MINUTES
of the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

August 11, 2017
State Capitol, Room 311
Santa Fe

The second meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on August 11, 2017 at 9:40 a.m. in Room 311 of the State Capitol in Santa Fe.

Present	**Absent**
Sen. Cisco McSorley, Co-Chair	Rep. Joanne J. Ferrary
Rep. Elizabeth "Liz" Thomson, Co-Chair	Sen. John Arthur Smith
Sen. Sander Rue	
Rep. Monica Youngblood	

Advisory Members	
Rep. Gail Chasey	Sen. Candace Gould
Sen. Linda M. Lopez	Sen. Mary Kay Papen
Rep. Jim R. Trujillo	

Guest Legislators
Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Sen. Howie C. Morales
Rep. Dennis J. Roch

Staff
Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, Researcher, LCS
Sara Wiedmaier, Intern, LCS

Guests
The guest list is in the meeting file.

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

Friday, August 11

Department of Health (DOH): Hepatitis and Harm Reduction Program

Dominick Zurlo, manager, Hepatitis and Harm Reduction Program, DOH, gave an update on the DOH program to reduce the spread of hepatitis, sexually transmitted diseases and human immunodeficiency virus (HIV) in the state. The program is funded in part with money received through the Master Settlement Agreement with tobacco companies.

The Hepatitis and Harm Reduction Program delivers services through public health offices and contractual providers statewide. In fiscal year (FY) 2017, the program conducted more than 4,600 hepatitis tests and, in FY 2016, distributed more than 4,100 hepatitis vaccines. The program focuses on the under-30 population, the age group with the highest infection rate.

The program also includes distribution of syringes and naloxone, an opioid overdose reversal drug. Approximately 6.75 million new syringes were distributed in FY 2016, and approximately 95 percent of the distributed syringes were subsequently collected. Two-thirds of those who receive syringe services attempt to get treatment for substance abuse, though many are unsuccessful due to a lack of services in their area. Naloxone was distributed to more than 3,000 people enrolled in the program in calendar year 2016, a nearly threefold increase over the amount distributed five years earlier. Also in that five-year period, the number of successful overdose reversals increased six times over.

The program is funded entirely by the state. Some of the money comes from tobacco settlement funds — $293,000 in FY 2017 and the same amount in FY 2018. The DOH will request an additional $150,000 in tobacco settlement funds for FY 2019, for a total of $443,000.

On questioning, Mr. Zurlo and committee members addressed the following topics.

Treatment barriers. Substance abuse treatment is not available in many rural areas; a person must travel and, in some cases, arrange for overnight lodging in order to receive treatment. Lack of support from family and friends, who might be users, is also a barrier.

Outreach. Public health offices conduct mobile outreach, as do community partners such as the Santa Fe Mountain Center, Alianza of New Mexico and Families and Youth, Incorporated.

Naloxone. The program is working with the Corrections Department to provide naloxone, as well as information on a range of available services, to inmates as they are released from detention. The Metropolitan Detention Center in Albuquerque houses a public health office that also provides services, including testing and education.

Follow-up on those who overdose and are treated with naloxone is difficult because the drug is not necessarily distributed to the people who overdose but to those around them who administer it. Information on treatment services is provided when naloxone is distributed. If a

person returns for an additional naloxone distribution, program personnel try to get information on incidents in which naloxone was used.

Tattoos. Hepatitis can be contracted in the tattooing process if the equipment is not sterile, which can be the case in unlicensed or correctional facilities. The under-30 population is especially vulnerable to infection from tattooing, as well as from substance abuse.

University of New Mexico (UNM) collaboration. The program collaborates with UNM's Project ECHO (Extension for Community Healthcare Outcomes) for the AIDS Education and Training Center and with the UNM Biostatistics Department for hepatitis research.

Syringe services. In 2015, the federal government decided that states can use federal money for syringe services; however, no federal money has been released for this purpose. The syringes that are handed out through the program do not have identifiers because of cost.

Comparison with other states. New Mexico is ranked eighth in the nation for prescription drug overdose mortalities; three years ago, the state was ranked third. New Mexico's hepatitis infection rate is comparable with other states in all age groups.

