



## DISABILITY RIGHTS NEW MEXICO

1720 Louisiana Blvd. NE, Suite 204 • Albuquerque, New Mexico 87110

TEL/TTY: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: [www.drn.org](http://www.drn.org) • EMAIL: [info@drnm.org](mailto:info@drnm.org)

James Jackson, Executive Director

*Promoting and Protecting the Rights of Persons with Disabilities*

### DISABILITY ISSUES IN THE 2011 LEGISLATURE STATUS REPORT #2

By Jim Jackson, Executive Director  
DISABILITY RIGHTS NEW MEXICO  
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**Looking to cut \$200 million.** The House Appropriations and Finance Committee (HAFC) and the Senate Finance Committee (SFC) have each begun hearings on state agency budgets as they move to develop a budget proposal for all of state government. The HAFC, which will act first on the budget before it goes to the Senate, is reviewing the recommendations from the legislature's interim finance committee (LFC) and the governor, each of which cuts spending levels in the coming year by around \$200 million compared to current spending levels. Those budget cuts will come on top of reductions that most agencies have already seen in the past few years. At this stage of the process, the HAFC generally adopts the lower of the two recommendations for each state agency, but this is not their final decision and appropriations levels for some programs will change as the final proposal takes shape in the committee.

**Other committees gearing up slowly.** Most legislative committees held their first meetings last week, when they introduced new members, reviewed committee rules and processes, and – in some cases – heard the first few bills that had been referred to them. The pace is expected to pick up next week as the committees fall into their typical schedule. Their workload will increase because over 600 bills and memorials have already been introduced.

**ALTSD Secretary named.** Governor Susana Martinez has selected Retta Ward, a high school biology teacher from Arizona, to serve as Secretary of the Aging and Long-Term Services Department. Ward, 57, has a master's degree in public health but most of her work in the last 25 years has been in school programs. She does not appear to have experience in the fields of aging or long-term services. Several bills in this year's legislature seek either to transfer several ALTSD programs to other departments or to abolish the agency altogether. There has been no official indication from the governor on her position on these proposals.

**Budget Updates.** Based on the latest projections, it looks like the Medicaid program would need \$3.87 billion in total funds next year to continue existing services and keep up with enrollment growth. That total reflects over \$250 million in cost savings from provider rate cuts, benefit reductions, and other measures the program has already implemented to reduce expenses. The legislature has been very supportive of the Medicaid program, and recognizes the need to replace federal stimulus funding with state money as the stimulus program ends. Unfortunately, the governor's funding recommendation falls short of next year's expense projections by about

\$25 million in state funds (\$85 million total when federal matching funds are included) and the LFC recommendation is more than \$38 million in state funds (around \$128 million total) below the projected need. Budget cuts of this size would require further reductions in services and provider rates, and other “cost containment” measures.

The LFC has proposed the elimination of the Consumer Support program at the DD Planning Council, which funds the Self-Advocacy Center as well as the Information Center/BabyNet information and referral service at the Center for Development and Disability. The governor has recommended level funding for that program.

The Civil Legal Services Commission funds non-profit agencies that provide legal services to low-income individuals, including Disability Rights New Mexico. While the LFC recommended only a small reduction in funding for this program, the governor’s budget would slash the state appropriation by half. In accordance with the usual committee practice, a subcommittee of HAFC decided on Friday to adopt the governor’s recommendation to cut the Commission’s state appropriation by nearly \$1 million. However, the subcommittee left the door open to adding more funding to the as they continue developing the budget.

### **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. HEC/HAFC.

#### Developmental Disabilities

**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.

**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. HCPAC.

#### Education

**HB 172** Prohibiting corporal punishment. Rep. Rick Miera. This bill deletes corporal punishment from the list of allowable disciplinary measures that public schools can impose on students. An amendment is expected that would more clearly prohibit the use of corporal punishment. HCPAC/HEC.

**SB 142** Ancillary program units. Sen. Cyndi 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. Fortunately, the bill provides an 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.

Additional bills are expected that would:

- Require appropriate educational interventions for children with autism in public schools
- Prohibit school referrals to police for minor/misdemeanor offenses
- Require the PED to obtain, maintain and report ~~on~~ data on suspensions/expulsions in public and charter schools, to include data by gender and race/ethnicity
- Limit or prohibit seclusion/restraints in public schools

#### 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. HHGAC/HTRC/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. These agencies would be eliminated within the next 2-5 years unless the legislature passed new laws to re-create them before the sunset date. HHGAC/HBIC/HAFC

**HB 94** Health Care Financing Agency. Rep. Danice Picraux. This bill would create a new state agency that would combine administration of health insurance for state and local employees with health policy functions and programs serving low-income and special needs populations such as Medicaid (including the CoLTS managed long-term care program), the Medically Fragile waiver now 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 public employee health insurance, 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 would also 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 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. HCPAC/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

**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. HHGAC.

**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. SPAC/SCORC/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.

**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. SRC/SPAC.

#### Mental 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. The training would be provided at the police academy for new officers and as an in-service for existing officers. The bill would also require law enforcement agencies to have policies promoting appropriate interventions for persons with mental illness. HCPAC/HJC.

**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. HHGAC.

**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. HAFC.

**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). SPAC/SCORC.

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.

**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 was therefore not adopted. 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 would clarify which state courts should address guardianship issues when the principal parties reside in different states. SPAC/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 bills may be introduced that would:

- Extend certain 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 is automatically terminated upon the death of a protected person. This bill will be introduced by Rep. Bill O’Neill.

#### Other

**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. SCORC/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.

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
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  
program)

Coordination of Long Term Services (Medicaid managed long term care