



DISABILITY RIGHTS NEW MEXICO

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Promoting and Protecting the Rights of Persons with Disabilities

DISABILITY ISSUES IN THE 2011 LEGISLATURE STATUS REPORT #4

February 14, 2011

By Jim Jackson, Executive Director
DISABILITY RIGHTS NEW MEXICO

Happy Valentine's Day!

Disability Rights Awareness Day. The disability community's annual legislative gathering is taking place on Monday, Feb. 21 at the Courtyard Marriott in Santa Fe, and on Tuesday, Feb. 22 at the state capitol. It's an opportunity to learn about how the legislative process works and what issues are being addressed in this year's session, and to network with people from around the state. For a full agenda of the two-day event, visit the DRNM web site, www.drnmm.org.

Funding restored. A large group of self-advocates, family members, providers and others attended a budget hearing last Monday to express concerns over proposed cuts to disability agencies and programs. Self advocates carried the day as a subcommittee of the House Appropriations and Finance Committee agreed to restore funds for the Self-Advocacy Center and the Information Center. The Legislative Finance Committee had recommended eliminating their funding. The same subcommittee approved a higher funding level for the NM Commission for the Blind. A different HAFC subcommittee decided to restore funding for outpatient mental health services provided in San Miguel County and Mora County by the Behavioral Health Institute; the LFC had recommended eliminating that program too.

DVR to start waiting list. Unfortunately, the Division of Vocational Rehabilitation is still facing a significant budget cut in the coming year, so it announced this past week that it would implement an "Order of Selection". This means that only those with the most severe disabilities will receive services; other eligible applicants will go onto a waiting list.

Committee action last week. Several bills we're following took a step forward in the legislative process this past week:

- HJM 16, a memorial calling for dignity and respect for persons with developmental disabilities, passed its committee and should be voted on Tuesday in the House.
- HJM 17, seeking alternatives to jail for persons with mental illness, passed the House and is now in the Senate.
- HB 172 and SB 319, prohibiting corporal punishment in public schools, each cleared their first committee assignment.
- SB 314, establishing options for services to children with autism in public schools, cleared the Senate Education Committee.

DRNM is New Mexico's designated Protection and Advocacy System

- HB 93, calling for police training on crisis management for persons with mental impairments, passed HCPAC.

New Bills. Some of the new bills introduced in the past week include:

- HB 432 and SB 450, calling for a behavioral health pilot project independent of the current managed mental health system, to be operated by a provider network entity.
- HB 427 and SB 398, subsidizing private school scholarships (vouchers) for special education students through income tax credits for individuals and corporations
- SB 417, requesting funding for Native American suicide prevention programs
- SB 418, prohibiting public schools from reporting minor incidents involving their students to law enforcement agencies.

This Thursday is the deadline for bill introduction in most cases. Expect to see a rush of new bills just ahead of the deadline.

Bills and Memorials of Interest to the Disability Community

Committee assignments for each bill are shown at the end of the summary of the bill. An explanation of abbreviations is included in the Reference section at the end of this report.

Brain Injury

HB 91 Reductions in fund balances. Rep. Lucky Varela. This bill transfers monies from certain specialized funds to the state's general fund to meet current state spending needs. The bill includes a transfer of \$300,000 from the Brain Injury Fund, reducing that fund's ability to meet future needs for persons with brain injury. Passed HEC; pending in HAFC.

Developmental Disabilities

HB 243 Therapeutic horseback riding. Rep. Candy Ezell. Appropriates \$75,000 to DFA for a therapeutic horseback riding program in Dexter, NM, to provide physical, cognitive and behavioral therapy. Passed HCPAC, pending in HAFC.

HJM 13 Review of CDD programs. Rep. Danice Picraux. This memorial calls on the Center on Development and Disabilities at UNM to do a financial and legal review of its various programs. This memorial has been withdrawn and will probably be replaced with a new one that looks to encourage the Center's interest in providing services to adults with autism. HHGAC.

HJM 16 Value and dignity of persons with developmental disabilities. Rep. Rick Miera and Sen. Tim Keller. This memorial calls on the governor and the legislature to recognize and respect the value and dignity of persons with developmental disabilities. Passed HCPAC, awaiting vote by the full House.

