

**MINUTES**  
**of the**  
**THIRD MEETING**  
**of the**  
**BEHAVIORAL HEALTH SUBCOMMITTEE**  
**of the**  
**LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**October 8, 2019**  
**OliveTree**  
**808 Fir Street**  
**Truth or Consequences**

The third meeting of the Behavioral Health Subcommittee (BHS) of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative Patricia Roybal Caballero, chair, at 9:43 a.m. on October 8, 2019 at OliveTree in Truth or Consequences.

**Present**

Rep. Patricia Roybal Caballero, Chair  
Sen. Bill B. O'Neill, Vice Chair  
Rep. Phelps Anderson  
Rep. Rebecca Dow  
Sen. Michael Padilla

**Absent**

Rep. Doreen Y. Gallegos  
Rep. Andrea Romero  
Rep. Christine Trujillo

**Advisory Members**

Rep. Dayan Hochman-Vigil  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen

Rep. Deborah A. Armstrong  
Rep. Karen C. Bash  
Rep. Zachary J. Cook  
Rep. Elizabeth "Liz" Thomson

**Staff**

Lenaya Montoya, Staff Attorney, Legislative Council Service (LCS)  
Andrea Lazarow, Bill Drafter, 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.

**Tuesday, October 8**

**Welcome and Introductions**

Representative Roybal Caballero welcomed the subcommittee, staff and members of the audience. Subcommittee members and staff introduced themselves.

**Welcome and Status Update on Rural Behavioral Health Services**

Bruce Swingle, county manager, Sierra County; Rev. Dr. Anne Hays Egan, New Ventures Consulting; Virginia Lee, jail administrator, Sierra County Detention Center; and Sharon Finarelli, chief executive officer, AppleTree Educational Center, addressed the subcommittee.

Mr. Swingle stated that Sierra County is experiencing a behavioral health crisis in part because the county lacks the resources and providers to meet existing needs. He noted that county jails have become de facto facilities for addressing behavioral health issues. He estimated that 35% of the county's resources are used to fund public safety and detention, much of which is attributable to individuals with behavioral health disorders. He asserted that all other social services and programs in the county are underfunded. Mr. Swingle noted that Sierra County benefited from a grant funded by a legislative appropriation for behavioral health services.

Dr. Egan identified rural health challenges and community responses. She stressed the importance of social determinants of health, such as poverty, education, employment and access to needed services, as necessary contributors to health and noted that access to these needed services is lacking in rural communities. She noted that behavioral health issues are having a huge impact on Sierra County and all other rural counties. Dr. Egan emphasized the importance of greater alignment of licensure, certification, service provision and funding in order to address these complex cultural issues. She recommended that the BHS, the LHHS and the Legislative Finance Committee work together to address gaps and identify evidence-based solutions to these endemic problems. She also recommended the creation of a task force to identify barriers to services and to identify approaches to address these barriers.

Ms. Lee provided personal experience of a lack of services to jail inmates resulting from limited funding. She noted that Sierra County is a beneficiary of a state grant that is helping to identify and develop programs to address these issues.

Ms. Finarelli related her personal story of losing her son to suicide following a long struggle with behavioral health and addiction issues. She stated that during his struggle, she learned a great deal about barriers to and treatment approaches of behavioral health services. She asserted that lessons she learned from her son persuaded her to develop new programs in the community, adding that rural communities can be ideal places to pilot these new approaches.

Subcommittee members asked questions and made comments addressing the following:

- a member asked how it was determined that one in 40 individuals with behavioral health issues is incarcerated; Mr. Swingle stated that the figure came from an article in the *Albuquerque Journal*;
- an observation was made that the grant to address behavioral health issues is only for one year, and it was asked what Sierra County will do if the funding is not renewed; Dr. Egan noted that other grant sources are already being pursued;
- it was asked if the Interagency Behavioral Health Purchasing Collaborative is helpful in addressing behavioral health issues; in response, Ms. Finarelli noted that in Sierra County, an informal substance abuse collaborative has been formed with broad participation beyond behavioral health providers that includes economic development and public safety issues, and the county has a health council that meets regularly;
- a member asked what primary care clinic serves Sierra County; Mr. Swingle stated that it is Ben Archer Health Center; however, the clinic has a limited ability to serve behavioral health and addiction needs, and there is no methadone treatment in Truth or Consequences, although Suboxone treatment is available, he said;
- a member asked how OliveTree is funded; Ms. Finarelli identified a variety of revenue sources outside of the grant;
- clarification was requested regarding the funding sources for the grant; David R. Scrase, M.D., secretary, Human Services Department (HSD), stated that the HSD received \$2.5 million in one-time, nonrecurring funds to address behavioral health needs and noted that the HSD has asked for \$3 million in the upcoming budget request to address these continuing issues;
- a member requested an estimate of the number of inmates in the Sierra County Detention Facility with behavioral health disorders and asked whether the county has any alcohol treatment programs; Mr. Swingle noted that the number is very high, but there is no official ability to diagnose mental health disorders; there are alcohol treatment programs;
- a member asked if the lack of broadband availability is a barrier in addressing integrated service delivery; Dr. Egan noted that it is a major issue in many areas in rural communities;
- a member asked if the development of tax incentives is helping economic development in Sierra County; Dr. Egan suggested that counties first need to identify what is present and working and then proceed to opportunity zone development;
- a member asked if Spaceport America will contribute to economic development in Sierra County; Mr. Swingle noted that it is contributing; however, spaceport revenues by state law are tax exempt, so the fiscal contribution to the county is limited;
- a member asked if the HSD grant has helped Sierra County develop an opioid treatment program; Ms. Finarelli noted that a regional approach is likely to be more successful than trying to do this in Truth or Consequences, but even that would be difficult to establish due to a lack of infrastructure; the problem is bigger than funding; it was noted that addressing these issues will take more than one year;
- a suggestion was made that Sierra County work with Dona Ana County and Bernalillo County to build an Oxford House to help address the housing shortage;

- a member stressed the importance of cultural issues that may impede an individual's ability to be successful following incarceration and asked if there are language or cultural issues that will need to be addressed through funding and resources in treating county jail inmates; Ms. Finarelli stated that generational poverty is a profound issue that has a huge impact when an incarcerated person reenters a community, and Dr. Egan suggested that knowledge of Spanish is critical in this part of the state; and
- a member asked what is the percentage of seniors in Sierra County; Mr. Swingle stated that it is extremely high and that Sierra County has the second highest population of seniors in the state.

### **Update on Behavioral Health Lawsuits**

Dr. Scrase and Angela Medrano, deputy secretary, HSD, addressed the subcommittee. Dr. Scrase highlighted statistics regarding the number of residents of Sierra County, the percentage enrolled in Medicaid and the number with behavioral health disorders. He stated that Governor Michelle Lujan Grisham instructed him that addressing behavioral health issues and resolving the lawsuits and facility closures that emerged during the previous administration are primary focus areas of her administration. Dr. Scrase identified lawsuits that have been settled and those that are still unresolved. He stated that the HSD has hired the Honorable Edward L. Chavez, former chief justice of the New Mexico Supreme Court, as special counsel to focus on these lawsuits. He identified behavioral health appeals and lawsuits that are not yet settled and gave an update on their status. He asserted that he believes the HSD is within days of resolving all remaining lawsuits.

Ms. Medrano provided additional details about communications with managed care organizations (MCOs) and providers to continue to rebuild the behavioral health network. Once lawsuits are settled, she said, the HSD will work with providers to reopen or expand services.

Subcommittee members asked questions and made comments in the following areas:

- a member asked for guidance to ensure that settlement money gets appropriated; Dr. Scrase stated that once the amount is fully known, he will provide more information and recommendations on this topic;
- a member asked if settlement agreements will be contingent on providers meeting certain criteria; Dr. Scrase said that the HSD is working with affected agencies to make these determinations;
- a member noted the impact in the community of the closing of the mental health provider Hogares, Inc., and asked whether that is one of the agencies to be reopened; Dr. Scrase stated that Hogares was offered the opportunity to reopen but declined;
- a member asked if the disparity between the number of applicants and the number of available jobs in behavioral health provider agencies is a statewide problem; Dr. Scrase stated that the HSD is conducting a study on this topic and will report to the legislature when it is known;

- a member asked if there is a threshold to the amount of an appropriate settlement; Dr. Scrase noted that the HSD has a plan to precisely determine this;
- an observation was made by a member that some provider agencies are independently suing OptumHealth, the federal Centers for Medicare and Medicaid Services and possibly others;
- an observation was made that while some provider agencies are beginning to offer behavioral health services, unmet needs remain in this area; and
- a strong statement was made that as steps are taken to restore the behavioral health network, attention must be paid to ensure that this situation never happens again; particular attention must be paid to the process of auditing.