Hepatitis services. People who receive hepatitis testing and vaccines through public health offices may not have health insurance or be enrolled in Medicaid, though the DOH does receive a Medicaid match for the services.

Mr. Zurlo will provide:

(1) data, if available, on how many HIV or hepatitis infections are prevented for every syringe that is returned to the program;

(2) a list of barriers to substance abuse treatment and how the DOH plans to eliminate those barriers; and

(3) whether naloxone can be detected in an autopsy (the Office of the State Medical Investigator is not currently testing for it).

DOH: Tobacco Use Prevention and Control (TUPAC) Program

Benjamin Jacquez, manager, TUPAC Program, DOH, reported to the committee on DOH efforts to reduce tobacco use, especially among minors.

Seventy-eight thousand people in New Mexico suffer from smoking-related diseases, and there are more than 2,600 smoking-related deaths in the state each year. In New Mexico, the combined federal and state tax burden of smoking is more than $1.4 billion annually, or about $945 per household. With smokers comprising 27 percent of adult Medicaid enrollees, the annual cost to the Medicaid program is $222.8 million.

Certain interventions have proven to be effective in reducing tobacco use, including 100 percent smoke-free policies, tobacco cessation services, media campaigns and tobacco product

price increases. Residents statewide have enrolled in QUIT NOW, an initiative that triples the success rate for those who quit smoking over those who try to quit on their own. Because smoking rates are higher in low-income populations than in other groups, the QUIT NOW initiative is especially focused on low-income smokers, many of whom are Medicaid recipients. Some states offer expanded smoking cessation services through their Medicaid programs, as well as reimbursement for "quitline" services, expanded outreach and copayment waivers; to date, New Mexico has not implemented any of these measures.

The TUPAC Program also works to reduce secondhand smoke exposure by creating smoke-free environments in multiple-family housing and in tribal and university facilities. Beginning with the 2017 fall semester, all UNM facilities statewide will be tobacco-free.

The program's annual budget — a blend of state and federal money — is $6.6 million. This is less than one-third of the funding amount recommended by the federal Centers for Disease Control and Prevention (CDC).

On questioning, Mr. Jacquez and committee members addressed the following topics.

Price increases. The CDC strongly recommends that states increase the price of tobacco products because numerous studies show a correlation between price increases and a drop in tobacco use.

Medicaid. A member proposed that nonsmoking be added as a condition of enrollment in the state's Medicaid program.

Public schools. The TUPAC Program works with the Public Education Department to raise awareness among middle school and high school students of the dangers of using tobacco, including flavored tobacco products.

E-cigarettes. The governor vetoed legislation from the 2017 regular session that would have added e-cigarettes to the scope of the Dee Johnson Clean Indoor Air Act. A member suggested that the topic be reintroduced in the 2018 session pursuant to the provision of Article 4, Section 5 of the Constitution of New Mexico, allowing introduction of bills of the last previous regular session vetoed by the governor.

Smoking rates. New Mexico's average smoking rates for adults (16.6 percent) and youth (11.4 percent) are comparable to those in other states.

Funding concerns. A member suggested that representatives from all DOH programs in attendance draft contingency plans for how to fund their programs if tobacco settlement funds dry up.

Mr. Jacquez will provide:

(1) data and a chart on the relationship between cigarette tax increases and smoking decreases, especially in youth, and the effects of both on state revenue;

(2) data on the decrease or increase in smokeless tobacco use from 2003 to 2015;

(3) a chart similar to the one on page 22 of the handout that shows, as a percentage of the population rather than as a head count, which counties are doing well with their smoking cessation programs;

(4) the percentage of people in the high-risk pool who are there because of conditions related to tobacco use;

(5) information on California's "limp-cigarette" advertisement and whether New Mexico can use it or use a poster generated from it;

(6) California surveys, if any, on the effectiveness of its anti-smoking advertisements; and

(7) CDC surveys, if any, on the effectiveness of anti-smoking ads.

Approval of Minutes

On a motion duly made, seconded and unanimously adopted, the minutes from the committee's June 19, 2017 meeting were approved.

