

THE DISABILITY COALITION
Advocating for People with Disabilities of All Types

**DISABILITY ISSUES IN THE 2021 LEGISLATURE
STATUS REPORT #3**

Jim Jackson, Coalition Chair
February 8, 2021

(See page 8 for a list of abbreviations, including legislative committees, used in this report.)

Coming Events: Feb 16, 11:00 to 12:30 – DRAD Legislative Update

The next Disability Rights Awareness Days (DRAD) webinar will include highlights of the session near the half-way point, and an update on the status of some of the key bills. Register for this event at https://us02web.zoom.us/webinar/register/WN_KRGhB2p6TxmVNVpXUPj9Uw and we'll send you the link to join the webinar.

Committee hearings:

Monday morning: HHHC – HB 154 drug pricing board, HB 174 tax exemptions;

*Monday afternoon: HCEC – HB 38 Paid family & medical leave; HJC – HB 4 Civil Rights Act;
SHPAC – SB 119 Interstate psychology compact, SB 128 Suicide prevention*

Wednesday morning: HSEIC – HB 93 limiting suspension/expulsion; SEC – SB 233 Student Bill of Rights

Saturday afternoon: HJC – HB 47 aid in dying

Bill introductions pour in. Most, but not all, of the disability-related bills we were expecting this session that had not previously been introduced came in this past week, along with other bills of interest. Some of the many new additions to the report this week include:

- HB 214 Repeal of authority for sub-minimum wages
- HB 222 Special education ombud
- HB 234 Professional guardianship licensure
- HB 237 NM School for the Deaf and public schools
- SB 189 Financial exploitation – civil remedies
- SB 190 Amending state law provisions re DD Planning Council
- SB 221 Financial exploitation – criminal penalties
- SB 289 Special Education Act
- SB 319 Seclusion/restraint in public schools

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.



Advisory member

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.

Reminder: Senate committees require you to alert the committee by email well in advance of the meeting if you want to provide public comment on a bill. House committees don't ask you to sign up in advance but you have to have a Zoom account in order to join the meeting; sign up for free at <https://zoom.us/join>.

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. That in turn means that this status report may not capture all committee action on some bills.

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 its usual process of temporarily accepting the lower of the two recommendations for each agency, allowing the committee 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. Neither recommendation reflects additional federal funding that will become available as a result of the Biden Administration's recent announcement that the enhanced federal match enacted as part of coronavirus relief will continue through at least December 2021; that additional federal money will significantly reduce the program's need for state funds.
- DD Services Division, DoH – The governor is asking for an \$18 million increase, which includes the use of carry-over funds from the current year, and DoH 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. Passed HHHC, pending in HSEIC.

HB 151 BH consortium for planning. Rep. Karen Bash. Calls for the establishment of a large "Bridges Across New Mexico" 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. Same as SB 191, below. HHHC/HAFC.

HB 178 Counseling and Therapy Practice extension. Rep. D. Wonda Johnson. Extends the board that oversees these practitioners for another six years (to 2027) and makes a few technical changes to the current ~~act~~ authorizing statute. Unless extended, the board will terminate this July 1. HHHC/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. HHHC/HJC

HB 215 BH screening, intervention and referral. Rep. Day Hochman Vigil. Calls on HSD to provide Medicaid coverage for screening, brief intervention and referral for treatment (SBIRT) for persons who appear to have an alcohol or substance use disorder or certain mental health conditions identified by HSD. HHHC/HJC

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

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 do this for anyone seen in an emergency room who appears to be suicidal. 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. *SHPAC hearing Monday afternoon.*

SB 191 BH consortium for planning. Se. Linda Lopez. Same as HB 151, above. SHPAC/SFC.

SB 285 Emergency transport for MH evaluation. Sen. Daniel Ivey-Soto. Under current law, police officers have the authority to detain and transport persons with a mental disability to an evaluation facility if they are suicidal or presenting a danger to themselves or others due to their disability. This bill would allow a police officer in such circumstances to have an EMT or other emergency medical responder transport the individual for the evaluation. 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. Passed SHPAC, pending in 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. Passed SHPAC, pending in 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. *HJC hearing Monday afternoon.*

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 to refuse pre-trial interviews by defense attorneys in criminal cases or arrange for limited interviews conducted by a law enforcement officer rather than counsel for a defendant. Passed HCPAC, pending in HJC.

SB 69 Crimes against children with disabilities. Sen. Linda Lopez. This bill would increase the penalties for abandonment or abuse of a child if the child has a disability, making abandonment a 4th degree felony rather than a misdemeanor; where the abandonment results in death or great bodily harm, it would be a 1st degree rather than 2nd degree felony. Passed SHPAC, pending in SJC, then referred to 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 Education and Care Department 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.

SB 190 Revise DDPC provisions in NM law. Sen. Siah Correa Hemphill. Updates provisions of state law applying to the DDPC to align with current federal law provisions. These changes involve the membership of the Council and its duties. In keeping with the intended alignment, the bill changes the name of the agency to the Developmental Disabilities Council. SHPAC/SJC

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.

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; *HSEIC hearing scheduled for Wednesday morning.*

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/H AFC.

HB 222 Special education ombud. Rep. Liz Thomson. Creates the Office of the Special Education Ombud within the DD Planning Council and appropriates \$295,000 to the Council for its operation. The Ombud program would investigate and resolve problems experienced by parents and students in obtaining appropriate special education services and assist in protecting the educational rights of students and parents. The Ombud would also identify systemic concerns and recommend solutions, review and comment on proposed changes to laws and policies, and provide an annual report on its activities and recommendations. HEC/H AFC.

