



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2015 LEGISLATURE POST-SESSION REPORT

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Another train wreck at the end of the line. The 2015 legislation ground to a halt at noon last Saturday. The House spent most of the morning mired in a 3-hour debate over changes made by a House committee to the Senate-passed package of projects that fund public building construction and maintenance for senior centers and various other facilities around the state – changes that everyone knew would be rejected by the Senate. The failure to reach agreement means that there will be no newly authorized projects this year.

On the Senate side, a number of memorials and non-controversial bills were passed on the final day, but the session ended with a filibuster on a bill that had been extensively amended in the House to provide a variety of tax incentives for certain business and industry interests.

Not a lot to show for it. The state budget bill was passed without controversy and a new gaming compact was approved. In the end, though, none of the "hot button" issues that consumed hours and days of debate in the session – abortion, 3rd grade retention, right to work, increases in the minimum wage, driver's licenses for undocumented residents, etc. – were passed. Just 10% of the 639 House bills and about 13% of the 726 Senate bills were passed and sent on to the governor for final action.

The same was true for disability-related bills. Among the handful of bills that passed were:

- HB 53, prohibiting schools from requiring children to take psychotropic medications
- HB 108, establishing high priority areas for investment of some behavioral health funds
- HB 212, to establish license requirements and payment rates for mental health triage centers
- SB 42, prohibiting termination of Medicaid eligibility when someone enters jail or prison

A complete list of disability-related bills and memorials that did get passed begins on page 2. See page 9 for a list of abbreviations used in this report.

Court-ordered outpatient treatment effort fails. SB 53, which would have authorized involuntary court-ordered mental health outpatient treatment for certain persons with mental illness, passed the Senate after numerous significant changes were made to the bill in committee hearings and on the floor. After three more committee hearings on the House side, it was then approved by the House with about 10 minutes left in the session. However, since the bill had been amended in the House at the

request of the sponsor, the Senate had to agree to those amendments in order for the bill to pass. As noted above, the Senate was tied up in a filibuster of a different bill at that time, and the session came to an end. Since the Senate failed to agree to the amendments, the bill did not pass the Legislature.

Other bills that failed to pass. Several other bills of significant interest to the disability community also failed to make it through the session. Some of these bills included:

- SB 216, requiring the Department of Health to issue an annual report about the Developmental Disabilities (DD) waiver and the waiting list for that program
- SB 283, prohibiting use of seclusion or restraints in public schools except in emergencies
- HB 222, authorizing pilot programs of community engagement teams to do outreach and encourage persons with mental illness to access available mental health services
- HB 448, authorizing "ABLE" savings accounts that allow persons with severe disabilities to save money without jeopardizing eligibility for benefits such as SSI

State budget bill passes without drama. Although the Senate made a significant number of changes to the budget bill that had been passed by the House, most of these revisions involved small dollar amounts. In a nearly unanimous vote, the House voted near the end of the session to accept the Senate changes and the bill was sent to the governor for final action.

Here are some of the highlights of the new state funding provided in HB 2, the state budget, for the fiscal year beginning July 1, 2015:

- Behavioral health:
 - \$2.25 million for crisis stabilization (triage) centers
 - \$1.2 million for intensive service coordination ("behavioral health homes")
 - \$1 million for targeted funding for high-needs communities ("behavioral health investment zones")
 - \$1 million for supportive/transitional housing
 - \$445,000 for the statewide crisis/help line
 - \$250,000 for in-patient psychiatric services for those who don't qualify for Medicaid
- Developmental disabilities:
 - \$450,000 for rate increases for DD waiver service providers
 - \$450,000 for rate increases for Family Infant Toddler (FIT) service providers
 - \$400,000 to take additional people off the waiting list and move them into services
- Miscellaneous:
 - \$300,000 for civil legal services to low income individuals
 - \$175,000 for court oversight of guardianship arrangements in Bernalillo County

Bills that Passed in the 2015 Session

These bills that passed both the House and the Senate have now been sent to the governor, who can either sign them into law or veto them. The deadline for the governor to act is April 10. Bills not acted on by that date are vetoed by that lack of action, through what is known as the "pocket veto".

- **HB 2** Rep. Larry Larrañaga. This is the state budget bill, known as the General Appropriations Act. It contains funding for all state agencies. The governor has the option of signing the bill but

vetoing certain language or funding amounts in the budget, provided that such vetoes do not alter the purpose of an appropriation.

