

THE DISABILITY COALITION
Advocating for People with Disabilities of All Types

**DISABILITY ISSUES IN THE 2021 LEGISLATURE
STATUS REPORT #2**

Jim Jackson, Coalition Chair
February 1, 2021

(See page 7 for a list of abbreviations, including legislative committees, used in this report.)

Committee hearings:

Tuesday afternoon: HLVMC: HB 110 Minimum wage increases and eliminating exemptions

“Can you hear me?” We’ve now had a week of “virtual” legislative committee hearings held by Zoom and it’s been a bumpy ride. Those viewing or participating in these meetings are hearing that question over and over (along with “Are you there?”), as members of the public providing comments in hearings get called on without notice, may have to figure out changing procedures to “unmute” themselves or confirm that a host has done so, and make sure they’re really “there” before starting in on their comments. Technical difficulties have been evident as well: the first hearing of the Senate Health and Public Affairs Committee was delayed more than two hours due to technical difficulties, as well as members not getting or finding their Zoom links or trying to use links that didn’t work.

Senate committee hearings had a built-in delay for every comment, since those who signed up to comment had to listen to the webcast to hear when they were called to speak, and the webcast lags significantly behind real time so there was lots of dead time while waiting for commenters to realize they’d been called on. Improvements are being made as the committees and their staff gain experience, but the process of providing public comment remains clunky and complicated, especially on the Senate side.

The Zoom meetings have other notable shortcomings compared to in-person hearings. The public can’t always see which committee members are present (or see all of them at once) and can’t see how many members of the public have signed on – visually “packing the room” with those interested in a bill isn’t possible. Technical issues aren’t limited to delays in getting hearings started but also include problems with echos, poor sound quality and cutoffs of public commenters and even committee members while the meeting is in progress. And beyond committee meetings, there’s the over-arching challenge of severe limits on the informal interactions with legislators as well as other advocates, lobbyists and interested members of the public that are a key part of a legislative session.

High-profile bills advance. Some of this session’s most controversial bills got favorable recommendations in their first committee hearings this week, but only after extensive public comment and committee discussion. Bills to repeal criminal penalties for abortions (HB 7, SB 10) passed their



Advisory member

initial committees after hours of public comment and committee member debate; this was also the case for the aid in dying bill (HB 47), the civil rights act (HB 4) that would allow residents to sue for violation of state constitutional rights and overcome the traditional defense of qualified immunity, and the proposed constitutional amendment to further tap the state's permanent fund for early childhood services (HJR 1). A bill to provide corona virus relief (SB 3) also took its first step forward.

Public input/viewing information. Committee agendas are available through the legislative website (nmlegis.gov) under the "What's Happening" tab on the legislative homepage. These agendas include information about how the public can provide comment on bills being heard in the committee. Committee meetings are also being webcast for viewing by people who don't wish to provide comment and therefore don't need to be part of the Zoom meeting; find them under the "Webcast" tab.

Bills and Memorials Introduced or Expected in the 2021 Session

This list is grouped by specific disability or subject matter and shows the bill number, sponsor, a description of the bill, the current committee assignments and action taken on the bill or memorial. The report also includes bills or memorials expected but not yet introduced. The deadline for introducing most bills is the half-way point of the session, which this year is Thursday, February 18th. Memorials can be introduced at any time.

Note: Due to the pandemic, both the House and the Senate are holding less frequent floor sessions than they do in normal times, when they meet almost daily. This means that information on the legislative website, including the daily bill locator, may not reflect committee action on a bill until long after it occurs, as committee "reports" reflecting actions taken on a bill must be accepted by the full chamber before they become part of the official record.

State Budget

HB 2 General Appropriations Act. Rep. Patty Lundstrom. HAFC. Both HAFC and the Senate Finance Committee are currently holding hearings on all state agencies and considering the budget recommendations from the Legislative Finance Committee and from the governor. HAFC, which initially develops the budget bill, is following their usual process of temporarily accepting the lower of the two for each agency, allowing them to decide later where to allocate additional funding available. Agency budgets of interest to the disability community include:

- Medicaid – The governor's budget calls for an increase in state funding of only \$43 million compared to the LFC recommendation of \$111 million. The primary difference is that HSD expects to finish this year with a surplus due to additional federal funding for pandemic relief, and the governor's budget anticipates that the surplus will be carried forward to use in the coming year.
- DD Services Division, DoH – The governor is asking for an \$18 million increase and notes that this will allow about 400 people to move off the waiting list and into DD waiver services. The LFC recommendation is for about a \$9 million increase.
- DDPC: The governor is supporting an increase of \$295,000 to create a new special education ombuds program, \$285,000 for a new licensure program for professional guardians, and over \$1 million for the operation of the Office of Guardianship, for a total increase of \$1.67 million. The LFC recommends \$250,000 but did not address the potential new programs recommended by the governor, which were not presented to the committee before it formulated its budget.

