

THE DISABILITY COALITION

Advocating for People with Disabilities of All Types

DISABILITY ISSUES IN THE 2021 LEGISLATURE POST-SESSION REPORT

Jim Jackson, Coalition Chair

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See page 8 for a list of abbreviations used in this report

Weird, unique pandemic session comes to an end. This year's legislative session – featuring a Capitol closed to the public and lobbyists, committee meetings held on-line via Zoom, most legislative staff working from home and many House members participating from home for much of the time – finally ended this past Saturday. Only 158 bills passed this year, well under half the average number of bills (356) passed in the previous ten 60-day sessions held in this century.

As expected, the Legislature passed a COVID relief bill benefitting businesses and employees as well as the state budget bill and a large capital outlay package. With big majorities in both chambers, Democrats also were able to muscle through a number of controversial high-profile bills. Those included repeal of a dormant state law criminalizing abortion, a proposed constitutional amendment to withdraw more income from the state's permanent fund to spend on education, aid in dying, liquor law reform, paid sick leave for private sector employees, tax changes benefitting low-income residents, a civil rights bill, a ban on animal trapping on public lands and a major reform of medical malpractice law. A proposal to legalize, regulate and tax marijuana sales did not make it through, but the governor has indicated she will call a special session of the legislature to address that issue.

Debate on those measures took up much of the available time for committee hearings and floor sessions in both chambers, which meant that many other bills died simply for lack of opportunity for discussion and action. The back-up in committees was particularly pronounced on the Senate side. At the end of the session, there were 119 bills still pending in the Senate Judiciary Committee. Many of those had been heard and tabled in the committee, but a large number died there because they were never even brought up for a hearing. And a number of bills that made it through their committee hearings and onto the calendars for action by the full House or Senate were never called up for a vote before time ran out. The competition for floor time was especially strong on the House side, where Republican filibusters chewed up hours of floor time and prevented action on other bills.

Lucky thirteen. Aside from the two general appropriations bills, only thirteen of approximately 60 bills and memorials on disability issues that we've followed this year passed the Legislature. Those are listed below, beginning on page 3, and include creation of a special education ombud program, further guardianship oversight and reform, elimination of copays for behavioral health services, and allowing aid in dying as an end-of-life option.



Advisory member

Many of the other disability-related bills were victims of the Senate logjam. House bills 93, 111, 192, 210, 215, and 253 died in Senate Judiciary for lack of a hearing. HB 272, providing for easy enrollment into affordable health insurance coverage, made it to the Senate calendar but didn't get called up for a final vote. SB 289, elevating and strengthening the role of special education within the Public Education Department, was the only Senate bill on our list to make it onto the House calendar but die for lack of a final vote in that chamber.

State budget approved. The Senate added about \$41 million more to the annual state budget for the Educational Retirement pension fund, and another \$32 million in one-time special appropriations, including \$21 million more for higher education scholarship programs. The House accepted those changes and the state budget bill, HB 2, has now been sent to the governor. Total annual state spending under the final version of the bill is up about 5% over the current year, to \$7.45 billion, which is essentially equal to projected revenue for the year. By the end of the coming fiscal year, financial reserves are projected to be about \$1.76 billion, or about 24% of annual state spending.

New Mexico also expects to receive \$1.63 billion in federal funds from President Biden's American Rescue Plan that was recently passed by Congress, to make up for reduced state revenues due to the coronavirus pandemic. HB 2 calls for the money to be used for one-time (i.e., non-recurring) expenditures including \$600 million for the unemployment trust fund and \$50 million for Medicaid, as well as support to individuals and households, small businesses, nonprofits and industries that have been adversely affected by the pandemic, and a variety of other uses including road projects and local economic development.

Disability-Related Bills That Passed the 2021 Legislative Session

The bills noted below have passed the Legislature. They are now being reviewed by Governor Lujan Grisham, who has until April 9 to either sign them into law or veto them. In the case of the two appropriations bills, she has the option of "line item vetoes" to remove specific items while signing the rest of the provisions into law.

