

# THE DISABILITY COALITION

*Advocating for People with Disabilities of All Types*

## DISABILITY ISSUES IN THE 2021 LEGISLATURE STATUS REPORT #5

Jim Jackson, Coalition Chair

February 21, 2021

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

### Committee hearings:

*Monday morning: HHHC - HB 237 NMSD and public schools*

*HTRC – HB 174 Income tax exemptions*

*SEC – SB 289 Special Education Act*

*Monday afternoon: HCEDC - HB 110 Minimum wage provisions*

*SJC – SB 60 PT interstate compact*

*Tuesday afternoon: STBTC - SB 299 Accessibility logo on specialty plates*

**Budget taking shape.** On Saturday, the House Appropriations and Finance Committee did its final review of proposed figures for the state budget for the coming year. The committee is expected to adopt HB 2 on Monday and send the bill to the House floor for debate and vote, likely on Tuesday.

The budget bill takes into account recent projections that the state will end the current year with a larger surplus than previously anticipated, and that income in the coming year will be about \$170 million more than projected at the beginning of this year's session. The more favorable outlook has also prompted legislative leaders to allow another "HB 2 Junior" bill this year, in which all legislators can designate small one-time amounts to their favorite state programs.

**Half-way home.** Thursday was the deadline for introducing most bills in this year's session. The House met its informal goal of limiting members to 5 bills each in this pandemic-adjusted session; the 70 member chamber has a current total of 353 bills. Since 41 of those are emergency place-holder ("dummy") bills, the average House member sponsored about 4 ½ bills. The Senate has 454 bills in play; since 39 of these are "dummy" bills, the 42 senators have introduced an average of 10 bills apiece. Overall, this year's legislature now has 807 bills in play; that's less than the 1,115 bills in the 2017 session and substantially less than the 1,369 bills in the most recent (2019) 60-day session

**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.



Advisory member

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 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. Since the session is now half-way over, there are only two ways to introduce new bills: by request of the governor, or by conversion of one of the place-holder ("dummy") bills assigned to party leaders and committee chairs. Memorials and resolutions 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, because 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. The committee is wrapping up its work on the budget and is expected to adopt it on Monday. Debate and a vote by the full House will probably be on Tuesday.

Information on the proposed budget is unofficial at this point, but it appears that Medicaid will receive an increase of about \$63 million for the coming year. While that's far less than HSD has predicted it needs, the department's projection didn't take into account the extra \$155 million in federal funds the program is expected to get in the July-December period as a result of President Biden's announcement that he plans to extend the public health emergency at least until the end of 2021, which means the higher federal Medicaid match will continue during that time.

State funding for DDS within DoH was reduced in the current year and replaced with extra federal Medicaid funding from the higher match rate during the pandemic. Other than restoring that \$7 million, it looks like there will be no "new" state money for the DD waiver in the coming year budget. However, like the rest of the Medicaid program, the DD waiver will benefit from the extension of the higher federal match rate noted above, so total funding available for the waiver should increase.

The DDPC is expected to see a significant increase for the Office of Guardianship to meet its current obligations and address the waiting list for those services; however, HB 2 does not include funding for the two new programs the Council hopes to implement – a special education ombud and a licensure and oversight program for professional guardians.

#### 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 and HSEIC, awaiting final House vote.

**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 authorizing statute. Unless extended, the board will terminate this July 1. Passed HHHC, pending in 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 CYFD custody, and a process for HSD and CYFD to work together to provide trauma-informed services and supports to those children and youth. Except in “extraordinary circumstances”, prohibits placement of children in hotels or motels, state offices or out-of-state facilities, or moving children who are placed out of their home more than three times within 1,000 days (about 3 years); upon a third change, additional planning for the child would have to occur. Passed HHHC, pending in 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 a substance abuse disorder or certain mental health conditions identified by HSD. Passed HHHC, pending in 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. Passed SHPAC, pending in SJC.

**SB 128** Suicide prevention, response and treatment. Sen. Bill O’Neill. This comprehensive bill calls for a number of steps to be taken to intervene when a person is known to be suicidal. It establishes the BH Purchasing Collaborative as the lead agency to plan and coordinate these interventions. A substitute version of the bill is expected to be presented this week but has not been publicly released yet. SHPAC/SJC.

**SB 191** BH consortium for planning. Sen. Linda Lopez. The amended version of this bill is similar to but no longer identical to 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 the House (39-29); SHPAC/SJC.

