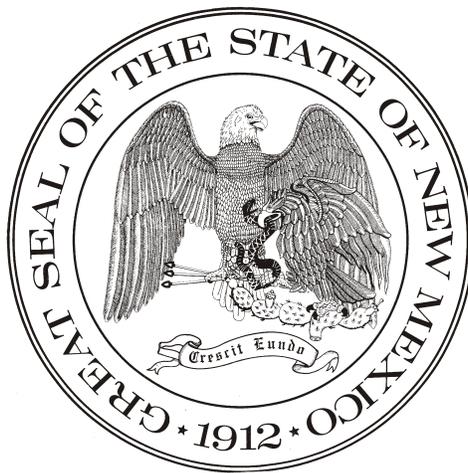


**Legislative Health and Human Services  
Committee**

**2010  
INTERIM REPORT**



**New Mexico State Legislature**  
*Legislative Council Service*  
*411 State Capitol*  
*Santa Fe, New Mexico*

# **2010 INTERIM REPORT LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

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- **Executive Summary and Legislative Proposals**
- **Work Plan and Meeting Schedule**
- **Agendas**
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## **EXECUTIVE SUMMARY AND LEGISLATIVE PROPOSALS**

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## SUMMARY

The Legislative Health and Human Services Committee (LHHS) completed its business for the interim on November 10, 2010. In addition to the LHHS oversight of health and human services agencies, the LHHS was directed by the New Mexico Legislative Council to concern itself with reviewing three major areas:

1. the restructuring of the state's Medicaid program;
2. the provisions of the federal Patient Protection and Affordable Care Act (PPACA), which passed in March 2010; and
3. the restructuring of the health functions of state government.

Secretary of Human Services Katie Falls came before the LHHS to describe the difficult choices that the Human Services Department will have to make in the upcoming months due to the state's enormous budgetary shortfall and the decrease in federal matching dollars. The LHHS raised concerns about maintaining the state's health and its health infrastructure; the continuing role of for-profit managed care in Medicaid; Medicaid fraud; and the difficulty of deciding what services could be cut when lives may be on the line.

Regarding federal health care reform, the LHHS received updates nearly every month from the joint legislative-executive SJM 1 Health Care Reform Working Group. The committee also received monthly testimony from national and local experts on provisions of the PPACA such as:

- health insurance exchanges, including models put forward by experts and advocates and other states' experiences;
- health care work force supply, including:
  - plans to collect data statewide on provider numbers;
  - a report from a task force that seeks to support nursing education in the state; and
  - testimony from state agencies and educational institutions on its applications for PPACA and federal stimulus health care workforce development grants;
- health insurance rate review and the PPACA possibilities for increasing or decreasing rates in the state;
- changes that will have to be made to the New Mexico Insurance Code, including mandates;
- health care delivery and reimbursement reform, including promotion of the accountable care organization reimbursement model and the medical home integrated delivery model;
- the impact of the PPACA's mandate that states offer Medicaid to all adults and children with incomes at or below 138% of the federal poverty level;
- the impact of the individual mandate to obtain insurance coverage and the increases in the numbers of insured individuals in the state; and
- what opportunities or challenges the PPACA may present in terms of New Mexico's governance of health care finance and administration.

After receiving the SJM 1 Health Care Reform Working Group's recommendations on the exchange, the committee debated whether to create an exchange, allow the federal government to operate an exchange on the state's behalf or opt out of having an exchange in 2017. The LHHS requested and endorsed a bill outlining a health insurance exchange to be created pursuant to the PPACA's mandate and the recommendations of the SJM 1 Health Care Reform Working Group. According to the bill draft the committee endorsed, the exchange would operate as a nonprofit entity and would provide for a single, robust exchange for individual and small-group markets.

In light of the Government Restructuring Task Force's deliberations on changes to governance of health and human services in New Mexico, the LHHS considered the possibility of consolidating the Interagency Benefits Advisory Committee agencies, which include the Risk Management Division of the General Services Department; the Public School Insurance Authority; the Retiree Health Care Authority; and the Albuquerque Public Schools' insurance program. The committee reviewed prior testimony on this subject and considered the impact of administrative and risk integration among these agencies.

The LHHS considered the possible effect of transferring Medicaid home- and community-based waiver program operations from the Aging and Long-Term Services Department and the Department of Health to the Human Services Department, as the Government Restructuring Task Force had proposed. The LHHS also considered the possible effect of transferring those aspects of the home- and community-based waiver operations and financing with which the Human Services Department is currently charged to the Aging and Long-Term Services Department and the Department of Health. The LHHS made no recommendations on this matter.

The committee considered the possibilities afforded by consolidating all medical assistance programs, including waivers, public employee and retiree health benefits, New Mexico Health Policy Commission functions, behavioral health purchasing, an all-payer claims database and work force data collection functions into one larger agency to be known as the Health Policy and Finance Department. The LHHS had staff produce a bill containing these provisions, but the committee did not endorse this legislation. It sent the bill to the Government Restructuring Task Force for the task force's consideration.

The Disabilities Concerns Subcommittee met on August 30, 2010. The subcommittee received testimony from Legislative Finance Committee staff, the Department of Health and advocates on the current state of the developmental disabilities waiver program that the Department of Health operates. The subcommittee, presenters and meeting attendees discussed concerns about financial management, caregiver training and maintaining participants' independence and quality of care. The subcommittee discussed provisions of the PPACA that would have an effect upon persons living with disabilities. It heard testimony from the Governor's Commission on Disability regarding the commission's legislative recommendations and funding issues. The subcommittee recommended for endorsement by the LHHS as a whole a bill that the commission proposed, which assesses fees at motor vehicle registration and allocates most of the fees to the Disability Fund to provide for services to persons living with disabilities. The LHHS endorsed that legislation at its November 10 meeting.

For the upcoming 2011 regular session, the LHHS endorsed eight bills and one memorial, which are described in the matrix that follows.

2011 Legislation Endorsed by the Legislative Health and Human Services Committee							
	202#	Topic or Short Title	Description	PPACA-Related	Government Restructuring-Related	Appropriation	Sponsor
1	182459.4 <b>ENDORSED</b>	Health Care Workforce Data Collection, Analysis and Policy Act	<ul style="list-style-type: none"> <li>• DOH directed to create a database to collect health care professional workforce data regarding demographics, specialties and professions;</li> <li>• Data collected at time of licensure or re-licensure; and</li> <li>• DOH directed to convene a work group of health care workforce specialists to make recommendations regarding education, recruitment and retention of health care providers</li> </ul>	Yes	No	No; directs DOH to seek a grant through PPACA	Sen. Dede Feldman
2	182632.2 <b>ENDORSED</b>	Health Care Provider Protection Act (including the Managed Health Care Ombudsman Act)	<p>Protections for health care providers working with managed care plans, including:</p> <ul style="list-style-type: none"> <li>• timely reimbursement;</li> <li>• limits on payment recoupments;</li> <li>• required training;</li> <li>• uniform and timely credentialing processes; and</li> <li>• creation of a managed health care ombudsman office</li> </ul>	No	No	No	Sen. Gerald Ortiz y Pino

2011 Legislation Endorsed by the Legislative Health and Human Services Committee							
	202#	Topic or Short Title	Description	PPACA-Related	Government Restructuring-Related	Appropriation	Sponsor
3	182663.2 <b>ENDORSED</b>	Managed Care and Medicaid Medical Home Requirements	Requires managed care organizations that contract with Medicaid, SCHIP and the SCI program to include specifications for funding and tracking implementation of medical home models of care	No	No	No	Rep. Danice Picraux
4	182696.3SA <b>ENDORSED</b>	Disability Fund Fees	Amends the Motor Vehicle Code to provide for a disability fund fee in addition to other motor vehicle registration fees to assist in funding disability-related activities	No	No	No	Sen. Phil A. Griego

2011 Legislation Endorsed by the Legislative Health and Human Services Committee							
	202#	Topic or Short Title	Description	PPACA-Related	Government Restructuring-Related	Appropriation	Sponsor
5	182910.3 <b>ENDORSED</b>	Health Security Act	<ul style="list-style-type: none"> <li>• Development of a state health coverage plan;</li> <li>• LFC cost study; implementation contingent on legislative approval of implementation and financing plans after LFC study;</li> <li>• Initial 5-year implementation plan;</li> <li>• Administered by a commission that is a government instrumentality;</li> <li>• Commission to seek federal waivers such as those for state innovation in PPACA;</li> <li>• Care planning, cost containment;</li> <li>• Delivery regions and regional councils; and</li> <li>• \$500,000 to LFC for cost study; directs LFC to seek partnerships and grants to offset costs of study</li> </ul>	Yes	Yes	Yes; for LFC financing options study	Sen. Carlos R. Cisneros
6	183033.6 <b>ENDORSED</b>	New Mexico Health Insurance Exchange Act	<ul style="list-style-type: none"> <li>• Establishes a state exchange;</li> <li>• Quasi-governmental entity;</li> <li>• Meets the requirements of PPACA;</li> <li>• Robust exchange: rates and sells plans; and</li> <li>• Rulemaking with superintendent</li> </ul>	Yes	No	No	Rep. Danice Picraux

2011 Legislation Endorsed by the Legislative Health and Human Services Committee							
	202#	Topic or Short Title	Description	PPACA-Related	Government Restructuring-Related	Appropriation	Sponsor
7	183089.1 <b>ENDORSED</b>	Memorial: Waivers of Innovation	Urges the congressional delegation to actively seek to amend the PPACA to remove the 2017 date for states to request a waiver of innovation	Yes	No	No	Sen. Carlos R. Cisneros
8	183222.2 <b>ENDORSED</b>	Accountable Care Organization Task Force	Directs HSD secretary to establish an accountable care organization task force in Medicaid, SCHIP and the SCI program	No	No	No	Rep. Danice Picraux
9	183271.2 <b>ENDORSED</b>	Health Insurance Premium Rate Review	Amends New Mexico Insurance Code to provide greater transparency in review of applications for health insurance premium rate increases; and provides for hearings related to such requests	Yes	No	No	Sen. Dede Feldman

## **WORK PLAN AND MEETING SCHEDULE**

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**2010 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**Members**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Sen. Rod Adair  
Rep. Nora Espinoza

Rep. Joni Marie Gutierrez  
Sen. Linda M. Lopez  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Rep. Jose A. Campos  
Rep. Eleanor Chavez  
Rep. Nathan P. Cote  
Rep. Miguel P. Garcia  
Rep. Keith J. Gardner  
Sen. Clinton D. Harden, Jr.  
Rep. John A. Heaton  
Sen. Gay G. Kernan  
Rep. Dennis J. Kintigh

Rep. James Roger Madalena  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Sen. Sander Rue  
Rep. Jeff Steinborn  
Rep. Mimi Stewart  
Sen. David Ulibarri  
Rep. Gloria C. Vaughn

**Work Plan and Focus for 2010**

The Legislative Health and Human Services Committee (LHHS) will concentrate on two major areas of focus this interim: the state's implementation of its response to the federal Patient Protection and Affordable Care Act of 2010 (PPACA) and changes to the state's Medicaid program. In addition, the committee will provide input on the state's efforts to examine possible restructuring opportunities as they relate to health and human services agencies and services. In doing so, the committee will review the agencies' missions, their critical core functions, their staffing and program needs and efficiencies that may be achieved. It will provide input on the Interagency Behavioral Health Purchasing Collaborative's (IBHPC's) request for proposals (RFP) and contract negotiations for a new statewide behavioral health entity. The committee will meet its statutory obligation to provide oversight of the Human Services Department (HSD); the Department of Health (DOH); the Aging and Long-Term Services Department (ALTSD); the Children, Youth and Families Department (CYFD); and the Workforce Solutions Department (WSD) as well.

In its review of the state's implementation of PPACA provisions, the committee will receive the recommendations of the Health Care Reform Working Group formed this year pursuant to Senate Joint Memorial 1 and the Governor's Health Care Reform Leadership Team formed in April 2010 pursuant to Executive Order 2010-012.

In light of the nearly unprecedented demands for timely action by the committee on these matters, the committee requested permission to hold monthly three-day meetings through the interim.

#### Organizational Meeting

In order to inform its subsequent discussions of health care reform and Medicaid changes, the committee heard an overview of the PPACA and received testimony regarding progress to date from the chair of the Health Care Reform Working Group. The committee requested and received an update from the HSD on its proposals regarding changes to Medicaid.

