to issue an annual report on the DD waiver program, including information about the number of people on the waiting list and the amount of state money that would be needed to eliminate the waiting list.
- SB 283 (Sen. Bill O'Neill) – Restricts the use of seclusion and restraint in public schools to true emergency situations, and requires prompt notification to parents if their child is subject to seclusion or restraint.
- SB 345 (Sen. Daniel Ivey-Soto) – Requires the state to report court determinations of incapacity due to mental illness to the FBI for purposes of maintaining the national data based intended to prevent such individuals from purchasing firearms.

Marriage penalty memorial passes. House Memorial 15, which calls on the U.S. Congress to end the "marriage penalty", has already been approved by the House – unanimously! The "penalty" refers to the fact that if two recipients of SSI benefits get married, their combined total cash benefit is reduced by 25%, and so is the total amount they are allowed to hold in savings. HM 15 was not referred to any committee and was promptly voted on by the House, so no further action is needed. A similar memorial on the Senate side, SM 3, has been referred to the Senate Rules Committee.

Controversial forced treatment bill to be heard in SPAC this Tuesday. SB 53, which would authorize court-ordered out-patient mental health treatment for certain persons with mental illness, will

be heard on Tuesday afternoon in the Senate Public Affairs Committee, which meets in Room 321 of the State Capitol. The bill targets persons who have some history of non-compliance with treatment and who are considered likely to cause harm to themselves or others at some time in the future if they go without treatment.

Budget hearings underway. The House Appropriations and Finance Committee and the Senate Finance Committee have each begun a series of hearings on the budget requests from all state agencies. The hearings highlight the budget recommendations from the governor and from the Legislative Finance Committee. Some of the most important budget issues affecting persons with disabilities include:

- **Medicaid:** The Governor and the LFC both recommend essentially full funding of this very significantly expanded program, which is expected to cover over 820,000 people by the end of the coming year – about 40% of the state's population. Medicaid provides health care coverage for everyone on SSI, as well as many other people with disabilities, and offers long-term services to all participants whose disability is severe enough to meet "nursing home level of care" criteria.
- **Developmental Disabilities waiver program and waiting list:** The LFC recommends an additional \$1 million to take around 50 individuals off the waiting list, using savings to the state from a small increase in the federal matching rate for Medicaid services. Governor Martinez did not recommend any new funding earmarked for the waiting list or any increase in funding for the program as a whole. The LFC recommends an additional \$300,000 to provide rate increases for Family Infant Toddler (FIT) provider agencies, and another \$300,000 for rate increases for DD waiver service provider agencies; the governor did not recommend any funding for rate increases.
- **Behavioral Health:** The governor and the LFC both recognize that with the large increase in Medicaid enrollment, there will need to be growth in the behavioral health portion of the Medicaid budget. Beyond that, the governor recommends an additional \$1 million for a statewide crisis access line, transitional living services, and mental health services for veterans who are not covered by Medicaid. The LFC recommends a total of \$2.5 million in new money for regional crisis stabilization units, as well as \$1.5 million for transitional and supportive housing, \$1.2 million for intense coordination of physical and mental health services ("health homes"), and \$400,000 to support and publicize the existing HSD crisis and access phone line.
- **Special education:** Current budget projections and funding requests are anticipated to be just sufficient to meet the federal "maintenance of effort" amount. In order to receive all available federal funding under the Individuals with Disabilities Education Act (IDEA), the state must provide a certain amount of state dollars in support of special education. If the final state budget reduces the amount of state special education funding below the current recommendations, the state may face a penalty that would cut the amount of federal funding it receives for these services.

Bills and Memorials Introduced or Expected

This list is grouped by disability or subject matter and shows the bill number, sponsor, a description of the bill and the current committee assignments or action taken on the bill or memorial. See page 9 for a list of abbreviations used in this section.

Autism Services

- **HB 103** Autism License Plates. Rep. David Gallegos. This bill would authorize a specialized license plate to promote autism awareness. The plate would cost \$35, and \$25 of the fee would go to the Department of Health to support autism research, outreach and education. HHC/HTPWC.