- **HB 53** Rep. Nora Espinoza. Prohibits schools from requiring administration of psychiatric medications for students as a condition for attending school, and makes it clear that parental refusal to consent to such medications cannot be grounds for removing children from a parent's custody.
- **HB 103** Rep. David Gallegos. Authorizes a special license plate to promote autism awareness. The plate would cost \$35, and \$25 of the fee would go to support autism research, outreach and education.
- **HB 108** Rep. Patty Lundstrom. Requires the Behavioral Health Purchasing Collaborative to divide the state into "zones" based on criteria such as mortality related to alcohol use, drug overdose and suicide, and gives priority in non-Medicaid funding for behavioral health services to zones identified as high-risk and high-need.
- **HB 139** Rep. Tomas Salazar. Allows hospitalized patients to designate a volunteer lay care provider to be involved in discharge planning and to receive training on meeting some of the care needs of an individual after being discharged from the hospital to the patient's home.
- **HB 212** Rep. Terry McMillan. Provides authority to DOH to license crisis triage centers that provide stabilization for persons in a mental health crisis, and directs HSD to establish a Medicaid reimbursement rate for services provided by a triage center.
- **HB 258** Rep. Miguel Garcia. Requires health care insurers to allow their enrollees to choose from among available mental health counselors.
- **HB 505** Rep. Deborah Armstrong. Requires Medicaid to cover young New Mexicans up to age 26 who were formerly in foster care, whether in New Mexico or other states. This coverage is required by the Affordable Care Act for those who were foster children in New Mexico but has been interpreted to allow the state to refuse coverage for those who were in another state's system, and HSD has chosen not to cover them. If signed into law, this bill would change that policy.
- **SB 42** Sen. Jerry Ortiz y Pino. Requires 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.
- **SB 233** Sen. Pat Woods. Requires 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. The bill also re-establishes a cap on certain benefits that had been eliminated in a recent court case.
- **SB 506** Sen. William Payne. Provides that a disabled veteran who is entitled to a property tax exemption and sells his/her residence may choose to claim the exemption for that year on either the old house or the new house.

Memorials that Passed in the 2015 Session

Memorials typically request that state agencies or others convene task forces or conduct studies and make recommendations. Memorials don't have the force of law and thus do not require approval by the governor after passage in the Legislature.

- **HM 9** Rep. David Adkins. 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. Same as SM 68, below.

- **HM 15** Rep. Carl Trujillo. Calls on the U.S. Congress to eliminate the “marriage penalty” for persons with disabilities who are on SSI. When two individuals on SSI get married, 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%. Same as SM 3, below.
- **HM 47** Rep. Gail Chasey. Calls for re-establishment and continuation of the J. Paul Taylor task force to further develop an early childhood behavioral health action plan. Same as SM 69 and SJM 10, below.
- **SJM 4** Sen. Sander Rue. 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 an evaluation of their competence to stand trial.
- **SM 3** Sen. Jerry Ortiz y Pino. Calls on the U.S. Congress to eliminate the “marriage penalty” for persons with disabilities who are on SSI. Same as HM 15, above.
- **SM 37** Sen. Nancy Rodriguez. 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.
- **SM 44** Sen. Sander Rue. Calls on HSD, the Mortgage Finance Authority, the NM Coalition to End Homelessness and the Albuquerque Heading Home program to identify strategies to coordinate efforts more effectively, identify gaps, and make recommendations to the Legislature.
- **SM 48** Sen. Jerry Ortiz y Pino. Recognizes the work of a group of young disability leaders and their efforts to promote disability history and awareness, and calls on the Public Education Department to encourage local school districts, charter schools and colleges and universities to offer educational programs related to disability history and awareness.
- **SM 69** Sen. Jerry Ortiz y Pino. Calls for the re-establishment and continuation of the J. Paul Taylor task force. Same as HM 47, above, and SJM 10, below.
- **SM 115** Study Sequoyah treatment center. Sen. Jerry Ortiz y Pino. Calls on the UNM Department of Psychiatry to establish a task force to review the Sequoyah Adolescent Treatment Facility and its current treatment model, staffing level and other issues and make recommendations on how to improve the facility’s operations and finances.

Bills and Memorials that did not pass

Note: The list below includes bills calling for appropriations, which rarely pass on their own because virtually all appropriations are made through the state budget bill, HB 2. Where funding for the purpose specified in a bill is included in HB 2, this is noted below.

Autism

- **HM 56** Study possible link of autism and Roundup. Rep. Brian Egolf.

