

**MINUTES
of the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 26, 2019
New Mexico Cancer Center
2240 College Drive
Gallup**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Senator Gabriel Ramos, co-chair, on August 26, 2019 at 10:06 a.m. at the New Mexico Cancer Center in Gallup.

Present

Sen. Gabriel Ramos, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary
Sen. Candace Gould

Absent

Rep. Gregg Schmedes
Sen. John Arthur Smith

Advisory Members

Sen. Linda M. Lopez

Rep. Gail Chasey
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Jim R. Trujillo

Guest Legislator

Rep. D. Wonda Johnson

Staff

Elisabeth Johnson, Staff Attorney, Legislative Council Service (LCS)
Lenaya Montoya, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are on the website and in the meeting file.

New Mexico Cancer Center

Barbara McAneny, M.D., chief executive officer, New Mexico Cancer Center, welcomed the committee to the cancer center and requested a moment of silence for a teenager who died from consequences of vaping. Dr. McAneny stated that a decision to build the cancer center was made in 2005, and the center was funded through a loan and through Medicaid and Medicare reimbursement payments from their services, with the cancer center officially opening in 2007. Dr. McAneny added that 15% of the population served by the center has commercial health insurance.

Dr. McAneny stated that the center is currently going through some renovations, including an update to its linear accelerator. She noted that the center is struggling financially. Dr. McAneny said that the center has a focus on cultural sensitivity in its practices and mentioned that it has a traditional hogan on the grounds.

Dr. McAneny mentioned that she started her career by being appointed to the national tobacco settlement committee by United States Senator Tom Udall. Dr. McAneny provided the TSROC with some statistics regarding tobacco-related deaths: 480,000 tobacco-related deaths occur per year in the United States, which includes 1,800 tobacco-related deaths in New Mexico; and \$170 billion is spent treating tobacco-related diseases, of which \$800 million is spent in New Mexico. She provided some history on the tobacco settlement and stated that money originally went to the General Fund, not toward tobacco cessation efforts.

Dr. McAneny stated that tobacco companies had to remove tobacco advertisements from television and had to cease advertising at major sporting events. She provided the committee with more statistics regarding the rates of smoking and quitting in New Mexico: 40,000 people still smoke, and rates of smoking cessation decrease with age. Dr. McAneny stated that treatment is expensive and that smokers become disabled more often than nonsmokers.

Dr. McAneny mentioned that flavors are no longer being used in e-cigarettes because the United States Food and Drug Administration (FDA) requested that flavors be removed from e-cigarettes. Dr. McAneny stated that more Spanish-language advertisements are appearing in the community and nationwide because Hispanics are less likely to smoke and are being targeted by tobacco companies. Dr. McAneny provided the committee with some statistics regarding smoking among students in New Mexico: 11% of high school students smoke, and 7% of middle school students vape. She added that people who vape will become tobacco users in the future and that if you can prevent kids from smoking or vaping until age 18, they are less likely to become future tobacco users.

Dr. McAneny stated that the tobacco tax is more of a deterrent than a revenue source and that New Mexico has outperformed most other states in the provision of tobacco cessation, prevention and treatment programs. Dr. McAneny stated that 190 people have died from interstitial lung disease because of vaping. She added that the American Medical Association's position is that vaping should be regulated by the FDA and the permitted age to purchase tobacco

products should be raised to 21. She listed a number of states that have been successful in passing legislation to raise the purchase age.

On questioning, Dr. McAneny and committee members addressed the following topics.

Raising the age of purchase to 21 and raising the tobacco tax. Members stressed the importance of raising the age of purchase to 21 to deter youth from beginning to smoke or vape and that raising the tax on tobacco products will deter youth from purchasing these products. Comments were made about past legislation introduced to raise the age of purchase and the tobacco tax rate and that such legislation will be introduced again in the future.

Effects of switching from smoking tobacco to vaping. A member asked questions about the effects on people switching from using tobacco products to vaping. Dr. McAneny stated that most people still use both methods and that if vaping products are going to be used for tobacco cessation, those products should be regulated and tested by the FDA. A member agreed that vaping should be studied by the FDA for use as a tobacco cessation product. Dr. McAneny stated that early studies show that vaping may decrease memory and increase appetite. Upon questioning about JUUL vaping cartridges, Dr. McAneny stated that one cartridge contains about the same amount of nicotine as one pack of cigarettes and that people tend to increase their use over time. Dr. McAneny commented that nicotine withdrawal happens quickly and that people tend to use vaping devices to relieve withdrawal symptoms.