#### Departmental Oversight

In its statutory oversight role, the committee will hear testimony from the HSD, DOH, ALTSD, CYFD and WSD on the impact that recent budget cuts have had in achieving their missions. The committee will request information on what changes to programs and services the departments are considering in order to comply with the provisions of PPACA and what efforts these departments have taken to seek alternative sources of funding through the PPACA, the federal American Recovery and Reinvestment Act of 2009 and other funding opportunities. Where cuts have been made to programs and services, the committee will provide input as to prioritization and measures to hold the affected constituencies harmless. The committee will also request recommendations from the departments regarding any restructuring or consolidation of functions.

#### Behavioral Health

The committee was very active in the 2009 interim in demanding a timely and adequate response to many complaints that its members and other legislators received regarding the new statewide entity contract with OptumHealth. Since then, OptumHealth has been placed on a corrective action plan, on which the committee will hear reports by the IBHPC. The IBHPC has issued a new RFP for a new statewide entity, and in light of the challenges presented by the last two statewide entity contracts, the committee will review and provide recommendations for a statewide entity contract that would make the entity accountable for specific measurable criteria and provide the state definite recourse for corrective action in the event of breach. The IBHPC has offered to delay its RFP process to allow the committee this input. Furthermore, the committee will receive the DOH's report on residential behavioral health facilities pursuant to House Joint Memorial 34 (2010).

#### State Response to PPACA and Proposed Medicaid Changes

The health care reform measures that the state must consider involve extremely short time lines set by Congress. These short time lines are exacerbated by the need for the state legislature to draft and fully vet any responsive legislation within the long-session/short-session cycle. Consequently, 2011 will be a crucial year for the introduction of legislation intended to implement some of the programs and policies that must be in place as early as January 1, 2014. To facilitate its consideration of health care reform measures, the committee is seeking monthly testimony to hear recommendations from the Health Care Reform Working Group.

As the committee charged with oversight of the agencies and programs that must implement or be created in response to the PPACA, the committee presents one of the only forums for the legislature to ensure adequate and timely implementation. Its members can expect to be called upon to introduce or review much of the legislation necessary to the PPACA's implementation in the state. This legislation will likely include extensive changes to the health insurance statutes, including but not limited to those relating to rating factors; guaranteed issue; preexisting conditions exclusions; medical-loss ratios; and coverage of dependents. The state faces the enormous task of creating an ombudsman's office and, moreover, a health insurance exchange. The exchange will be charged with acting as a central clearinghouse assisting individuals and small businesses to purchase health insurance coverage — both private and public. This means that the exchange will have to provide consumer information, enrollment assistance and an interface between state and federal public programs such as Medicaid, the Children's Health Insurance Program, the State Coverage Insurance and premium assistance, as well as private products. The committee will review the state's two-tiered high-risk pool and plans for assisting individuals covered in these pools to transfer to other coverage pursuant to the PPACA's reforms.

New Mexico will have to consider opportunities afforded in the PPACA to create or participate in entirely new insurance products, such as consumer-operated oriented plans (CO-OPs) and nonprofit nationwide plans to be offered through the state's exchange. The state will have to consider whether or not to enter into health care choice compacts, as well as its role in maintaining the PPACA-mandated role of maintaining a level playing field both for nonprofit and private health insurers. The committee will receive the Health Care Reform Working Group's recommendations on these matters, to consult with the Governor's Health Care Reform Leadership Team and to review any available actuarial studies in its deliberations upon the course of any legislative action in response to these demands.

Health insurance ratemaking will have to be considered in detail, given that health insurers are expected to bring rate increases before the Insurance Division of the Public Regulation Commission in response to the PPACA. Many members of the committee have been contacted by constituents concerned about this issue in general, and specifically regarding the recent rate hike of individual plans by Blue Cross Blue Shield of New Mexico. The committee will have to balance the need for having a multitude of solvent plans available throughout the state with concerns over the public's ability to pay continued increases. This will require expert testimony as well as actuarial analyses.

Another issue regarding insurance facing the committee is the fact that the PPACA's insurance reforms mostly do not affect "grandfathered" plans — those in effect prior to the March 23, 2010 signing of the PPACA. The committee will review the existing state law in order to maintain provisions relevant to grandfathered plans while updating the law to reflect those plans affected by the PPACA.

#### Medicaid and Other Public Programs

Budget shortfalls and the PPACA's changes to federal matches, maintenance of effort requirements and extensive changes to the state's public programs will require considerable

review by the legislature. The state will have to consider how to keep as many New Mexicans covered as possible while maximizing federal dollars. The committee will receive recommendations from the secretary of human services, the Health Care Reform Working Group, the Governor's Health Care Reform Leadership Team and other experts.

#### Health Care Work Force

In a climate where many additional New Mexicans are expected to obtain health insurance coverage, the shortfall in the state's supply of health care professionals will become a crucial issue in access to care. The PPACA contains many provisions relating to a health care work force. The PPACA's reimbursement reform and other related provisions will have an impact on providers, which the committee will discuss. There are also many grants and other incentive programs to develop the work force. The committee will review the plans that state agencies and educational institutions have for maximizing these federal dollars to address the shortfall. This review includes receiving reports from the task force, which has been meeting pursuant to House Memorial 50 (2010) on a statewide nursing education plan. It also includes reporting from state universities, the DOH and the Higher Education Department regarding their efforts to recruit, train and retain health care professionals.

#### Information Technology, Data and Reporting

Key to implementing the PPACA and Medicaid changes will be the collection and dissemination of data regarding health care infrastructure; the work force; insurance coverage, financing and other important factors in health care coverage; and delivery matters. The committee will hear testimony from the Health Care Reform Working Group, the Department of Information Technology, the HSD, the DOH and the Insurance Division of the Public Regulation Commission regarding their information technology capabilities and needs in hopes of outlining a clear strategy for meeting the state's needs.

#### Quality, Transparency and System Reform

The committee will hear testimony on the PPACA's quality and transparency measures, as well as testimony regarding possible savings for the state's Medicaid program and health care costs overall by examining measures for increasing health care quality, transparency and delivery systems. This will include opportunities to explore models such as accountable care organizations, reimbursement restructuring consistent with policy priorities and delivery models such as medical-home extensions, the use of PPACA funds to promote primary care and community-health and school-based health centers. It will also entail further examination of public health, environmental health, prevention, wellness and disease management programs as they are addressed in the PPACA and elsewhere.

#### Long-Term Care

The PPACA offers many opportunities for the state to increase community-based long-term care for aged and disabled populations, including individuals with developmental disabilities. These opportunities include federal demonstration projects, increased funding for the Money Follows the Person initiative, the Community First Choice option for community-based services through an amendment to the state's Medicaid plan; and the federal Community Living Assistance

Services and Supports (CLASS) Act provisions for long-term care insurance. The committee has already expressed a great deal of concern regarding the first year of implementation of the Coordinated Long-Term Services (CoLTS) program, and these additional health reform provisions will be important when lawmakers consider the future of CoLTS.

### **Disabilities Concerns Subcommittee**

#### **Members**

Sen. Nancy Rodriguez, Chair

Sen. Rod Adair

Sen. Mary Kay Papen

Rep. Keith J. Gardner

Rep. Antonio Lujan

Rep. Danice Picraux

Senate Bill 264 (2010) created a permanent, six-member, bicameral interim Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee, charged with continuing a study of the programs, agencies, policies, issues and needs relating to individuals with disabilities, including review and study of the programs, statutes, constitutional provisions, regulations and court decisions governing programs, agencies and issues relating to individuals with disabilities. In a one-day meeting during the interim, the subcommittee will examine the status of the guardianship alliance, adult protective services and the impact of cuts to the developmental disabilities waiver program and departments' responses to federal incentives to implement the Money Follows the Person in New Mexico Act. It will receive reporting pursuant to House Memorial 56 (2010), which seeks to reduce the incidence of brain injury among athletes by mandating certain protocols in school athletic activities, regarding direct caregiver training and reporting pursuant to Senate Bill 1 (2010).

**Legislative Health and Human Services Committee  
2010 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 2*	Santa Fe
July 6-8	Santa Fe
August 2-4	Santa Fe
August 31-September 1	Santa Fe
October 4-6	Santa Fe
November 8-10	Santa Fe

Disabilities Concerns Subcommittee

August 30	Santa Fe
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## **AGENDAS**

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**2010 Interim Report  
Legislative Health and Human Services Committee**

Revised: May 20, 2010

**TENTATIVE AGENDA  
for the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**Organizational Meeting  
June 2, 2010  
Room 322, State Capitol  
Santa Fe**

**Wednesday, June 2**

9:00 a.m.     **Call to Order**

9:05 a.m.     **Welcome and Introductions**

9:10 a.m.     **Reports and Updates:**

**SJM 1 Health Care Reform Working Group**

—Deborah Armstrong, Director, New Mexico Medical Insurance Pool; Chair,  
Health Care Reform/SJM 1 Working Group

**Governor's Health Reform Leadership Team**

—Sam Howarth, Director, Division of Policy and Performance, Department of  
Health

**Government Restructuring Task Force**

—Paula Tackett, Director, Legislative Council Service (LCS) or Raúl E.  
Burciaga, Director-Designate, LCS

11:00 a.m.    **Overview: Patient Protection and Affordable Health Care Act**

—Frederick Isasi, Senior Legislative Counsel for Healthcare, U.S. Senator Jeff  
Bingaman

12:00 noon    **Lunch**

1:30 p.m.     **Medicaid Restructuring Process**

—Carolyn Ingram, Director, Medical Assistance Division, Human Services  
Department (HSD)

—Charissa Saavedra, Deputy Secretary, HSD

2:15 p.m.     **Public Comment**

2:45 p.m.     **Discussion of Meeting Protocol**

3:00 p.m.     **Consideration of Work Plan**  
—Michael Hely, Staff Attorney, LCS

4:00 p.m.     **Adjourn**

Revised: July 2, 2010

**TENTATIVE AGENDA  
for the  
SECOND MEETING  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**July 6-8, 2010  
Room 307, State Capitol  
Santa Fe**

**Tuesday, July 6**

- 9:00 a.m.     **Call to Order**
- 9:05 a.m.     **Welcome and Introductions**
- 9:15 a.m.     **Independent Evaluation of Behavioral Health Transformation**  
—Cathleen Willging, Ph.D., Research Scientist, Behavioral Health Research  
Center of the Southwest
- 10:15 a.m.    **Advocates Roadmap for the Future**  
—Nancy Koenigsberg, Esq., Legal Director, Disability Rights New Mexico
- 11:15 a.m.    **Native American Behavioral Health Concerns**  
—Regina Roanhorse, Diné Local Collaborative 15 and New Mexico Health  
Advocacy Alliance
- 12:00 noon    **Lunch**
- 1:30 p.m.     **Public Input on Behavioral Health Concept Paper and Status of Request for  
Proposals**  
—Teresa Gomez, Interagency Behavioral Health  
Purchasing Collaborative (IBHPC)
- 2:00 p.m.     **Report: OptumHealth Directed Plan of Correction**  
—Alicia Smith, J.D., Alicia Smith and Associates
- 2:30 p.m.     **Behavioral Health Vision and Strategic Plan Development**  
Core Service Agencies  
Comprehensive Community Support Services  
Behavioral Health Workforce Issues  
Consolidation of Services and Programs in the Behavioral Health Services  
Division of the Human Services Department (HSD)  
—Linda Roebuck Homer, CEO, IBHPC
- 4:30 p.m.     **Public Comment**

5:00 p.m.     **Recess**

**Wednesday, July 7**

9:00 a.m.     **Call to Order**

9:05 a.m.     **Health Care Workforce: Current and Anticipated Needs**  
—Frank Hesse, M.D., Chair, New Mexico Health Policy Commission  
—Jerry Harrison, Ph.D., Executive Director, New Mexico Health Resources

10:15 a.m.    **Workforce Data Needs: A Proposal**  
—Dan Derksen, M.D., Center for Community Partnerships, Robert Wood  
                  Johnson Health Policy Fellow

11:00 a.m.    **Workforce Provisions and Opportunities: Patient Protection and Affordable  
Care Act (PPACA)**  
—Harvey Licht, Health Policy Consultant

12:30 p.m.    **Lunch**

1:30 p.m.     **Workforce and the PPACA: State Coordination**  
—Sam Howarth, Ph.D., Director, Division of Policy and Performance, DOH  
—Teresa Casados, Deputy Secretary, Workforce Solutions Department  
—Len Malry, M.P.A., Director of Workforce Education, Higher Education  
                  Department