Behavioral Health/Mental Health

- **HB 44** Gun show sales and reporting MI determinations. Rep. Miguel Garcia. This bill regulates the sale of guns at gun shows but also requires the state to report court findings of mental illness to federal authorities for purposes of maintaining the federal data base of those who are prohibited from buying guns. The bill provides for confidentiality of the data transmitted and opportunities to re-establish eligibility to purchase guns. HRPAC/HJC.
- **HB 108** Priority zones for BH services. Rep. Patty Lundstrom. This bill would require the Behavioral Health Purchasing Collaborative to divide the state into “zones” based on the combined incidence of mortality related to alcohol use, drug overdose and suicide, and give priority in funding behavioral health services to zones with the highest levels of such mortality. Local governments would be required to provide 25% match for state funding. The state would be required to provide regular reports on behavioral health funding and services to the Legislature. HHC/HAFC.
- **HB 212** Medicaid payment for triage centers. Rep. Terry McMillan. This bill would require the Medicaid program to reimburse mental health crisis triage centers for services provided at the same rate paid for the service when provided at a general hospital. HTPWC/HAFC.
- **HB 222.** Community Engagement Teams. Rep. Jason Harper. This bill authorizes the creation of Community Engagement Teams, which are intended to reach out to individuals with mental illness to educate them about available services and encourage them to participate in such programs. HHC/HJC.
- **HB 223** Supportive housing. Rep. Roger Madalena. This bill would provide \$900,000 to CYFD to provide housing and support services to families whose children have been subject to abuse or neglect, who lack adequate housing, and who have mental health or substance abuse challenges. HRPAC/HAFC.
- **HB 224** Broaden mental health parity. Rep. Roger Madalena. This bill would extend the state’s existing parity law to include substance abuse as well as mental health services, extend the parity requirements to individual as well as group health plans, and specifically require coverage of residential substance abuse treatment for adults. HHC/HWMC.
- **HB 258** MH counselor freedom of choice. Rep. Miguel Garcia. This bill would require health care insurers to allow their enrollees to choose from among available mental health counselors. HRPAC/HHC.
- **SB 38** Supportive housing and related support services. Sen. Jerry Ortiz y Pino. This bill would provide \$10.9 million to be used over the next five years for supportive housing, case management and other support services for homeless persons with mental illness in Las Cruces, Gallup, Farmington, Santa Fe, Albuquerque, based on the “Heading Home” model successfully piloted in Albuquerque over the past few years. SPAC/SFC.
- **SB 43** Transfer Sequoyah to UNM. Sen. Jerry Ortiz y Pino. This bill would transfer the Sequoyah Adolescent Treatment Facility from the Department of Health to the University of New Mexico Psychiatry Department. In the past year, the facility has changed its approach to treatment and dramatically reduced the use of restraints and punitive techniques – a change that DRNM helped bring about – but some people believe that its somewhat more selective admission criteria have caused the facility to stray from its mission as a treatment facility of last resort for the state’s most troubled youth. SEC/SPAC.
- **SB 44** Behavioral health in school-based clinics. Sen. Jerry Ortiz y Pino. This bill appropriates \$16.56 million to be used over the next 5 years to provide behavioral health services in school-based health clinics around the state. SEC/SFC.
- **SB 45** Behavioral health “warm line” and resource center. Sen. Jerry Ortiz y Pino. This bill would appropriate \$1.9 million to UNM to be used over the next 5 years to develop a “warm line”

and resource center that would link callers to available behavioral health services in their communities. SPAC/SFC.

