



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2018 LEGISLATURE POST-SESSION REPORT

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Low-key session draws to a close. This year's short session ended last Thursday, and the final day followed the pattern of the past four weeks. Legislators worked together with little rancor or animosity, passing a number of bills by wide bipartisan margins. The House even stood in recess more than once, simply waiting to follow up on some last-minute actions in the Senate. A highly favorable budget situation created a positive environment, and Democratic legislators generally chose to wait until next year – when a new governor will be in place – to pursue some of their initiatives that Governor Martinez has opposed. The fact that 2018 is an important election year made the camaraderie and bi-partisanship all the more noteworthy.

Key disability bills go to governor. Several bills of interest to the disability community benefitted from the get-it-done mentality of the session. After numerous twists and turns, substitute versions and amendments, an abbreviated version of guardianship reform sailed through amid promises to pursue further improvements in the next year or two. The bill to impose limits on the use of “step therapy” in prescription medications came to focus on consumer protections and appeal processes, and then also passed with ease. A bi-partisan “crime package” that passed with near-unanimous support included provisions facilitating screening and services for persons with mental illness or substance abuse issues who are being held in jails and prisons. And for the second year in a row, a bill to provide strong “due process” protections for Medicaid providers has made it to Governor Martinez, who vetoed a similar bill last year.

But some didn't make it. For the third year in a row, a bill to transfer the Division of Vocational Rehabilitation (DVR) from the Public Education Department to the Workforce Solutions Department failed to make it through the legislature. And for the second year in a row, a memorial dealing with the issue of sub-minimum wages for certain employees with disabilities received committee approval but was never called up for a vote in the full House. A bill to authorize police to enter buildings without permission or a court order to bring a mentally ill person in for an emergency evaluation didn't pass; neither did a memorial calling for a task force to address the high rate of sexual assault on persons with disabilities.

Budget bill beefs up state spending. After resolving a minor dispute between the House and the Senate regarding road repairs and school fund balances, the state budget bill cleared the legislature on the final evening of the session. HB 2 spends about \$259 million of the \$292 million in “new money” available, although some of the new spending is for one-time purposes rather than recurring expenses. Big winners in the budget were public schools, public employees, higher education and criminal justice agencies.

And a correction to our previous report. Last week we reported that the Senate Finance Committee had added \$3.4 million to the budget for the DD waiver, on top of the \$2 million provided for in the House version. While the final budget bill does provide a net increase in state funding for the DD waiver of \$5.4 million, that money was already in the House version; the Senate did not put in any additional funding. And only \$2 million is earmarked for reducing the waiting list; the other \$3.4 million can be used to meet the increased cost of those already in the program as well as for addressing the waiting list if the Department of Health chooses to do so.

Bills and Memorials That Passed the 2018 Regular Session

The bills noted below have passed the legislature, and are now being reviewed by Governor Martinez, who can either sign them into law or veto them. The governor has until March 7 to take action. Memorials do not have the “force of law” and those that passed go into effect because they do not require the governor’s approval.

The State Budget

HB 2 General Appropriation Act. Rep. Patty Lundstrom. This is the state budget bill for FY 2019 that includes appropriations for all state agencies.

The Medicaid program received an increase of about \$18 million, which the Human Services Department projects will be enough to fully fund the program in the coming year. The additional funding includes \$2.3 million for rate increases for behavioral health providers, \$1.4 million for rate increases for nursing homes, and \$500,000 for rate increases for primary care providers.

The budget for the DD waiver in the Department of Health includes a net increase of \$5.4 million: \$2 million is earmarked for providing services to those on the waiting list; an additional \$3.4 million could be used for the waiting list or to meet the higher costs of serving those already in program. HB 2 also includes an extra \$2 million in the current budget year to cover an expected shortfall due to higher average per-person costs in the waiver program.