- DVR: The governor’s request for VR services is for the same level of funding as the current year, while the LFC recommends a very slight decrease. The governor recommends level funding for independent living services while the LFC recommends a reduction of 2%.
- GCD: The governor recommends level state funding; the LFC recommends a 4% reduction.
- NMCB: The governor recommending level state funding, and the LFC recommends a 2% reduction.
- NMCDHH: This commission doesn’t receive much state funding compared to its overall budget, but it has never received the amount of funding from other sources that has been expected. The governor is proposing level funding from all sources; the LFC recommends a significant increase (\$210,000) in state funding but a significant decrease (\$801,000) in total funding.

Note: The LFC based its recommended budget on requests submitted by state agencies in September according to the usual schedule, at which time the governor was directing that requests be reduced from the current year. Since that time, improving revenues led the governor to change her position and not only authorize level budgets for most agencies (i.e., continuing appropriation amounts from the current year) but to support funding for some new programs or efforts, as noted above for the DDPC and the DD waiver. This has led to significant discrepancies between the two budget recommendations for many agencies.

Behavioral Health

HB 125 Behavioral health practice and oversight. Rep. Day Hochman-Vigil. Modifies some of the licensure requirements for psychologists and therapists, such as extending the period of temporary New Mexico licensure for those licensed in another state and practicing here during a health care emergency. HHC/HSEIC

HB 151 BH consortium for planning. Rep. Karen Bash. Calls for the establishment of a large consortium of politicians, architects, business people and social service agencies to consider the need for additional residential facilities for mental health and substance abuse treatment, and for transitional and longer term housing. It would also develop a drug prevention program for students and review DWI laws and penalties. HHC/HAFC.

HB 178 Counseling and Therapy Practice extension. Rep. D. Wonda Johnson. Extends the “life” of the board that oversees these practitioners for another six years (to 2027) and makes a few technical changes to the current act. Unless extended, the board would be terminated this July 1. HHC/HSEIC

HB 202 Child welfare improvements. Rep. Meredith Dixon. Calls for amending the Behavioral Health Purchasing Collaborative’s state behavioral health plan to include specific provisions for children and youth in custody of CYFD, and a process for HSD and CYFD to work together to provide trauma-informed services and supports to those children and youth. Prohibits (except in “extraordinary circumstances”) placement of children in hotels or motels, state offices or out-of-state facilities. Children who are placed out of their home could not be moved more than three times within 1,000 days (about 3 years); upon a third change, additional planning for the child would have to occur. HHC/HJC

SB 128 Suicide prevention, response and treatment. Sen. Bill O’Neill. This comprehensive bill would require inpatient and outpatient mental health facilities to conduct suicide risk assessments on all new patients, and provide counseling and facilitate follow-up for those at risk. Hospitals would have to arrange risk assessments for anyone seen in an emergency room who appears to be suicidal, and provide counseling and arrange follow-up services as needed. A suicide response coordinator in each county, appointed by the state, would dispatch a counselor to any emergency scene involving a person believed to be suicidal. All health insurance plans regulated by the state would be required to provide coverage for all services mandated by the bill. SHPAC/SJC

SB 119 Interstate compact on psychology. Sen. Jerry Ortiz y Pino. Allows for the temporary practice of psychology in New Mexico by someone appropriately licensed in another state, and the same opportunity for those licensed here to practice in other states. SHPAC/SJC

Brain Injury

SB 65 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. SHPAC/SFC

SB 109 Brain injury services. Sen. Jerry Ortiz y Pino. Appropriates \$500,000 to the brain injury fund to support services for persons with brain injuries. SHPAC/SFC

Civil Rights

HB 4 Civil Rights Act. Rep. Georgene Louis. Allows an individual to sue any state or local public agency, including a school district, if it deprives the individual of rights granted under the state constitution. The defense of qualified immunity would be eliminated, and a successful litigant would be entitled to attorney's fees. Passed HSEIC, pending in HJC.