DOH: Breast and Cervical Cancer Early Detection (BCC) Program

Beth Pinkerton, manager, BCC Program, DOH, reported on New Mexico's BCC Program, which provides breast and cervical cancer screening and diagnostic services at no cost to eligible women in the state. Approximately 72,000 women currently meet the eligibility requirements, which include age, income and insurance coverage factors.

Nearly 1,400 women in New Mexico are diagnosed with invasive breast cancer every year, and nearly 250 of them die. The BCC Program addresses the issue through a statewide network of providers that offer mammogram services, prioritized for women ages 40 to 49 years old. Providers agree to accept Medicare reimbursement rates for their services and are paid with tobacco settlement funds, which have been flat at $128,600 per year since FY 2012. The funds are also used as a match for additional federal funding for the program. While the BCC Program does not pay for breast or cervical cancer treatment, program participants may receive treatment through Medicaid if they meet income eligibility requirements.

Because smoking and exposure to secondhand smoke increase the risk of breast cancer, all BCC Program participants are screened for tobacco use and, if appropriate, are referred to DOH tobacco cessation services.

On questioning, Ms. Pinkerton noted that:

(1) while not a perfect screening tool, mammograms are the best tool available for breast cancer screening and are required for federal program funding; and

(2) the BCC Program has not changed since the state expanded Medicaid.

DOH: Diabetes Prevention and Control (DPC) Program

Christopher Lucero, health educator supervisor, DPC Program, DOH, reported on diabetes in the state and the DOH program to reduce its incidence, complications and costs.

More than one-fourth of the state's population — 635,000 adults — are "pre-diabetic", and the CDC estimates that up to 30 percent of them will develop type 2 diabetes in the next five years. One risk factor is smoking; smokers face a 30 percent to 40 percent higher risk of developing diabetes than nonsmokers. Direct and indirect costs to the state of diabetes and pre-diabetes far exceed its investment in addressing the issue; in FY 2017, for example, the DPC Program spent $1.2 million on diabetes prevention and control, while the overall cost to the state for treatment the same year came to $2.5 billion.

The program, which receives tobacco settlement funding, incorporates interventions that have been proven to be effective, such as weight loss and lifestyle-change services; chronic disease self-management services; and support. Future initiatives include development of a statewide diabetes prevention plan, expansion of the program into more communities around the state and development of population-specific promotional messaging.

On questioning, Susan Baum, M.D., medical director, Chronic Disease Bureau, DOH, who spoke from the audience, noted that stem cell research into diabetes is being conducted by the National Institutes of Health and at certain universities around the country, though not at UNM.

Human Services Department (HSD) Update

Megan Pfeffer, R.N., chief, Quality Bureau, Medical Assistance Division, HSD, gave a presentation on tobacco use prevention and cessation services in the state's Medicaid program, also known as Centennial Care.

The Medicaid program received a $27.3 million appropriation from the Tobacco Settlement Program Fund for FY 2017 and a $29.3 million appropriation for FY 2018. Some of the funding was allocated to tobacco use prevention and cessation services, which include direct treatments such as patches, drugs and inhalers, as well as support services such as counseling and a quitline. In addition to individual treatments and support, Centennial Care's managed care organizations (MCOs) host a variety of smoking cessation initiatives, including the Quit for Life Program and outreach and information on the American Cancer Society's Great American Smokeout. MCOs are required by contract to monitor member use of smoking cessation products and counseling and to provide education on the risks of tobacco use. In 2016, the MCOs reported that more than 7,600 Medicaid enrollees received tobacco use prevention and cessation services.

A portion of the appropriations from the Tobacco Settlement Program Fund was also designated for breast and cervical cancer treatment for eligible women. This program has undergone some changes since the state's Medicaid expansion took effect. Currently, 176

women are receiving treatment under Medicaid Category 052, down from 231 at this time last year; the decrease is most likely due to more women qualifying for services under Medicaid Category 100 now that Medicaid eligibility has been expanded.

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

Assessments. Comprehensive needs assessments are required for a Medicaid enrollee to receive level 2 or level 3 care coordination services. Prenatal assessments are conducted upon referral for pregnancy services.

Children. Care coordinators discuss with caregivers the dangers to children of smoking and secondhand smoke.