2:30 p.m.     **Department Oversight: Workforce Solutions Department**  
—Kenneth "Ken" Ortiz, Secretary, Workforce Solutions Department

4:00 p.m.     **Public Comment**

4:30 p.m.     **Recess**

**Thursday, July 8**

9:00 a.m.     **Call to Order**

9:05 a.m.     **Department Oversight: Children, Youth and Families Department (CYFD)**  
—William "Bill" Dunbar, Secretary-Designate, CYFD  
—Marisol Atkins, Deputy Secretary, CYFD

10:30 a.m.    **Department Oversight: Aging and Long-Term Services Department  
(ALTSD)**  
—Michael Spanier, Secretary, ALTSD  
—Matthew Onstott, Deputy Secretary, ALTSD

- 12:00 noon    **Lunch**
- 1:30 p.m.    **Department Oversight: HSD**  
—Kathryn "Katie" Falls, Ph.D., Secretary, HSD
- 3:00 p.m.    **Department Oversight: DOH**  
—Alfredo Vigil, M.D., Secretary, DOH
- 4:30 p.m.    **Public Comment**
- 5:00 p.m.    **Adjourn**

Revised: August 23, 2010

**TENTATIVE AGENDA  
for the  
THIRD MEETING  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**August 2-4, 2010  
Room 322, State Capitol  
Santa Fe**

**Monday, August 2**

- 9:00 a.m.     **Call to Order**
- 9:05 a.m.     **Welcome and Introductions**
- 9:15 a.m.     **Government Restructuring: Opportunities in the Patient Protection and  
Affordable Care Act (PPACA)**  
—Michael Hely, Staff Attorney, Legislative Council Service (LCS)  
—Karen Wells, Researcher, LCS
- 10:30 a.m.    **Government Restructuring: Review of Agency Input**  
—Michael Hely, Staff Attorney, LCS  
—Karen Wells, Researcher, LCS  
—Nancy Eisenberg, Public Health Student, University of New Mexico
- 12:00 noon    **Lunch**
- 1:30 p.m.     **Health Care Common Interests: Review of SJM 1, 2009**  
—Michael Hely, Staff Attorney, LCS  
—Karen Wells, Researcher, LCS  
—Ruby Ann Esquibel, Health Policy Coordinator, Human Services Department  
(HSD)
- 3:00 p.m.     **Government Restructuring: Discussion and Committee Recommendations**
- 4:30 p.m.     **Public Comment**
- 5:00 p.m.     **Recess**

## **Tuesday, August 3**

- 9:00 a.m.     **Call to Order**
- 9:05 a.m.     **PPACA: Information Technology Overview**  
—Bob Mayer, Deputy Secretary, Department of Information Technology
- 10:30 a.m.    **PPACA: Medicaid Eligibility and the Exchange**  
—Carolyn Ingram, Division Director, Medical Assistant Division (MAD), HSD  
—Ruby Ann Esquibel, Health Policy Coordinator, HSD
- 11:30 a.m.    **Medicaid Information Technology and the Electronic Health Record  
Incentive Program**  
—Julie Weinberg, Deputy Director, MAD/HSD
- 12:30 p.m.    **Lunch**
- 2:00 p.m.     **Physician Quality and Outcome Reporting**  
—Dan Jaco, New Mexico Medical Review Association
- 3:00 p.m.     **Payment and Reporting for Health Care-Acquired Infections**  
—Alfredo D. Vigil, Secretary, Department of Health
- 4:00 p.m.     **Public Comment**
- 4:30 p.m.     **Recess**

## **Wednesday, August 4**

- 9:00 a.m.     **Call to Order**
- 9:05 a.m.     **Health Reform Leadership Team: Strategic Plan and  
HM 43: Native American Medicaid Category**  
—Kathryn (Katie) Falls, Secretary, HSD
- 10:30 a.m.    **Health Reform and Medicaid: Challenges to the Provider Community**  
—Robert Garcia, Vice President for Regional Administration, Presbyterian  
Healthcare Services; President, New Mexico Hospital Association  
—Laurence Shandler, M.D., Pediatrician; Member, Medicaid Advisory  
Committee  
—Steven Hansen, C.E.O., Presbyterian Medical Services
- 1:30 p.m.     **Lunch**
- 2:30 p.m.     **Report from SJM 1 Health Care Reform Working Group**  
—Deborah Armstrong, Chair

4:00 p.m. **Public Comment**

4:30 p.m. **Adjourn**

Revised: August 30, 2010

**TENTATIVE AGENDA  
for the  
FOURTH MEETING  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**August 31-September 1, 2010  
Room 307, State Capitol  
Santa Fe**

**Tuesday, August 31**

- 8:30 a.m.      **Call to Order**
- 8:35 a.m.      **Welcome and Introductions**
- 8:40 a.m.      **Approval of Minutes**
- 8:45 a.m.      **Patient Protection and Affordable Care Act (PPACA) Opportunities:  
Delivery System and Financing of Health Care**  
—Enrique Martinez-Vidal, Vice President, Academy Health; Director, Robert  
Wood Johnson Foundation State Coverage Initiative Program
- 10:45 a.m.     **Consolidated Environmental Review Act — Steps for Improved Health**  
—Representative Gail Chasey  
—Kitty Richards, M.S., M.P.H., Bernalillo County Place Matters Team  
—Eric Jantz, Staff Attorney, New Mexico Environmental Law Center
- 11:30 a.m.     **Committee Consideration of Restructuring Opportunities**
- 12:30 p.m.     **Lunch**
- 2:00 p.m.      **Public Comment**
- 2:30 p.m.      **New Mexico State University (NMSU) and the Future of Health Care Work  
Force**  
—Dr. Tilahun Adera, Dean, College of Health Sciences, NMSU  
—Pamela Schultz, Ph.D., Interim Director, School of Nursing, NMSU

4:00 p.m.     **Medical Homes: Background, Opportunities in the PPACA and New Mexico's Experience**  
—Nancy Eisenberg, Public Health Student, University of New Mexico; Intern,  
Legislative Council Service

5:00 p.m.     **Recess**

**Wednesday, September 1**

8:30 a.m.     **Call to Order**

8:35 a.m.     **Native American Issues and the PPACA**  
—Alvin Warren, Secretary, Indian Affairs Department

10:05 a.m.    **University of New Mexico Health Sciences Center (UNM/HSC) and the Future of Health Care Work Force**  
—Dr. Paul Roth, President, UNM/HSC

12:00 noon    **Lunch**

1:30 p.m.     **The "Triple Aim" of Health Care: A New Mexico Model of Outcome-Based Care**  
—Charles Alfero, M.A., Chief Executive Officer, Hidalgo Medical Services

3:00 p.m.     **Behavioral Health and Health Professional Managed Care Concerns and Proposed Amendment to the Patient Protection Act**  
—Hannah-Leigh Bull, M.A., Licensed Marriage and Family Therapist  
—Dora Wang, M.D., Licensed Psychiatrist; Assistant Professor, UNM/HSC

4:30 p.m.     **Public Comment**

5:30 p.m.     **Adjourn**

Revised: October 1, 2010

**TENTATIVE AGENDA  
for the  
FIFTH MEETING  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**October 5-7, 2010  
Room 322, State Capitol  
Santa Fe**

**Tuesday, October 5**

- 9:00 a.m.      **Call to Order**
- 9:05 a.m.      **Welcome and Introductions; Overview of Today's Agenda**
- 9:10 a.m.      **Approval of Minutes**
- 9:15 a.m.      **Overview of Health Benefits Exchange Provisions in the Federal Patient Protection and Affordable Care Act (PPACA)**  
—Marguerite Salazar, Regional Director, Region 8, United States Department of Health and Human Services
- 9:45 a.m.      **Health Exchange Planning Grant**  
—Kathryn "Katie" Falls, Secretary, Human Services Department (HSD)
- 10:15 a.m.      **Health Insurance Exchanges: Lessons from Utah, Massachusetts, California and Florida**  
—Cheryl Smith and Daniel Schuyler, Directors, Leavitt Partners, LLC  
—Mark Reynolds, Acting General Counsel, HSD
- 11:00 a.m.      **Western States Regional Exchange**  
—John Franchini, Superintendent of Insurance, Insurance Division, Public Regulation Commission (ID/PRC)
- 11:15 a.m.      **Questions and Comments for Morning Panelists**
- 12:15 p.m.      **Lunch**

**Tuesday, October 5 (Continued)**

- 1:15 p.m.     **Costs of Exchanges; Options for States**  
—Mary Feldblum, Executive Director, Health Security for New Mexicans Campaign
- 2:00 p.m.     **Previous Models of Health Insurance Exchanges in New Mexico**  
—Morris "Mo" Chavez, Esq., Chavez and Associates, LLC, Former Superintendent of Insurance, ID/PRC  
—J.R. Damron, M.D.
- 3:00 p.m.     **Exchange Recommendations from SJM 1 Health Care Reform Working Group (HCRWG)**  
—Deborah Armstrong, Chair, HCRWG
- 4:00 p.m.     **Committee Discussion and Direction: Exchanges**
- 5:00 p.m.     **Public Comment**
- 5:30 p.m.     **Recess**

**Wednesday, October 6**

- 9:00 a.m.     **Call to Order; Overview of Today's Agenda**
- 9:05 a.m.     **Rate Review: Factors, Procedures and Administration**  
—Sondra Roberto, Staff Attorney, Consumers Union  
—Representative from New Mexico Health Insurers
- 10:00 a.m.    **Rate Review in New Mexico: Existing Law and Procedures in New Mexico and Potential Changes**  
—John Franchini, Superintendent of Insurance, ID/PRC  
—Kimberley Scott, ID/PRC  
—Thomas Bowling, Chief Life and Health Actuary, ID/PRC  
—Christine Baca, Bureau Chief, Managed Health Care Bureau; Life and Health Bureau, ID/PRC  
—Brian Harris, Assistant Attorney General, Office of the Attorney General
- 12:00 noon    **Lunch**
- 1:30 p.m.     **Overview: PPACA and Health Insurance Reforms; Potential Changes to New Mexico Insurance Code Due to PPACA**  
—John Franchini, Superintendent of Insurance, ID/PRC  
—Melinda Silver, Esq., Melinda Silver Enterprises  
—Mark Reynolds, Acting General Counsel, HSD  
—Marisela Chavez, Legal Intern, LCS, University of New Mexico School of Law

**Wednesday, October 6 (Continued)**

4:00 p.m. **Committee Discussion and Direction: Ratemaking**

5:00 p.m. **Public Comment**

5:30 p.m. **Recess**

**Thursday, October 7**

9:00 a.m. **Call to Order**

9:05 a.m. **Governance of Health Care Financing and Administration: Restructuring Opportunities**

—James Tryon, M.D.

—Brent Earnest, Analyst, Legislative Finance Committee

11:00 a.m. **Committee Discussion and Direction: Health Care Finance and Administration Governance Restructuring Opportunities**

12:00 noon **Lunch: Behavioral Health Caucus**

**Early Detection and Treatment of Schizophrenia; Telehealth in Behavioral Health Treatment; Causes of Suicide and Prevention in New Mexico**

—Steven Adelsheim, M.D., Director, Center for Rural and Community Behavioral Health, University of New Mexico

1:30 p.m. **Long-Term Care: PPACA and Restructuring**

—Matthew Onstott, Ph.D., Deputy Secretary, Aging and Long-Term Services Department (ALTSD)

—Emily Kaltenbach, Director of Policy and Planning, ALTSD

3:00 p.m. **Office of Ombudsman; Consumer and Business Outreach**

—Jane Wishner, Esq., Executive Director, Southwest Women's Law Center

—Kimberley Scott, ID/PRC

4:00 p.m. **Public Comment**

5:00 p.m. **Adjourn**

Revised: November 5, 2010

**TENTATIVE AGENDA  
for the  
SIXTH MEETING  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**November 8-10, 2010  
Room 309, State Capitol  
Santa Fe**

**Monday, November 8**

- 9:00 a.m.      **Call to Order**
- 9:05 a.m.      **Status Report of Government Restructuring Task Force**  
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
- 10:00 a.m.      **Status Report and Recommendations, SJM 1 Health Care Reform Working Group (HCRWG)**  
—Debbie Armstrong, Chair, HCRWG
- 11:00 a.m.      **Report; Health Care Reform Executive Leadership Team**  
—Kathryn "Katie" Falls, Secretary, Human Services Department
- 12:30 p.m.      **Lunch**
- 2:00 p.m.      **Public Comment**
- 3:00 p.m.      **Discussion of Legislative Endorsements on Restructuring and Health Care Reform**  
—Michael Hely, Staff Attorney, LCS
- 5:00 p.m.      **Recess**

**Tuesday, November 9**

- 9:00 a.m.      **Call to Order**
- 9:05 a.m.      **Welcome and Introductions; Overview of Today's Agenda**
- 9:10 a.m.      **Approval of Minutes**
- 9:15 a.m.      **HM 50: Statewide Nursing Education Plan**  
—Deborah Walker, R.N., M.S.N., Director, New Mexico Board of Nursing  
—Pat Boyle, Executive, R.N., M.S.N., Director, Center for Nursing Excellence

—Nancy Ridenauer, R.N., Ph.D., Dean, University of New Mexico College of Nursing

—Pamela Schultz, R.N., Ph.D., Interim Dean and Associate Director, School of Nursing

10:30 a.m. **Reports: Substance Abuse Services for Pregnant Women (SM 19 - 2009); Economic Security for Women and Families (HM 35 - 2010)**  
—Giovanna Rossi-Pressley, Executive Director, Office of the Governor's Council on Women's Health

11:30 a.m. **Lunch**

1:00 p.m. **Update: Federal High-Risk Pool**  
—Debbie Armstrong, J.D., Executive Director, New Mexico Medical Insurance Pool

1:30 p.m. **Treatment Foster Care Legislation**  
—Gail Chasey, New Mexico State Representative, District 18  
—Michael Hart, Esq., Martinez, Hart and Thompson P.C.