Appropriations

HB 2 General Appropriations Act. Rep. Patty Lundstrom. This is the overall state budget bill, which provides funding to all state agencies. The final version of the bill affects disability agencies and programs in the following ways, compared to the current year's budget. Most of these agencies receive funding from other sources, such as the federal government or user fees, in addition to state funds. The Legislature includes all agency funds in HB 2, so an agency might get more state funding yet still show a reduction in total funds available if those other sources are expected to decrease.

- NMCDHH – Adds about \$210,000 in state funding, but reduces overall funding by \$800,000
- NMCB – Slight reduction (\$42,000) in state funding, and total reduction of \$374,000 (2.7%)
- Medicaid (including Medicaid behavioral health) – According to the LFC, there is a \$64 million increase in state funding, which will generate a very large increase in federal matching funds.
- BHSD in HSD – Level funding (i.e. no change, same amount as the current budget year)
- DVR Rehabilitation Services – Level funding
- DVR Independent Living – \$34,000 reduction in state funding (5%)
- GCD – \$70,000 reduction in state funding, total reduction of \$79,000
- DDPC general programs – Level funding [*but see SB 377, below, which adds \$250,000 for a special education ombud office*]
- DDPC Office of Guardianship – Increase in state funding of \$700,000 to continue and expand guardianship services, and an additional \$300,000 which is presumably for the initiatives

authorized by HB 234 (see below). HB 2 also includes a one-time appropriation of \$15,000 for a Supported Decision-making Task Force as called for in HB 94, an additional special appropriation of \$500,000 for guardianship services, and a supplemental appropriation of \$250,000 to meet a shortfall in the current year budget.

- **DDSD in DoH** – About a \$7 million increase in state funding. This simply restores a reduction in state monies last year for which federal funds were used instead, so it's the equivalent of level funding. However, because the state will get the higher federal match rate for Medicaid during the coronavirus public health emergency for a longer period than originally expected, there should be an increase in total funding available.

SB 377 General Appropriations Act II. Sen. George Munoz. This bill, typically referred to as “HB 2 Junior”, provides one-time supplemental funding for a very wide range of state agencies and programs. Each legislator was able to allocate a certain amount of funding to programs of their choice. Items of interest to the disability community in the bill include \$250,000 for the special education ombud program created pursuant to HB 222, as well as additional funding for Special Olympics, civil legal services, deaf/blind support services, youth suicide prevention programs, support of disabled veterans, mental health services for student athletes at UNM and NMSU, and the Best Buddies program facilitating friendships between students with and without disabilities.

Substantive Bills

HB 4 Civil Rights Act. Rep. Georgene Louis. As amended, allows an individual to sue a state or local public agency, including a school district, if it deprives the individual of rights specified in the Bill of Rights section of the state constitution. Although the amended version excludes educational rights provided by other provisions of the state constitution, it would still apply to situations such as interactions between police and individuals with mental illness. The defense of qualified immunity would be eliminated, and an award of attorney's fees to a successful litigant would be allowable but not mandatory.

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. To avoid burdening employers with this new mandate during the pandemic, this bill will not go into effect until July 1, 2022.

HB 47 End-of-life options. Rep. Debbie Armstrong. Authorizes an individual with a terminal illness who is expected to die within six months to obtain a prescription from a qualified health care provider that the individual could self-administer to 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.

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.

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.

HB 222 Special education ombud. Rep. Liz Thomson. Creates the Office of the Special Education Ombud within the DD Planning Council. The Ombud program is authorized to 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 will 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. *There is \$250,000 in SB 377 (“HB 2 Junior”) for this new program.*

HB 234 Guardianship reforms. Rep. Marian Matthews. The final version of this bill makes various changes to the Office of Guardianship at the DDPC, such as requiring exploration of alternatives to guardianship prior to filing a petition for guardianship, creating a volunteer court visitor program to provide site visits after guardians have been appointed, and requiring annual reports on the activities of the Office. It modifies various provisions of the Probate Code to emphasize least restrictive alternatives. It requires the Administrative Office of the Courts to review annual reports filed by guardians, and report the results of that review to the relevant district court, and requires the state auditor to do the same for annual reports by conservators.