SB 297 Remove limits to early childhood insurance coverage. Sen. Jerry Ortiz y Pino. Current law requires most state-regulated health insurance policies in New Mexico to cover the cost of early childhood services to children up to three years old with developmental disabilities, up to an annual limit of \$3,500 worth of services. This bill would eliminate the annual cap on coverage. SPAC/SCORC.

Education

HB 172 Prohibiting corporal punishment. Rep. Rick Miera. As amended, this bill deletes corporal punishment from the list of allowable disciplinary measures that public schools can impose on students, and requires school boards to adopt policies prohibiting the use of corporal punishment. Identical to SB 319. Passed HCPAC, pending in HEC.

HB 321 Public school data reporting. Rep. James Roger Madalena. This bill would require the PED to obtain, maintain and report data on suspensions/expulsions in public and charter schools, to include data by gender, race/ethnicity, special education status, and related information. It would also add family members and advocates to the group that helps plan and oversee data collection from the schools. HCPAC/HJC.

HB 427 Special needs student scholarships. Rep. Antonio Maestas. This bill would authorize special education scholarship organizations and provide tax credits to donors to such organizations. Same as SB 398, below. See the summary of that bill for additional information and DRNM's concerns. HEC/HTRC.

SB 142 Ancillary program units. Sen. Cindy Nava. This bill limits the number of "ancillary services" units that public schools can generate under the school funding formula, based on the number of children in the district and the number in special education programs. Ancillary services typically include occupational, physical and speech therapy but may include other services. The concern behind the bill is that some school districts may be inflating the need for services in order to generate more funding. SEC/SFC.

SB 192 Special education amendments. Sen. Lynda Lovejoy and Rep. Mimi Stewart. This is a package of technical amendments to state special education law that will more closely align state definitions and requirements with the provisions of the federal IDEA. The bill also explicitly authorizes programs and services for children with developmental delay; these programs are already in place state-wide but not specifically authorized in state law. SEC/SPAC.

SB 226 Limiting lottery scholarships. Sen. William Payne. This bill would generally require lottery scholarship recipients to maintain a full-time course load and complete their degree within five years in order to maintain their scholarship. However, the bill maintains the existing exception for students with disabilities who might need to take courses on a part-time basis and might take more than five years to complete a degree. SEC/SJC/SFC.

SB 314 Autism evaluation and services. Sen. Clinton Harden. This bill would define autism for purposes of special education and require schools to consider a variety of potential appropriate educational interventions for children when developing individual educational plans for them. Passed SEC, pending in SPAC.

SB 319 Prohibiting corporal punishment. Sen. Cindy Nava. This bill is identical to HB 172 and prohibits punishment in public schools. Passed SEC, pending in SPAC.

SB 330 Limit FIT placement options. Sen. Cindy Nava. Under current law, if a child enrolled in a Family, Infant, Toddler program regulated by the Department of Health turns 3 years old during the school year, the family has the choice of either continuing the child in the FIT program for the remainder of the school year or enrolling the child in the public school's pre-

school program for 3-5 years olds. This bill would eliminate the FIT continuation option, and presumably require the family to enroll the child in the public school program. SEC/SPAC.

SB 398 Special needs student scholarships. Sen. Jerry Ortiz y Pino. This bill would authorize the creation and recognition of organizations to provide scholarships to the families of special needs students to assist them in attending the school of their choice. Ninety percent of the contributions by individual and corporate taxpayers to such organizations would become a credit against the state income tax they would otherwise owe. *DRNM's concerns with this bill are 1) we question whether it is good public policy to use tax dollars to encourage families to send their children to private schools, 2) every tax credit dollar allowed is a dollar no longer available to the state to support current services, which increases the state's budget gap, and 3) children voluntarily enrolled in private schools do not have most of the legal protections regarding special education that are provided under IDEA and state law, and thus have little recourse if the private school is not providing an appropriate education.* SEC/SFC.

SB 418 Limiting school referrals to police. Sen. Jerry Ortiz y Pino. This bill would prohibit school districts from reporting petty acts of misconduct or misdemeanors to law enforcement agencies, require them to develop policies that offer alternatives to suspension and expulsion, and require that they report annually to the Public Education Department data concerning the number of students arrested, cited or referred to CYFD juvenile authorities, by age, race, gender, and special education eligibility category (if applicable). SEC/SJC.