- **SB 48** Psychiatric nurse practitioner training. Senator Mary Kay Papen. This bill provides \$400,000 to New Mexico State University to expand its psychiatric nurse practitioner training program. SEC/SFC.
- **SB 53** Assisted Outpatient Treatment. Senator Mary Kay Papen. This bill would authorize court-ordered mental health outpatient treatment for persons with a history of mental illness who are considered likely to cause harm to themselves or others at some time in the future if they go without treatment. *DRNM has a number of concerns with this bill as currently drafted, including our belief that it is a human rights violation to force treatment on individuals who are legally competent to make their own decisions, not currently a danger to themselves or others, and not accused of any crime. The proposal is highly controversial and deeply divisive in the mental health community.* SPAC/SJC/SFC.
- **SB 154** BH training for medical professionals. Sen. Sue Wilson Beffort. This bill provides \$12 million over a five-year period to UNM for Project Echo, to train primary care providers to screen and treat (or refer) for behavioral health issues. SPAC/SFC.
- **SB 155** Recruitment of health care professionals. Sen. Sue Wilson Beffort. This bill provides \$300,000 to the Department of Health to recruit medical, dental and behavioral health providers in New Mexico. SPAC/SFC.
- **SB 244** Screening and services for children. Sen. Jerry Ortiz y Pino. This bill would direct HSD to broaden the definition of medical necessity for Medicaid to cover an expanded range of services. It would require all Medicaid providers, and all behavioral health providers, that serve children to screen for a history of adverse childhood events and refer them for services. SPAC/SFC
- **SB 345** Reporting court findings of mental incapacity. Sen. Daniel Ivey-Soto. This bill requires the state Administrative Office of the Courts to report all court findings of mental incapacity to the FBI's instant background check system. The court orders covered by the bill would include guardianship appointments where a person was determined incapacitated due to mental disability, determinations that a person is incompetent to stand to trial, or involuntary civil commitments where a person was determined to have a mental illness and to be a danger to himself or others. Under federal law, all such persons are prohibited from purchasing firearms. The bill would establish a process for such persons to petition the court to restore these rights. SPAC/SJC.
- **SJM 4.** Alternative placements for some held in jail. Sen. Sander Rue. This memorial calls on the Association of Counties to form a task force to study alternative placements for people with mental illness in jail awaiting trial or pending an evaluation of their competence to stand trial. SRC/SJC.
- **SJM 10** J. Paul Taylor task force. Sen. Jerry Ortiz y Pino. Calls for the re-establishment and continuation of this broadly representative task force to further develop an early childhood behavioral health action plan. SRC/SPAC.

Brain Injury

- **SB 308** Motorcycle helmets optional based on fee. Sen. Jerry Ortiz y Pino. This bill would generally require all motorcycle riders (including passengers) to wear appropriate and approved helmets, but would allow for an exemption for an owner of the motorcycle if he/she paid an annual fee of \$692. Proceeds of the fees collected would go to the brain injury service fund, the trauma system fund, and a new fatal-injury diagnosis and reporting fund. Persons who did not wear a helmet and were not exempt would face a first-time violator fine of \$300; second and subsequent violations would carry a fine of \$600. Current law requires helmets only for those under 18 years of age. SPAC/SJC/SFC.

- **SB 327** Mandatory motorcycle helmets. Sen. Jerry Ortiz y Pino. This bill is similar to SB 308 (above) but it would simply require all motorcycle riders (including passengers) to wear appropriate and approved helmets, with no exemption. Violators would face the same fines. SPAC/SJC.

Expected legislation, not yet introduced:

- Legislation that would require Medicaid and most private insurance policies to cover certain services for persons with brain injuries.