Effects of marijuana use in vaping, for substance use treatment and for cancer treatment. A member asked about the effects of marijuana to treat cancer patients. Dr. McAneny stated that some patients who did not use marijuana socially did not like the effects of marijuana use. A member asked about marijuana use in vaping products, and Dr. McAneny noted that flavors of all kinds are appealing to youth. Questions were asked by members regarding whether marijuana was a good way to treat substance use disorders. Dr. McAneny noted that marijuana may not be the best way to treat opioid use disorders and that there is a need for further studies, but because marijuana is classified as a Schedule I drug, the FDA cannot study it until it is removed from the Schedule I listing. She added that there is a need for consistency between state and federal laws regarding the legalization of recreational and medical use of marijuana. Dr. McAneny stated that she does not prescribe medical marijuana because she is afraid of losing her United States Drug Enforcement Administration license.

Vaping deaths. A member asked a question regarding a recent death related to vaping. Dr. McAneny stated that the recent death of a teenager was caused by vaping and that there have been 190 previous deaths with vaping as the suspected cause, but there were confounding factors in those deaths. A member asked why the FDA was slow to study these deaths. Dr. McAneny stated that there is a need for enabling legislation at a federal level to allow the FDA to study this.

Ban on flavoring in tobacco products. When asked if the FDA has officially banned flavors from e-cigarettes, Dr. McAneny stated that JUUL has preemptively removed some of its

flavors, but not all. A member asked whether it makes sense to include menthol in a potential flavor ban. Dr. McAneny stated that it would be a good idea to include menthol because it has been targeted toward African American communities and is considered a flavor that entices youth.

Cancer center renovations. A member asked about the new radiation machine that the cancer center is getting and what is being done to ensure that patients do not miss treatments. Dr. McAneny stated that installation of the new machine was scheduled for the time around the holidays when the number of treatments is usually lowest. Dr. McAneny also stated that the cancer center has funding to help patients with transportation, food and lodging if they have to travel elsewhere to receive treatments.

Department of Health (DOH)

Dominick Zurlo, Ph.D., program manager, Harm Reduction Program, DOH, discussed the contents of his presentation entitled "HIV, STD and Hepatitis Section Activities". Dr. Zurlo noted that the Public Health Division of the DOH and contractual providers conducted over 4,600 laboratory tests for hepatitis B and hepatitis C viruses in fiscal year (FY) 2017. Dr. Zurlo discussed the accomplishments of the Harm Reduction Program and noted that the Overdose Prevention Program distributed naloxone during approximately 11,000 overdose prevention educational sessions in 2019.

Beth Pinkerton, program manager, Breast and Cervical Cancer Early Detection (BCC) Program, DOH, discussed the contents of her presentation. Ms. Pinkerton noted that approximately 22,250 women in New Mexico are eligible for breast cancer screening services through the BCC Program. She also noted that the BCC Program is currently only funded to serve about 12% of the eligible population through tobacco settlement funds and that 96.7% of the tobacco settlement funds were used to provide breast cancer screening services to women 50 years of age and younger. Ms. Pinkerton stated that all women who participate in the BCC Program are assessed for tobacco use, and current users are referred to the DOH's free tobacco cessation services.

David Tompkins, manager, Community Health Initiatives, DOH, discussed the department's Tobacco Use Prevention and Control (TUPAC) program. Mr. Tompkins noted that there has been a 65% decline in high school youth cigarette smoking and a 19% decline in adult smoking.

Christopher Lucero, program manager, Diabetes Prevention and Control Program, DOH, addressed the committee. He noted that the estimated costs for people living with undiagnosed diabetes or prediabetes is \$276 million per year. Mr. Lucero noted that the Diabetes Prevention and Control Program contracts with multiple partners to increase access to services. Mr. Lucero noted that tobacco settlement funding enables staffing for a nurse who provides assistance to providers to develop management services and policies and that the funding also provides for a

marketing and communications position. Tobacco settlement funding provided outreach measures in both Native American and African American communities, he said.

On questioning, panel members and committee members addressed the following topics.

Funding for youth prevention programs. In response to a question about estimated costs for youth prevention programs, Mr. Tompkins stated that there is a lack of media programs focused on youth and estimated that it would cost \$1.5 million to \$2 million to combat e-cigarette use in youth. Mr. Tompkins mentioned that the DOH is not focusing on youth prevention programs.

List of tobacco retailers in the state and licensing of retailers. A member asked whether the Taxation and Revenue Department has provided a list of tobacco retailers; the panel stated that a list does not exist at this time because tobacco retailers are not licensed. The panel and members expressed a need for licensing tobacco retailers. A member asked the panel whether there have been attempts to license tobacco retailers; the panel stated that there have been, but legislative proposals have not been successful.

