

# THE DISABILITY COALITION

*Advocating for People with Disabilities of All Types*

## 2021 LEGISLATIVE SESSION PREVIEW

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**Session dates:** The 60 day session starts at noon on Tuesday, January 19<sup>th</sup>, 2021 and is scheduled to end no later than noon on Saturday, March 20.

**A session in isolation.** When the legislative session begins on Tuesday, the Capitol will be closed to the public and could remain that way until the end. Most committee meetings will be conducted on-line by Zoom, though the Senate might allow members to participate in person in Capitol hearing rooms and the House Appropriations and Finance Committee is expected to meet in person at the Roundhouse due to the large amount of paperwork the committee reviews as it develops the budget. House rules will be amended to permit representatives to participate in floor session debates and votes remotely. Even House members present in person will have to participate via Zoom on their computers so that there is no disadvantage to members who will not be physically present at the Capitol. On the Senate side, members will have to be on the floor or tuning in via Zoom from their offices in the Capitol in order to participate in floor debates and votes. Most legislative staff will be working from home.

Public input to committee hearings will be limited to emails or on-line options such as “chat box” comments or oral comment if allowed and called on by the committee chair. Some legislative leaders have emphasized that this allows input by those in distant communities who haven’t had such an opportunity in the past, but of course that depends on their having adequate internet service in the first place, which is often not the case. Both chambers have committed to pausing their proceedings if the Legislature’s internet or webcasting function fails, but if an individual viewer’s connection goes down they are simply out of luck. Without the usual informal and on-going conversations among legislators, staff, lobbyists and state agency representatives, this year’s very insular process may produce legislation that has not been as well developed as in previous sessions.

Suggestions to postpone the session, or to deal with the state budget and then adjourn, in hopes that a session could be conducted later after the pandemic subsides with more typical public participation, have so far been rejected, but this question may be re-visited as the session progresses.

**Another new-look legislature.** This year’s state Senate will be quite different in many ways. Sen. Mimi Stewart of Albuquerque is expected to be elected as the new president pro tem, with the power to appoint senators to key positions. There will be new chairs of important committees including the Finance, Corporations, and Rules committees. Those positions will be officially announced once the session begins. Just as importantly, the “profile” of the Senate will change: most of the more conservative members from last year’s Democratic caucus are not returning this year, and three Senate seats have shifted from Republican to Democrat. The result is a Senate that not only has a large and



Advisory member

more progressive Democratic majority but will be led on the floor and presumably in committees as well by members who reflect the progressive profile of the caucus. This change creates an opportunity for bills that have been blocked in the past by conservative leaders to make it through the Senate.

On the House side there have been no significant shifts in membership or leadership; Democrats continue to hold a large majority. However, it is worth noting that for the first time in state history, women will constitute a majority of the chamber.

**The budget outlook.** When the current fiscal year (FY 21) began last July, the state had cash reserves of \$2.5 billion (35% of annual spending). State revenue this year will be about \$7.0 billion, supplemented by \$750 million in federal stimulus funds and some other miscellaneous income for a total of about \$7.78 billion. State spending, after reductions made in last June's special session, is authorized at about \$7.0 billion; combined with a lot of one-time additional spending, expenses this year are estimated at about \$7.95 billion.

The coming fiscal year (FY 22) will thus begin with cash reserves of about 2.4 billion (33% of annual spending). State revenue is estimated at \$7.38 billion. Based on the approved FY 21 spending level, and taking into account the need to replace about \$150 million in one-time federal stimulus money that was used to supplement or replace state dollars in the current year, there should still be about \$169 million in "new money" to spend (enough for about a 2.5% increase in state spending), plus an unusually healthy amount of cash reserves to draw on as needed.

**Appropriations for FY 2022.** As always, the primary responsibility of the legislature this session will be to craft a budget for FY 2022 (the year that begins July 1, 2021). The process begins with the House Appropriations and Finance Committee, which will consider the recommendations of the Legislative Finance Committee and those of Governor Lujan Grisham, which were each just released this past week. There are many similarities between the two but some important differences as well.

The governor's budget raises annual state spending to \$7.3 billion, an increase of about 3.3%. It includes a \$128 million increase in on-going spending on public education (about a 4% increase), but does not include across-the-board salary increases for teachers or state employees. The governor proposes \$600 million in one-time spending, including \$475 million for COVID relief efforts, bringing reserves at the end of the year down to \$1.8 billion (25%).