Government Restructuring

HB 66 Administrative services by DFA. Rep. Lucky Varela. Under this bill, the Department of Finance and Administration (DFA) would provide budgeting and administrative services for all state agencies with fewer than 20 employees rather than having those functions handled in-house at each agency. This would affect the DD Planning Council, the Governor's Commission on Disability, and other small agencies. Passed HHGAC without recommendation, pending in HTRC with additional referral to HAFC.

HB 88 State agency sunsets. Rep. Paul Bandy and Sen. Lynda Lovejoy. This bill would apply "sunset" dates to a variety of boards, commissions, and agencies, including the DD Planning Council, the Behavioral Health Planning Council, the Commission for the Blind, the Commission for the Deaf and Hard of Hearing, the Civil Legal Services Commission, and others. Each agency would be reviewed by the Legislative Finance Committee in the year prior to the sunset date, and the LFC would then be required to propose legislation to either extend or terminate each agency. HHGAC/HBIC/HAFC

HB 94 Health Care Financing Agency. Rep. Danice Picraux. As amended in HHGAC, this bill would create a new state agency that would administer Medicaid (including the CoLTS managed long-term care program and the Medically Fragile waiver now administered at DOH), behavioral health and other programs. The bill does not move the DD waiver from the Department of Health at this time. HHGAC/HEC/HAFC.

HB 189 Transfer ALTSD programs to HSD. Rep. Al Park. This bill would eliminate the Aging and Long Terms Services Department and transfer all of its programs and personnel to the Human Services Department. HCPAC/HHGAC/HAFC.

SB 15 Health Policy and Financing Agency. Sen. Dede Feldman. This bill would create a new state agency that would include the Health Policy Commission, Medicaid, behavioral health,

long-term services (including CoLTS) now housed at ALTSD, the medically fragile waiver now at DOH, and other programs. It also would restructure two of the legislature's interim committees. The bill does not move the DD waiver program from the Department of Health at this time. SRC/SPAC/SFC.

SB 67 Administrative Hearings. Sen. John Ryan. This bill would create a new government entity that would employ the hearing officers who act as judges in administrative appeals, rather than having that function handled by the individual agencies whose decisions are being appealed. This would include appeals involving decisions by Medicaid, DVR, the DD division, etc. This bill reflects a recommendation from the Government Restructuring Task Force and may give hearing officers more independence from the provider agencies. SRC/SJC/SFC.

SB 104 Administrative Hearings. Sen. Tim Eichenberg. This bill is identical to SB 67, above. SRC/SJC/SFC.

SB 158 Repeal certain boards and commissions. Sen. Lynda Lovejoy and Rep. Paul Bandy. This bill would eliminate the Governor's Commission on Disability and the Brain Injury Advisory Council (along with many other boards and commissions). GCD's current functions would be transferred to the Aging and Long-Term Services Department, where a new "Disabilities Concerns" division would be created to carry out those activities. This new division would have responsibility for any federal disability program that was not assigned by law to some other state agency. The BIAC's functions would be transferred to the DD Planning Council, and the new division at ALTSD would be directed to coordinate with DDPC on issues affecting persons with brain injuries. SRC/SPAC/SFC.

SB 162 Health Administration and Finance Agency. Sen. Linda Lopez. This is another bill to create a new agency housing health policy and coverage programs, including Medicaid, behavioral health, long-term services, and others. Similar to HB 94 and SB15. SRC/SPAC/SFC.

Health Care

HB 33 Health Insurance Exchange. Rep. Danice Picraux and Sen. Dede Feldman. Establishes a framework for implementation of the state health insurance exchange consistent with federal health care reform. The Exchange would be established as an independent quasi-governmental agency with a board of directors appointed by the governor and by the legislative leadership. A substitute version passed HCPAC; pending in HHGAC.

HB 124 Provider notice to patients. Rep. Al Park. These amendments to the Uniform Health-Care Decisions Act would require medical providers to identify themselves to patients by name and professional category (doctor, physician's assistant, nurse, etc) prior to carrying out medical procedures on the patient. HHGAC/HJC

HB 373 Financial impact of Medicaid changes. Rep. Rhonda King. This bill would require the Secretary of the Human Services Department to submit a report describing the fiscal impact of any proposed changes to the Medicaid state plan or any waivers of Medicaid requirements requested of the federal government, at least 60 days prior to submission of any such changes. HHGAC/H AFC.