Appropriations in HB 2 for other disability agencies include:

- NM Commission for Deaf and Hard of Hearing: total increase of about \$301,000
- NM Commission for the Blind: total decrease of about \$1.26 million
- DVR: slight loss in total funding of about \$330,000
- Independent Living Services: loss in total funding of about \$95,000
- Governor’s Commission on Disability: increase in total funding of about \$23,000
- DD Planning Council: the federal program and the Center for Self-Advocacy receive a net loss of about \$20,000, but the Center did receive a special appropriation of \$65,000 for a ramp van. The Office of Guardianship received an increase of about \$67,000 for personnel.
- The Department of Health received a one-time appropriation of \$269,000 to operate the annual community programs audit required by the Jackson case

Other appropriations of note in HB 2 include:

- \$300,000 for special Olympics
- \$100,000 for housing services to individuals with mental illness who are homeless or at risk
- \$100,000 to HSD for autism services
- \$100,000 for suicide prevention and job development on tribal lands
- \$500,000 special appropriation to HSD to implement the provisions of HB 19 (crime package), with the goal of reducing recidivism
- \$307,400 in additional funding to the Civil Legal Services Commission, which funds a number of agencies – including DRNM – that provide legal services to low-income individuals

HB 19 Criminal Justice Omnibus Bill. Rep. Nate Gentry and Sen. Daniel Ivey-Soto. This bill, which combines the provisions of a number of other bills, requires jails and prisons to screen inmates or detainees who are in the facility for 30 days or more for substance abuse or mental health issues. The facilities would be required to facilitate access to inmates or detainees by the Medicaid program staff or Medicaid managed care organization (MCO) staff for the purpose of Medicaid eligibility determinations. Medicaid care coordinators would have to assess the needs of inmates/detainees, and link eligible individuals to available services upon their release from the correctional facilities.

HM 8 Movement Disorders Center at UNM. Rep. Debbie Armstrong. Calls on the Regents of the University of New Mexico to develop a plan to establish a Movement Disorders Center at UNM to provide services and support to persons with movement disorders (including Parkinson’s Disease, Huntington’s Disease, tremors and other disorders) and their caregivers. (Same as SM 4, below, which also passed.)

HM 9 Study Possibility of Medicaid Buy-in Plan. Rep. Debbie Armstrong. Calls for a study by the interim Legislative Health and Human Services Committee of the feasibility of allowing low/moderate-income individuals the opportunity to “buy in” to the state Medicaid program by paying a small monthly premium. (Same as SM 3, below, which also passed.)

HM 64 Incentives for Physical Therapists. Rep. Liz Thomson and Rep. Debbie Armstrong. Calls on the secretary of the Higher Education Department to convene a task force to look at how the state’s financial incentives for health professionals could be used to incentivize physical therapists and assistants to practice in New Mexico, with the aim of developing the PT workforce to meet growing need for these services.

HM 104 Study police lapel cameras and IPRA. Rep. Gail Chasey. Calls for a task force to review the issue of public access to police lapel camera videos of encounters between police officers and people who have mental illness or are victims of crime, looking to find the appropriate balance between the public’s interest in police conduct and the privacy interests of individuals involved in these encounters. (Same as SM 98, below, which also passed.)

SB 2 Due Process for Medicaid Providers. Sen. Mary Kay Papen. Provides procedural protections for Medicaid providers accused of fraud.

SB 11 Limitations on “Step Therapy”. Sen. Gay Kernan and Sen. Liz Stefanics. Addresses the use of “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. The version that passed focuses on prompt appeal processes for patients and their doctors seeking to bypass step therapy requirements.

SB 19 Uniform Guardianship and Conservatorship Code. Sen. Jim White, Rep. Gail Chasey and Sen. Daniel Ivey-Soto. The final version of this bill, which seemed to change shape every step of the way, makes a variety of changes to existing state law, but does not enact the new national model law as originally intended. The bill opens guardianship and conservatorship hearings to the public, requires notice of hearings to close family members, restricts the power of guardians to limit visitation by family members or to change the provisions of a power of attorney, and requires that all professional conservators post a bond.

SB 220 Crisis Triage Centers. Sen. Mary Kay Papen. Changes the definition of these centers to include facilities connected to existing hospitals, and authorizes triage centers to provide residential as well as non-residential services. Licensed triage centers are eligible for Medicaid reimbursement. The bill has an “emergency clause”, allowing it to go into effect immediately if the governor signs it into law.

SJM 1 Veterans Suicide Prevention. Sen. Jeff Steinborn. Calls on the Veterans Services Department to convene a task force to hold hearings around the state to gather input on how to reduce the incidence of suicide among New Mexico veterans.

SM 3 Study Possibility of Medicaid Buy-in Plan. Sen. Jerry Ortiz y Pino. Same as HM 9, above.

SM 4 Movement Disorders Center at UNM. Sen. Jerry Ortiz y Pino. Same as HM 8, above.

SM 98 Study police lapel cameras and IPRA. Sen. Sander Rue. Same as HM 104, above.

