

**MINUTES
of the
SEVENTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**October 25, 2017
State Capitol, Room 321
Santa Fe**

The seventh meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on October 25, 2017 by Representative Deborah A. Armstrong, chair, at 9:18 a.m. in Room 321 of the State Capitol. A quorum was present.

Present

Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong
Rep. Rebecca Dow
Sen. Mark Moores
Sen. Bill B. O'Neill
Sen. Cliff R. Pirtle
Rep. Elizabeth "Liz" Thomson

Absent

Advisory Members

Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. Linda M. Lopez
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Mary Kay Papen
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Sen. Bill Tallman
Rep. Christine Trujillo

Rep. Nick L. Salazar
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics

Guest Legislator

Rep. Harry Garcia

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Staff

Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Karen Wells, Contract Staff, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, October 25

Welcome and Introductions

Committee members and staff introduced themselves.

Enhanced Nursing Compact

Demetrius Chapman, M.P.H., M.S.M. (R.), R.N., executive director, Board of Nursing (BoN), provided an overview of the existing interstate Nurse Licensure Compact (NLC). He noted that the Enhanced Nurse Licensure Compact (eNLC) has been embraced by 26 states, with more expected to follow. On January 20, 2018, without legislative action, there will be only two states remaining in the existing compact. The eNLC seeks to have uniform licensure requirements in all participating states. Mr. Chapman described the 11 requirements in the eNLC. Nurses in the original NLC states will be automatically grandfathered into the eNLC until such time as the original NLC is dissolved. The eNLC makes it clear that nurses must be in compliance with state requirements.

Jeff Dye, president and chief executive officer (CEO), New Mexico Hospital Association (NMHA), noted that of the 48 hospitals that are members of the association, virtually all utilize out-of-state nurses. He reviewed the findings of a survey of NMHA members, which reflects the anticipated impact of New Mexico not embracing the eNLC. Hospitals are being urged to work to ensure that all nurses currently employed obtain a New Mexico license and not rely on a legislative fix in January. The inability of New Mexico's community hospitals to quickly fill nursing vacancies with temporary traveling nurses via the eNLC could compromise capacity for patient care. Hospitals need temporary traveling nurses to address the statewide shortage of qualified nurses, according to Mr. Dye.

Dawn Hunter, deputy secretary, Department of Health (DOH), described the effects on the DOH of failure to enact the eNLC. She noted that the majority of the impact would be indirect rather than direct, as the DOH does not employ a significant number of out-of-state

nurses. That being said, she highlighted several major areas that would be affected. During an epidemic or natural disaster, it is vital to be able to move nurses easily across state lines. She identified the difficulty in recruiting and retaining school nurses, particularly in the border areas. Deputy Secretary Hunter noted that flight nurses required to cross state lines in transporting patients may not be able to conduct transports. Schools of nursing report that lack of adoption of the eNLC may impact their ability to employ qualified nurse instructors.

Questions and comments from committee members covered the following areas:

- whether it is necessary to pass legislation and have it signed within the first three days of the 2018 legislative session; ideally, yes;
- a concern arising from union nurses regarding changes in subpoena powers, prosecutorial process and other concerns;
- whether the BoN is aware of opposition to the eNLC; the overwhelming majority of nurses have expressed support;
- whether a joint session of both chambers should meet on the first day of the 2018 legislative session to discuss the eNLC; possibly, as some states have adopted conditional compact approval;
- whether there is a requirement for a nurse to join the compact; no; and
- whether the current state law can be amended to address the eNLC; yes.

The chair invited members of the audience to comment.

Jim Puente, director, Nurse Licensure Compact, National Council of State Boards of Nursing, addressed the concerns previously expressed; these issues have not been raised in any other state; and the eNLC is a patient safety model, not a nurse safety model. With regard to subpoena powers, there is no change to existing compact requirements; there is nothing in the compact to affect due process; prosecutorial power of the commission with compact oversight authority under the compact is also not an issue; and the commission has no power over individual nurses.