HB 237 School for the Deaf and public schools. Rep. Antonio Maestas. This bill authorizes the NM School for the Deaf to provide services to deaf or hard-of-hearing students who attend public school, and prohibits NMSD from charging public schools when NMSD staff participate in IEP meetings or evaluations of public school students. It creates a "Deaf Coordinator" position within the Public Education Department, and enacts a "bill of rights" for deaf or hard-of-hearing children. HHHC/HEC.

SB 233 Student Bill of Rights. Sen. Linda Lopez. Establishes a very wide variety of rights for students in public schools, such as the right to be free from discrimination based on disability, the right to have teachers and other school personnel follow IEPs and Section 504 plans, and to access available mental health services. There is no mechanism in the bill to enforce these rights. SEC/SJC. *SEC hearing Wednesday morning*

SB 289 Special Education Act. Sen. Linda Lopez. The bill enacts the "Special Education Act", which establishes Special Education as a division within PED and has its staff report to a deputy secretary within PED. It strengthens and broadens the role of this division, including monitoring, training and technical assistance etc. It would move some existing provisions of state law regarding special education into the new act. It also appropriates \$1 million to the PED to provide training to school employees on working with and meeting the needs of special education students. SEC/SFC.

SB 319. Seclusion/restraints in schools. Sen. Linda Lopez. This bill would prohibit the use of seclusion in public schools; make it clearer that restraint is to be used on a student only as a last resort in emergency situations; strengthen requirements for schools to report promptly any use of restraint to

parents; require annual reports to the Public Education Department detailing all incidents of the use of restraints on students; requiring opportunity for public input into school policies on use of restraints; and require training of at least some school staff on alternatives to restraint and safe methods of restraint. SEC/SJC.

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. Passed HLVMC, pending in HCEDC.

HB 214 Repeal of sub-minimum wages. Rep. Joanne Ferrary. Repeals 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. HHC/HLVMC.

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 as an alternative to guardianship and recommend changes in NM law to allow and support it. Passed HHC, pending in HAFC.

SB 189 Financial exploitation protections and penalties. Sen. Katy Duhigg. Calls on financial institutions to report suspected financial exploitation of vulnerable adults and allows them to delay transactions that appear to be exploitative or fraudulent. Allows adults who have been the victim of financial exploitation to obtain relief through the courts, including recovery of the funds in question and, in some cases punitive damages. STBTC/SJC.

SB 221 Criminal penalties for financial exploitation. Sen. Michael Padilla. Makes it a crime for a person, whether in a fiduciary relationship or not, to trick, coerce or use undue influence to gain control of the resources or property of an elderly, disabled, or otherwise vulnerable adult. A first offense would be a third degree felony; further offenses by the same person would be a second degree felony. SHPAC/SJC/SFC.

HB 234 Guardianship licensure. Rep. Marian Matthews. Requires that professional guardians and conservators (individuals who are paid to provide these services to more than two persons not related to the individual) be licensed, and designates the Office of Guardianship at the DDPC as the licensing entity. Licensees would have to be certified by an authorized state or national organization. The Council would be authorized to investigate complaints against these guardians and conservators and suspend or revoke their license if appropriate. The bill also updates various provisions of law applicable to the Office of Guardianship, and appropriates \$285,000 to the Council to fulfill these new duties. HSEIC/HAFC.

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. Same as SB 308, below. Passed HHHC, pending in HJC. *HJC hearing Saturday afternoon.*

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. *HHHC hearing Monday morning*

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 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.

SB 308 Aid in dying. Sen. Liz Stefanics. Same as HB 47, above. SHPAC/SJC.

SM 6 Long-term care task force. Sen. Carrie Hamblen. Requests ALTSD to establish a task force to look at ways of ensuring that nursing homes are better prepared in the future to deal with public health emergencies. The task force is also asked to look at encouraging placements in the community rather than in nursing homes; and improving staffing, physical plant issues, and resident quality of care, SRC/SHPAC.

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

HB 223 Voluntary MVD disability 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. HTPWC/HJC

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

SB 299 Accessibility Logo on Specialty License Plates. Sen. Mark Moores. 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. STBTC/SFC.

SB 322 Zoning accommodations. Sen. Gregg Schmedes. Requires local zoning authorities to permit a second small home on a residential lot, even in an area zoned for only one home per lot, if the second home is for the residence and care of a family member with disabilities. SHPAC/STBTC.

Paid Sick Leave

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. A new version that incorporates some provisions from HB 37, below, and changes some details in the bill was adopted in HLVMC; now pending in HJC.

HB 37 Paid sick leave. Rep. Angelica Rubio. Required 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. Identical to SB 198, below. *This bill has been combined into a new version of HB 20, above.*

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. *HCEDC hearing Monday afternoon.*

SB 198 Paid sick leave. Sen. Linda Lopez. Identical to HB 37, above. STBTC/SJC

Miscellaneous

HB 174 Increase tax exemptions. Rep. Phelps Anderson. Would double the current exemption from state income tax for persons who are over 65 or blind from \$8,000 to \$16,000 of income. HHC/HTRC. *HHHC hearing Monday morning*

HB 253 Confidentiality exception for research. Rep. Day Hochman Vigil. Changes the confidentiality provisions of the state Mental Health/Developmental Disabilities Code to allow for limited data-sharing related to children, for approved research purposes only. The data would not be publicly available. HHHC/HJC.

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

Other

IEP	Individualized Education Plan
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