Behavioral Health/Mental Health

- **HB 44** Gun show sales and reporting MI determinations. Rep. Miguel Garcia.
- **HB 222** Mental health community engagement teams. Rep. Jason Harper. Authorized pilot projects to reach out to individuals with mental illness.
- **HB 223** Supportive housing. Rep. Roger Madalena. Provided \$900,000 to CYFD to provide housing and support services for certain families in need, including those with substance abuse or mental health challenges. HB 2 includes this \$900,000.

- **HB 224** Mental health parity. Rep. Roger Madalena. Extended existing parity law to include substance abuse and required coverage for residential treatment.
- **HB 376** Solitary confinement. Rep. Moe Maestas. Prohibited solitary confinement in jails and prisons for minors and persons with mental illness, and limited its use on others.
- **HB 455** 3-county BH pilot project. Rep. John Zimmerman. Appropriated \$265,000 for behavioral health services in Luna, Grant and Hidalgo Counties. HB 2 includes \$100,000 for this purpose.
- **HB 543** Mental illness awareness license plates. Rep. Wonda Johnson. Authorized special license plates to promote public awareness of mental illness.
- **HB 545** Limit pre-trial detention for misdemeanors. Rep. Stephanie Maez. Prohibited holding persons accused of certain minor crimes in jail for more than 48 hours. Adults with mental illness are often arrested for crimes such as littering or sleeping in public parks or shoplifting. Same as SB 538, below.
- **HB 574** Background checks for therapists. Rep. Sharon Clahchischilliage. Required a criminal background check for various mental health counselors and therapists.
- **SB 38** Supportive housing and support services. Sen. Jerry Ortiz y Pino. Provided funding for supportive housing, case management and other support services for homeless persons with mental illness in several communities based on the “Heading Home” model. HB 2 appears to contain \$900,000 for this purpose.
- **SB 43** Transfer Sequoyah to UNM. Sen. Jerry Ortiz y Pino. Would have transferred the Sequoyah Adolescent Treatment Facility from the Department of Health to the University of New Mexico Psychiatry Department.
- **SB 44** Behavioral health in school-based clinics. Sen. Jerry Ortiz y Pino. Appropriated \$16.56 over 5 years to provide behavioral health services in school-based health clinics around the state.
- **SB 45** Behavioral health “warm line” and resource center. Sen. Jerry Ortiz y Pino. Appropriated \$1.9 million for a “warm line” and resource center at UNM.
- **SB 48** Psychiatric nurse practitioner training. Senator Mary Kay Papen. Provided \$400,000 to NMSU to expand its psychiatric nurse practitioner training program. HB 2 contains \$300,000 for this purpose.
- **SB 53** Assisted Outpatient Treatment. Senator Mary Kay Papen. Authorized court-ordered mental health outpatient treatment for persons with a history of mental illness who don’t meet the criteria for involuntary inpatient commitment but are considered likely to cause harm to themselves or others at some time in the future if they go without treatment.
- **SB 154** BH training for medical professionals. Sen. Sue Wilson Beffort. Funded training for primary care providers and others to screen and treat (or refer) for behavioral health issues.
- **SB 155** Recruitment of health care professionals. Sen. Sue Wilson Beffort. Appropriated \$300,000 to the Department of Health to recruit medical, dental and behavioral health providers.
- **SB 244** Screening and services for children. Sen. Jerry Ortiz y Pino. Required Medicaid and other behavioral health providers to screen children for a history of adverse childhood events and refer them for services.
- **SB 345** Report court findings of mental incapacity. Sen. Daniel Ivey-Soto. Required the state to report all court findings of mental incapacity to the FBI’s instant background check system, which is used when people seek to purchase firearms.
- **SB 484** Corrections-related behavioral health services. Sen. Sander Rue. Phased in a requirement that at least half of all behavioral health programs in state prisons and community corrections programs would have to be "evidence-based".

- **SB 522** Priority zones for BH services. Sen. George Muñoz. This bill is similar to HB 108, which passed the Legislature (see page 3 of this report).
- **SB 538** Limit pre-trial detention for misdemeanors. Sen. Mimi Stewart. Same as HB 545, above.
- **SB 566** Priority zones for BH services. Sen. Mary Kay Papen. Similar to HB 108, which passed the Legislature (see page 3 of this report).
- **SB 595** Native American suicide prevention. Sen. John Pinto. Appropriated \$51,000 for a suicide prevention program in public high schools in Native American communities in northwestern New Mexico. HB 2 contains \$200,000 for UNM for this purpose.
- **SB 620** Behavioral health services in McKinley County. Sen. George Muñoz. Appropriated \$1.5 million for behavioral health services in McKinley County. HB 2 includes \$300,000 for this purpose.
- **SB 666** Priority zones for BH services. Sen. George Muñoz. This was another version of HB 108, which passed the Legislature (see page 3 of this report).
- **SJM 10** J. Paul Taylor task force. Sen. Jerry Ortiz y Pino. Same as HM 47 and SM 69, which both passed the Legislature.
- **SJM 24** School mental health task force. Sen. Sander Rue. Called on HSD and the PED to convene a task force to make recommendations for effective provision of school-based mental health support and mental disorder treatment services to students.
- **SM 112** Behavioral health study. Sen. Clemente Sanchez. Requested a study to identify areas of the state with the greatest shortages in providers and services and to make recommendations to address those shortages.