2:30 p.m. **My Community Task Force (HM 49 - 2010)**  
—Leora Jaeger, Consultant

3:00 p.m. **Ending Child and Family Homelessness in New Mexico (HM 7 - 2010)**  
—Wendy Wintermute, Statewide Coordinator, New Mexico Campaign to End Child Homelessness  
—Kim Cobbs, Bureau Chief, Community and Behavioral Services Bureau, Children, Youth and Families Department

3:30 p.m. **Public Comment**

4:00 p.m. **Discussion and Approval of Legislative Endorsements**

5:00 p.m. **Recess**

### **Wednesday, November 10**

9:00 a.m. **Call to Order**

9:05 a.m. **Discussion and Approval of Legislative Endorsements**

12:00 noon **Adjourn**

Revised: August 23, 2010

**TENTATIVE AGENDA  
for the  
DISABILITY CONCERNS SUBCOMMITTEE  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**August 30, 2010  
Room 307, State Capitol  
Santa Fe**

**Monday, August 30**

- 8:30 a.m.      **Call to Order**
- 8:35 a.m.      **Welcome and Introductions**
- 8:40 a.m.      **Evaluation of the Developmental Disabilities Waiver Program: Report of the  
Legislative Finance Committee (LFC)**  
—Pamela Galbraith, Program Evaluator, LFC  
—Alfredo Vigil, M.D., Secretary, Department of Health (DOH)  
—Nannie Sanchez, Advocate  
—Rosemary Sanchez, Advocate  
—Larry Maxey, Director, Alegria Family Services  
—Carol Romero, Executive Director, Advocacy Partners, LLC
- 10:40 a.m.    **HM 56: Consolidated Caregiver Training**  
—Alfredo Vigil, M.D., Secretary, DOH  
—Jennifer Thorne-Lehman, Deputy Director, Developmental Disabilities  
Supports Division, DOH
- 11:15 a.m.    **Disability Features of the Patient Protection and Affordable Care Act:**  
—**Patient Protection and Guardianship**  
—**Money Follows the Person**  
—Karen Wells, Researcher, Legislative Council Service
- 12:00 noon    **Lunch**
- 1:30 p.m.      **Governor's Commission on Disability Recommendations and Funding Issues**  
—Jim Parker, Director, Governor's Commission on Disability
- 2:30 p.m.      **Government Restructuring: Discussion**
- 4:00 p.m.      **Public Comment**
- 5:00 p.m.      **Adjourn**

**MINUTES**

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**2010 Interim Report  
Legislative Health and Human Services Committee**

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

**June 2, 2010**  
**Room 322, State Capitol**  
**Santa Fe**

The first meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Senator Dede Feldman, vice chair, at 9:24 a.m. on June 2, 2010. Committee members introduced themselves.

**Present**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Sen. Rod Adair  
Rep. Nora Espinoza  
Sen. Linda M. Lopez  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Absent**

Rep. Joni Marie Gutierrez

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Rep. Eleanor Chavez  
Rep. Nathan P. Cote  
Rep. Dennis J. Kintigh  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill  
Sen. Nancy Rodriguez  
Sen. Sander Rue  
Rep. Mimi Stewart

Rep. Jose A. Campos  
Rep. Miguel P. Garcia  
Rep. Keith J. Gardner  
Sen. Clinton D. Harden, Jr.  
Rep. John A. Heaton  
Sen. Gay G. Kernan  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Mary Kay Papen  
Rep. Jeff Steinborn  
Sen. David Ulibarri  
Rep. Gloria C. Vaughn

**Staff**

Michael Hely  
Karen Wells  
Mark Harben

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts are in the meeting file

**Wednesday, June 2**

## **Welcome and Introductions**

The chair invited members of the committee and staff to introduce themselves.

## **Reports and Updates**

### **SJM 1 Health Care Reform Working Group**

Deborah Armstrong, director, New Mexico Medical Insurance Pool (NMMIP), chair, SJM 1 Health Care Reform Working Group (SJM 1 working group), provided an update on work that is underway to identify state action necessary to implement the federal Patient Protection and Affordable Health Care Act (PPACA). Ms. Armstrong described the membership of the SJM 1 working group, and the process for determining an interim agenda. The SJM 1 working group is made up of both executive and legislative members and was created pursuant to a senate joint memorial that passed both houses during this year's legislature. She commented on the massive breadth and scope of the federal law and the enormous challenge of identifying critical elements that will require state action to implement. The SJM 1 working group has identified a schedule of major topics to be addressed in monthly meetings. Advisory groups are self-forming to further provide input to the SJM 1 working group on specific topics that include Medicaid; the health care work force; consumer education and outreach; and health insurance exchanges. Ms. Armstrong will be giving updates to the LHHS monthly and has coordinated the schedule and agenda to avoid duplication as much as possible. The web site of the Insurance Division of the Public Regulation Commission (PRC) contains updated information regarding the work of this SJM 1 working group.

### **Governor's Health Reform Leadership Team**

Sam Howarth, director, Division of Policy and Performance, Department of Health (DOH), provided an overview of the goals and purpose of the Governor's Health Reform Leadership Team, which had its first meeting on May 20, 2010. It was created by Governor Richardson's Executive Order 2010-012 to develop a strategic plan for implementation of the PPACA. The team is made up entirely of members from executive departments, including human services; health; children, youth and families; workforce solutions; information technology; Indian affairs; and other departments on which the PPACA will have an impact. Mr. Howarth emphasized that it will require a Herculean and coordinated effort to fully implement the PPACA and will result in significant structural and policy changes. Each department is identifying a lead person who is a classified employee to ensure the continuity of implementation after the election of a new governor, when many or all cabinet-level employees will probably be replaced. Additionally, classified employees will be selected to take the lead on legal and information technology issues. The team will meet again on June 11, at which point it hopes to identify the specific responsibilities of each department, time lines for implementation and the parties responsible for carrying out these responsibilities. Mr. Howarth emphasized that the team recognizes the critical importance of capitalizing on funding opportunities. The executive order calls for a report to the governor by July 1, 2010. The team also anticipates working closely with the SJM 1 working group and the LHHS.

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

- whether any grant applications have already been made pursuant to the PPACA and what they are;
- PPACA funds that have been or will be appropriated to the state;

- identification of a grant to fund a temporary high-risk pool of \$37 million;
- whether the governor has any plan to appoint a "czar" to ensure coordination and to maximize funding opportunities;
- a request to the leadership team for a matrix that demonstrates responsibility for applying for grants and how funding is allocated;
- the possibility that a special session will be needed to appropriate matching funds when grants and projects require matching funds;
- the potential negative impacts of the loss of the superintendent of insurance and other key members of the Insurance Division and missed opportunities for funding;
- what legislative action, if any, might be required prior to the next legislative session and what is expected for the 2011 session;
- whether the Retiree Health Care Authority will be affected and how; Wayne Propst, executive director, Retiree Health Care Authority, indicated the authority is waiting for clarification and guidance;
- how coordination between the SJM 1 working group and the leadership team will occur; both groups will report to the LHHS;
- the need for ongoing organized efforts to ensure the accomplishment of this huge task;
- a suggestion by Ms. Armstrong that the LHHS propose legislation to create an ongoing structure to implement federal health care reform;
- a request for the elements of the federal Indian Health Care Improvement Act, which is included in the PPACA, to be presented to the LHHS and the interim Indian Affairs Committee; and
- the critical importance of outreach to Native Americans and other specific groups within New Mexico as to how the PPACA may have an impact on them.

A request was made for aggressive accountability regarding the application for grants and funding and the recognition that federal funding is now available to address many of the concerns and issues that have been raised in the LHHS for years. Mr. Howarth stated that comprehensive matrices are under development to identify and take advantage of funding opportunities as they arise.

Questions were raised regarding whether and how the network of community health providers plans to benefit from the multibillion dollar availability of funds. David Roddy, executive director, New Mexico Primary Care Association, noted that grants for these entities will be competitive and that New Mexico's past success at serving the uninsured in community health centers may now be a disadvantage in competing for these funds. Formula funding, however, should benefit New Mexico.

### **Overview: PPACA**

Frederick Isasi, senior legislative counsel for health care for U.S. Senator Jeff Bingaman, recognized the significance of the passage of the PPACA. He provided a brief overview of the federal law. He emphasized that the law is projected to reduce the federal deficit and has a great potential to reduce the growth of the cost of health care. He highlighted the impact on uninsured New Mexicans, especially uninsured children. Insurance market revisions will eliminate what he characterized as insurers' many "heinous" practices such as rescissions and exclusions for pre-existing conditions. Co-payments for prevention are eliminated. The "donut hole" of prescription drug coverage for seniors will be eliminated. There are many measures included in the PPACA that have not been covered in the media, including work force provisions, system and

reimbursement redesign, quality improvements and long-term care provisions. He noted that the number of uninsured could be reduced from more than 20% to less than 4% in New Mexico. Federal Medicaid funding will be substantially increased, and Senator Bingaman worked hard to ensure that New Mexico would not be harmed by efforts to expand coverage to the uninsured under Medicaid. Premium decreases should be seen in the private market, especially for small businesses. He outlined several measures that will require legislation at the state level to fully implement the act, including the establishment of health insurance exchanges. He emphasized that Senator Bingaman and he are ready and willing to serve as resources in the process.

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

- whether New Mexicans enrolled in the State Coverage Insurance (SCI) Program will be helped or harmed by this new law; the majority of New Mexicans who are SCI eligible but not enrolled *will* be considered as newly eligible for the purpose of federal Medicaid matching funds, according to Mr. Isasi; current SCI enrollees may or may not be identified as newly eligible;
- clarification regarding a provision in the PPACA to create a basic health option for individuals between 133% and 200% of the federal poverty level that could be implemented in New Mexico; the federal match would be 100% for this optional population; this option would be in lieu of an exchange; a model already exists in Washington state to do this;
- acknowledgment that seamless enrollment integration between the exchange and Medicaid is required and will require New Mexico to acquire considerable information technology supports to accomplish this;
- clarification regarding insurance provisions and the current lack of knowledgeable staff at the Insurance Division due to staff turnover;
- a suggestion that the LHHS consider legislation to restructure the Insurance Division so that it is not under the PRC;
- clarification regarding where and how savings will be achieved under the PPACA;
- the fiscal impact of expansion of coverage to dependents up to age 26;
- the fiscal impact of a defined benefit package and the impact of state mandates for coverage;
- clarification regarding compacts that permit insurance to be sold across state lines;
- whether the mandates currently in New Mexico law are anticipated to be included in the new federal basic benefit package; it is not clear;
- whether the PPACA includes funding to support the expansion of education infrastructure for training of the health professional work force; it is anticipated that the University of New Mexico will be approved for up to 15 new slots for physicians;

- the opportunity for community health centers to serve as residency sites for physicians in training;
- whether there is capital outlay funding in the PPACA to expand health professional training sites;
- a request to inform Senator Bingaman that anesthesiology assistants be permitted to practice at sites outside of Albuquerque;
- clarification regarding the adequacy of subsidies to assist individuals to purchase mandated health insurance and what the caps are on out-of-pocket expenses;
- the importance of strong rate review processes to hold down rising health insurance premium rates; and
- the problem of rising Medicaid costs and the increasing burden on state general funds.