Bills and Memorials That Did Not Pass

Autism

SB 161 Medicaid Coverage of Autism Services. Sen. Linda Lopez. Required Medicaid coverage of speech, occupational and physical therapy as well as applied behavioral analysis as treatments for autism spectrum disorder, without regard to an individual’s age and without annual or lifetime limits on coverage. *Note: there is \$100,000 in HB 2 for Medicaid coverage of autism services.*

Behavioral Health/Mental Health

HB 20 Reducing Prison Recidivism. Rep. Nate Gentry and Sen. Daniel Ivey-Soto. Required jails and prisons to screen inmates or detainees for substance abuse or mental health issues, and to refer such individuals for case management and support services upon their release from the facility. *Note: similar provisions were included in HB 19, which passed.*

HB 132 Rapid Re-housing. Rep. Tomas Salazar. Appropriated \$2 million to provide services and supports to homeless persons to help them obtain and maintain permanent housing. *Note: there is \$100,000 in HB 2 for housing for persons with mental illness who are homeless or at risk of homelessness.*

HB 135 Interventions and Services for At-risk Youth. Rep Sheryl Williams Stapleton. Required HSD to create a program to provide services to meet the needs of youth with behavioral health issues who are at risk for involvement in the juvenile justice or criminal justice system.

HB 217 Reducing Prison Recidivism. Rep. Daymon Ely and Rep. Nate Gentry. Required jails and prisons to screen inmates or detainees for substance abuse or mental health issues, to refer such individuals for case management and support services upon their release, and to help them enroll in Medicaid as allowed by current state law. *Note: similar provisions were included in HB 19, which passed.*

HB 221 Home Entry for MH Evaluation. Rep. James Strickler. Allowed a police officer to enter a building without a court order or permission from the owner or occupant of the building in order to detain and transport a person for an emergency mental health evaluation, based on a certificate issued by a mental health professional.

HB 251 County BH Transportation Fund. Rep. Sheryl Williams Stapleton. Established a state fund to help counties provide for transportation of low-income persons to behavioral health services

HJR 2 Tap Land Grant Fund. Rep. Daymon Ely. This constitutional amendment required more of the annual earnings of the Land Grant Permanent Fund to be spent on a variety of public safety programs, including behavioral health services.

HJR 3 Tap Severance Tax Fund. Rep. Daymon Ely. This constitutional amendment required more of the annual earnings of the Severance Tax Permanent Fund to be spent on a variety of public safety programs, including behavioral health services.

HJM 2 Inpatient Services in Southern New Mexico. Rep. Joanne Ferrary. Called on the Legislative Finance Committee to develop a plan to provide inpatient beds for mental health patients in southern New Mexico.

SB 4 AOT Funding. Sen. Mary Kay Papen and Sen. Peter Wirth. Appropriated \$1 million to the Department of Health to assist cities or counties that implement an Assisted Outpatient Treatment (AOT) program.

SB 73 Supportive Housing for Persons with Behavioral Health Issues. Sen. Howie Morales. Appropriated \$2.5 million to HSD to provide rental assistance, supportive services and other help to individuals with behavioral health disabilities who are homeless or at risk of homelessness. *Note: there is \$100,000 in HB 2 for housing for persons with mental illness who are homeless or at risk of homelessness.*

SB 168 Mental Health and Suicide Prevention Info to Students. Sen. Mary Kay Papen. Required all higher education institutions to provide incoming students with information about available mental health and suicide prevention services provided by the school or affiliated programs.

SB 172 Suicide Awareness Prevention Training. Sen. Jerry Ortiz y Pino. Required most public and private school personnel to receive one or two hours of training annually for suicide awareness and prevention.

Developmental Disabilities

HB 107 DD Waiver Program Funding. Rep. Miguel Garcia. Appropriated an additional \$25 million for the DD waiver program. The funds could be used to provide additional services and take people

off of the waiting list. *Note: there is \$5.4 million in new money in HB 2 for the DD waiver, of which \$2 million is specifically earmarked for taking people off the waiting list and moving them into services.*

HB 176 Special Olympics Funding. Rep. Carl Trujillo. Appropriated \$300,000 for Special Olympics programs. *Note: there is \$300,000 in HB 2 for Special Olympics.*

SB 6 Special Olympics Funding. Sen. Mary Kay Papen. Appropriated \$300,000 for Special Olympics programs. *Note: there is \$300,000 in HB 2 for Special Olympics.*

SB 120 SGF Provider Rate Increases. Sen. Nancy Rodriguez. Appropriated \$345,000 to DOH for rate increases for providers of DD services funded by State General Funds.

