



DISABILITY RIGHTS NEW MEXICO

3916 Juan Tabo Blvd., NE • Albuquerque, New Mexico 87111

TEL: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: www.drn.org • EMAIL: info@drnm.org

Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

2019 LEGISLATIVE SESSION PREVIEW

Jim Jackson, DRNM Public Policy Associate

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Session dates: This 60 day session starts Tuesday, January 15 and ends Saturday, March 16.

Coming Events:

- **Jan. 12: Pre-Legislative-Session Forum.** DRNM and The Disability Coalition team up again to present an update on current and upcoming disability issues, the state budget outlook, and a preview of disability-related legislation expected in the 2019 session. Our luncheon speaker is Rep. Joanne Ferrary, followed by a legislative advocacy training. Register through www.DRNM.org
- **Feb. 5-7: Disability Rights Awareness Days** in Santa Fe. Monday Feb. 5 at the State Capitol and Tuesday/Wednesday Feb. 6-7 at the Drury Plaza Hotel. Self-advocacy training, exhibits by sponsoring agencies, plenary sessions and workshops, updates on legislative developments, breakfast with legislators Wednesday morning, and more! For details and registration information, go to <https://www.classy.org/event/drad-2019-or-lift-every-voice/e214771>.

Prepare for a whirlwind! The 2019 session is expected to be one of the busiest and perhaps most productive sessions in decades, with over 370 bills already pre-filed before the session has even started! We're expecting a tsunami of legislation due to a number of unusual circumstances:

- Newly elected Democratic Governor Michelle Lujan Grisham is far more likely to sign bills passed by the Democratic-controlled legislature than was her predecessor, Republican Governor Susana Martinez. Look for legislators to bring back bills that didn't get passed or signed in recent years, and to bring forth lots of new ideas as well. And of course the new governor will have plenty of initiatives of her own.
- The "blue wave" of the 2018 general election increased the Democratic majority in the House by eight seats, creating a 46-24 edge over Republicans. This will make it easier to pass legislation – at least in the House - that is favored by members of the majority party.
- There will be a record amount of "new money" available. Many legislators (and lobbyists and advocates) are hoping to see some of that funding spent on their favorite projects or services.

The state House will look different, too. For the first time in history, a majority of the Democrats (24 out of 46) will be women. With seven Republican women also serving, the total number of women in the House will be 31 – not quite a majority but another record. And the

“blue wave” drastically changed the look of the Albuquerque delegation: out of the 22 districts that include portions of the City of Albuquerque, there is only one Republican left – Bill Rehm.

Over in the Senate, there will be two changes from last year: Gregg Fulfer has been appointed to replace Sen. Carroll Leavell, who resigned last month for health reasons; and Gabriel Ramos is expected to be appointed by Governor Lujan Grisham to fill the Senate seat of newly-elected Lieutenant Governor Howie Morales of Silver City. While Democrats outnumber Republicans in this chamber 26-16, most observers expect the Senate to be less receptive to some of the more progressive initiatives likely to come over from the House.

State budget outlook

The latest consensus revenue estimates indicate that there should be \$1.1 billion in new (additional) income to the state during the year that begins July 1, 2019. That’s money above and beyond the current level of state spending – about \$6.3 billion – approved in this year’s budget.

In theory, the \$1.1 billion in new money is “recurring”, meaning that it’s officially considered to continue in coming years. Due to the boom and bust cycles of the oil and gas industries, though, it’s a safe bet that the legislature will not increase annual spending by that amount for next year. But how much additional spending will be considered “too much”? Look for considerable debate within each chamber and between the House and the Senate and with the governor as to just how much higher to push the state budget. The higher the final figure, the more funding can be provided for existing or new programs and services.

The good news doesn’t stop there. Since revenues in this current year are already far exceeding previous expectations, the state is also expected to have around \$2.5 billion in reserves – money in the bank – by this July 1. Look for some of these excess funds to be tapped to shore up state pension funds, build or repair schools and highways, or other one-time expenditures.

On top of all that – or maybe because of it – there will also be attempts in the coming session to address tax reform. This could come in the form of eliminating some existing tax breaks or exemptions, developing new and more reliable revenue sources, adjusting tax rates, etc.