### **Roundtable Discussion on Behavioral Health Policy Issues**

Aryan Showers, director, Office of Policy and Accountability, Administrative Services Division, Department of Health (DOH); Michael Bowers, policy analyst, Office of Policy and Accountability, Administrative Services Division, DOH; Bryce Pittenger, director, Behavioral Health Services Division (BHSD), Children, Youth and Families Department (CYFD); Dr. Scrase; Ms. Medrano; and Mika Tari, acting director, BHSD, HSD, participated in a roundtable discussion.

The agency representatives and subcommittee members raised several behavioral health priorities about which they were in agreement. Collaborations and partnerships were recognized as crucial, as was streamlining certain bureaucratic processes, including the process to become a licensed behavioral health provider. The value of research on other payment models was recognized. Partnerships between governmental agencies that deal with various aspects of behavioral health were identified as crucial to promoting an environment that is less bureaucratic. The importance of aligning departmental regulations, responsibilities and programs was recognized.

The importance of data collection was raised, with a desire expressed to combine the current systems into an all-payer claims database. Issues regarding the shortage of behavioral health providers were addressed. Participants agreed that reciprocity for out-of-state providers, streamlining of credentialing and privileging processes and models of service provision were important.

It was acknowledged that the ideas and priorities discussed are all reflected in Governor Lujan Grisham's top priorities for behavioral health services, which include substance abuse; workforce; criminal justice; children and youth; and intentional use of metrics to measure outcomes of any program. Dr. Scrase added an additional priority: wherever possible, leverage the federal medical assistance percentages (FMAPs) that are available in the Medicaid program.

### **Update on Crisis Triage Centers (CTCs) Statewide**

Ms. Medrano noted that the development of CTCs demonstrated a collaborative effort among the CYFD, the DOH and the HSD. She identified a continuum of crisis services,

including prevention, response, early intervention and post-intervention. She described the projected time line to establish a children's treatment center at the University of New Mexico (UNM). Ms. Pittenger described the necessary collaboration with the CYFD on this project.

Ms. Tari described covered services, including emergency triage, evaluation and admission, stabilization services and prescription and administration of medications, that can be provided on an outpatient or short-term residential basis. She described the eligible population to be served and the benefits of CTCs and identified current CTC providers in New Mexico. She noted that two providers have been given temporary licensure; two additional providers have submitted a letter of intent to the DOH to be approved.

Ms. Medrano announced that the BHSD of the HSD has hired Dr. Neal Bowen, Ph.D., as its new director.

A subcommittee member asked for an update regarding local behavioral health collaboratives in the state. Ms. Tari noted that the grant that funded the local collaboratives has expired, so there is no longer any funding for them.

#### **Review of Statewide Behavioral Health Capacity**

Dr. Scrase, Ms. Medrano and Ms. Pittenger addressed the subcommittee. Dr. Scrase reviewed statistics regarding the population served by various social services programs in the HSD; the fiscal year (FY) 2020 budget for each program; the percentage of General Fund budget for each program; and the total budget request that the HSD will be making. He noted that significant declines in the number of those uninsured in New Mexico have led to growth in Medicaid enrollment. He stated that this shift resulted in an additional \$10 billion in General Fund revenues since 2013 due to Medicaid FMAP funds.

Ms. Medrano stated that a recent United States Department of Health and Human Services' Office of the Inspector General (OIG) report on behavioral health access for Medicaid enrollees demonstrates that there are shortages of providers in every county in the state. She noted that the study showed that licensed behavioral health providers numbered 9,528; however, only 2,665 of these (or 30%) were Medicaid participants. She identified that more than one-half of New Mexico counties have fewer than two licensed providers per 1,000 enrollees and that rural and frontier counties have a much lower number of providers. According to Ms. Medrano, the OIG report noted that 43% of provider organizations assert that enrollees have difficulty accessing the full range of behavioral health services. The OIG report concluded that these providers are unevenly distributed across the state and that many do not provide services to Medicaid enrollees. Key recommendations identified in the report include working to expand the health care workforce for Medicaid enrollees; reviewing access to care standards; providing access to transportation; and increasing the use of telehealth services. She added that the report recommended increasing the use of electronic health records, identifying strategies to improve care coordination and integrating behavioral and primary health care. Ms. Medrano stated that the OIG report acknowledged that many recommendations will be difficult to implement without

additional resources. She noted that New Mexico has rolled out a delivery model called the Treat First Clinical Model that addresses these recommendations.