**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. Amended to delete outdated references in the current statute to "mental or physical handicap" and replace them with "mental or physical disability". Passed HLLC, pending in 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 4<sup>th</sup> degree felony rather than a misdemeanor; where the abandonment results in death or great bodily harm, it would be a 1<sup>st</sup> degree rather than 2<sup>nd</sup> 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. Passed SHPAC, pending in SJC.

**SB 342** Pay increase pass-through. Sen. Liz Stefanics. Requires 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. Includes some basic data reporting about the direct care workforce employed by DD waiver provider agencies to inform policymaking in this area. SHPAC/SFC.

### 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 and HSEIC, awaiting House vote.

**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. *Heard but set aside by the chair of the committee; the bill's future is uncertain.*

**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. Same as SB 346, below. Passed HEC, pending in 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. *Hearing in HHHC scheduled for Monday morning 2/22/21.*

**HB 266** Special education licensure. Rep. Natalie Figueroa. This bill affects persons who have been licensed as special education teachers based on "alternative" criteria related to their previous professional experience and education. It would impose some additional requirements for relevant training, mentoring, etc. in order to maintain licensure. Passed HEC, pending in HSEIC.

**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. *Heard and tabled in SEC.*

**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. *SEC hearing scheduled for Monday morning 2/22/21.*

**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 to parents any use of restraint; require annual reports to the Public Education Department detailing all incidents of the use of restraints on students; require 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.

**SB 346** Special education ombud. Sen. Linda Lopez. Creates the Office of the Special Education Ombud within the DD Planning Council and appropriates \$295,000 to the Council for its operation. Same as HB 222, above. SEC/SJC/SFC.

#### Employment of people with disabilities

**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 HCEDEC. *HCEDEC hearing scheduled for Monday, 2/22/21.*

**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. Passed HHHC, pending in HLVMC.

**SB 354** Create VR Commission to replace DVR. Sen. Linda Lopez. This bill would take the Division of Vocational Rehabilitation (DVR) out of the PED and establish it as an office under a new independent commission – the same organizational structure as the Commission for the Blind, which is New Mexico’s other federally-funded vocational rehabilitation program. The new commission, which would oversee the program, would be a 6-person board appointed by the governor. All the employees and resources of the current DVR would be transferred to the new agency. SRC/SJC.

#### 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 HHHC, 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. *Heard and held over in STBTC pending amendments or a substitute version to address concerns raised by committee members.*

**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. Passed SHPAC, pending in SJC, then referred to 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** End-of-life options. 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 House (39-27); awaiting Senate committee assignments.

**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. Passed HHHC and HTRC, awaiting House vote.

**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. Passed HHHC, pending in 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 state regulation). Appropriates \$600,000 to the Office of the Superintendent of Insurance to cover the cost of the board, staff and other support. Passed HHHC, pending in HAFAC.

**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. Passed HHHC, pending in HSEIC.

**HB 272** Easy enrollment for health coverage. Rep. Liz Thomson. 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. HHHC/HTRC.

**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. Passed SHPAC, pending in SJC. *SJC hearing scheduled for Monday afternoon, 2/22/21.*

**SB 308** End-of-life options. Sen. Liz Stefanics. Same as HB 47, above. SHPAC/SJC.

**SM 6** Long-term care task force. Sen. Carrie Hamblen. Requests that ALTSD 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.

#### Independent Living/Community Services

**HB 223** Voluntary MVD disability registry. Rep. Liz Thomson. Allows but does not require individuals to note, in conjunction with their car registration, that they or a regular passenger in their vehicle 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 passenger who is on the registry. Passed TPWC, pending in 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. *STBTC hearing scheduled for Tuesday, 2/23/21*

**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.

**SB 394** MVD fee waiver. Sen. Linda Lopez. Would waive the usual automobile registration fee for one vehicle owned by a low income person with a significant disability. STBTC/SFC

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 the 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. As amended, the program would not go into effect until 2024, and cities and counties would be prohibited from enacting their own separate programs or requirements. Passed HCEDC and HJC, awaiting House vote.

**SB 198** Paid sick leave. Sen. Linda Lopez. Identical to the original version of 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. Passed HHC, pending in HTRC. *HTRC hearing scheduled for Monday, 2/22/21.*

**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. Passed HHC, pending in 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 Program