HB 266 Special education licensure. Rep. Natalie Figueroa. This bill affects persons with professional experience and education in a different field who are seeking licensure as special education teachers based on “alternative” criteria rather than the traditional teaching pathway of obtaining a degree in education. It calls for what is essentially a brief apprenticeship program by requiring a period of training with a master teacher in order to obtain alternative licensure.

HM 27 Parity pay task force. Rep. Rebecca Dow. Calls on the LFC to set up a task force to review the adequacy of rates paid to personal care and child care agencies as well as other providers that get most of their revenue from state contracts, and the impact on those contractors of increases in the state’s minimum wage. The task force would consist of the HSD, CYFD and ECECD secretaries, the directors of the home care and child care provider associations, and members appointed by legislative leadership and the LFC. There is no requirement that the group include anyone representing the workers who provide the services.

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.

SB 285 Emergency transport for MH evaluation. Sen. Jerry Ortiz y Pino and Sen. Daniel Ivey-Soto. Allows an emergency medical technician or similar responder to transport an individual for an emergency mental health evaluation at the request of the individual or of a police officer in situations where the officer has authority under existing state law to detain and transport the individual. An amendment was added to ensure that the individual involved would not have to pay for this alternative transport.

SB 317 Health care coverage and cost-sharing exemption for BH services. Sen. Martin Hickey. The final version of this bill combines two approaches to expanding access to health care. It prohibits, for a five-year period beginning January 2022, any co-pays or other consumer cost-sharing for mental health and substance abuse services under health insurance policies regulated by the state of New Mexico, and calls for annual reports on the financial and health-related impacts of this provision. The bill also

imposes a surtax on health insurance premiums and uses some of the income from that tax to support a health care affordability fund that will be used to expand access to health care coverage for low-income New Mexicans. The provisions of this bill go into effect on January 1, 2022.

SB 375 Officer training and certification. Sen. George Muñoz and Sen. Stuart Ingle. In addition to a variety of changes relating to law enforcement governance, this bills adds requirements for police officers and firefighters to receive training in racial sensitivity and dealing with persons with behavioral health issues, including crisis intervention, de-escalation techniques, and peer-to-peer interventions.

Bills and Memorials That Did Not Pass

Behavioral Health

HB 151 BH consortium for planning. Rep. Karen Bash. Called for a large task force to consider the need for additional behavioral health facilities and housing options. Similar to SB 191, below.

HB 202 Child welfare improvements. Rep. Meredith Dixon. Would have put into law a few of the provisions in the settlement agreement in the *Kevin S.* lawsuit relating to children in CYFD custody.

HB 215 BH screening, intervention and referral. Rep. Day Hochman Vigil. Called 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.

SB 119 Interstate compact on psychology. Sen. Jerry Ortiz y Pino. Would have brought New Mexico into the interstate agreement (compact) that allows someone appropriately licensed in another state to practice temporarily in New Mexico.

SB 128 Suicide prevention, response and treatment. Sen. Bill O'Neill. Called for a number of steps to be taken to assess risk of suicide and intervene when the risk was clear.

SB 191 BH consortium for planning. Sen. Linda Lopez. Similar to HB 151, above.

Brain Injury

SB 65 Brain injury study. Sen. Jerry Ortiz y Pino. Appropriated \$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.

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

Civil Rights

HB 111 Housing discrimination issues. Rep. Andrea Romero. Provided additional protections for tenants in rental arrangements, including prohibition of retaliation against a tenant exercising his or her rights, such as requesting a reasonable accommodation based on disability.