Dr. Scrase described Medicaid behavioral health provider network enhancement strategies that focus on collaborations, alignment of MCO and network incentives and creation of a Medicaid provider network analysis using existing DOH, HSD, UNM and other data. He described a three-year plan for an updated Medicaid fee schedule that is fair, benchmarked to regional and national rates and aligned with the Medicaid strategic plan. He reminded the subcommittee that hospitals and nursing homes benefited from legislation in 2019 that should result in additional money for those institutions and that can be matched with FMAP funds, thereby increasing the ability to serve Medicaid enrollees. Dr. Scrase acknowledged that the ratio of Medicaid to private insurance enrollment in New Mexico is disadvantageous to health care providers, adding that reimbursement for behavioral health providers will continue to be a focus of the HSD during its next three-year plan.

Ms. Pittenger described the four goals of the Interagency Behavioral Health Purchasing Collaborative and the responsible agency for each goal as follows:

- expansion of the behavioral health provider network: HSD;
- expansion of community-based mental health services for children: CYFD;
- effectively addressing substance abuse disorder: DOH; and
- provision of effective behavioral health services to justice-involved individuals: Governor's Office, Aging and Long-Term Services Department and Corrections Department.

Ms. Pittenger provided detail regarding funding requests for each of the four priorities, noting that in total, the FY 2020 budget requests exceed \$35 million and will bring in an additional federal match of \$22 million.

Subcommittee members asked questions and made comments in the following areas:

- a member asked if the \$3 million to extend the behavioral health grant for an additional year is included in the funding requests; yes, Ms. Pittenger noted that requested state funds are targeted for children who are not eligible for Medicaid or other federal match funds;
- a member stated that the goal of value-based purchasing is to pay for outcomes of care in the least restrictive environment and asked if the HSD is moving to establish a system of value-based purchasing; Dr. Scrase stated that a few projects with nursing homes and with MCOs are already being implemented;
- a member asked if the HSD has any interest in seeing the introduction of a local alcohol excise tax; Dr. Scrase noted that such a tax could help fund the \$35 million that is needed for all of the behavioral health budget requests, and he suggested that if

- New Mexico benefits from a settlement in the current federal opioid legal case, all funds received could be dedicated to treating substance abuse;
- a member commented that New Mexico is lacking in capacity for girls in residential treatment centers and asked if there is a plan to address this; Ms. Pittenger stated that the CYFD is working with an existing facility to expand its capacity by 16 beds to serve girls; and
  - a member asked if there is potential for any of the \$35 million for behavioral health to be funded by a capital outlay request; Dr. Scrase believes that has already been considered.

### **Approval of Minutes**

A motion was made by Representative Anderson and seconded by Representative Dow to approve the minutes of the September 13, 2019 meeting. The motion was adopted without objection.

### **Public Comment**

Pamela Stafford, public policy director, The Arc of New Mexico, testified that facilities that treat individuals with intellectual and developmental disabilities who have a co-occurring substance abuse disorder are often not appropriately staffed to deal with these individuals. Behavioral health service providers have an obligation to consider how to develop that capacity, she said.

Charlie Marquez thanked Dr. Scrase for the work that he has done to increase reimbursement rates for developmental disabilities waiver clients. He noted that work lies ahead to ensure that funding for nursing homes from a provider fee be transferred to the HSD upon implementation. A member commented that many nursing homes believe that much of the anticipated revenue will go to paying for increased liability insurance premiums and will not go to care of the residents. Dr. Scrase asserted that the HSD believes that the increase in liability insurance is only a fraction of the full amount of funding that will go to nursing homes and that the HSD has a meeting scheduled to work with nursing homes on this and other issues. Mr. Marquez urged the subcommittee to look into the cost of liability insurance as an ongoing problem for health care providers.

### **Adjournment**

There being no further business before the subcommittee, the meeting adjourned at 3:38 p.m.