HB 192 Human Rights Act Amendments. Rep. Brittney Barreras. Extends the anti-discrimination provisions of the state Human Rights Act, which currently applies to private businesses and the state as a whole, to any public body funded by a governmental entity, including school districts. An amendment is expected that will delete outdated references to "mental or physical handicap" and replace them with "mental or physical disability". HLLC/HSEIC.

Criminal Matters

HB 143 Crime victim interviews. Rep. Meredith Dixon. Authorizes children and incapacitated adults who are victims of crime to forgo pre-trial interviews or arrange for limited and less confrontational interviews. HCPAC/HJC.

SB 69 Crimes against children with disabilities. Sen. Linda Lopez. Current law makes it a crime to abandon or abuse a child. This bill would increase the penalties for such crimes if the child has a disability. For example, abandonment of such a child would be a 4th degree felony (not a misdemeanor) unless it results in death or great bodily harm, in which case it would be a 1st degree felony (not a 2nd degree felony). SHPAC/SJC/SFC

Developmental Disabilities

- **SB 9** Special Olympics. Sen. Peter Wirth. Appropriates \$300,000 to the Department of Tourism to support Special Olympics. Passed SHPAC, pending in SFC.
- **SB 33** Early detection of cerebral palsy. Sen. Greg Schmedes. Appropriates \$200,000 to the Early Childhood Department of Health to fund training and technical assistance to health care workers to promote early detection of cerebral palsy (CP) in young children. Passed SHPAC, pending in SFC.

Other expected legislation:

- Pay increase pass-through. Sen. Liz Stefanics. 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.
- Revise NM law provisions re DDPC. Sen. Siah Correa Hemphill. A bill to update provisions of state law applying to the Developmental Disabilities Planning Council to align with current

federal law provisions. In keeping with the intended alignment, the bill changes the name of the agency to the Developmental Disabilities Council.

Education/Special Education

HB 93 Limiting suspension/expulsion. Rep. Ray Lara. Requires school districts to adopt disciplinary policies that provide that suspension or expulsion be used only as a last resort following use of alternative interventions and upon a determination that suspension or expulsion is the only safe response. Although the bill addresses behaviors that may be attributed to homelessness, adverse childhood experiences, or similar causes, its provisions would apply to suspension or expulsion of students with disabilities as well. Passed HEC, pending in HSEIC

HB 213 Special ed fund for parent use. Rep. Candie Sweetser. This bill would require school districts to set aside a portion of the funds they are generating during the current school year based on special education enrollment, and allow parents to get reimbursements from those funds if they have had to pay other providers for services in a child's Individualized Educational Plan (IEP) that were not provided by the school. HEC/HAFC.

Other expected legislation:

- Sen. Linda Lopez. 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.
- Special education ombudsman. Re. Liz Thomson. 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.

Employment

HB 110 Minimum wage changes. Rep. Patricia Roybal Caballero. There are a number of categories of employees that are currently exempted from the state's minimum wage law, and this bill would eliminate nearly all of these exemptions and gradually raise the state minimum wage to \$15 per hour in 2024. It also would repeal the existing but unused provision of state law that provides for an exemption allowing non-profit agencies and other businesses to pay employees with disabilities less than the state minimum wage, based on their productivity compared to employees without disabilities. HLVMC/HCEDC.

Guardianship and protective arrangements

- **HB 94** Supported decision-making task force. Rep. Joanne Ferrary. Appropriates \$35,000 to the DD Planning Council to create a task force to study supported decision-making and recommend changes in NM law to allow and support it. Passed HHHC, pending in HAFC.

Other expected legislation:

- Guardianship licensure. Rep. Marian Matthews. A bill to require that individuals who are paid to provide guardianship services to more than two persons unrelated to the individual ("professional guardians") be licensed, and to designate the Office of Guardianship at the DD Planning Council as the licensing entity.

- Civil protections and penalties. Sen. Katy Duhigg. A 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.
- Criminal protections against financial exploitation. Sen. Michael Padilla. A separate bill that would impose criminal penalties for financial exploitation of vulnerable adults.