HJM 9 Amendments to Affordable Care Act. Rep. Mimi Stewart. This memorial asks our Congressional delegation to support changing the federal health care reform law to move up the date when states may ask for permission to pursue other approaches to expanding health

coverage as alternatives to the health insurance exchange. Currently, such waivers will not be available until 2017. Passed the House; SRC/SPAC.

SB 22 Health care provider protection and ombudsman. Sen. Jerry Ortiz y Pino. In addition to establishing greater protections for health care providers in their relationship to managed care organizations, this bill would create an independent health care ombudsman program. The ombudsman would be available to assist consumers as well as providers with problems related to managed care companies. The Superintendent of Insurance would select the ombudsman but the program would have to be operated by one or more contractors independent from the Insurance Division. SCORC/SJC/SFC.

SB 38 Health Insurance Exchange. Sen. Dede Feldman. This bill would establish a health insurance exchange program in New Mexico to fulfill the requirements of federal health care reform. It is similar but not identical to HB 33. Passed SPAC, pending in SCORC with additional referral to SFC.

SB 206 Eliminate Medicaid managed care. Sen. Jerry Ortiz y Pino. This bill would require the Human Services Department to provide Medicaid, the Children's Health Insurance Program, and the State Coverage Insurance program through contracts with individual providers or provider networks, and would prohibit the department from providing those services through contract with managed care companies. SPAC/SFC.

SB 370 Health Insurance Exchange. Sen. George Munoz. This bill also would establish a health insurance exchange program but takes a more limited approach to the scope of the exchange and relies heavily on the Superintendent of Insurance and the board of the existing medical insurance pool. Passed SPAC, pending in SCORC with additional referral to SFC.

SJM 1 Health care reform work group. Sen. Dede Feldman. This memorial calls for continuation of the health care reform work group that was established last year to assist the state in preparing for and implementing the provisions of federal health care reform. Passed SPAC, awaiting vote by full Senate.

Mental Health/Behavioral Health

HB 93 Mental health intervention training. Rep. Ed Sandoval and Sen. David Ulibarri. This bill would require police officer training in crisis intervention, confrontation de-escalation, and appropriate interaction with persons who have mental impairments. Forty hours of initial training would be provided at the police academy for new officers, and four hours of in-service for existing officers every two years. The bill would also require law enforcement agencies to have policies promoting appropriate interventions for persons with mental illness. Passed HCPAC, pending in HJC.

HB 432 Regional pilot programs. Rep. Zachary Cook. This bill would require the Behavioral Health Purchasing Collaborative to contract with a network of behavioral health providers, in partnership with a new risk-based entity owned or controlled by the network, to provide behavioral health services in one or more regions of the state for a period of at least two years. The existing managed care entity (currently Optum Health) would no longer cover the affected region(s). HAFC.

HJM 17 Alternatives to incarceration. Rep. Rick Miera. This memorial calls for a task force of stakeholders to develop strategies to reduce the unnecessary incarceration of persons with mental

illness. DRNM and NAMI-NM would be among the members of the task force. Passed the House; SRC/SPAC.

HJM 23 Task force for children. Rep. Danice Picraux. This memorial calls on the Behavioral Health Purchasing Collaborative to convene a task force to develop recommendations on how to encourage parents, social workers, therapists and others to support children in school, and reduce aggressive behaviors and the need for clinical intervention. H AFC.

SB 21 End managed care in behavioral health. Sen. Jerry Ortiz y Pino and Rep. Antonio Lujan. This bill deletes the current requirement for the Behavioral Health Purchasing Collaborative to contract with one or more managed care entities to administer state behavioral health services, and instead calls for the state to contract directly with providers or provider networks. Passed SPAC; pending in SFC.

SB 175 Choice of MH Counselors. Sen. Bernadette Sanchez. This bill amends the provision of the Insurance Code that protects the right of an insured to choose their own provider within the limits imposed by the insurance plan, by adding “professional clinical mental health counselors” to the list of practitioners. The choice of provider is still subject to the limits of the insurance plan’s coverage, so the bill would not guarantee access to a provider outside the network of contracted providers in a plan that uses such a network. The provision does not apply to health maintenance organizations (HMOs). Passed SPAC; pending in SCORC.