In a bit of a role reversal, the budget recommended by the interim Legislative Finance Committee calls for an even higher level of annual spending: \$7.38 billion (a 4% increase). The LFC increase for public schools, \$113 million, is significant but not quite as high as the governor's proposal. The LFC budget provides for 1.5% salary increases for teachers and state employees. One-time spending proposals include \$300 million to boost the state unemployment fund, \$75 million for economic recovery efforts, \$250 million for highway projects, and \$185 million for education programs. It would take reserves at the end of the year down to a level equal to 22% of state spending.

Here's a quick look at some particular state programs and agencies affecting persons with disabilities and how they are treated in these proposed budgets:

**Medicaid:** A temporary increase in the federal government's share of Medicaid expenses during the COVID pandemic has allowed New Mexico to stretch its state matching dollars (and even reduce the level of that funding in FY 20) without significant harm to the program. It looked like state funding

approved for the current year would fall short by about \$22 million, but extension of the additional federal assistance through the spring and early summer is expected to erase that shortfall. However, the Human Services Department's most recent estimate is that it will need about \$162 million in additional state money to support the program in FY 22. This figure assumes that there will be no further enhanced federal funding to states in conjunction with the pandemic after July 1, but that too may change.

The governor's budget increases state spending on Medicaid by \$43 million, and projects total spending (including federal and other funds) to go up by only 1% from current levels. The LFC recommends an increase in state spending of over \$111 million, and expects total spending to rise by nearly half a billion dollars (7.6%).

**Department of Health:** The department launched the new DD "supports waiver" last fall, which provides a limited menu of benefits and a \$10,000 budget to many of the individuals on the waiting list for the traditional or Mi Via waiver programs. However, due to budget limitations, the agency has not made further progress in moving people off the waiting list for those more comprehensive waiver programs. The state reduced its funding for these programs this year but was able to avoid significant cuts to the program due to the supplemental federal Medicaid funding. In FY 22, those federal funds will have to be replaced with state dollars, and any expansion of the program would require even more new funding.

The governor's budget increases state spending (above the currently reduced amount) by \$14 million, while the LFC would raise it by \$9.4 million. However, the governor's budget for FY 22 would simply bring total state spending on these services back to the level spent in FY 20; the LFC wouldn't quite get that far. A slightly more favorable federal matching rate will help, but it will not be possible to make major progress on the DD waiver waiting list (which stands at about 4,700 people with a current waiting time of over 13 years) with these funding levels.

**Other disability programs and agencies:**

*HSD Behavioral Health Division:* This division is involved in planning and also covers services to persons who are not eligible for Medicaid. The governor's budget contains increases in mental health services delivered through other agencies but calls for level state funding for this division, and the LFC has the same recommendation.

*NM Commission for the Deaf and Hard of Hearing:* The governor's budget calls for level state funding and level total funding for this agency. The LFC recommends a major increase in state funding (\$210,000 or 44%) to make up for other revenues that have been expected but so far haven't materialized. However, the LFC recommends a reduction in total spending of about \$800,000, based on the agency's spending less than what has been appropriated for it in previous years.

*NM Commission for the Blind:* The governor's budget would level fund this agency as well. The LFC recommends a slight (2%) cut to state funding for the Commission, and an overall cut in total funding of 2.7%.

*Division of Vocational Rehabilitation (DVR):* The primary service component of this agency is its Rehabilitation Services program, which relies heavily on federal funding but requires a state match of about 20%. The governor recommends level funding for the program; the LFC proposes a slight (1.6%) cut to state funding but expects total spending to be very close to current levels.

*Governor's Commission on Disability:* This agency, which also houses the Brain Injury Advisory Council, would receive level funding in the governor's budget. The LFC would reduce state funding by \$70,000 (5%) and overall spending by 4%.

*Developmental Disabilities Planning Council:* The governor has recommended an increase in state funds of \$283,000 for the Council, which may be intended to implement an Ombudsman program for students in special education and their families. The LFC does not recommend this increase. The DDPC also operates the Office of Guardianship. The governor proposes an increase of \$1.6 million (36%) for this program, though it estimates that other funding will dip slightly and result in a net increase of over \$1.1 million (about 20%). The LFC recommends an increase in state funding of only \$250,000, and projects that a reduction in other funds will result in an overall 4.5% budget reduction.

### Anticipated Legislative Proposals in the 2021 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; House pre-filed bills have already been assigned a bill number, but Senate bills have not. The pre-filing period ends Friday, Jan. 15. These bills will be introduced officially once the legislative session begins. Other legislation directly affecting persons with disabilities will also be 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 18<sup>th</sup>. (Note: Numbers in parentheses for Senate bills are file numbers assigned by the Legislative Council Service for bills that have been pre-filed but have not yet been assigned actual bill numbers.)