HB 192 Human Rights Act Amendments. Rep. Brittney Barreras. Extended the anti-discrimination provisions of the state Human Rights Act to governmental entities and replaced outdated references in current law to “mental or physical handicap” with “mental or physical disability”.

Criminal Matters

HB 143 Crime victim interviews. Rep. Meredith Dixon. Authorized 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.

SB 69 Crimes against children with disabilities. Sen. Linda Lopez. Increased penalties for abandonment or abuse of a child if the child has a disability.

Developmental Disabilities

SB 9 Special Olympics. Sen. Peter Wirth. Appropriated \$300,000 to the Department of Tourism to support Special Olympics.

SB 33 Early detection of cerebral palsy. Sen. Greg Schmedes. Appropriated \$200,000 for training and technical assistance to health care workers to promote early detection of cerebral palsy (CP).

SB 342 Pay increase pass-through. Sen. Liz Stefanics. Required a portion of any future rate increase for DD waiver providers to be passed on to their direct care workers, and required providers to report information on wages, vacancy and turnover rates and other workforce information about those workers.

Education/Special Education

HB 93 Limiting suspension/expulsion. Rep. Ray Lara. Required school districts to adopt disciplinary policies that call for suspension or expulsion to be used only as a last resort.

HB 116 Add more professionals to 3-tier licensure. Rep. Liz Thomson. Added various school support professionals to the three-tier salary structure established in state law.

HB 213 Special ed fund for parent use. Rep. Candie Sweetser. Required school districts to set aside some of their special education funds to reimburse parents if the parents had to pay for services in their child's IEP that were not provided by the school.

HB 237 School for the Deaf and public schools. Rep. Antonio Maestas. This bill originally directed the NM School for the Deaf (NMSD) to provide services to deaf or hard-of-hearing students in public schools without charge, and sought to achieve equity in funding for all school-age children with hearing impairment. The bill was heavily criticized by NMSD supporters who believed that it could result in diverting funding away from that institution. The bill was amended to remove all references to NMSD but was still tabled in its first committee hearing.

SB 233 Student Bill of Rights. Sen. Linda Lopez. Would have established a very wide variety of rights for students in public schools, including students with disabilities, but had no enforcement mechanism.

SB 289 Special Education Act. Sen. Linda Lopez. Would have established Special Education as a division within PED under supervision of a deputy secretary. Strengthened and broadened the role of this division, including monitoring, training and technical assistance, etc.

SB 319. Seclusion/restraints in schools. Sen. Linda Lopez. Prohibited the use of seclusion in public schools; made it clearer that restraint is to be used on a student only as a last resort in emergency situations; and strengthened requirements for schools to report promptly to parents any use of restraint.

SB 346 Special education ombud. Sen. Linda Lopez. Created the Office of the Special Education Ombud within the DD Planning Council. *A similar bill, HB 222, passed the Legislature.*

Employment of People with Disabilities

HB 110 Minimum wage changes. Rep. Patricia Roybal Caballero. Eliminated most of the current exclusions from the state's minimum wage law, gradually raised the state minimum wage to \$15 per hour, and repealed the existing but unused provision of state law allowing payment of less than minimum wage to employees with disabilities.

HB 214 Repeal of subminimum wages. Rep. Joanne Ferrary. Repealed the existing but unused provision of state law that allows 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.

SB 354 Create VR Commission to replace DVR. Sen. Linda Lopez. Would have taken DVR out of PED and established it as an office under a new independent commission.

Guardianship and Protective Arrangements

HB 94 Supported decision-making task force. Rep. Joanne Ferrary. Appropriated \$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. *Although the bill did not pass, there is \$15,000 for this purpose in the House version of HB 2.*

SB 189 Financial exploitation protections and penalties. Sen. Katy Duhigg. As amended, would have allowed vulnerable adults who are the victim of financial exploitation to obtain relief through the courts, including recovery of the funds in question, attorney fees, and in some cases punitive damages.