Developmental Disabilities

- **HM 9** Medical transitions for young adults. Rep. David Adkins. This memorial calls for DOH and the UNM Center for Development and Disability to convene a task force to study the needs of young adults with significant health care needs as they transition from pediatric care to the adult-oriented health care system. Speaker's Table.
- **SB 19** DD waiver waiting list plan and funding. Sen. Bill Soules. This bill would require DOH and HSD to develop a 5-year plan, to be updated annually, to address the waiting list for the DD waiver program by identifying the number of people on the waitlist, a target number to be added to services each year, and the amount of funding needed to meet the target. The bill also would appropriate \$25 million for the waiting list in the coming year. SPAC/SFC. *The sponsor has announced that he will not pursue this bill and will instead focus on SB 216, below.*
- **SB 216** DD waiver annual waiting list report. Sen. Bill Soules. This bill would require DOH to issue an annual report to the legislature regarding the DD waiver program and the wait list. The report would include a variety of data including a projection of how much it would cost the state to virtually eliminate the waiting list over a 5-year period. SPAC/SFC.
- **SB 312** Restore DD provider rate cuts. Sen. Carlos Cisneros. This bill provides \$3 million to the Department of Health to restore rate cuts imposed on DD waiver provider agencies in the past few years. SPAC/SFC.
- **SM 37** DD Awareness Month. Sen. Nancy Rodriguez. This memorial calls for the governor to designate March as Developmental Disabilities Awareness Month and calls on all public officials to recognize the accomplishments and capacity of persons with developmental disabilities and to treat them with respect. On the President's table.

Expected legislation, not yet introduced:

- Enable the ABLE Act. This bill would authorize the establishment of special savings accounts for persons with significant disabilities that occur before the age of 26. The accounts would not be counted toward the usual resource limits in determining eligibility for public benefit programs such as SSI. The recently-enacted federal ABLE Act allows the accounts but there must be state legislation authorizing them before they can be established.

Education

- **HB 53.** No mandatory psychotropic medications in schools. Rep. Nora Espinoza. This bill would prohibit schools from requiring administration of psychiatric medications for students as a condition for attending school, and make it clear that parental refusal to consent to such medications cannot be grounds for removing children from a parent's custody. HHC/HSCAC/HJC
- **HB 271** Sharing info on students in state custody. Rep. Gail Chasey. This bill requires PED and CYFD to share information between agencies regarding children in state custody in order to improve their educational outcomes. It would also require annual status reports on the educational outcomes of these youth, as a group (not individuals). HSCAC/HEC/HJC.

- **SB 283** Restrict use of seclusion/restraint in public schools. Sen. Bill O’Neill. This bill would strictly limit the use of seclusion or restraints on students in public schools to emergency situations, require prompt notice to the child’s parent when seclusion or restraint has been used, and require an annual report from each school district on the number of incidents involving restraint or seclusion. SEC/SJC.

Expected legislation, not yet introduced:

- Disability awareness and history. We expect a funding request to support a pilot program of disability awareness and disability history training in 5 school districts.

Health Care – General

- **HB 139** Voluntary lay aftercare providers. Rep. Tomas Salazar. This bill would allow hospitalized patients to designate one volunteer lay care provider to be involved in discharge planning and to receive training on meeting some of the care needs of an individual once discharged from the hospital back to the patient’s home. HHC/HBEC.
- **SB 359** Limit co-pays for physical rehab. Sen. Bill O’Neill. This bill would limit the amount of co-pay that health care insurers can impose for physical rehabilitation services to no more than either the co-pay required for a specialist visit, or 120% of the co-pay for seeing a primary care provider, whichever is lower. SPAC/SFC.

Expected legislation, not yet introduced:

- Continuity of medication coverage pending appeal. This bill would require MCOs and other insurance providers to continue to cover certain prescriptions while a consumer is pursuing an appeal of a decision by the insurer to discontinue such coverage.

Housing

- **HB 47** Homeless assistance. Rep. Tomas Salazar. This bill provides \$1 million to DFA for services and supports for homeless persons. A large percentage of homeless individuals are persons with mental illness. Same as SB 88. HHC/HAFC.
- **SB 87** Housing Trust Fund. Sen. Nancy Rodriguez. This bill would provide \$5 million to the Mortgage Finance Authority to expand housing opportunities under the Housing Trust Fund. SCORC/SFC.
- **SB 88** Homeless assistance. Sen. Nancy Rodriguez. Same as HB 47. SPAC/SFC.