Ruby Ann Esquibel, principal fiscal analyst, Legislative Finance Committee (LFC), who spoke from the audience, announced that the LFC will hold hearings on the Medicaid program on Wednesday, August 16, 2017. She also explained that tobacco use prevention and cessation programs are not included in the HSD agency report card because these reports do not go into program-level detail.

Ms. Pfeffer will provide information on:

(1) why the 1-800-QUIT-NOW line does not get Medicaid reimbursement and whether it qualifies for it;

(2) MCO contracts with providers for tobacco-related services; and

(3) coordination between the Medicaid program and the DOH's TUPAC Program.

Reducing Tobacco Use in New Mexico

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, and Poqueen Rivera, New Mexico government relations director, American Heart Association, presented strategies for reducing tobacco use in the state.

The presenters identified the three most effective, evidence-based strategies to reduce tobacco use as follows:

- *Increases in tobacco taxes.* Price increases lead to a reduction in smoking, most notably in youth, and provide the state with needed revenue. The LFC estimates $88 million to $94 million in new recurring revenue from a $1.50 increase per pack. New Mexico's tobacco taxes are below average among states, and the state does not impose a tax on e-cigarettes. Based on a comprehensive review of evidence, the U.S. surgeon general has called raising prices on cigarettes "one of the most effective tobacco control interventions". The tobacco industry itself recognizes the effect of increased prices on reducing smoking, especially among children: according to the R.J. Reynolds Tobacco Company, if prices were 10 percent higher, the incidence of smoking among youth ages 12 to 17 would be 11.9 percent lower.

- *Fully funded prevention and cessation programs*. Funding to reduce tobacco use in New Mexico is less than 25 percent of the level recommended by the CDC. States with sustained, well-funded prevention programs have reduced youth smoking by 45 percent to 60 percent. Conversely, when program funding is cut, smoking rates stop declining or rise.
- *Comprehensive smoke-free policies*. The tobacco industry has acknowledged that smoking prohibitions in the workplace lead to smoking rates 11 percent to 15 percent below average and a quit rate that is 84 percent higher than average. New Mexico's smoke-free laws are comparable to other states but need improvement, especially in regard to e-cigarettes.

When tobacco is sold to a minor, New Mexico law currently penalizes the clerk who makes the sale, but not the retailer. The presenters urged the committee to amend the statute to hold retailers accountable and to create a dedicated funding stream for enforcement efforts. They also explained the risk of losing federal funding if New Mexico's noncompliance rate on sales to minors is found to be 20 percent or higher. In 2016, eight counties in the state had a violation rate that exceeded this limit. One challenge in enforcing the law is the lack of a comprehensive list of retailers in the state that sell tobacco.

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

Tobacco products tax. A member suggested that exempting certain tobacco products from the tax would help a bill to increase tobacco taxes progress through the legislative process. The presenters noted that some products that are currently not taxed, such as flavored cigars, are very popular with youth and that to include them in the tax would help prevent youth tobacco use.

Another gap in the tax is tribal tobacco sales, which are not subject to state taxes. Tribes have agreed to impose an "equivalent tax".

Erectile dysfunction. Smoking is one of the leading causes of erectile dysfunction. Though California's limp-cigarette advertisement implies that the negative effect is immediate, effects develop over time and mostly in long-term smokers. Data have not been gathered on how much tobacco-related erectile dysfunction costs the state in treatments and prescriptions. Drugs that are prescribed for erectile dysfunction are also used to treat other health issues.

Hookahs. Hookah use has been declining since e-cigarettes have been available. There currently is no way to track tobacco purchases for use in hookahs; thus, it is not known whether gross receipts tax is charged on the products.

Tobacco sales to minors. The federally funded Synar Program recruits minors to assist law enforcement by attempting to make tobacco purchases in order to check retailer compliance with the law.

Ms. Adondakis will provide information on lawsuits against the federal Food and Drug Administration over e-cigarette regulations.

Committee staff will look into whether creating a list of tobacco retailers in the state can be required through regulation rather than by law.

Adjournment

There being no further business before the committee, the second meeting of the TSROC for the 2017 interim adjourned at 1:30 p.m.