Appropriations for FY 2020

As the 2019 Legislature works on crafting a budget for FY 2020, it will consider the recommendations of its Legislative Finance Committee and of the new governor. Those two sets of recommendations will be released in the coming week and will be summarized in DRNM’s first weekly Legislative Report around January 21.

Ordinarily, those recommendations would be closely related to the budget requests submitted back in September by each state agency. However, those requests were developed under the outgoing administration of Governor Susana Martinez, so they may not carry much influence. Here’s a quick review of a few of those requests and the issues facing certain agencies:

Medicaid: HSD now estimates that it will need about \$63 million in additional funding to support the program. The increase is needed to keep up with modest enrollment increases and

because the federal government's contribution to the cost of serving the "Medicaid expansion" group (adults below 138% of the poverty level) will drop from 93% to its final level of 90% next January. That's still far above the 73% federal share for most Medicaid services and programs.

Department of Health: DoH asked for about \$15 million in additional funding for DD-related purposes, such as provider rate increases, keeping up with the rising costs of serving persons receiving waiver services, and trying to meet its obligations under the *Jackson* lawsuit - but did not request any new money to take people off the waiting list.

CYFD: Requested a total increase of \$21 million; \$2 million of that would be for behavioral health services to children

Other disability agencies:

- Division of Vocational Rehabilitation (DVR) asked for a \$550,000 increase earmarked for services to adults. Federal law now requires DVR to spend at least 15% of their federal funds on transition services for youth, which results in fewer dollars for adult services. At the same time, DVR is choosing to remain under an "Order of Selection" that limits acceptance of new adult clients to those with the most severe disabilities, and did not request the funding it would need to remove this restriction.
- Commission for the Blind (NMCB) asked for a \$200,000 increase for Independent Living services for seniors and for other services for adults, to offset the same federal limitation on use of their federal funds.
- Commission for the Deaf and Hard of Hearing (NMCDHH) had a flat overall budget request, but they are seeking additional state funds because the additional fees they were expected to receive from telephone service fees has not materialized.
- Developmental Disabilities Planning Council did not seek a significant increase in their annual appropriation but requested permission to spend some of their large cash balance on additional personnel and to address its waiting list for guardianship services.

Other Appropriation Requests

Legislators, advocates and lobbyists will also be seeking funding to support service expansions or improvements in disability-related programs or services. Some of the initiatives we are aware of include:

- DD waiver waiting list - \$25 million is being requested to launch a 5-year plan to move 3,000 people off the waiting list and into waiver services
- Guardianship monitoring and oversight – the courts need additional funding to adequately review annual reports and conduct other monitoring of guardians and conservators
- \$5 million will be requested for autism evaluations and services, as recommended by a task force established through a previous legislative memorial.
- The Direct Caregivers Coalition will be promoting a \$6 million rate increase for providers with a mandate to pass along at least half that amount as a wage increase for individuals who provide personal care under the Medicaid program.
- There may be an effort to increase funding for DVR in order to eliminate Order of Selection.
- The Civil Legal Services Commission, which funds a variety of legal service agencies serving low income New Mexicans (including Disability Rights New Mexico and the Native American Disability Law Center) is seeking an additional \$2.5 million so that additional clients can be served.

Anticipated Legislative Proposals in the 2019 Session: The disability-related issues that we expect the Legislature to address this year are listed below. Listed first in each category are bills that have been “pre-filed” in advance of the session and have already been assigned a bill number. These bills will be introduced officially once the legislative session begins. It is very likely that other legislation directly affecting persons with disabilities will also be pre-filed or introduced during the session. The deadline for introducing most bills is the half-way point of the session, which this year will be Thursday, February 14th.

Behavioral Health/Mental Health

HB 43 Behavioral health interventions for non-violent offenders. Rep. Sheryl Williams Stapleton. Charges the Human Services department with responsibility to develop and implement services for non-violent offenders with behavioral health issues to reduce recidivism, and appropriates \$1.5 million to HSD for this purpose.

HB 59 Non-discrimination against art therapists. Rep. Christine Trujillo. Requires insurance companies to pay licensed art therapists for the services they provide if those services are covered by a policy and they pay other behavioral health providers for the same services.

