



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2017 LEGISLATURE STATUS REPORT #1

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Coming Events at the Capitol:

Today: Justice for All – Tables staffed by agencies providing legal services

Feb. 23-24: Disability Rights Awareness Days in Santa Fe. Thursday at the Drury Plaza Hotel and Friday at the State Capitol. Registration available through The Arc of New Mexico (arcnm.org).

New session, new leadership. The 2017 legislative session began last Tuesday with the installation of new leadership in both chambers. Brian Egolf of Santa Fe was elected unanimously as Speaker of the House, while Peter Wirth (also of Santa Fe) took over as Majority Leader in the Senate.

The changes extended to the standing committees of the Legislature. On the House side, a number of changes to the committee structure resulted in new committee names and the addition of one more committee than in the past. With the Democrats re-taking the majority, all of the House committees have new chairs. Debbie Armstrong will lead the Health & Human Services Committee and Stephanie Garcia Richard is the new chair of the Education Committee. Patty Lundstrom is the chair of House Appropriations, and Gail Chasey is back as Judiciary Committee chair. In the Senate, Bill Soules has taken over as chair of the Education Committee, as former chair John Sapien gave up the position in order to move into a new seat on the Senate Finance Committee.

Climbing out of the budget hole. Faced with a projected deficit of \$68 million in the current budget year, the Legislature has gone right to work developing a “solvency” package. The Senate voted quickly and nearly unanimously to pass four bills that will generate about \$260 million to wipe out the deficit and maintain a small balance in the state’s checking account by the end of this fiscal year on June 30. These bills reduce current year spending by around \$28 million, eliminate or re-finance some construction and equipment projects, utilize (“sweep”) unspent fund balances in various state accounts and insurance programs, and reduce funding for local school districts by about 2%.

In a rare if not unprecedented move, the House stayed in Santa Fe for the first Saturday of a 60-day session to address the budget crisis. After extensive and contentious debate, it passed its own version of the changes to capital outlay and the insurance funds conversions. The House Appropriations and Finance Committee then approved the Senate version of the school funding cuts and the “sweeps” bill, including the reductions in other state spending, paving the way for a final House vote on those measures today (Monday).

In order for any of these proposals to become law quickly, though, they will need to be passed by large majorities in both chambers and then signed by the governor. The opposition to the bills shown by most House Republicans leaves such an outcome in serious doubt.

FY 18: Another budget showdown looming? For the coming fiscal year, which begins July 1, 2017, the projected gap between estimated revenues (\$5.929 billion) and the current authorized spending level (\$6.022 billion) is a deficit of \$93 million. Governor Susana Martinez has repeatedly said that she is opposed to any new taxes, and so far she has not shown any openness to changing that position. Democrats in the Legislature appear reluctant to cut state programs further than they have already been cut, and many are looking at potential sources of new or additional state revenues. With Democratic majorities in both the House and the Senate, we are likely to see serious conflict between the governor and the legislature as they grapple with this budget challenge.

State Agency Budget Recommendations for FY 18. The governor and the Legislative Finance Committee have each made recommendations to the Legislature on funding for all state agencies in the coming fiscal year. The increases or decreases described below are based on the current year budget as adjusted by the Legislature in the special session this past October.

Human Services Department

Medicaid: HSD currently estimates that it will need an additional \$42 million in state funding to cover the cost of the Medicaid program in FY 2018. This is a substantial reduction from their estimate just a month ago, and only 5% more than the current funding level. However, this estimate assumes that HSD will cut \$16 million in state spending through “cost containment” measures such as imposing co-pays and premiums on some Medicaid recipients and increasing federal payments for Native American enrollees.

The governor recommends a \$30 million increase in state funding for Medicaid, which falls short of projected need by \$12 million. The LFC’s recommendation for state funding for Medicaid is approximately equal to the current level, and recommends that HSD seek a total of over \$30 million in state savings through cost containment measures. However, the LFC recommends an **additional \$63 million** in state funds for the Medicaid program, contingent on the Legislature putting in place a fee for certain Medicaid providers. The fee would increase Medicaid costs but could bring in much more federal funding - perhaps enough to fully fund the program and avoid further cuts.

Behavioral Health Services Division (non-Medicaid): The LFC recommends a reduction of about \$300,000 in total spending in this division; the governor recommends a cut of over \$1 million.

Department of Health

A slight increase in the federal government’s share of the cost of the Developmental Disabilities waiver program means state spending to keep the program at its current level will fall by \$1 million. The governor recommends reducing state spending by that amount and keeping enrollment steady. The LFC recommends keeping that \$1 million in the program and using it to serve 62 persons now on the waiting list for this program. There are over 6,500 individuals on that waiting list.

New Mexico Commission for the Deaf and Hard of Hearing

Based on declining revenues from telephone service surcharges, the governor recommends a reduction in total spending of 2% and the LFC recommends a 4% reduction. The Commission may pursue legislation that would broaden the application of the phone surcharge to include services such as VOIP that use the internet rather than land lines or cell phones.