Medicaid

- **SB 42** Medicaid eligibility in jails and prisons. Sen. Jerry Ortiz y Pino. This bill would require HSD to help residents of jails and prisons apply for Medicaid if they are likely to qualify and are not already enrolled, and to maintain Medicaid eligibility for recipients who enter jail or prison, in order to facilitate the prompt delivery of Medicaid services once such persons are released. Medicaid cannot pay for medical services provided in jails or prisons, but residents of such facilities are still allowed by federal law to apply for and be found eligible for Medicaid; doing this before release would help to ensure that services are available without delay upon release from incarceration. SPAC/SFC.
- **SB 55** Medicaid due process. Sen. Mary Kay Papen. This bill establishes a definition of "credible allegation of fraud" as applied to Medicaid providers, and builds in due process protections for providers who may be accused of fraud. It clarifies that simple and inadvertent errors in billing do not constitute fraud. The bill is a response to HSD's actions in 2013, when 15 agencies had their

funding halted and many went out of business without an opportunity to contest the allegations. SPAC/SJC.

- **SB 139** Medicaid for former foster children. Sen. Michael Padilla. This bill would require the state to provide Medicaid up to age 26 for young adults who were formerly in foster care, regardless of which state they lived in while in foster care. Under the ACA, people who age out of foster care are eligible for Medicaid until they turn 26 – a parallel to the ACA rule allowing young adults to stay on their parents’ insurance until that age – but New Mexico has chosen to provide such coverage only to young people who were in the New Mexico foster care system and not to those from other states. SPAC/SFC.
- **SB 320** Limiting emergency procurement of health care services. Sen. Jacob Candelaria. This bill would prohibit HSD from using a determination of alleged fraud as a rationale for bypassing the state Procurement Code requirements and hiring substitute health care providers, as the department did when replacing a number of mental health provider agencies in 2013. SPAC/SJC/SFC.

Voting Rights

- **HB 61** Voter ID and other voting procedures. Rep. Jim Smith. This lengthy bill would, among other things, require persons who vote in person to provide identification, which could either be a government-issued photo ID, a federally issued or tribal ID for Native Americans, a photo of the voter contained in the state voter data base with an accompanying statement from the voter, or an accurate statement by the voter of the voter’s birth date and Social Security number. The bill would preempt more restrictive provisions by cities or counties. HGEIC/HJC.

Other

- **HB 29** Child abuse reporting. Rep. Brian Egolf. This bill would clarify that anyone who suspects child abuse is required to report the alleged abuse to the relevant authorities. A recent court case in New Mexico limited this requirement only to certain professionals such as doctors and teachers. HSCAC/HJC.
- **HB 72** Tax credit for LTC insurance. Rep. Christine Trujillo. This bill would provide an income tax credit for persons with a private long-term care insurance policy, equal to the annual premium for the policy (but not to exceed the total amount of a person’s income tax liability). HHC/HWMC.
- **HB 77** Accessibility license plates for transportation agencies. Rep. Paul Pacheco. This bill would allow agencies that regularly transport clients or other persons with disabilities to obtain distinctive license plates for vehicles they own that provide such transportation so that the vehicles could legally park in designated accessible (“handicap”) parking spaces. HTPWC/HHC.
- **HM 15** End the marriage penalty. Rep. Carl Trujillo. This memorial calls on the U.S. Congress to eliminate the “marriage penalty” for persons with disabilities on SSI. When two individuals on SSI get married, they are treated as a couple and their total benefits are reduced by 25% compared to their two individual benefits, and the amount of resources they are allowed to keep is also reduced by 25%. Addressing this problem will require Congressional action and the memorial calls on Congress to do so. **PASSED**
- **SB 36** Court monitoring of guardianship arrangements. Sen. Michael Padilla. This bill would provide \$245,000 to the 2nd judicial district court in Albuquerque to provide oversight of guardianship arrangements for elders and persons with disabilities. Passed SJC; pending in SFC.
- **SB 181** Funding for civil legal services. Sen. Nancy Rodriguez. This bill would provide an additional \$2 million for the Civil Legal Services Commission to provide more legal services to low-income New Mexicans. *DRNM is one of many non-profit agencies that receive CLSC funding.* SJC/SFC.