Brain Injury

- **HB 556** Insurance coverage for brain injury services. Rep. Deborah Armstrong. Required that health insurance policies cover a variety of services for persons with brain injury.
- **SB 89** Brain Safe program. Sen. Mark Moores. Appropriated \$3 million to UNM for annual MRI scans on the brains of student athletes for research purposes. HB 2 contains \$175,000 for this.
- **SB 308** Motorcycle helmets optional based on fee. Sen. Jerry Ortiz y Pino. Allowed adult motorcycle riders to ride without helmets if they paid an annual fee of \$692. Current law requires helmets only for those under 18 years of age.
- **SB 327** Mandatory motorcycle helmets. Sen. Jerry Ortiz y Pino. Required all adult motorcycle riders to wear appropriate and approved helmets.
- **SB 431** Student training on brain injuries. Sen. Bill Soules. Required schools to provide all student athletes with training and information on sports-related brain injuries.
- **SB 492** Athlete brain injury protocols. Sen. Michael Sanchez. Required coaches in youth activity leagues to receive the same training on concussions as currently provided by law to public school athletic coaches.

Developmental Disabilities

- **HB 448** ABLE accounts. Rep. Sheryl Williams Stapleton. Authorized ABLE accounts in New Mexico and designated an office in state government to regulate such accounts. These accounts allow persons whose disability occurs by age 26 to build up special savings accounts up to \$100,000 without jeopardizing their eligibility for benefit programs such as SSI.
- **HB 467** ABLE accounts. Rep. Ken Martinez. This was the same as HB 448, above but was set aside by the sponsor in favor of HB 448.
- **SB 19** DD waiver waiting list plan and funding. Sen. Bill Soules. This bill was set aside by the sponsor in order to focus on SB 216.

- **SB 216** DD waiver annual waiting list report. Sen. Bill Soules. Required DOH to issue an annual report to the Legislature regarding the DD waiver program and the waitlist.
- **SB 278** Brittany alerts. Sen. Jacob Candelaria. Expanded existing missing person alert programs to include missing persons with a developmental disability.
- **SB 312** Restore DD provider rate cuts. Sen. Carlos Cisneros. Provided \$3 million for rate increases for DD waiver provider agencies. HB 2 includes \$450,000 for this purpose.
- **SB 460** FIT provider rate increases. Sen. Howie Morales. Appropriated \$8.2 million for rate increases for Family Infant Toddler (FIT) provider agencies. HB 2 includes \$450,000 for this purpose.
- **SM 68** Medical transitions for young adults. Sen. Jerry Ortiz y Pino. Same as HM 9, which passed the legislature.

Education

- **HB 271** Sharing info on students in state custody. Rep. Gail Chasey. Required PED and CYFD to share information regarding children in state custody, many of whom have disabilities, in order to improve their educational outcomes.
- **SB 203** School testing accommodations. Sen. John Sapien. Required schools to offer standards-based tests (such as the new PARCC test) to certain English Language Learners in their primary language, and to provide a paper-based version of this test, which is typically taken on a computer, to students with disabilities if called for in their IEP.
- **SB 283** Seclusion/restraint in public schools. Sen. Bill O’Neill. Prohibited the use of seclusion or restraints on students in public schools except in emergency situations, and required prompt notice to a child’s parent when seclusion or restraint was used.
- **SB 640** New education funding formula. Sen. Mimi Stewart. Significantly restructured the funding formula for public schools, including the methodology for funding special education.

Health Care – General

- **HB 388** Limit co-pays for physical rehab. Rep. Terry McMillan. Limited the amount of co-pays for physical rehabilitation services. Same as SB 359, below.
- **SB 359** Limit co-pays for physical rehab. Sen. Bill O’Neill. Same as HB 388, above.
- **SB 517** Health care appeals. Sen. Jacob Candelaria. Require managed care organizations (MCOs) to provide an internal appeal procedure to challenge reductions or denials of coverage, and required continuation of existing benefits pending the outcome of such appeals.