Andrew Black of Senator Bingaman's Santa Fe office and Melanie Goodman of Senator Bingaman's Las Cruces office were introduced and offered to provide resources to the LHHS to take advantage of the PPACA provisions; Senator Bingaman's office has access to national expertise on such issues as exchanges that staff members are happy to share.

### **Medicaid Restructuring Process**

Carolyn Ingram, director, Medical Assistance Division, Human Services Department (HSD), and Charissa Saavedra, deputy secretary, HSD, provided the committee with an overview of the purpose for and process to restructure Medicaid. Restructuring is underway as a method of aligning New Mexico's program with federal PPACA provisions and in anticipation of increasing challenges of state general funding of Medicaid. Several work groups have been formed to gather input on the process of restructuring Medicaid, including advocates, tribes, and health and human services agencies redesign teams. A provider work group will be formed. The purpose of each work group was identified. Ms. Ingram updated the committee on SCI funding and current issues, beginning with a historical review of the program and its funding streams. Recently, the federal Centers for Medicare and Medicaid Services (CMS) informed the HSD that enhanced federal medical assistance percentages (FMAP) funding will not be available for current SCI enrollees as newly eligible, which will reduce the funding for SCI by an estimated \$17.4 million. Even if the department is successful in convincing the CMS that enhanced FMAP should be provided for this population, the waiver that allows New Mexico to serve childless adults caps the amount that can be spent due to budget neutrality requirements. Potentially, New Mexico could have a shortfall of approximately \$20 million in this program. The HSD sees the SCI as the vehicle for offering an alternative public program to enrollees through the exchange. The HSD is looking at how other states have handled this situation and options that New Mexico might pursue. The work groups have been considering these options. Ms. Ingram reviewed cost-containment measures that have already been implemented in Medicaid.

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

- clarification regarding the composition of the provider work group to be formed;
- the importance of adequate physician representation on the provider work group to ensure that physicians do not cease to participate in Medicaid;
- clarification regarding existing co-payments in Medicaid; a list of co-payments will be provided;
- the profound potential impact of Medicaid budget shortfalls and of Congress not extending the enhanced FMAP; if Congress does not extend the enhanced FMAP, Medicaid will face an estimated \$160 million shortfall in New Mexico;
- clarification regarding what happens if a Medicaid client is unable to pay a co-payment; the provider ultimately absorbs the cost;
- the number of other states that operate Medicaid under a managed care approach and whether there is any consideration of New Mexico not operating its program under a managed care model;
- clarification about how the provider tax is being implemented in Colorado and how much money could be raised by instituting provider taxes in New Mexico;
- clarification regarding changes that have been implemented pursuant to a study of potential cost-containment measures; and
- the impact of the nursing home bed tax that was previously implemented in New Mexico; New Mexico won the lawsuit that challenged this bed tax, but the law has since sunsetted.

### **Government Restructuring Task Force**

Jonelle Maison, Legislative Council Service (LCS), reported on behalf of Paula Tackett, director, LCS, and Raúl E. Burciaga, director-designate, LCS. She noted that the New Mexico Legislative Council (LC) did not reduce the number of days that the LHHS will meet in the interim and approved three-day meetings; however, the Disability Concerns Subcommittee must meet during one of the regularly scheduled LHHS meeting days. Additionally, this year, the LC is discouraging meetings being held outside of Santa Fe. Finally, the LC would like the LHHS and all interim committees to work with the agencies that they oversee to identify opportunities for restructuring government, cost efficiency and consolidation.

Committee members had questions and made comments as follows:

- clarification regarding the membership and meetings of the Disability Concerns Subcommittee;
- a need for data to make recommendations as requested by the Government Restructuring Task Force;

- clarifications regarding specific concerns that the Government Restructuring Task Force has expressed, including Medicaid and other health care services relative to the PPACA;
- clarification regarding exactly what is being asked of the LHHS: consideration of structure, contracts and the impact of structural consolidations recommended by the Carruthers Commission; there were suggestions for making the system better;
- clarification of the deadline for these recommendations, which is August 2010;
- whether the task force has decided how to address these issues and recommendations and whether the chairs, vice chairs and co-chairs of the interim committees will be part of those discussions;
- an observation that the LHHS is tasked with such an enormous responsibility already and spending too much time on this task may not be a good idea;
- a concern that the Coordination of Long-term Services (CoLTS) Program vendors are losing money, yet no state employees were let go in order to implement this program; and
- an observation that executive agencies are like a ship without a sail as key people leave and are not replaced; accomplishing restructuring in a time of transition is very challenging.

### **Public Comment**

Pug Burge, associate vice president for administration at the University of New Mexico Health Sciences Center (UNM/HSC), conveyed concerns of health sciences center president Dr. Paul Roth regarding federal health reform and the impact on the UNM/HSC. Three internal task force groups have been formed to closely track regulations, make recommendations for boards and commissions and pursue grant opportunities. One key committee will address work force issues and will work with the SJM 1 working group and its advisory groups. The UNM/HSC is committed to coordinating efforts with all other efforts that are currently underway. A committee member commented that the UNM/HSC has excellent grant writers, and that their expertise should be sought.

Barbara Webber, executive director, Health Action New Mexico, commented that this interim and the upcoming session promise to be among the most important in history for the LHHS. She reminded the committee that consumers are eagerly awaiting information about the new PPACA and how it will benefit them and urged members to consider those who will be most affected by all the changes.

Mike Batte, administrator for the New Mexico Life Insurance Guaranty Association, informed the committee of a bill that was introduced in the 2009 session. That bill died in committee, which Mr. Batte attributed to the complexity of the content, and the bill would benefit from interim committee review. He asked the committee to look at that bill, time permitting.

Nick Estes, policy analyst for New Mexico Voices for Children, emphasized that the issue of the loss of the enhanced FMAP under Medicaid will have a significant impact on the state either in the short run or in the future. Advocacy groups are working hard to convince Congress to extend

the enhanced FMAP. When the FMAP is reduced, it will result in a \$360 million shortfall to Medicaid, which will result in devastating cuts to recipients. He urged the committee to identify ways to replace those lost revenues.

### **Consideration of Work Plan**

Michael Hely, staff attorney, LCS, reviewed the proposed work plan, which was developed by staff with input from the chair and vice chair. The work plan proposes to concentrate on the state's implementation of the PPACA and changes to Medicaid. Additionally, the committee has been asked to focus on opportunities for restructuring government; a potential release of a request for proposal and new contract for the provision of behavioral health services; and oversight of the health and human services agencies of the state. PPACA measures that will come under review by the LHHS are enormous and will require close attention to such issues as work force, information technology, insurance reforms, Medicaid, quality, transparency and system reform, long-term care and more. That review also will require close coordination with the SJM 1 working group and the Governor's Health Reform Leadership Team. The Disability Concerns Subcommittee focus will be subject to change after a chair of the subcommittee is appointed. He reviewed the proposed meeting schedule, noting that meeting dates have been coordinated with meeting dates of the SJM 1 working group.

Committee members asked questions and made comments on the following areas:

- whether the Disability Concerns Subcommittee can consider the implementation of the CoLTS Program;
- whether the guardianship alliance and guardianship issues can be addressed by the LHHS;
- an observation that the SJM 1 working group, the Governor's Health Reform Leadership Team and the LHHS will be involved in duplicative work; there was a request that the LHHS write a letter to the governor stating that opinion. Some committee members disagreed, saying there could be value in two groups meeting on this complicated topic; and
- a request that the work plan reflect a desire that the LHHS receive reports from the other groups working on health reform.

A motion was made and seconded to approve the work plan as amended. There being no objection, the work plan was adopted.

The meeting was adjourned at 3:55 p.m.

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

**July 6-8, 2010  
Room 307, State Capitol  
Santa Fe**

The second meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Senator Dede Feldman, vice chair, at 9:10 a.m on Tuesday, July 6, 2010. An announcement was made that the meeting would be webcast. Committee members introduced themselves.

**Present**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Sen. Rod Adair (7/6)  
Rep. Nora Espinoza  
Rep. Joni Marie Gutierrez (7/6)  
Sen. Linda M. Lopez (7/6, 7/7)  
Sen. Gerald Ortiz y Pino

**Absent**

Rep. Antonio Lujan

**Advisory Members**

Rep. Ray Begaye  
Rep. Eleanor Chavez (7/8)  
Rep. Nathan P. Cote  
Rep. Miguel P. Garcia  
Rep. Keith J. Gardner (7/6)  
Sen. Clinton D. Harden, Jr. (7/6, 7/7)  
Sen. Gay G. Kernan (7/7)  
Rep. Dennis J. Kintigh  
Rep. James Roger Madalena (7/6)  
Sen. Cisco McSorley (7/6, 7/7)  
Rep. Bill B. O'Neill  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez (7/6, 7/7)  
Sen. Sander Rue (7/6)  
Rep. Mimi Stewart (7/7, 7/8)  
Rep. Gloria C. Vaughn

Sen. Sue Wilson Beffort  
Rep. Jose A. Campos  
Rep. John A. Heaton  
Rep. Rodolpho "Rudy" S. Martinez  
Rep. Jeff Steinborn  
Sen. David Ulibarri

**Guest Legislator**

Sen. Bernadette M. Sanchez (7/6)

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Michael Hely  
Karen Wells  
Zelda Abeita

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts are in the meeting file.

### **Tuesday, July 6**

#### **Welcome and Introductions**

The chair commented on the importance of the work to be done during this interim relative to health care reform. She asked presenters to address specific provisions in the federal Patient Protection and Affordable Care Act (PPACA) that will affect them. A quorum being present, a motion was made and seconded to approve the June minutes of the LHHS; the minutes were unanimously adopted. A request was made for an outline of when each major topic is anticipated to be addressed during the interim.

#### **Advocates Road Map for the Future**

Nancy Koenigsberg, legal director, Disability Rights New Mexico (DRNM), presented a brief history of the Interagency Behavioral Health Purchasing Collaborative (IBHPC) and an outline of needs that advocates feel must be addressed in the future. She stated that her presentation summarized comments provided by DRNM in response to a concept paper and request for proposals (RFP) issued by the collaborative, noting that, as a result of the public comments, a decision was made not to issue an RFP at this time. DRNM believes the IBHPC needs to identify what is working well and what is not and then make changes as needed. DRNM recommends development of a master strategic plan to be presented both to the LHHS and the Legislative Finance Committee (LFC). Ms. Koenigsberg commented that the original vision of the collaborative — to move to a system of community-based outpatient services — has not materialized, while access to inpatient, more intensive services or residential treatment centers has languished. She reminded the committee that the statute creating the IBHPC called for a master strategic plan. According to Ms. Koenigsberg, no such master plan can currently be found as a public document, nor do regulations exist, though some have been proposed. DRNM feels development of a master strategic plan containing performance measures is still needed. The IBHPC should be evaluated and consideration given as to whether medical assistance standards are being met. Feedback from local collaboratives should be regularly incorporated into the strategic plan. Close oversight of the comprehensive community support services model is needed, particularly with regard to case management. The legislature should ensure that the statute is upheld.

Committee members had questions and made comments on the following topics:

- staff brought forward a copy of a comprehensive plan, published in July 2007, and Ms. Koenigsberg stated that she does not know whether that plan represented an active and current strategic plan;
- access to services seems to have diminished since the inception of the IBHPC;

- problems with continuing the IBHPC model and a managed care behavioral health system;
- a suggestion that consideration be given to repealing the IBHPC statute and integrating behavioral health services with the Medicaid Salud! program; Ms. Koenigsberg urged members not to make such a major change without taking the evaluation steps recommended in her presentation;
- clarification regarding the nature and purpose of DRNM; and
- an observation that behavioral health funding is being directed into jails and the prison system rather than the community.