Deborah Walker, director, New Mexico Nurses Association (NMNA), testified that the nurses raising concerns do not reflect the majority opinions. The NMNA has been traveling around the state to engage nurses on this topic and has discovered that there is limited information regarding the current NLC, on which it has been providing education. There are concerns about costs. The BoN in August raised the cost of a nurse license to the maximum allowed by state law. The NMNA is acutely aware of the workforce issues; rural communities tend to rely much more heavily on travelers. The NMNA has developed a list of issues that will need to be looked into more thoroughly in the future and will encourage the BoN to conduct more educational sessions before the eNLC is adopted.

Elaine Brightwater, nurse practitioner, has concerns regarding the powers that would be vested in the commission charged with rulemaking. She noted that advanced practice nurses are

not included in the multistate compact and do not want to be part of it. She asserted that the professional nursing boards exam, NCLEX, though widely used, is a private product owned by the commission. She is concerned that the eNLC enshrines the NCLEX as the only test of a nurse's competence.

Judy Bauer-Creegan, New Mexico School Nurse's Association, noted that the Gadsden Independent School District and the statewide school nurse association are in support of the eNLC. She contends that nurses would rather pay for one license than be required to have licenses in multiple states. She emphasized that New Mexico already has a compact and that the eNLC does not change much. In a recent statewide meeting of school nurses, there was no opposition to the eNLC.

Becky Rowley, New Mexico Independent Community Colleges and Clovis Community College, stated that New Mexico Independent Community Colleges and Clovis Community College stand in strong support of the eNLC. Nursing programs in New Mexico community colleges have a need to reach out to Texas and other states in order to support clinical training and lack the ability to recruit sufficient nurse educators from within the state.

Lorie MacIver, president, National Union of Hospital and Health Care Employees District 1199NM, stated that the union wants to work collaboratively and does not oppose the eNLC across the board. It desires the opportunity to meet in dialogue with the BoN.

Cleo Fowler, retired nurse, feels that more time is needed before a decision is made. The proposed eNLC gives further regulatory power to a non-New Mexico entity; it will increase nurses' costs; and it has potential to decrease due process for nurses. She agrees that it is an important action to be taken but not without a thorough look at the details.

Questions from committee members included:

- clarification of the impact if legislative action takes more than three days; many traveling nurses will simply leave the state and go to a state that has enacted the eNLC; the impact on small rural hospitals will be profound; care to patients will be affected, as staffing will be inevitably reduced;
- whether grandfathering provisions are affected if the legislation is not passed within three days; the grandfathering provision expires on January 19, 2018; New Mexico might miss out on this provision if it is the last state to enact the eNLC;
- an observation that the eNLC cannot be changed and must be adopted as is; it is a licensure compact, not a practice compact; adoption does not relieve nurses in New Mexico from complying with the Nursing Practice Act;
- whether adoption of the eNLC will ensure that an out-of-state nurse has had a criminal background check; yes;
- whether use of traveling nurses costs more than use of New Mexico nurses; yes, however, it is often necessary due to the nursing shortage;

- whether continuing education (CE) requirements will be uniform; no, that is not a requirement of the eNLC; that is up to the home state to determine;
- whether the \$6,000 fee to participate in the current NLC would be changed; it is possible but not anticipated;
- an observation that in Chaves County, at least one hospital would likely shut down if the eNLC is not adopted;
- whether the eNLC has a sunset provision; no;
- whether it would violate the provisions of the compact if New Mexico added a measure to add a sunset clause; an opinion of the commission's legal council would be needed; Mr. Puente said the opinion will be provided;
- clarification that the state law to authorize the eNLC could have a separate section to include a sunset provision;
- whether a nurse in New Mexico would have any changes to the nurse's license as a result of the eNLC; no, because the state licensure requirements are already the same as the compact;
- clarification regarding the cost of a license in New Mexico; fees have been increased to \$110 for renewal and \$150 for a new license; travelers do not have to obtain a New Mexico license under the compact;
- whether licensing fee increases have resulted from participation in the compact; no;
- clarification regarding the extent to which public meetings were held to discuss the prospective eNLC rule changes; public meetings were held, and the BoN newsletter addressed this issue;
- whether the public hearing was announced in the BoN newsletter; yes, every nurse in the state received that newsletter;
- clarification regarding required actions of New Mexico nurses should the eNLC be adopted; no actions are required;
- an observation that the BoN voted unanimously to support the eNLC at its October meeting;
- whether a special session in November would protect New Mexico from untoward effects and loss of grandfathering protections of late endorsement of the eNLC; yes;
- whether the governor has endorsed action on the eNLC; this is not known;
- whether the eNLC has congressional approval; no, congressional approval is not required;
- a recommendation that the BoN host a meeting with nurses, especially union nurses, who have raised concerns to resolve issues; and
- whether a broader survey could be sent out to gather input from other institutions besides hospitals, including how long it takes for a nurse to get licensed and how long in advance a traveler would have to make a decision to bypass New Mexico, and a request for the DOH to encourage other state trade associations to gather input.