New Mexico Commission for the Blind

The governor recommends a small increase for the agency, while the LFC recommends a very small decrease.

Aging and Long-Term Services Department

Consumer and Elder Rights: This division, which includes the Long-Term Care Ombudsman program, would receive a 1.5% increase based on the governor's budget; the LFC recommends a 4% increase.

Adult Protective Services: The governor recommends a 4% increase, while the LFC proposes a 2.7% increase.

Division of Vocational Rehabilitation

Rehabilitation Services: The governor and the LFC both recommend major increases for DVR, based on drawing down significantly more federal money available to the agency. The federal government matches state spending on a 4 to 1 basis.

Independent Living Centers: Both the governor and the LFC recommend about \$100,000 more for the IL centers, which is an increase of over 7%.

Developmental Disabilities Planning Council

The LFC recommends level funding for the Council at \$6.44 million; the governor supports an increase of \$100,000.

Governor's Commission on Disability

The LFC recommends essentially level funding, while the governor recommends a cut of \$46,000 (2.6%).

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 6 for a list of abbreviations, including legislative committees, used in this section. The deadline for introducing most bills is the half-way point of the session, which this year will be Thursday, February 16th.

Behavioral Health/Mental Health

- **HB 136** Rapid Re-housing. Rep. Tomas Salazar. Appropriates \$2 million to provide services and supports to homeless persons to help them obtain and maintain permanent housing. HAFC
- **HB 157** Occupational Health Coverage for Firefighters. Rep. Debbie Armstrong. Establishes a rebuttable presumption that professional firefighters who are newly diagnosed with mental illness or post-traumatic stress disorder are eligible for worker's compensation health care. HHHC/HLEDC
- **SB 83** Carve Out Behavioral Health. Sen. Jerry Ortiz y Pino. Prohibits HSD from providing Medicaid-funded behavioral health services through any managed care program. SPAC/SFC
- **SB 84** Add Members to BH Collaborative. Sen. Jerry Ortiz y Pino. Adds representatives of the behavioral health provider association, the NM Association of Counties and the Municipal League to the state Behavioral Health Purchasing Collaborative. SPAC/SFC

Expected:

- There may be a memorial addressing the issue of family members of adults with mental illness seeking information so they can be involved with assistance and support for their family member and the confidentiality provisions of state and federal law that prohibit disclosure without consent.

Brain Injury

- **SB 38** Student Athlete Training. Sen. Bill Soules. Requires schools to provide information to their student athletes about concussions and the need to protect against potential brain damage. SPAC/SEC

Caregivers - Professional and Family/Volunteer

- **HB 86** Use of Sick Leave to Provide Care. Rep. Debbie Armstrong. This bill would require private employers to allow employees with accumulated sick leave to use such leave to provide caregiving to family members in need of such assistance. HHHC/HJC
- **SM 1** Recognizing Family Caregivers. Sen. Bill O'Neill. Recognizes the contributions of caregivers and calls for support of measures to assist or compensate them for their services. SRC/SPAC

Expected:

- A memorial is expected that would call for a task force to review and make recommendations regarding issues affecting direct care workers, including implementation of federal protections under the Fair Labor Standards Act and promoting a stable and adequate workforce to meet the needs of growing populations of seniors and persons with disabilities in New Mexico.

Criminal Justice

- **HB 72** Reinstate the Death Penalty. Rep. Monica Youngblood. Re-establishes the death penalty in New Mexico for the murder of police officers or children. The bill establishes some exceptions for persons with intellectual disabilities or mental illness though concerns remain regarding those provisions. HCPAC/HJC/H AFC
- **HB 175** Limiting Solitary Confinement. Rep. Moe Maestas. Prohibits the use of solitary confinement in jails or prisons for persons with severe mental illness, effective July 1, 2018. HCPAC/HJC

Developmental Disabilities

- **SJM 2** Rett Syndrome. Sen. Michael Padilla. Calls on the Department of Health to include Rett Syndrome as a qualifying condition to be eligible for the DD waiver program. A person with Rett Syndrome would not typically qualify under current standards. SRC/SPAC

Expected:

- The Association of Developmental Disabilities Community Providers (ADDCCP) may be promoting legislation that would limit the liability of DD provider agencies and offer some protection against certain lawsuits.

Education

- **HB 75** Prohibit Seclusion and Restraint. Rep. Jim Smith. Prohibits the use of seclusion/restraint in public schools except in emergency situations. HEC/HJC

Expected:

- There may be a memorial calling for the Division of Vocational Rehabilitation, the Public Education Department and the public schools to work together to assure implementation of new federal requirements for transition planning for youth with disabilities beginning at age 14.