### **Independent Evaluation of Behavioral Health Transformation**

Cathleen Wilging, Ph.D., Pacific Institute for Research and Evaluation, Behavioral Health Research Center of the Southwest, offered findings from an independent study she performed of the provision of behavioral health services and the impact of reform efforts in New Mexico. Key points that emerged from the study highlight the continuing need for evaluation of the reform efforts and the need for mid-course corrections. Analysis of the survey results revealed transition issues, including a work force "stressed out" by new billing, reimbursement and enrollment requirements and financial insecurity, particularly with safety net institutions. Issues of reform distress and voluntary staff turnover were explored. Rural personnel appear to have less capacity to respond to the challenges of the reform and transformation. Agency leadership and training are critical to ensure implementation of integrated treatment models with evidence-based practices. The results of the statewide survey yielded important information regarding the capacity and characteristics of the behavioral health work force, including shortages of providers, especially in rural areas with large Native American populations. According to Dr. Wilging, reform planning should include further analysis of these findings and efforts to reduce rural-urban disparities. The survey also looked at the financial status and administrative costs of reform. Consumer analysis should be broadened to ensure that findings accurately reflect the impact of reform on safety net agencies and other factors that color the response of those surveyed. A more concerted effort to strengthen New Mexico's safety net is suggested by the findings, as well as more proactive attention by the IBHPC in addressing "on-the-ground" issues such as training needs, administrative time and costs and the unintended consequences of reform revealed by this study.

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

- actions taken to ensure long-term evaluation of the behavioral health system and feedback to legislators;
- the value of stakeholder input;
- the process of the study and whether the administration cooperated in the study;
- clarification regarding why New Mexico has to pay the Western Interstate Commission for Higher Education (WICHE) extra to obtain data about providers when the state already pays \$100,000 per year to participate in WICHE;
- the apparent discrepancy between provider dissatisfaction and consumer satisfaction with services and the system;
- whether the study will be ongoing, to which Dr. Wilging replied that, no, funding for the study is expiring but that a more in-depth analysis of the findings will be released;
- whether the findings and analysis will lead to recommendations for mid-course corrections that could or should be implemented by the IBHPC;
- clarification about the distribution of providers and consumers in rural and urban areas;

- the impact of vacancies that were not replaced and whether funding was reduced as a result of the vacancies;
- whether community-based services will be a successful model in rural areas;
- the pros and cons of mandated mental health treatment;
- the distribution of funds and whether funds are getting to needed services and providers;
- an observation of the usefulness of this data for the Government Restructuring Task Force;
- whether providers are closing agencies and, if so, why;
- clarification regarding what constitutes "rural" in the study and the differentiation between "rural" and "underserved";
- differences between clinical homes and medical homes and differences between comprehensive community support services and case management; and
- whether the presenter has any recommendations for mid-course corrections.

### **Native American Behavioral Health Concerns**

Regina Roanhorse, Diné Local Collaborative 15 and New Mexico Health Advocacy Alliance, testified regarding reductions to funding of prevention services for Native Americans. She identified herself as a family member of a consumer. She stated that all her work for the local collaborative is done on a volunteer basis. She is particularly concerned about the number of youth suicides in McKinley County. She reviewed a letter she sent to the IBHPC in response to its request for public input pursuant to the concept paper. She testified that many Native American providers indicated reluctance to provide input out of fear of reprisals. She identified specific concerns regarding the difficulty of Native American providers in obtaining contracts from OptumHealth. Other areas of concern include lack of attention to cultural competency, how core service agencies and comprehensive community support services will be integrated into the behavioral health system of care, diversion of funding away from services to information technology, the structure within OptumHealth that sidelines Native American issues and a lack of funding for Native American prevention services. Ms. Roanhorse emphasized that prevention is a high priority for the local collaborative. She provided data to demonstrate how cuts to program funding for prevention have affected Native American youth. Five Native American prevention programs lost 100% of their funding. She described the difficulty in obtaining data from OptumHealth and the IBHPC. She urged the committee to work to restore funding for prevention services for Native Americans.

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

- whether OptumHealth representatives were present; Carol Levine, interim C.E.O. of OptumHealth, stated that she heard the concerns and would "follow up" on them;
- whether the drop-in center in Shiprock could be funded using community reinvestment funds; current budget cuts have led to reductions in community reinvestment services; hopefully they will be restored as the budget picture improves;
- an expression of strong sentiment that OptumHealth is not serving Native Americans in New Mexico; and
- a request for LHHS members who are members of the LFC to carry the funding needs of Native Americans to the LFC.

The chair recognized the governor from the Pueblo of Tesuque, the Honorable Rick Vigil, who was present in the audience.

Questions and comments resumed as follows:

- the potential to develop non-Native Americans as youth providers and counselors through the use of role models; provisions in the PPACA support this idea;
- encouragement for Ms. Roanhorse to develop a proposal for the LHHS to consider to raise the level of health among Native American youth; Ms. Roanhorse will provide some material to staff;
- a request for a report on cultural competency as required in legislation carried by Senator Sanchez;
- a request for identification of priorities for funding; programs to prevent youth suicide are paramount; and
- the importance of asking Native American consumers and providers what is needed and listening to the responses.

### **Public Input on the Behavioral Health Concept Paper and Status of RFP**

Teresa Gomez, HSD and IBHPC, and Karen Meader, IBHPC, introduced themselves. Ms. Gomez provided background information on the governor's request for the IBHPC to go out to bid for a new RFP for the statewide entity. She briefly reviewed the content of the concept paper that formed the basis of the public hearings held around the state. Approximately 250 people attended these hearings, including one hearing for tribal members. She highlighted common themes that emerged in public comments, including a strong desire to avoid another transition in such a short period of time; a need for clarification of the roles and responsibilities of the state and a desire for providers to have a stronger role in implementing the programs; a need for individual consumers to have a voice; a desire to open the RFP bid to local nonprofit agencies; doubts about the readiness of the IBHPC to undertake a new contract or RFP; challenges of Governor Richardson's time line; tribal concerns as delineated by the previous presenter; and concern that the concept paper did not reflect any real change. Ms. Gomez presented this input to the IBHPC in June, which resulted in a unanimous recommendation to the governor not to proceed with the RFP. This recommendation was approved by the governor.

### **Report: OptumHealth Directed Plan of Correction**

Alicia Smith, Alicia Smith Associates, said that her company was engaged as a monitor pursuant to the statewide entity contract to implement a directed corrective action plan (DCAP) required of OptumHealth. She identified the time line of events since OptumHealth was chosen as the statewide entity, to the imposition of sanctions and the onset of the DCAP, to the present status of compliance with the DCAP by OptumHealth. Ms. Smith reviewed the key areas that were addressed in the DCAP, including claims processing, claims submission, fund mapping and provider relations. Steps taken to mediate these circumstances were identified. Initially, OptumHealth relaxed a number of edits in the system that allowed more claims to be processed and expedited payments to be made. A provider council was formed early in the DCAP process and will become a permanent council. Extensive and repeated provider training has been conducted, and alterations in the process of service registration have been achieved. The process of reconciling the claims of those providers who received expedited claims is now occurring. In most cases, agreements have been reached between OptumHealth and providers. Alicia Smith Associates is attentive to any large system issues that may persist. Monitoring is ongoing, with

some requirements of edits remaining relaxed until the system is capable of handling the reintroduction of edits. Ms. Smith stated that the DCAP implementation is going well, but it is far from over. Statistics were provided to demonstrate the current status of corrective action. Performance measures that Alicia Smith Associates are tracking on a weekly and monthly basis were identified. The number of claims being paid has gone up while the number of denied claims has gone down. Claims payments and weekly turnaround times have improved. An independent audit, conducted by a company called Hewitt, was conducted as required by the DCAP, the overall result of which reflected that the OptumHealth system meets the commercial objectives for financial accuracy but remains below commercial objectives for payment accuracy and turnaround time. The audit shows, and Alicia Smith Associates concurs, that the core problem appears to be that the system is still unable to identify funding streams appropriately. A one- to two-month lag between service dates and claims payments remains. She reiterated that improvements have been made and are significant; however, there is still work to be done, and the results are not perfect. Ms. Levine has been very cooperative and helpful.

Comments and questions from committee members covered the following areas:

- clarification regarding how providers and OptumHealth will work together after the completion of the DCAP; a permanent provider council will be established;
- a comment from David Ley, a provider in the audience, who asserted that most providers are happier, though concerns still remain; it is hoped that the provider council will be able to participate in decision-making in the future;
- a comment by Ms. Levine agreeing that OptumHealth intends to continue the provider council and plans to allow decision-making with providers in the future;
- fear that once the DCAP is completed, things will revert to a bad situation; Alicia Smith Associates will remain involved up to six months after the completion of the DCAP, as needed;
- whether Mr. Ley was among the providers who offered public comment urging no change in contract at this time; Mr. Ley answered "yes";
- the size of the OptumHealth contract: \$378 million;
- a recommendation that independent monitoring should be a provision of any future contract for a statewide entity;
- the possibility of establishing a "preferred provider" class of providers who are able to get paid without more stringent edits in the system;
- whether any small providers have gone out of business; as far as is now known, no small provider has gone out of business;
- whether the information technology system of OptumHealth now comes up to standards; the comprehensive system that OptumHealth originally proposed was very complex and not adequately tested; many changes have been made to the system, but it is not yet adequate to meet needs;
- whether an overall performance of OptumHealth is anticipated or needed;
- whether standard edits are evaluated as appropriate edits; examples of standard edits were provided; the majority are required by state or federal law; there are six edits that were relaxed and that are being restored through a rigorous testing process;
- clarification regarding the number of providers affected by delayed payments and the number that bill electronically;
- an observation that billing of claims to Medicare is simple and reimbursement is very quick; this could serve as a standard to pursue; and

- a request for staff to review the payment requirements established under the New Mexico statutes requiring prompt payment of clean claims.

### **Behavioral Health Vision and Strategic Plan Development**

Kathryn (Katie) Falls, secretary, HSD, presented material originally scheduled for presentation by Linda Roebuck Homer, who was unable to attend due to the death of her father. Secretary Falls identified the goals and vision of the IBHPC. She reviewed the structure and membership of the IBHPC, the Behavioral Health Planning Council and 18 local collaboratives.

The 17 state agencies that comprise the IBHPC meet regularly to work together to address the goals and vision of the collaborative. A continuum of care was described that ranges from prevention and early intervention through inpatient services. She described community-based services and programs and which agency is primarily responsible for each program. Secretary Falls identified services that started to be consolidated on July 1, 2010, including the Office of Substance Abuse Prevention, the Compulsive Gambling Council and pre-admission-screening and resident-review activities. These services will be jointly managed between the Department of Health (DOH) and the HSD through a joint powers agreement. She reviewed the role of the statewide entity and highlighted the accomplishments of the IBHPC.

Ms. Gomez described the functions and role of core service agencies (CSAs) in ensuring a clinical home to coordinate comprehensive community support services (CCSS). This new model of service delivery is designed to support the provision of quality care and build capacity. Ms. Gomez described actions taken to increase efficiency and effectiveness, including consolidated funding, maximized Medicaid funding, strengthened oversight and contract management. Accountability has improved with the use of numerous performance measures and indices and the implementation of multi-systemic therapy treatment modalities. Also described were supportive housing initiatives. Future directions and issues were highlighted, including efforts of the Workforce Solutions Department (WSD) to enhance higher education for work force development and training and for addressing shortages among the provider community.

A new comprehensive strategic behavioral health plan is currently under development that will align behavioral health in New Mexico with the PPACA and the needs of the state. The plan is intended to integrate primary and behavioral health services, to strengthen linkages of prevention programs, to emphasize early intervention, to establish regional systems of crisis response and care and to target returning veterans.

Questions and comments by committee members covered the following areas:

- how the IBHPC made the decision to rely on CSAs as a delivery system model and whether this model will limit consumers' provider choices; consumers will be able to choose all providers and services except for CCSS, which must be provided by CSAs;
- how conflicts of interest are being identified with CSAs;
- clarification regarding the current status of implementation of CSAs;
- a request for a list of all agencies already approved, where they are located and their qualifications to be CSAs; Secretary Falls will provide this information;
- concerns about the process of deciding to move to CSAs and what supportive data were used to make this decision; Secretary Falls offered to create a report to answer all of these questions and more;

- whether cultural competency was considered in the development of CSAs;
- concern that OptumHealth will be responsible for implementing CSAs before the state is satisfied that OptumHealth is capable of managing claims payments;
- what is happening with case management as a service and how it is different from CCSS; CCSS are a replacement for case management for people with serious mental illness or co-occurring disorders; CCSS help people learn to manage their own needs, versus having arrangements made for a client by a case manager;
- clarification regarding the reported lack of regulations; there are regulations in each department, and IBHPC regulations are under development; and
- an observation that performance measures identified in a strategic plan should tie directly to the contract for the statewide entity.