Housing

- **HB 47** Homeless assistance. Rep. Tomas Salazar. Provided \$1 million for services and supports for homeless persons. Same as SB 88, below.
- **SB 87** Housing Trust Fund. Sen. Nancy Rodriguez. Provided \$5 million to the Mortgage Finance Authority to expand housing opportunities under the Housing Trust Fund.
- **SB 88** Homeless assistance. Sen. Nancy Rodriguez. Same as HB 47, above.

Medicaid

- **SB 55** Medicaid due process. Sen. Mary Kay Papen. Established a definition of "credible allegation of fraud" as applied to Medicaid providers, which excluded simple and inadvertent errors in billing, and provided due process protections for providers who may be accused of fraud.
- **SB 139** Medicaid for former foster children. Sen. Michael Padilla. Identical to HB 505, which passed the Legislature (see page 3 of this report).

- **SB 320** Limiting emergency procurement of health care services. Sen. Jacob Candelaria. Prohibited HSD from using alleged fraud as a rationale for bypassing the state Procurement Code.

Voting Rights

- **HB 61** Voter ID and other voting procedures. Rep. Jim Smith. Required voters to verify their identity through various means, including but not limited to a photo identification card such as a driver's license. Also pre-empted more restrictive provisions by cities or counties.
- **HB 340** Photo ID requirement. Rep. Cathrynn Brown. Required persons who vote in elections in person to show a valid photo ID.

Other

- **HB 29** Child abuse reporting. Rep. Brian Egolf. Clarified that anyone who suspects child abuse is required to report the alleged abuse to the relevant authorities. The bill was prompted by a recent Court of Appeals ruling that limited this requirement. However, that ruling was recently overturned by the state Supreme Court so the bill was no longer seen as necessary.
- **HB 72** Tax credit for LTC insurance. Rep. Christine Trujillo. Provided a partial income tax credit for persons who buy private long-term care insurance.
- **HB 77** Accessibility license plates for transportation agencies. Rep. Paul Pacheco. Allowed agencies that regularly transport clients or other persons with disabilities to obtain distinctive license plates for vehicles they own that provide such transportation.
- **HB 276** Disabled veteran license plates. Rep. Jeff Steinborn. Allowed disabled veterans who qualify for more than one type of special automobile license plate to receive two plates of their choice without an annual fee. Current law provides for only one free plate. Same as SB 449, below.
- **HB 464** Mobility impairment logo on other special license plates. Rep. Deborah Armstrong. Called for a distinctive logo signifying a mobility impairment that could be added to any other specialized license plate which would be valid for parking in accessible parking places.
- **HB 476** Special needs child adoption tax credit. Rep. Alonzo Baldonado. Increased the annual tax credit available to those who adopt a special needs child from \$1,000 to \$1,500.
- **HB 493** Court monitoring of guardianship arrangements. Rep. Sarah Maestas Barnes. Same as SB 36, below.
- **HJR 7** Property tax exemption. Rep. Miguel Garcia. This was a proposed amendment to the state constitution to exempt from property tax the residence of an individual who is "100% permanently disabled" and whose annual household income is no more than \$15,000.
- **SB 36** Court monitoring of guardianship arrangements. Sen. Michael Padilla. Provided \$245,000 to the district court in Albuquerque to provide oversight of guardianship arrangements for elders and persons with disabilities. It appears that HB 2 includes \$175,000 for this purpose.
- **SB 181** Funding for civil legal services. Sen. Nancy Rodriguez. Provided an additional \$2 million for the Civil Legal Services Commission to provide more legal services to low-income New Mexicans. HB 2 includes an additional \$300,000 for this purpose.
- **SB 188** Regulation of youth wilderness programs. Sen. Sue Beffort. Provided clear authority for the state to regulate and monitor wilderness programs for youth with behavioral issues. This authority has been challenged in court by at least one such program.
- **SB 218** Free parking for disabled veterans. Sen. Bill Soules. Provided that vehicles bearing a special license plate for veterans with 100% disability could be parked free in any parking facility owned by the state or by a city or county.

- **SB 248** Special assessment exemption. Sen. Michael Sanchez. Exempted 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.
- **SB 449** Disabled veteran license plates. Sen. William Burt. Same as HB 276, above.

ABBREVIATIONS USED IN THIS REPORT

BH	Behavioral health
CYFD	Children, Youth and Families Department
DD	Developmental disabilities
DOH	Department of Health
HB	House Bill
HSD	Human Services Department
NMSU	New Mexico State University
PED	Public Education Department
SB	Senate Bill
UNM	University of New Mexico