Healthcare/Medicaid

- **HB 87** Department of Health Diabetes Committee. Rep. Debbie Armstrong. Directs DOH to convene an inter-agency committee to identify goals and benchmarks to reduce the incidence of diabetes, improve diabetes care, and control complications of the condition. HHHC/HJC

- **HB 112** Limiting Changes to Insurance Policy Drug Coverage. Rep. Bobby Gonzales. Under this bill, insurance companies could not increase co-pays for a covered drug, drop a drug from their formulary, or impose a new requirement for prior authorization after the beginning of the annual period of the policy coverage. Insurers would have to provide at least 90 days notice before the beginning of a plan year if such changes are proposed for that plan year. HHHC/HJC
- **SB 8** Medical Marijuana Changes. Sen. Cisco McSorley. Creates presumptive eligibility for the medical marijuana program for persons with chronic, debilitating health conditions, and extends the length of time for which a certification of eligibility is valid. SPAC/SJC

Expected:

- A proposal to limit or prohibit “step therapy” or “fail first” requirements in health insurance policies, whereby an individual has to try common or lower cost prescription drugs first and show that they don’t work before use of a more expensive drug is allowed.

Self-Determination and Protective Measure

- **HB 98** Paper Ballot for Blind Voters. Rep. Tomas Salazar. Requires the Secretary of State to establish procedures whereby a blind or visually impaired voter could complete a paper ballot either at a polling place or by absentee ballot. Such a process is typically available now at polling places but not for absentee voting. HLELC/HJC
- **HB 146** Criminal Penalties for Financial Exploitation. Rep. Yvette Herrell. Makes financial exploitation of a vulnerable adult a misdemeanor or felony crime, depending on the severity of the case. HHHC/HJC/HAFC
- **HB 171.** Aid in Dying. Rep. Debbie Armstrong. This bill enacts the End of Life Options Act, which would allow physicians to prescribe a lethal dose of medication that a competent adult with a terminal illness could use. *This controversial proposal is expected to generate considerable attention and debate, and a workshop on this bill will be offered on the first day of Disability Rights Awareness Day.* HHHC/HJC

Expected:

- A bill will be introduced that is intended to make it harder for guardians to deny visitation between family members and a protected person under guardianship. Other changes to the guardianship or conservatorship provisions in state law may be proposed as well.

Service Provider Issues

- **HB 85** Licensure and Oversight of Board and Care Facilities. Rep. Debbie Armstrong. Makes clear that boarding homes that provide personal assistance to their residents, including assistance with taking or managing prescription drugs, have to be licensed by the Department of Health and will be subject to visitation by the Long-Term Care Ombudsman. The bill includes provisions making it a criminal offense to abuse or neglect residents of such homes. HHHC/HJC
- **HB 132** Accessibility Logo on Specialty License Plates. Rep. Sarah Maestas Barnes. Allows auto owners with a disability to obtain a specialty license plate of their choice that would also feature the logo that allows for parking in designated accessible parking spaces. HTPWC/HTRC
- **SB 69** License Plates for Disability Agencies. Sen. Sander Rue. Allows agencies providing services to persons with disabilities to obtain accessibility license plates for their agency-owned vehicles as long as those vehicles are used primarily for the purpose of transporting individuals with disabilities. SCORC/SPAC

Expected:

- Senator Michael Padilla has expressed interest in introducing legislation to set minimum physical plant standards for boarding homes and other facilities that provide housing or day services to elders and persons with disabilities.

- Another attempt will be made at legislation to provide due process protections for Medicaid providers who are suspected of fraud, in response to HSD’s actions in 2013 that put many long-time providers out of business. All of those providers have since been exonerated by the Attorney General with respect to fraud allegations. A related bill may be introduced to specifically prohibit HSD from using extrapolation as a method for determining how much a provider may have over-billed the state when billing errors (whether intentional or not) are discovered.
- It’s likely we will see another proposal to transfer DVR from PED to the Department of Workforce Solutions.

Other Disability Issues

SM 3 Patrick Grange ALS Awareness Day. Sen. Clemente Sanchez. Promotes public awareness of ALS by declaring Feb. 6 as “Patrick Grange ALS Awareness Day”, in honor of the late UNM soccer player.

Contacting your Legislators

You can find out who your Senator and Representative are and get their contact information on the Legislature’s web page: https://www.nmlegis.gov/Members/Find_My_Legislator.

From this page, choose “Search by Name, District or your Address” for either the House of Representatives or the Senate. Then ...

- Enter your full home address in the box provided under “Your Address” and click on “Go”.
- Scroll down to find a picture of your Representative or Senator.
- Click on his or her name to get contact information.
- From the same page with the picture you can choose a different political body to find out who else represents you in Santa Fe or in the U.S. Congress.

Each legislator has an office in the Capitol. You can find the office phone number in the contact information provided through the Find My Legislator function, or you can call the Capitol switchboard at 986-4300 and ask to be put through to the office of any 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 working to promote favorable action 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
HCPAC	House Consumer and Public Affairs Committee
HEC	House Education Committee
HHHC	House Health and Human Services Committee
HJC	House Judiciary Committee
HLEDC	House Labor and Economic Development Committee

HLEGLC House Local Government, Elections, Land Grants and Cultural Affairs Committee
HTPWC House Transportation and Public Works Committee
HTRC House Taxation and Revenue Committee

SCC Senate Committees 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