### **Public Comment**

Patsy Romero, Romero and Associates, spoke on behalf of several behavioral health providers around the state whom she represents as clients. She provided a position paper that is critical of the implementation of CSAs, contending that the concept is ill-conceived and excludes many valuable providers. She requested that the program of CSAs be halted until further planning and development can be accomplished.

Dr. Deborah Altschul, Consortium for Better Health Research Training, University of New Mexico (UNM), stated that the program she works with is working with the IBHPC on a six-year project, funded by a grant, to assess rural provider and consumer needs.

Veronica Rodriguez, Esperanza Guidance Services, has been a provider of CCSS since 2008. She fears her small agency will not be in existence as of January 1, 2011 due to implementation of the CSA delivery system model.

Susan Trujillo of Silver City urged the committee to work together with the local collaboratives to find workable solutions to problems.

The committee recessed for the day at 5:50 p.m.

### **Wednesday, July 7**

#### **Call to Order**

The meeting was called to order by the chair at 9:20 a.m.

#### **Health Care Work Force: Current and Anticipated Needs**

Frank Hesse, M.D., chair, New Mexico Health Policy Commission (HPC), and Jerry Harrison, Ph.D., executive director, New Mexico Health Resources (NMHR), presented information regarding the shortage of health professionals in the areas of primary care, mental health and dental services. Dr. Hesse offered comments on behalf of the HPC and described the need for an increased health professional work force and the need for system reforms that encourage more self-care and prevention. In addition to doctors, allied health professionals at all levels are needed. He contends that UNM graduates too few health care providers, many of whom do not remain in New Mexico to practice. All health professional education programs in the state will need to be expanded. He noted that the HPC is constrained in its ability to be of assistance to

the legislature due to severe budget cuts. He called for the creation of a new health care work force commission that will build on the remaining strengths of the HPC.

Dr. Harrison noted that in the last 15 years, NMHR has successfully recruited over 850 health care professionals, 123 of whom were recruited within the last two years. He described the mission and funding source for NMHR. He noted that New Mexico has virtually no statistics regarding the health care work force. He provided background information regarding health professional shortage areas (HPSAs) and how these areas are determined. Maps were provided showing HPSAs in New Mexico for primary care, dental and mental health professionals. In primary care, virtually the entire state qualifies as an HPSA. New Mexico is ranked between forty-ninth and fiftieth in the United States in terms of access to dental providers. He noted that a majority of health professionals are aging and are expected to retire soon. Available data only reflect the number of health care professionals who are licensed in the state and do not identify which of those licensed professionals are still practicing. He described the New Mexico loan for service program and loan repayment program, which assist medical students with tuition costs, including WICHE funding for dental students. Though the programs are vital, they do not eliminate substantial debt for students. The PPACA contains significant new funding for the National Health Service Corps, of which New Mexico has traditionally been a big recipient. The DOH administers the New Mexico Health Service Corps, which augments federal funding for New Mexico medical students. Dr. Harrison recommended the creation of a loan program specifically targeted at nurses and other allied health professionals. He also recommended examining the current process of review of scope of practice issues. Coordination between various health professional training programs could result in retention of graduates in New Mexico. Additionally, data must be collected that accurately identify needs for the future in all health care professions. He recommended greater investment in faculty.

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

- resources needed to expand training and education of health professionals;
- frustration regarding resistance to changes in scope of practice by health care professionals;
- whether New Mexico has the right array of licensing boards;
- the need for reimbursement reform in order to incentivize more people to practice in needed professions such as primary care;
- whether New Mexico's diversity impairs the recruitment of health professionals, especially mental health professionals; the difficulty of earning a competitive wage in New Mexico is the greater problem;
- whether the inclusion of federally qualified health centers in the HPSA maps would change the HPSA status; it would not change the status;
- clarification regarding the current status of physicians' payment of gross receipts taxes (GRT); some relief was given to some practitioners;
- an observation that some doctors find it more profitable to practice in Colorado or Texas in order to avoid payment of GRT;
- the extent to which malpractice insurance is a problem and how it affects recruitment;
- the importance of educating and supporting health professionals in New Mexico and providing incentives for them to remain in the state to practice;
- the lack of data regarding reasons why doctors are leaving the practice of medicine; the last data collected was in 2006 by the HPC;

- whether anti-competition clauses are common in recruitment and employment contracts;
- the impact of caps on limited liability corporations imposed by the Insurance Division of the Public Regulation Commission on physicians in independent practice; the Board of Medical Examiners has mediated this impact by regulation;
- the reasons why UNM is graduating so few professionals and the effect that low faculty salaries have on this issue;
- the effect of additional grant funding on the supply of nurses; and
- whether elimination of certain boards or commissions through government restructuring efforts will help or harm scope of practice issues; Dr. Harrison expressed a concern that such a move would expose the state to a great deal of liability.

Pat Boyle, director, Center for Nursing Excellence, testified that nursing grant funds are being used for a variety of things, including information technology, advanced education and training for nurse faculty and program enhancements. The number of nursing school graduates has doubled over the last four years; however, a shortage still remains. A consortium has been formed to promote partnerships between schools of nursing.

Deborah Walker, director, Board of Nursing, noted that statutes provide an environment in which nurses can pursue advanced nursing degrees. She voiced concern that new graduates with associate degrees are not getting jobs. So far, the information is only anecdotal; however, the board, in collaboration with other entities such as the Center for Nursing Excellence, will look into this in more detail. Ms. Walker and Ms. Boyle reminded the committee that they will hear testimony and receive a written report in October on these issues in response to HJM 50.

John Anderson, lobbyist for the New Mexico Medical Society (NMMS), explained the GRT issue: doctors can claim a tax deduction for the amount of GRT they pay; additionally, there is a component of Medicare and Medicaid reimbursement to compensate for GRT. In fee-for-service, doctors can claim a line item on their tax forms for GRT paid, but few do so. In the first year of Governor Richardson's tenure, the legislature passed a bill to provide a deduction to doctors for GRT paid to managed care organizations. Mr. Anderson will provide a booklet to the committee developed by the NMMS that explains this in greater detail. He offered to have the NMMS tax expert give a presentation on this issue. Dr. Harrison added that the GRT issue is not an issue in the recruitment of doctors to New Mexico. He reminded the committee that doctors who agree to practice in a rural area are entitled under state law to a tax credit and that more than 1,400 physicians have taken advantage of this provision. Mark Moore, director, New Mexico Dental Association, testified that GRT payment is a problem for the recruitment of dentists.

### **Work Force Data Needs and Work Force Provisions and Opportunities in the PPACA**

Dan Derksen, M.D., Center for Community Partnerships, Robert Wood Johnson Center for Health Policy fellow, reiterated the need for additional health care professionals and emphasized the need for data to demonstrate fully the need. He identified funding opportunities that are contained in the PPACA, including \$230 million for teaching health centers, \$168 million for primary care provider training and much more. New Mexico is currently ranked last in the nation in access to care, according to the Commonwealth Fund, but opportunities now exist to change that. He reviewed the number of New Mexicans currently covered by some form of publicly funded health insurance, which is close to 75% of the current population of the state. When the PPACA is fully implemented in 2014, that number will increase, creating an additional demand for

health care professionals. Dr. Derksen reviewed old data that are available to demonstrate the shortages that New Mexico is currently experiencing and to project future needs. Recent data from UNM indicate that 40% of practicing physicians in New Mexico graduated from UNM. New Mexico is increasingly successful in retaining graduates in the state, but the state needs to do better. The state is currently increasing its primary care work force by approximately 1% per year; however, Dr. Derksen estimates that New Mexico will need an increase of 6.5% per year to meet future needs. Training of health professionals in teaching health centers such as health commons models has been proven to increase the retention of providers in the state and should be encouraged. A disturbing trend in the nation is the significant decline of medical school graduates that enter family medicine. This trend will become very serious by 2014.

Dr. Derksen identified several ideas for addressing these trends, including continued support for the B.A./M.D. program at UNM, expanding family medicine training to new sites, increasing family nurse practitioner and physician assistant training, funding tuition payments for physicians who practice primary care in HPSAs and actively taking advantage of the many funding opportunities in the PPACA. He emphasized the benefit of reaching out to medical students while they are still in school to give them the support and encouragement they need. He advocated for increased training sites, coordinating training efforts with system and reimbursement reforms and a commitment to improving patient outcomes. New Mexico should be proud of the progress it has made and continue to work toward the future.

Harvey Licht, Varela Consulting Group, provided a historical perspective of the health professionals pipeline in the United States. By 2020, a shortage of 120,000 to 125,000 health professionals in the country is projected. In the PPACA, significant provisions address this shortage, including 40 different sections that modify or authorize almost 50 different programs. For the most part, the funding language is conditional, authorizing funding rather than appropriating funds; however, Kathleen Sebelius, secretary, federal Health and Human Services Department, has committed \$200 million to fund work force initiatives out of current funds. Mr. Licht provided the statutory definition of "health work force" and other important terms contained in the PPACA. Program provisions in the act fall into three categories, including education and training programs, educational financing and location incentive programs and work force assurance programs. Perhaps the most important provision is the establishment of the National Health Care Workforce Commission, which will include state work force development grants and the establishment of national/state health care work force analysis centers. Federal money will be available to states for comprehensive planning to meet work force needs and to develop a single evidence-based strategic plan. Mr. Licht highlighted appropriations that are contained in the PPACA to expand the National Health Service Corps tenfold, as well as increased funding for educational loans, loan repayment and training for mid-career training scholarships. Selected training program provisions target training in primary care, increasing teaching capacity and a graduate nurse education demonstration. Training for dentistry, mental and behavioral health, direct care workers and public health is contained in the act and could have a significant impact on New Mexico's ability to train needed health care professionals.

Mr. Licht recommended a variety of steps to maximize the use of resources in the PPACA. Requirements in state health work force development grants may suggest legislation that could be introduced to establish work force data monitoring, planning and development, educational program coordination and educational financing of program outreach.

Questions and comments covered the following areas:

- clarification regarding who is eligible for grants and how funding for these initiatives will be distributed;
- the status of mandated cuts to physician reimbursement under Medicare; the issue is complicated, but it appears Congress does not want to cut payments to doctors and will ultimately identify a long-term solution to this problem;
- an observation that until the issue of low reimbursement of primary care physicians is addressed, it is unlikely that more physicians will choose primary care as a specialty;
- whether the PPACA contains provisions to create additional residency programs; the primary care extension program may have opportunities;
- the effectiveness of rural doctors mentoring students in actual practice situations;
- the lack of uniformity in the activities that nurse assistants, medical assistants and other allied health practitioners are able to perform;
- clarification regarding what is being done to encourage middle school and high school students to pursue health professions;
- encouragement to rebuild the HPC to enable it to be more effective in these challenging times;
- whether other states are looking at similar measures to enhance the choice of primary care as a specialty;
- whether there is potential in the PPACA to fund tuition repayment, as provided for in Senator Feldman's unfunded bill; there may be potential if additional capacity could be created at UNM;
- clarification regarding the eligibility to apply for work force grants;
- concern that grant opportunities will be missed and a suggestion that someone in the Legislative Council Service be identified to track grants; synchrony between the executive and legislative branches will be necessary to benefit the state fully;
- recommendations, if any, that are coming from physicians in the state;
- the number of grants that require matching funds from the state and whether there will be a need to appropriate funds before the January session; and
- a request for data regarding where UNM medical school students went to high school and college; Pug Burge, vice president for administration for health sciences, UNM, stated that she would obtain the information from Dr. Paul Roth.

Dr. Harrison introduced Melissa Candelaria and Kevin McMullen, two recruiters for the NMHR.

### **Work Force and the PPACA: State Coordination**

A panel composed of Sam Howarth, director of policy and performance, DOH, Teresa Casados, deputy secretary, WSD, and Len Malry, director of workforce education, Higher Education Department (HED), was invited to discuss efforts to coordinate grant applications for work force development. Mr. Howarth spoke about what the state is doing to identify and track health work force and other health care grant applications. He noted that the SJM 1 Health Care Reform Working Group and the Governor's Health Care Reform Leadership Team have been working on PPACA implementation issues. The final report of the leadership team is complete and will be presented to the LHHS after the governor formally accepts it. This report contains a

recommendation to continue the work of the leadership team. Mr. Howarth noted that the leadership team members, who are all exempt employees, have appointed classified employees to provide continuity in implementation after the November elections. He provided documentation of all of the grants or RFPs that the DOH is tracking. The DOH monitors federal registers, LISTSERV and many other sources to follow these grant opportunities, and once the applications are issued, they are entered into a matrix that contains eligible applicants, grant amounts, cost-sharing requirements, deadlines and detailed information regarding what the grant is funding. Mr. Howarth reviewed the basic goals and purposes of all of the PPACA grants for which applications have already been released. He noted that the DOH is coordinating with all partners and potential partners for grants for which the state can apply and is distributing grant opportunities to other eligible entities for grants for which the state is not eligible to apply. The HSD web site contains information that is updated weekly on grant opportunities and action.