#### Brain Injury

Pre-filed:

- **SB** [218455.1] Brain injury services. Sen. Jerry Ortiz y Pino. Appropriates \$500,000 to the brain injury fund to support services for persons with brain injuries.
- **SB** [218454.1] Brain injury study. Sen. Jerry Ortiz y Pino. Appropriates \$150,000 to the Department of Health to collect data, review existing services, and recommend steps to improve and expand services to persons with brain injuries

#### Developmental Disabilities

Pre-filed

- **SB** [218889.1] Early detection of cerebral palsy. Sen. Greg Schmedes. Appropriates \$200,000 to the Department of Health to fund training and technical assistance to health care workers to promote early detection of cerebral palsy in young children.

Other expected legislation:

- A bill to require that at least 70% of any rate increases provided by the legislature for services that are provided by direct care workers in the DD waiver programs be passed on to increase worker compensation, and that provider agencies report how they spent the new funding so that compliance can be tracked.
- A bill to update provisions of state law applying to the Developmental Disabilities Planning Council to align with current federal law provisions.
- A bill that would assure that people with intellectual/developmental disabilities can have a caregiver accompany them when they when they are in the hospital.

### Guardianship and protective arrangements

- A bill to create a task force to study supported decision-making and recommend changes in NM law to allow and support it.
- A bill to authorize and fund a pilot project of oversight of guardianships in two judicial districts, to be done by the DD Planning Council. The Council has oversight authority over the guardianships that it funds, but that is only a small portion of all guardianship arrangements in the state.
- A bill that would impose criminal penalties for financial exploitation of vulnerable adults.
- A separate bill that would impose civil penalties for financial exploitation of vulnerable adults, and allow financial institutions to delay transactions that appear to be exploitative or fraudulent.

### Education/Special Education

- A bill that would prohibit the use of seclusion in public schools, strengthen requirements for schools to report to parents and to the state Public Education Department any and all incidents of the use of restraints on students, and require training of school staff on alternatives to restraint.
- A bill to create and fund an Ombudsman to assist families in resolving problems in obtaining appropriate special education services for their children.
- A bill to increase the amount of funding provided to school districts to serve children in special education, raise the organizational profile of Special Education within the Public Education Department, and assure that the program be staffed with persons with relevant expertise.

### Health Care

#### Pre-filed

- **HB 47** Aid in dying. Rep. Debbie Armstrong. Authorizes prescriptions to be issued by a qualified health care provider that an individual with a terminal illness could self-administer that would bring about the person's death. For persons who have a current diagnosis or recent history of mental illness or intellectual disability, an evaluation would be required by a health care professional with appropriate expertise to determine if the person has capacity to provide voluntary, informed consent.
- **SB** [.218136.3] Physical therapy interstate compact. Sen. Siah Correa Hemphill. Would commit New Mexico to an interstate compact such that a licensed PT in good standing in another state could practice in New Mexico, and vice versa for New Mexico licensed PTs.

#### Other expected legislation:

- A bill to create a state oversight board that would have the authority to review and approve (or disapprove or limit) major price increases for prescription medications.
- A bill that would facilitate enrollment into Medicaid or the Health Insurance Exchange based on a person voluntarily agreeing to have information in state tax returns shared with the state agencies running those health coverage programs.
- A bill to impose an additional state tax on insurance premiums in order to fund expanded access to health care coverage.

### Independent Living/Community Services

#### Pre-filed:

**SB** [218450.1] AT and home modifications. Sen. Jerry Ortiz y Pino. Appropriates \$300,000 to the Governor's Commission on Disability to provide assistive technology and home modification services.

### Miscellaneous

#### Pre-filed:

- **HB 37** Paid sick leave. Rep. Angelica Rubio. Requires most employers in NM to provide sick leave to their employees, and to allow such leave to be used for purposes including caring for a family member with a physical or mental illness or health condition.
- **HB 38** Paid family and medical leave. Rep. Christine Chandler. Creates a program funded by employers and employees that would provide paid leave for employees needing to take time off work to care for a newborn or for a family member with a disability.

Other expected legislation:

- A bill that would expand the NM Commission for the Blind (the group that oversees the state agency of the same name) from 3 persons to 5 persons. This would exempt the agency from a federal requirement that it maintain a consumer advisory group (State Rehabilitation Council).
- A bill to increase the existing penalty for crimes against children when those children have disabilities.
- A bill to change the confidentiality provisions of the state Mental Health/Developmental Disabilities Code to allow for limited data sharing related to children, for research purposes only. The data would not be publicly available.