HB 83 Extreme risk protection orders. Rep. Daymon Ely. Allows for court orders for police to seize guns from those determined to pose a high risk of violence to themselves or others, which could impact persons with mental illness.

HB 153 Suicide awareness training. Rep. Patricio Ruiloba. Requires virtually all licensed health care providers to receive a one hour training annually on suicide awareness and prevention.

SB 64 Behavioral health investment zones. Sen. Cisco McSorley. Directs HSD to divide the state into different geographic zones, and give priority in targeting certain funding to zones with the highest needs.

SB 141 Interstate psychology compact. Sen. Jerry Ortiz y Pino. Adopts an interstate agreement regulating the temporary practice of psychology across state lines through telepsychology.

SB 152 MH-DD Code grievance procedure. Sen. Liz Stefanics. Requires the Department of Health to establish a grievance procedure to address disputes related to a client’s consent to mental health treatment or a determination that the client lacks the capacity to consent.

Expected:

- Prohibition on use of solitary confinement of persons with serious mental illness
- Allowing disclosure of client information without individual consent for research purposes, and between corrections personnel and community mental health professionals for the purpose of promoting continuity of care for persons being discharged from jail or prison.

Brain Injury

SB 134 Brain injury fund appropriation. Sen. Jerry Ortiz y Pino. Appropriates \$500,000 for the Brain Injury Services fund.

SB 171 Brain injury fee increase. Sen. Bill Tallman. Increases from \$5.00 to \$6.40 the portion of traffic violation fines that goes to support the Brain Injury Services Fund.

Developmental Disabilities

HB 61 Sexual assault study. Rep. Christine Trujillo. Appropriates \$450,000 to the Crime Victims Reparation Commission to conduct a study of sexual assaults against persons with disabilities and to identify needed improvements in data collection.

HB 68 Reduce the DD Waiver waiting list. Rep. Liz Thomson. Directs the Department of Health to move 600 individuals on the waiting list into waiver services each year over the next five years, and appropriates \$25 million to the Department of Health for this purpose.

HB 69 Early detection of cerebral palsy. Rep. Liz Thomson. Appropriates \$200,000 to the Department of Health to provide training to health care professionals on new methods for early detection of cerebral palsy.

Expected:

- Amending the membership and duties of the state Developmental Disabilities Planning Council
- Creating an Office of Autism within the Developmental Disabilities Supports Division of the Department of Health.

Education Issues

SB 48 Diabetes management in schools. Sen. Mimi Stewart. Requires training of public school staff in diabetes management, requires school personnel to provide diabetes management services in conjunction with an approved plan for individual students, and allows students to self-manage their diabetes in school settings.

SB 179 Lottery scholarship eligibility. Sen. Liz Stefanics. Extends lottery scholarship eligibility to students with disabilities who had to attend an out-of-state high school in order to receive a free, appropriate education (as required by the Individuals with Disabilities Education Act), if they graduated from an accredited school.

Expected:

- Legislation to implement the court ruling in the Yazzie case, which will have an impact on special education funding and services

Guardianship / Protective Arrangements

Expected:

- Legislation to provide better notice of the rights of an allegedly incapacitated person, and deleting an existing provision giving guardians of adults all the same rights as a parent of a minor child.

Health Care

HB 48 Training on assisted listening technology. Rep. Patricia Roybal Caballero. Requires audiologists and other hearing aid dispensers to provide information about assisted listening systems.

HB 70 Health insurance coverage of prosthetics and orthotics. Rep. Liz Thomson. Requires insurance policies to cover prosthetics and orthotics to at least the same extent as Medicare and on terms equivalent to other covered services.

HB 72 Occupational therapy practice act. Rep. Liz Thomson. Updates the OT practice act to reflect current standards and practices.

HB 81 Limiting co-pays for therapy services. Rep. Eliseo Alcon. Limits the amount of co-pays that insurance companies charge for occupational therapy, physical therapy, or speech/language therapy to the amounts that they charge for primary care visits.

HB 88 Health care values & access commission. Rep. Debbie Armstrong. Establishes a state commission to gather data about health care services and costs and to make recommendations to improve and better coordinate the provision of health care services in NM. Same as SB 101, below.