SB 417 Native American suicide prevention. Sen. Lynda Lovejoy. This bill appropriates \$100,000 for the Behavioral Health Purchasing Collaborative to establish a state-wide clearinghouse to provide culturally appropriate suicide prevention and related services, and \$300,000 to establish three local Native American youth suicide prevention programs. SIAC/SFC.

SB 438 Safe House Act. Sen. Jerry Ortiz y Pino. This bill requires HSD to establish at least two behavioral health safe houses for persons in crisis, to be staffed with peer counselors and others. It would also create a fund that could be used to support additional safe houses. There is no funding in the bill to support the first two houses. SPAC/SFC.

SB 450 Regional pilot programs. Sen. Mary Kay Papen. This bill would require the Behavioral Health Purchasing Collaborative to contract with a network of behavioral health providers, in partnership with a new risk-based entity owned or controlled by the network, to provide behavioral health services in one or more regions of the state for a period of at least two years. The existing managed care entity (currently Optum Health) would no longer cover the affected region(s). SPAC/SFC.

Other bills may be introduced that would:

- Amend the state Mental Health Code to limit or eliminate the role of district attorneys in filing petitions for civil commitment, because of the time and resources required to file such petitions.
- Address the effects of solitary confinement on persons with disabilities and others

Self-Determination

HB 105 Electronic Voter Registration. Rep. Eleanor Chavez. This bill would allow people to register to vote on line, and authorize a link of their registration information to their driver’s license in the MVD data base for the purpose of confirming identity. HCPAC/HVEC.

HB 229 Parental notification act. Rep. Alonzo Baldonado. This bill is identical to SB 230 (see below for summary and analysis). HCPAC/HJC.

HB 271 Extend guardianship powers. Rep. Bill O’Neill. This bill would extend certain specific powers of a guardian for up to one year after the death of a protected person, in order to make funeral arrangements, wrap up the person’s affairs, and report to the court. At present, the guardian’s authority automatically ends upon the death of a protected person. HCPAC/HJC.

HJR 11 Voting rights amendment. Rep. Brian Egolf. This is a proposed constitutional amendment that would change current language to lower the voting age to 18, and to allow school board elections to be held at the same time as regular primary or general elections. The proposal leaves in place the archaic and derogatory language in the same sentence of the constitution that prohibits voting by “idiots and insane persons”. A broader proposal to address that language and otherwise update these provisions was on the ballot last year but did not pass by a large enough margin and therefore was not adopted. HEC/HVEC.

HJR 16 Voting Rights amendment. Rep. James White. This proposed constitutional amendment is similar to the amendment proposed by HJR 11 (above), but addresses only school board elections, directing that they be held at the same time as other elections. It would not change the offensive language prohibiting voting by “idiots and insane persons”. HEC/HVEC.

SB 125 Limitations on driver’s licenses after age 75. Sen. Peter Wirth. This bill is intended to implement the recommendations of a task force that addressed safe driving. The bill sets up increasingly shorter periods between license renewals once drivers get to be 75 years old. It also requires more extensive testing for these older drivers than for any other drivers; this provision was not recommended by the task force and is likely to be dropped from the bill. SCORC/SJC.

SB 146 Uniform Probate Code Amendments. Sen. William Payne. This package of amendments to the guardianship provisions of the Probate Code clarifies which state would have jurisdiction to address guardianship issues when the principal parties reside in different states. SJC.

SB 230 Parental notification act. Sen. William Sharer. This bill would require notice to the parents of a minor child, or to the guardian or conservator of an adult woman found to be “incompetent”, prior to the performance of an abortion, unless a court exempts the woman from the notification requirement. *DRNM’s concerns with this legislation are that under New Mexico law, a conservator has no authority to approve or refuse an abortion, a guardian’s authority to approve or refuse an abortion is questionable at best, and New Mexico does not use the term “incompetency” in the determination of guardianship or conservatorship.* SPAC/SJC.

Other

HB 399 Restroom Access Act. Rep. Tom Anderson. This bill would require retail stores to let a customer use the employees-only restroom if there is no public restroom immediately available to the customer, the customer presents documentation of having a medical condition covered by the bill, and there are no serious safety or security risks to the business in providing access. HHGAC/HJC.