Mr. Puente offered to address concerns raised in public comment. He noted that 96% of hospitals and 90% of nurses nationwide want their state to be in the eNLC, and two out of three union nurses support the eNLC. The commission has set aside adequate funding to implement

the eNLC well into the future; this is among the least expensive of many compacts in which the state is involved and for which it pays steep costs. In terms of rulemaking, rules must be related to the statute and cannot change anything currently in the Nursing Practice Act. The commission is a quasi-governmental entity. The NCLEX is not owned by the commission; it is the national exam that all states have agreed upon to test standards of nursing practice. Concerns about due process and other stated concerns are not handled by the commission; they are the purview of state BoNs. Concerns regarding individual state CE requirements do not measure the readiness of a nurse to practice. There is no research that shows a direct link between CE and patient safety. He further stated that failure to join the eNLC would disable telehealth in the Four Corners area. Surveys show that new nurses do not want to practice in non-compact states.

Ms. Walker acknowledged that all nurses recognize the imperative of passing the eNLC. She is grateful for the dialogue but would like to continue to talk. Generally, there is appreciation for the time spent considering the issue. Ms. Brightwater restated her concerns regarding advanced practice nurses. Nurses generally like the sunset clause. Mr. Dye raised the issue that a sunset clause could raise uncertainty, and down the road, out-of-state nurses might opt out of working in New Mexico as the sunset date approached. Mr. Puente observed that such a clause would announce an intent to discontinue the compact and give six months' notice to the commission of that intent. There might be other ways of addressing this.

Senator Ortiz y Pino made a motion to request that a bill be drafted to endorse the eNLC to be considered at the November 17 meeting of the LHHS; the motion passed with no objection. Senator Moores requested that all parties involved work together so that the compact can be approved in a timely manner.

Report on Senate Memorial 50, 2017 Regular Session — Study of New Mexico Families That Use Two or More Types of Social Services

Jennifer Ramo, executive director, New Mexico Appleseed (Appleseed), introduced Gwendolyn Aldrich, Bureau of Business and Economic Research (BBER), University of New Mexico, and Meghan Mead, staff attorney, Appleseed.

Ms. Ramo stated that Appleseed has been studying the effects of poverty for many years. She described the typical family in poverty in New Mexico, with multisystem families being those that engage in two or more types of social services. Significant research shows a correlation between these problem areas. Currently, different agencies deal with different problems with no effective sharing of data or collaboration and coordination of care. She identified three reasons to study multisystem families: (1) they are the most expensive, accounting for 20% of the social services population but 80% of the budget for those services; (2) studying them could lead to predicting and preventing future problems; and (3) designing an integrated system would address their needs in a coordinated fashion.

Appleseed has been doing research on the potential for an integrated data system to focus on the greatest areas of need and cost. Senate Memorial 50 requests that the Legislative Finance

Committee (LFC) and the BBER work together to identify the costs of such a response. The BBER has been conducting the study, including development of a data source inventory and mapping process. A cost analysis of New Mexico's multisystem families reflects scattered data across state agencies dealing with these social services and needs. Effectiveness of the ways in which the populations are being served cannot be adequately identified at present. Long-term benefits of this work will reveal who these multisystem families are and how their needs can be effectively met with better outcomes and lower costs.