HB 90 Aid in Dying. Rep. Debbie Armstrong. Authorizes prescriptions that an individual with a terminal illness could self-administer which would bring about the person's death. Same as SB 153, below.

HB 142 Pre-existing condition exclusions. Rep. Liz Thomson. Prohibits health insurers from denying coverage to persons with pre-existing conditions. Does not prohibit higher premiums for coverage, nor prohibit annual or lifetime coverage limits.

HB 143 PCS rate and wage increase. Rep. Christine Trujillo. Provides \$6 million to HSD to increase provider reimbursement rates for Medicaid personal care services, with a requirement that at least half of the money be used to increase wages for the workers who provide personal care services.

SB 41 Medicaid providers due process. Sen. Mary Kay Papen. Provides protections for Medicaid providers accused of fraud.

SB 85 Domestic worker minimum wage. Sen. Liz Stefanics. Repeals the provision of current state law that exempts "domestic workers" from minimum wage requirements. This would assure that personal care workers, among others, would receive at least the state minimum wage, and that the Department of Workforce Solutions would enforce their rights to such wages.

SB 101 Health care values & access commission. Sen. Jeff Steinborn. Same as HB 88, above.

SB 112 Limiting insurance policy changes. Sen. Liz Stefanics. Prohibits health insurers from changing coverage or co-pays for prescription drugs during a plan year, and requiring notice of any proposed changes at least 90 days before a new plan year.

SB 123 Caregiver leave. Sen. Liz Stefanics. Allows employees of private businesses as well as state and public school employees to use accumulated sick leave for the purpose of caring for a family member, if their employer provides a sick leave benefit.

SB 153 Aid in Dying. Sen. Liz Stefanics. Same as HB 90, above.

SB 185 Monitoring neurological disorders. Sen. Jeff Steinborn. Appropriates \$100,000 to the department of Health to establish a program to monitor the incidence of neurological disorders and to identify, prevent and treat such disorders.

Expected:

- Creating a Medicaid buy-in program to offer a new health coverage option that will increase affordability and access to care by leveraging the Medicaid program.

Other

HB 82 Home rehab for veterans. Rep. Eliseo Alcon. Appropriates \$2 million to the Mortgage Finance Authority to rehabilitate homes owned and occupied by low income veterans; includes home modifications for accessibility.

HB 96 Blind parents' rights. Rep. Tomas Salazar. Prohibits blindness from being used as a basis for denial of parental rights.

HB 136 Voluntary driver registry. Rep. Liz Thomson. Allows but does not require persons with disabilities to note, in conjunction with their car registration, that they have a disability that might affect their ability to communicate. Law enforcement officers would be required to consult the registry prior to interacting with a motorist and to take appropriate steps when attempting to communicate with a driver or regular passenger who is on the registry.

HJR 3 Low income property tax exemption. Rep. Miguel Garcia. Would amend the state constitution to exempt very low income persons with severe disabilities from property taxes on a home they own and occupy.

SB 42 Expanding the use of “silver alerts”. Sen. Richard Martinez. Expands these alerts to include missing persons of any age who have dementia, and to all missing persons over 50 years old even if they do not have dementia. It also expands the dissemination of such alerts.

SB 46 Home rehab for veterans. Sen. Richard Martinez. Same as HB 82, above.

SB 53 State park accessibility. Sen. Jeff Steinborn. Requires the adoption of state rules intended to make state parks as affordable for and accessible to all state residents as possible.

SB 63 Medical and geriatric parole. Sen. Cisco McSorley. Directs the Corrections Department to implement a program providing parole for eligible inmates who are elderly, permanently incapacitated, or terminally ill.

SB 139 Funding for GCD programs. Sen. Jerry Ortiz y Pino. Appropriates \$300,000 to the Governor’s Commission on Disability for its assistive technology and home modifications programs.

SB 189 Parking placards for disability agencies. Sen. Sander Rue. Allows agencies that own or lease vehicles used to transport individuals with disabilities to obtain parking placards for those vehicles, allowing them to be parked in accessible parking spaces.

Contacting your Legislators

Before the session starts on January 15, you can still contact your legislators in their home communities. 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 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 “Search”.
- You should now see 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.

Once the session starts, each legislator will have 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 by sending an email to info@drmm.org and put PLAN in the subject line.