SB 221 Criminal penalties for financial exploitation. Sen. Michael Padilla. Made it a crime for a person to trick, coerce or use undue influence to gain control of the resources or property of an elderly, disabled, or otherwise vulnerable adult.

Health Care

HB 122 Health care affordability fund. Rep. Debbie Armstrong. Imposed a surtax on health insurance policies and would have used some of the income from the tax for a health care affordability fund to expand access to health care coverage for low-income New Mexicans. *These provisions were incorporated into the final version of SB 317, which passed the legislature.*

HB 154 Prescription drug affordability board. Rep. Angelica Rubio. Created a state oversight board that would have had the authority to review major price increases for prescription medications.

HB 203 Health Security Act planning board. Rep. Debbie Armstrong. Created a board that would develop a plan over the next two years to provide health coverage, including behavioral health services but excluding long-term care, for most New Mexicans.

HB 210 A/SLP Interstate compact. Rep. Brittny Barreras. Would have brought New Mexico into an interstate compact that allows a licensed audiologist or speech/language pathologist (SLP) in good standing in another state to practice in New Mexico.

HB 272 Easy enrollment for health coverage. Rep. Liz Thomson. Would have facilitated enrollment into health insurance coverage through the Health Insurance Exchange or Medicaid by allowing a person to have information in state tax returns shared with the Exchange, so that the person could be made aware of coverage options that may be available to them.

SB 60 Physical therapy interstate compact. Sen. Siah Correa Hemphill. Would have brought New Mexico into an interstate compact so that a licensed PT in good standing in another state could practice in New Mexico.

SB 308 End-of-life options. Sen. Liz Stefanics. *Same as HB 47, which passed the legislature.*

SM 6 Long-term care task force. Sen. Carrie Hamblen. Requested 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 and to look at encouraging community placements rather than nursing homes.

Independent Living/Community Services

HB 223 Voluntary MVD disability registry. Rep. Liz Thomson. Allowed 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. That information would have been available to law enforcement officers prior to interacting with the motorist or passenger.

SB 47 AT and home modifications. Sen. Jerry Ortiz y Pino. Appropriated \$300,000 to the Governor's Commission on Disability to increase their ability to provide assistive technology and home modification services.

SB 299 Accessibility logo on specialty license plates. Sen. Mark Moores. Allowed 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, as long as the accessibility logo was compatible with the design of the specialty plate.

SB 322 Zoning accommodations. Sen. Gregg Schmedes. Required 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.

SB 394 MVD fee waiver. Sen. Linda Lopez. Waived the usual automobile registration fee for one vehicle owned by a low-income person with a significant disability.

Paid Sick Leave

HB 37 Paid sick leave. Rep. Angelica Rubio. Required most employers in NM to provide sick leave to their employees, which could be used to care for a family member with an illness or disability. *A similar bill, HB 20, passed the legislature.*

HB 38 Paid family and medical leave. Rep. Christine Chandler. Created a program jointly funded by employers and employees that would have provided paid leave for employees needing to take time off work to care for a newborn or for a family member with a disability.

SB 198 Paid sick leave. Sen. Linda Lopez. Identical to the original version of HB 37, above.

Miscellaneous

HB 174 Increase tax exemptions. Rep. Phelps Anderson. Doubled the current exemption from state income tax for persons who are over 65 or blind from \$8,000 to \$16,000 of income.

HB 253 Confidentiality exception for research. Rep. Day Hochman Vigil. Changed 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.

ABBREVIATIONS USED IN THIS REPORT

HB	House Bill
SB	Senate Bill
LFC	Legislative Finance Committee

State Agencies

BHSD	Behavioral Health Services Division (in HSD)
CYFD	Children, Youth and Families Department
DDPC	Developmental Disabilities Planning Council
DDSD	Developmental Disabilities Supports Division (in DoH)
DoH	Department of Health
DVR	Division of Vocational Rehabilitation (within PED)
ECECD	Early Childhood Education and Care Department
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
UNM	University of New Mexico
NMSU	New Mexico State University