Committee members had questions and made comments in the following areas:

- clarification regarding the original hypothesis of Senate Memorial 50; the work is to prove or disprove the notion that multisystem families will be better served by an integrated approach;
- whether there has been any progress on former attempts to centralize and integrate social services; this study looks at identifying affected families and integrating data to be able to know where to start on centralizing services;
- whether there are federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) concerns in this project; yes, the data would be shared between covered agencies that are identified as exceptions in the HIPAA requirements;
- whether lessons learned from other states provide an idea of the potential savings through this approach; there is potential for this;
- clarification regarding research goals versus implementation goals; Appleseed hopes that identification of the relevant data will lead to that clarification;
- a suggestion that Appleseed gather data from other states and state agencies; that is part of the work it is doing without it being explicitly mentioned in the memorial; state agencies have agreed to participate in data sharing with the LFC;
- an observation that the state has no authority over federal programs, which may complicate the efforts;
- recognition of the importance of involving case managers in identifying and treating families with the greatest complexity;
- recognition that a Medicaid waiver might provide an avenue for implementation;
- whether data will be gathered from rural as well as urban areas; yes;
- whether the percentage of families who are homeless or who have members who are veterans is known; that is part of what the data collection is hoped to generate;
- clarification regarding the validity of comparisons of potential cost savings based on other states; it is a very preliminary estimate; the BBER is hoping to develop this data;
- whether health care and behavioral health care cost information is included in the data from other states; South Carolina has an all-payer claims database; other states are including Medicaid data; the project is pulling from different sources; the LFC noted that research seems to suggest it is a combination of data sources;
- a recommendation that child care, child assistance, aging issues and other areas should be included and identified; these are part of the study; and

- recognition that the project opens the possibility of better understanding adverse childhood events, social determinants of health and many other elements that contribute to the health and well-being of New Mexicans.

Jon Courtney, LFC, stated that the LFC has had difficulty obtaining information from some state agencies. Hopefully, the efforts and work on ongoing projects of some agencies can be leveraged to pursue the database envisioned by this project.

Senate Joint Memorial 6, 2017 Regular Session — Study Direct-Care Workforce

Adrienne R. Smith, president and CEO, New Mexico Direct Caregivers Coalition, introduced Alisha Norsworthy, caregiver and member of the task force created by Senate Joint Memorial 6. Ms. Smith provided an overview of the goals and purpose of Senate Joint Memorial 6, which created a task force to recommend measures to ensure state compliance with the federal Fair Labor Standards Act of 1938 (FLSA) "Home Care Rule" of 2015. The memorial asks the task force to recommend and implement policies to promote a stable workforce to meet the needs of seniors and individuals with disabilities. The report makes 16 recommendations, a few of which were highlighted.

The FLSA sets standards that direct care workers be paid at least minimum wage, overtime pay and travel time in the course of a caregiver's work day. In 2015, the U.S. Department of Labor revised the FLSA regulations to extend the minimum wage and overtime protections to nearly four million homecare workers in the United States. The report presented at this meeting represents phase one of the task force's work; a second report will be forthcoming.

Ellen Pinnes, consultant with the task force, noted that managed care organization (MCO) regulations state that no worker would be permitted to work more than 40 hours per week, in order to avoid paying overtime. The task force recommends that the Human Services Department (HSD) conduct a study to determine how much money should be budgeted to cover the cost of overtime. If the HSD determines that caps on hours are needed, exceptions to those caps should be established. If such a cap is implemented, there should be a process for an exception to the rule in both short-term and emergency situations, as well as long-term exceptions that must be built into the care plan.

Tallie Tolen, chief, Long Term Services and Supports Bureau, Medical Assistance Division, HSD, reported that the HSD has imposed a 40-hour cap in the Mi Via program in order to ensure that a member's monthly budget is not exceeded. There is no cap on the hours worked in the personal care services program.

Ms. Smith described an additional issue the task force has studied regarding the definition of "employer". The task force recommends that the Workforce Solutions Department work with the HSD to promulgate regulations that clarify this issue. Ms. Pinnes noted that under the FLSA, the employer is legally responsible for paying overtime. Given that, the task force felt it was important that an analysis be conducted to clarify this issue.