SB 121 FIT Provider Rate Increases. Sen. Nancy Rodriguez. Appropriated \$5.5 million to the Department of Health for rate increases for providers of Family Infant Toddler (FIT) services.

SB 122 DD Waiver Provider Rate Increases. Sen. Nancy Rodriguez. Appropriated \$5.1 million to the Department of Health for rate increases for providers of DD Waiver services.

SB 130 Special Olympics Funding. Sen. John Sapien. Appropriated \$310,000 to support participation in Special Olympics by individuals receiving DD waiver services. *Note: there is \$300,000 in HB 2 for Special Olympics.*

SB 139 DD Waiver Report and Waiting List Funding. Sen. Bill Soules. Provided \$25 million to DOH to greatly reduce the waiting list for the DD waiver, and required DOH to issue an annual report on the waiver waiting list, including estimates of the funding needed to gradually eliminate the wait list. The bill was found not “germane” to the 30-day session and did not move forward.

SB 190 DD Waiver Waiting List Funding. Sen. Jerry Ortiz y Pino. Appropriated \$25 million to the Department of Health to provide DD Waiver services to persons who are currently on the waiting list for such services. *Note: there is \$5.4 million in new money in HB 2 for the DD waiver, of which \$2 million is specifically earmarked for taking people off the waiting list and moving them into services.*

SB 223 DD Waiver Waiting List Funding. Sen. Bill Soules. Appropriated \$25 million to the Department of Health to provide DD Waiver services to persons who are currently on the waiting list for such services. *Note: there is \$5.4 million in new money in HB 2 for the DD waiver, of which \$2 million is specifically earmarked for taking people off the waiting list and moving them into services.*

Education

HB 341 Michael’s Law & School Care & Restraints. Rep. Stephanie Garcia Richard. Required planning, services and procedural protections for students with disabilities or a record of adverse childhood events, limited use of restraints and seclusion, and called for notice to parents. Substantially similar to SB 233, below. This bill was introduced in the final days of the session, using an “emergency bill” allowing for introduction past the usual deadline, after the governor issued a late message authorizing it to be considered in the short session. It was never heard in committee and did not pass.

SB 233 School Services for Children in Need of Accommodations. Sen. Linda Lopez. Required schools to provide screenings, needs assessments and service plans for any child upon their first

violation of school rules in an attempt to avoid referrals to police or juvenile justice authorities. Substantially similar to HB 341, above.

Employment and Employment Services

HB 92 Transfer DVR to DWS. Rep Candy Ezzell. Transferred the Division of Vocational Rehabilitation from the Public Education Department to the Department of Workforce Solutions. Same as SB 58, below.

HM 16 Minimum Wage Task Force. Rep. Joanne Ferrary. Called for a diverse task force to study the issue of sub-minimum wages to employees with disabilities and recommend solutions.

SB 58 Transfer DVR to DWS. Sen. Michael Padilla. Same as HB 92, above.

Healthcare/Medicaid

HB 42 Limitations on “Step Therapy”. Rep. Liz Thomson and Rep. Monica Youngblood. Imposed some restrictions on (but did not 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. *Note: a similar bill, SB 11, passed the legislature.*

SB 77 Family Members as Paid Caregivers. Sen. Bill O’Neill. Required HSD to allow family members to serve as paid caregivers to other adults in the family, including spouses.

Other Disability Issues

HB 101 Mobility License Plates. Rep Sarah Maestas Barnes. Directed the Motor Vehicle Division to develop an accessibility emblem or decal that could be affixed to any other specialty license plate. HRC.

HB 120 Sentencing Enhancements. Rep. “Moe” Maestas and Rep. Monica Youngblood. Added three years to the sentence served by people convicted of felonies in which a person with a disability or a person at least 60 years of age was seriously injured.

HB 171 Blind Parents’ Rights. Rep. Jane Powdrell-Culbert. Prohibited use of a parent’s blindness as a rationale for limiting the person’s parental rights.

HB 230 Disabled Veterans License Plates. Rep. Rick Little. Allowed veterans who are at least 50% disabled as a result of their military service to receive two free specialty license plates instead of one.

SM 61 Sexual Assaults on Persons with Disabilities. Sen. Jerry Ortiz y Pino. Called for a task force to study the high rate of sexual assaults on individuals with disabilities and recommend legislation to address this problem. The task force would have included, among many others, the Statewide Independent Living Council, The Arc of NM, and Disability Rights NM.