HB 431 Exemption from vehicle registration fee. Rep. Miguel Garcia. Under this bill, persons with disabilities whose annual income is no more than \$15,000 would not have to pay the motor vehicle registration fee for one automobile that they own. HTPWC/HTRC.

SB 65 Fees to Disability Fund. Sen. Phil Griego. This bill would add \$5 to all vehicle registration fees, \$4 of which would go to the “Disability Fund” administered by the Governor’s Commission on Disability. This would generate about \$8 million per year to GCD to support a variety of possible disability services, as determined by the GCD. *DRNM supports new revenue but would prefer to see it used directly to reduce budget cuts to Medicaid, DVR, and other existing disability service programs.* Passed SCORC, pending in SFC.

SB 205 Protection of genetic information in employment. Sen. Cisco McSorley. This bill would establish protections for employees related to the collection and use of genetic information by employers. SCORC/SJC.

SB 286 Access aisle markings. Sen. Jerry Ortiz y Pino. This bill would require the access aisle next to certain accessible (“handicapped”) parking spaces to be more clearly marked as a no-parking area. SPAC/SCORC.

SB 334 Adult residential provider licensing. Sen. Tim Jennings. This bill would require owners and operators of residential facilities for seniors or persons with disabilities to provide extensive information to the state agency licensing the facility, and direct the state not to license any facility whose owner or operator has been involved in criminal activity, financial misdeeds or other disqualifying activities. SPAC/SJC.

Other bills may be introduced that would:

- Generate more income to the Commission for the Deaf and Hard of Hearing by raising the access fee for phone service from 0.33% to 0.5%, imposing the fee on internet (VoIP) phone service, and improving collection of the fee.

REFERENCE INFORMATION

Contacting Your Legislators. You can contact your senator or representative during the session:

Telephone: 505-986-4300. This is the Capitol switchboard operator: ask for your legislator by name and they will route your call to his/her office.

E-mail: To find your legislator’s e-mail address, log on to the Legislature’s “Find Your Legislator” web site, <http://www.nmlegis.gov/lcs/legislatorsearch.aspx>, and click on the “Alpha List” for either the House or the Senate. Not all legislators have listed email addresses.

U.S. Mail: Legislator’s name, NM State Capitol Bldg., Santa Fe, NM 87503

Don’t know who your legislators are? It’s easy to find out through the internet but you’ll probably need your full 9-digit zip code. If you don’t know that number, you can get it through the postal service using this link: <http://zip4.usps.com/zip4/welcome.jsp>. Then log on to the state legislature’s “Find Your Legislator” web page, <http://www.nmlegis.gov/lcs/legislatorsearch.aspx>. Under either the House of Representatives or Senate, click on the link to “Search by Name, District or Zip Code”. You’ll see a page with the photos and names of all the Representatives or Senators, with a search box near the top to search by zip code. Enter your five-digit zip code and click “Search”. If you get a list including more than one Representative or Senator, you’ll also get a search box at the bottom where you can enter the full 9-digit zip code. That search will result in a page that shows your specific Representative and Senator.

ABBREVIATIONS USED IN THIS REPORT

State Agencies

ALTSD	Aging and Long Term Services Department
CYFD	Children, Youth and Families Department
DDPC	Developmental Disabilities Planning Council
DFA	Department of Finance and Administration
DOH	Department of Health
GCD	Governor's Commission on Disability
HSD	Human Services Department
PED	Public Education Department

Legislative Committees

HAFC	House Appropriations and Finance Committee
HBIC	House Business and Industry Committee
HCPAC	House Consumer and Public Affairs Committee
HEC	House Education Committee
HHGAC	House Health and Government Affairs Committee
HJC	House Judiciary Committee
HTPWC	House Transportation and Public Works Committee
HTRC	House Taxation and Revenue Committee
HVEC	House Voters and Elections Committee
SCORC	Senate Corporations and Transportation Committee
SEC	Senate Education Committee
SFC	Senate Finance Committee
SIAC	Senate Indian and Cultural Affairs Committee
SJC	Senate Judiciary Committee
SPAC	Senate Public Affairs Committee
SRC	Senate Rules Committee
LFC	Legislative Finance Committee (joint House-Senate committee that meets during the interim between legislative sessions)
LHHS	Legislative Health and Human Services Committee (interim committee)

Other

CoLTS	Coordination of Long Term Services (Medicaid managed long term care program)
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