Health Care

- **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 who is expected to die within six months 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, or appear to have such a 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. Passed HHHC, pending in HJC
- **HB 122** Health care affordability fund. Rep. Debbie Armstrong. Creates a health care affordability fund and imposes an additional state tax on health insurance premiums to provide revenue for the fund. The fund would be used to expand access to health care coverage for low-income New Mexicans. HHHC/HTRC
- **HB 154** Prescription drug affordability board. Rep Angelica Rubio. Creates a state oversight board that would have the authority to review and approve (or disapprove or limit) major price increases for prescription medications. HHHC/HSEIC
- **HB 203** Health Security Act planning board. Rep. Debbie Armstrong. Creates a board that would be charged with developing a plan over the next two years to provide health coverage, including behavioral health services but excluding long-term care, for all New Mexicans (except those with job-based coverage that is not subject to any state regulation). Appropriates \$600,000 to the Office of the Superintendent of Insurance to cover the cost of the board, staff and other support. HHHC/HAFC
- **HB 210** A/SLP Interstate compact. Rep. Brittney Barreras. Would commit New Mexico to an interstate compact so that a licensed audiologist or speech/language pathologist (SLP) in good standing in another state could practice in New Mexico, and vice versa for audiologists and SLPs licensed in New Mexico. HHHC/HSEIC
- **SB 60** Physical therapy interstate compact. Sen. Siah Correa Hemphill. Would commit New Mexico to an interstate compact so that a licensed PT in good standing in another state could practice in New Mexico, and vice versa for PTs licensed in New Mexico. SHPAC/SJC.

Other expected legislation:

- 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 so they can be made aware of coverage options that may be available to them.

Independent Living/Community Services

SB 47 AT and home modifications. Sen. Jerry Ortiz y Pino. Appropriates \$300,000 to the Governor’s Commission on Disability to increase their ability to provide assistive technology and home modification services. SHPAC/SFC. Passed SHPAC, pending in SFC

Miscellaneous

HB 20 Paid sick leave. Rep. Christine Chandler. Requires most employers in NM to provide sick

leave to their employees, and allow such leave to be used for purposes including caring for a family member with a physical or mental illness or health condition. Similar but not identical to HB 37.

HLVMC/HJC

HB 37 Paid sick leave. Rep. Angelica Rubio. Requires most employers in NM to provide sick leave to their employees, and allow that leave to be used for purposes including caring for a family member with a physical or mental illness or health condition. Similar but not identical to HB 20.

HLVMC/HJC

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. HCEDC/HJC

HB 174 Increase tax exemptions. Rep. Phelps Anderson. Would exempt the first \$16,000 of income of those over 65 and those who are blind from state income taxes; this is double the amount of the current exemption. HHHC/HTRC.

Other expected legislation:

- 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.

ABBREVIATIONS USED IN THIS REPORT

Legislature and Committees

HB	House Bill
HAFC	House Appropriations and Finance Committee
HCEDC	House Commerce and Economic Development Committee
HCPAC	House Consumer and Public Affairs Committee
HEC	House Education Committee
HHHC	House Health and Human Services Committee
HJC	House Judiciary Committee
HLVMC	House Labor, Veterans, and Military Affairs
HLLC	House Local Government, Land Grants and Cultural Affairs Committee
HSEIC	House State Government, Elections and Indian Affairs Committee
HTPWC	House Transportation and Public Works Committee
HTRC	House Taxation and Revenue Committee

SB	Senate Bill
SEC	Senate Education Committee
SFC	Senate Finance Committee
SIEC	Senate Indian, Rural and Cultural Affairs Committee
SJC	Senate Judiciary Committee
SHPAC	Senate Health and Public Affairs Committee
STBTC	Senate Tax, Business and Transportation Committee

State Agencies

ALTSD	Aging and Long Term Services Department
CYFD	Children, Youth and Families Department
DDPC	Developmental Disabilities Planning Council
DoH	Department of Health
DVR	Division of Vocational Rehabilitation (within PED)

GCD	Governor's Commission on Disabilities
HSD	Human Services Department
NMCB	New Mexico Commission for the Blind
NMCDHH	New Mexico Commission for the Deaf and Hard of Hearing
PED	Public Education Department