Collection of syringes. A member asked Dr. Zurlo how many syringes were distributed and how many were returned through the Harm Reduction Program; Dr. Zurlo stated that 12.5 million syringes were distributed statewide and that 75% were collected back directly by individuals in the program. He added that the program worked with the City of Albuquerque and Bernalillo County to put 10 new collection boxes across Albuquerque but that the syringes collected through these boxes are not counted in the program statistics. Dr. Zurlo stated that the program will accept syringes from most people and that he is concerned with pharmacies and hospitals distributing syringes but not getting them returned.

Human Services Department (HSD)

Julie Lovato, deputy bureau chief, Quality Bureau, Medical Assistance Division, HSD, discussed the department's tobacco prevention and cessation services. Ms. Lovato noted that the HSD received \$8 million from the Tobacco Settlement Program Fund for FY 2018. Of this amount, \$1.2 million was allocated for the Breast and Cervical Cancer Treatment Program and \$6.8 million was allocated for Medicaid programs. Ms. Lovato noted that 100% of the funding received was expended.

On questioning, Ms. Lovato and committee members addressed the following topics.

The role of managed care organizations (MCOs) in cessation classes. A member asked whether cessation classes are provided by MCOs or if clients are referred to the DOH quit line; Ms. Lovato stated that MCOs provide counseling and coaching services along with cessation classes but that MCOs also refer clients to the DOH quit line.

Coaching services and cost. A member asked for clarification regarding coaching services. Ms. Lovato stated that the services include counselors working one-on-one with members to discuss tobacco cessation strategies and work toward a reduction in nicotine cravings. Ms. Lovato stated that she would find out whether the cost burden of coaching services is moving to the DOH and report back to the committee. Ms. Lovato stated that the HSD has established a working group with the DOH and MCOs to ensure that MCOs have the capacity to provide the cessation classes.

Breast and cervical cancer population. Referring to the \$1.2 million for the Breast and Cervical Cancer Treatment Program, a member asked what population is served by this program. Ms. Lovato stated that the program serves individuals who were not enrolled prior to Medicaid expansion, and she noted that 129 individuals are in the program.

Minutes Approval

On a motion made, seconded and passed, the committee approved the minutes of the July 1, 2019 meeting.

Indian Affairs Department (IAD)

Drew Roybal-Chavez, chief financial officer, Administrative Services Division, IAD, and Kelly Barela-Rivera, procurement and contracts specialist, IAD, discussed the department's tobacco cessation and prevention projects. Mr. Roybal-Chavez noted that \$249,300 was appropriated to the IAD from the Tobacco Settlement Program Fund. Mr. Roybal-Chavez provided the committee with statistics on smoking rates among different races and ethnicities. He discussed grant recipients for FY 2019 and the projects that each of these recipients completed. Mr. Roybal-Chavez noted that \$19,060 of appropriated funding was projected to revert to the fund.

On questioning, the panel and committee members addressed the following topics.

Role of Keres Consulting, Inc. A member asked if the Keres Consulting project is similar to the TUPAC program run by the DOH. Mr. Roybal-Chavez stated that Keres Consulting is a nonprofit and the program it runs was previously administered by the IAD; now the IAD is managing the program in-house through the help of Keres Consulting. A member asked if the IAD collaborates with the DOH's TUPAC program. Mr. Roybal-Chavez stated that the IAD is not currently collaborating with the DOH but did in the past and that he wants to work with the DOH in the future.

Clarification on tobacco bags. A member asked what a tobacco bag is. Mr. Roybal-Chavez answered that a tobacco bag is used to hold tobacco for traditional and ceremonial use. The program uses tobacco bags to show children the difference between commercial and traditional uses of tobacco.

Grant award process. A member asked how programs are chosen within the IAD grant award process. Mr. Roybal-Chavez stated that a ranking system is used and that grantees that have programs that are closer to the goals and focus of the grant program get rewarded. Mr. Roybal-Chavez stated that getting the word out on this grant program is a major barrier. A member asked if addressing vaping is a part of each grant application. Mr. Roybal-Chavez stated that it is and that there is a focus on emerging tobacco products.

Smoking rates among Native Americans and tribal taxation on cigarettes. A member asked whether the lower rates of smoking among Native Americans is caused by tribal taxation on cigarettes. Mr. Roybal-Chavez stated that he would contact to the DOH to get that information and would report back to the committee.

Adjournment

There being no further business before the committee, the third meeting of the TSROC for the 2019 interim adjourned at 2:30 p.m.