Questions and comments from committee members covered the following areas:

- clarification regarding what subset of caregivers and payers is affected by the FLSA rule; the FLSA applies to *all* caregivers; phase one of this study only affects Medicaid;
- whether the task force includes caregivers who work for an agency; yes, as well as independent caregivers;
- whether the task force is coordinating with agency employers as well as its workforce; yes;
- whether the management participating in the task force is threatened by the advocacy for independent caregivers; no, all agree the job is hard and important and needs clarity;
- a suggestion that both caregivers and those receiving care should have an avenue to register complaints; the report recommends the establishment of an ombudsman program for complaints regarding the FLSA;
- clarification regarding how widespread the distribution of this report will be; the memorial identifies the recipients of the report to include the agencies that are involved;
- whether the caregivers and recipients of services are involved in determining the amount of care needed; in Medicaid, that decision is made by the MCOs;
- an observation that Medicaid is one of the very few payers of long-term care services;
- whether there is any research about agencies that may have been observing these rules prior to the 2015 FLSA rule; no;
- recognition of a distinction between a payer's decision regarding the services provided and the number of hours a person may work to provide those services;
- an observation that the HSD not only has an obligation to pay for services provided, but also for requesting an adequate appropriation to cover those anticipated costs; and
- whether the FLSA applies to independent caregivers as well as caregivers who work for an agency; this can be looked at in phase two of the report.

Senator Ortiz y Pino made a motion to send a letter to all of the agencies involved in the task force with a copy of the report and a recommendation for follow-up as called for in the memorial; the motion passed without objection.

Domestic Violence in New Mexico: Batterers Intervention Program

Pam Wiseman, executive director, New Mexico Coalition Against Domestic Violence (NMCADV), addressed the significance of domestic violence in New Mexico. She identified five recommendations arising from the criminal justice system for reducing violence, as follows:

- develop and utilize a standardized risk assessment;
- strengthen judicial councils and provide support;
- implement the Colorado model that uses multidisciplinary teams for batterer interventions with a pilot in several areas;

- establish core competencies for service providers and training through a standardized curriculum; and
- develop outcome measures to assess how community attitudes affect recidivism.

Evidence is clear that when domestic violence program staff in prisons and jails do their work, violence is reduced. There will be costs, but it is unclear exactly how much money will be needed. Some studies suggest that the cost of one incident of recidivism is \$54,000; any investment in reducing recidivism will be returned.

Committee members had questions and comments as follows:

- recognition that even small incidents of domestic violence lead to much bigger problems;
- whether the approach to treating batterers varies by district; it does vary by district, though whatever model is used, assessments, training, supervision and core competencies should be standard;
- recognition that the assessment process is critical and should be standardized;
- whether there is progress in the direction of standardization; the Children, Youth and Families Department (CYFD) is using a recommended assessment tool; the NMCADV is recommending a pilot project with law enforcement to use this assessment process;
- ways in which law enforcement can be made to participate in batterers intervention; this is difficult, but a pilot project in targeted areas would start the process;
- recognition that the system currently has very little consistency;
- whether the LFC conducted a report on this topic and whether it recommended a pilot; the LFC did not recommend a pilot, but it did recommend a coordinated community response;
- a suggestion that training in the New Mexico Law Enforcement Academy might be fruitful;
- recognition that the legislature passed a bill in 2017, which was vetoed, requiring a domestic violence offender to relinquish firearms following a conviction for domestic violence;
- a recommendation that a time line be set to establish and implement a validated assessment tool;
- consideration for inclusion in the assessment tool information regarding previous abuse of animals and recognition of the correlation between animal abuse and abuse of another human;
- a suggestion that consideration be given to a memorial studying the importance of law enforcement involvement in domestic violence; and
- a request for a follow-up report next year to the LHHS.

Emily Martin, chief, Community Services Bureau, CYFD, and Rebecca Edwards, supervisor, Domestic Violence Unit, CYFD, were invited to address the committee. Ms. Martin

and Ms. Edwards have no disagreement with the recommendations of the NMCADV. Law enforcement was not involved in developing the recommendations in the report. Ms. Martin noted that the CYFD has requirements for providers regarding training and use of the core competencies. She also supports the use of the Colorado model. The CYFD supports involvement of law enforcement but has little to no control over whether law enforcement agrees to participate. Ms. Wiseman noted that this might lend itself to a legislative proposal to fund a pilot.

Adjournment

There being no further business, the meeting was adjourned at 3:35 p.m.