- **SB 188** Regulation of youth wilderness programs. Sen. Sue Beffort. This bill would clarify that CYFD has jurisdiction to regulate and monitor wilderness programs for youth. The state’s authority to regulate these programs, which often serve young adults with behavioral issues, was challenged recently. SPAC/SJC.
- **SB 233** Parity in worker’s compensation. Sen. Pat Woods. This bill would require the same level of benefit for temporary or permanent disability for a worker who develops a mental disability due to a work-related injury as one who develops or experiences a physical disability. Current law provides a lesser benefit for mental disability. SCORC/SJC.
- **SB 248** Special assessment exemption for disabled veterans. Sen. Michael Sanchez. This bill would exempt a home occupied by a veteran with a 100% service-connected disability, or his/her surviving spouse if living in the home, from any special property tax assessment. SPAC/SJC.
- **SM 3** End the marriage penalty. Sen. Jerry Ortiz y Pino. This memorial calls on the U.S. Congress to eliminate the “marriage penalty” for persons with disabilities on SSI. When two individuals on SSI get married, they are treated as a couple and their total benefits are reduced by 25% compared to their two individual benefits, and the amount of resources they are allowed to keep is also reduced by 25%. Addressing this problem will require Congressional action and the memorial calls on Congress to do so. SRC/SPAC

Contacting your Legislators

You can find out who your legislators are and get their contact information on the legislature’s “Find Your Legislator” web page: http://www.nmlegis.gov/lcs/legislator_search.aspx.

To find your state representative from this web page, take these steps:

- Under the heading “House of Representatives”, click on the link to “Search by Name, District or Address”
- Click on the link “OR Search by Address” near the top of the page.
- Enter your complete address (street, city, state and zip code) in the box provided
- Click on the “Find District” button, and in a few moments you’ll see the name (and a picture) of your representative and the number of the House district. If you hit the “back” button or arrow to return to the previous screen, you can click on the picture of your representative to find the member’s address and other contact information.

To find your state senator, go to the same starting web page and choose the “Search by Name, District or Address” link for the Senate.

Each legislator has an office in the Capitol. This year, most House members are in new offices. To reach a legislator’s office during the session, call the Capitol switchboard at 986-4300 and ask for your legislator. We encourage you to bring the voice of the disability community to the Legislature!

Policy and Legislative Action Network (PLAN): Join your friends and colleagues in speaking out on issues of concern to people with disabilities and their families. Become part of the PLAN! We’ll let you know when there are opportunities to speak out on bills in the Legislature and other key issues, and give you background info and talking points; you show the power of the disability community by following up with calls or emails to public officials. Sign up with DRNM’s project coordinator, Katie Gordon, at KGordon@drnm.org.

ABBREVIATIONS USED IN THIS REPORT

Legislative Committees

HAFC	House Appropriations and Finance Committee
HEC	House Education Committee
HGEIC	House Government, Elections, and Indian Affairs Committee
HHC	House Health Committee
HJC	House Judiciary Committee
HRPAC	House Regulatory and Public Affairs Committee
HSCAC	House Safety and Civil Affairs Committee
HTPWC	House Transportation and Public Works Committee
HWMC	House Ways and Means Committee
SCORC	Senate Corporations Committee
SEC	Senate Education Committee
SFC	Senate Finance Committee
SJC	Senate Judiciary Committee
SPAC	Senate Public Affairs Committee
LFC	Legislative Finance Committee (joint House-Senate committee that meets during the interim between legislative sessions)

State Agencies

ALTSD	Aging and Long Term Services Department
DDPC	Developmental Disabilities Planning Council
DOH	Department of Health
GCD	Governor's Commission on Disability
HSD	Human Services Department
PED	Public Education Department