Committee members had questions and comments in the following areas:

- the status of grants that are imminently due;
- how to avoid competing grant applications;
- a request by Ms. Burge to report all grants for which UNM is applying and to contact New Mexico State University to identify grants for which it may be applying;
- an observation that legislators are getting calls from constituents about how to apply for grants;
- whether the state is notifying eligible entities of grant opportunities; the DOH and the grant lead in each executive agency are notifying as many entities as they can identify when grant announcements are made;
- whether there are opportunities for the legislature to help the executive in getting the word out;
- how matching funds are being identified and the lack of appropriations from the legislature; and
- possibilities to partner with the State Workforce Development Board.

Ms. Casados described a work force planning grant for which the WSD is applying. She noted that the current makeup of the State Workforce Development Board may need to be altered slightly in order to qualify for the grant. The purpose of the grant is to foster state partnerships to create and implement plans for health work force development. If the planning grant is awarded, the state will be eligible for an implementation grant. The planning grant calls for an assessment of health care career pathways that already exist, regulations, barriers and a plan to eliminate barriers. Some resources already exist to get started on this planning effort and to include them in the grant application. The planning grant is for \$150,000, and, if awarded, the implementation grant would provide \$1.5 million per year for three years. The goal is to plan for an increase in the primary care work force of 10% to 15% over the next 10 years. She described the matching requirements.

Committee members had questions and comments in the following areas:

- how the WSD intends to obtain the necessary data; the HED has four-year-old data that are being updated, and the HPC has geographic access data for selected health care professionals that are current through 2009;
- the type of in-kind matching funds that are available; it could be part of individual salaries at the DOH;

- estimates of state expenditures to apply for and carry out the purpose of the planning grant; and
- how changes in the composition of the State Workforce Development Board will be accomplished.

Mr. Malry discussed the planning grant for which the WSD is applying. The grant will allow the HED to update data regarding the current education and training opportunities that exist in New Mexico and to identify a strategic plan for coordinating and consolidating those opportunities. Mr. Malry expressed excitement about the potential for increased public-private partnerships. He provided a memorandum describing all of the activities in which the HED is currently involved to promote higher education of health work force training and education.

Committee members asked whether the HED tracks the number of nurses who graduate in New Mexico; Mr. Malry will provide that information.

Mr. Howarth closed by identifying three key areas to ensure an adequate work force in the future. First, students need to be encouraged at an early educational level to pursue a health professional education. Second, the pipeline needs to be enhanced so that more opportunities to obtain a health professional education are available. Finally, ongoing recruitment and retention efforts will always be needed. He noted that the HPC will be issuing a white paper on the health work force later this year.

### **Workforce Solutions Department**

Ken Ortiz, secretary, WSD, identified areas of the department in which funding has been cut and measures that the department has taken to accommodate those cuts. He began with a general overview of program support since fiscal year 2009, when state general funds were cut by 36% and federal funds increased by 6%. Secretary Ortiz provided more specific detail in the areas of program support, work force transition services, information technology, business services and the labor relations program identifying the amount of decrease that has been seen in both state general funds and federal funds. Generally, cuts have resulted in unfilled vacancies. The WSD currently has approximately an 18.5% vacancy rate. He provided information about the federal American Recovery and Reinvestment Act of 2009 (ARRA) funding received and how those stimulus funds were used to support specific program areas. Programs that benefited from ARRA funds included the federal Workforce Investment Act of 1998 youth program, adult program and dislocated program. Reemployment through the federal Wagner-Peyser Act of 1933 also benefited from ARRA funds by allowing significant project completion to assist job seekers. The largest amount of ARRA funding, \$39 million, was received under the Unemployment Insurance Modernization Act of 2009, and it is being used in a phased-in approach. Finally, a variety of grants for green jobs received ARRA funds.

Secretary Ortiz identified numerous ideas to enhance government efficiency. Included are suggestions to eliminate staff travel through increased internet use; form redesign; administrative simplification and program reduction; electronic payments of unemployment insurance benefits; co-location of support services such as the temporary assistance for needy families (TANF) program, job placement and training; collection of tax assessments; consolidation of other state agencies such as the Workers' Compensation Administration and the Vocational Rehabilitation Division of the Public Education Department; increased internet use; creation of a universal call

center; consolidating call centers of other agencies; consolidating inspector general and audit activities for the state; and certain Procurement Code adjustments. Secretary Ortiz has created a competitive grant team to ensure that maximum revenue is received. Several of these ideas would require legislative action.

Committee members had questions and comments in the following areas:

- the effect of Congress' lack of action to extend unemployment benefits and whether benefits could be restored retroactively if Congress acts at a later time to extend these benefits;
- estimates of the number of people who are affected by this; approximately 400 to 500 people per week apply for unemployment benefits with an estimated 60,000 people currently unemployed who will not receive benefits when their current benefits are exhausted;
- clarification regarding the impact of the vacancy rate at the WSD;
- the disproportionate effect of unemployment on Native Americans;
- encouragement regarding the idea to co-locate support offices at one-stop shops;
- an observation that approximately 25% of the unemployed in the state are registered with a work force connection site and do not realize the services that are available to them;
- the source of funding for extended unemployment benefits;
- when the state's Unemployment Compensation Fund will become insolvent; the tax liability to employers is increased at such time as insolvency is imminent to keep the fund solvent;
- ways in which the business community is notified of the trigger that will result in increased tax liability;
- whether the dislocated worker money could be used to support health professional job development;
- clarification regarding outreach in the re-employment program funded by the ARRA;
- whether unemployment insurance is taxable income; yes, it is;
- the number of job openings the state currently has; more than 20,000 jobs are actively posted, but more than 65,000 people are unemployed;
- the impact of workers with arrests for driving while intoxicated who lose their driver's licenses and whether they are eligible to seek unemployment benefits if they lose their job for this reason; and
- the impact of payment of unemployment benefits by the Navajo Nation.

### **Public Comment**

There being no public comment, the committee recessed at 5:25 p.m.

### **Thursday, July 8**

The meeting was called to order at 9:05 a.m. by the chair.

### **Children, Youth and Families Department (CYFD)**

William Dunbar, secretary-designate, CYFD, and Marisol Atkins, deputy secretary, CYFD, provided a budget overview to the committee describing the effect of budget cuts on programs. Since fiscal year 2009, the department has been cut by \$24 million, \$7 million of which is in fund

balances. More cuts are anticipated before the end of fiscal year 2011. The CYFD has spread the effect of the cuts throughout the department, with some programs being disproportionately affected. The juvenile community corrections program was reduced by \$3.9 million, and the domestic violence program was cut by \$2.6 million, including lost TANF funds. The department's vacancy rate has nearly doubled since June 2008. While under a hiring freeze, the CYFD has developed a system for filling critical positions that prioritizes the health and safety of clients in direct state care. Cost-efficiency measures, such as the elimination of staff cell phones, have been implemented. New contracts have been negotiated, with partners such as UNM and pharmaceutical manufacturers, that have saved significant money.

Ms. Atkins testified that in January of this year, a waiting list was established for families seeking child care assistance who are above 100% of the federal poverty level. By May 2010, 1,952 children were on a waiting list. The CYFD anticipates additional federal dollars through a child development block grant beginning in the fall of 2010. Currently, ARRA funds are funding that block grant; however, ARRA funds will end in July 2011. Secretary-Designate Dunbar noted that child care assistance is a program that keeps families working; loss of child care assistance often results in a family losing employment, at which time the family can be expected to apply for additional state and federal benefits. Despite the difficulty of receiving subsidies for enrolled children, child care providers continue to work to improve the quality of their programs. Ms. Atkins reported that federal funds for home visiting programs were reduced through TANF; however, the governor has supplemented those funds with discretionary dollars to keep the program whole. The CYFD is applying for a grant to expand home visiting through the PPACA in close coordination with the DOH.

Secretary-Designate Dunbar pointed out that accepted reports of child abuse requiring investigation have increased. Jared Roundsville, deputy secretary for protective services, added that the number of children in foster care has remained stable. In order to meet demands in an environment of reduced funds, the CYFD has worked hard to keep children in homes. The complexity and severity of abuse and neglect cases have increased and continue to rise. These cases require more resources on the part of the state and place a tremendous emotional burden on staff. Since January 2010, the CYFD has seen 17 fatalities and 39 cases of severe injuries. The department has concluded that this rise in abuse and neglect is due in part to the poor economy.

Secretary-Designate Dunbar reported that the "Cambiar model", based upon the "Missouri model", is being implemented to reform juvenile justice services in secure facilities as well as in the community. This model has resulted in lower rates of recommitment and a decrease of youth entering the adult corrections system. The CYFD wants to implement the model statewide. John Sweeney, director, Juvenile Justice Division, CYFD, provided additional details regarding the success of this model where it has been implemented. In order to sustain the model, the CYFD will need to maintain ongoing training of staff, continue succession planning to develop facility staff skill levels, continue to develop data and outcome measures and encourage partnerships with communities.

David Martinez, youth and family services director, noted that coordination among all divisions and programs of the CYFD is essential. Secretary-Designate Dunbar stated that he is not prepared to talk about restructuring at this time. He believes that the CYFD is organized properly.

Other departments around the nation have indicated that New Mexico is a model program. The CYFD will continue to report undocumented immigrants, despite confusion regarding this policy.

Committee members had questions and comments in the following areas:

- ways in which programs and services in general could be consolidated; the CYFD would like to meet with the secretaries of health and human services before making formal recommendations;
- the possibility of moving TANF to the HSD;
- any changes envisioned for early childhood services such as moving the licensing of child care facilities to the DOH; childhood services are vitally important, and the CYFD believes all of these services should remain together in one department;
- plans to fund an early childhood coordinator through the Lieutenant Governor's Office;
- the extent of training for foster parents;
- whether there is a sliding scale for child care, to which CYFD staff responded that, yes, people on the waiting list would pay a co-payment once their child is enrolled; however, without the subsidy, most are unable to pay for any portion of child care;
- whether there could be consideration of increasing the co-payments to keep some children in child care; the CYFD will look into it;
- whether federal funds are still available for Head Start; yes, but state-funded Head Start has been discontinued due to budget cuts;
- what the department is able to do to prevent incidents of torture and deaths of children; oversight has been increased and response procedures enhanced for children aged three years and under in response to the increase in serious incidents of this sort;
- whether there are children in the system who are being served but who do not have documents proving legal presence in the United States; seven individuals are identified but not yet reported due to the lack of a reporting procedure; a meeting is scheduled with U.S. Immigration and Customs Enforcement, and the children will be reported;
- whether one of the individuals who does not have documents proving legal presence in the country is a convicted sex offender; the response was that no individual has been accused or convicted of a sex offense;
- whether the number of children who died or were seriously injured were under the custody of the state; none of them were; of the 17 fatalities, six were known to the CYFD;
- whether the CYFD overrules recommendations of the New Mexico Child Abuse and Neglect Citizen Review Board; safety is always the first priority of the CYFD, and a child will never be returned to a home if the CYFD believes that the child's safety is in jeopardy;
- ways in which the department determines the children and families who are most in need during these tight economic times;
- whether an institutional bias exists against group homes; group homes are an important part of the network of services and are currently funded; work is ongoing to identify greater resources to allow a child to be supported in the community for the long term;
- the percentage of incarcerated youths with behavioral health conditions and the level of psychiatric care they receive while they are incarcerated and after they are discharged;
- clarification regarding training provided to foster parents and extended family members;
- the percentage of children who are abused by family members; the vast majority are;

- contingency plans for when ARRA or TANF funds cease if the state cannot replace those funds;
- whether the CYFD is aware of youth suicides among members of the Mescalero Apache Tribe and what is being done; an extensive, cross-agency coordinated effort is underway;
- whether federal funds are available to support children aging out of foster care; yes, up to \$1,500 is available for transitions, education vouchers and monthly stipends up to the child's twenty-first birthday so long as the child is employed or in school;
- the availability of housing for these youth;
- clarification regarding the size of the home visiting grant available under the PPACA and what New Mexico's chances are of receiving it; a \$500,000 planning grant, if awarded, will be followed by additional money for implementation;
- the number of families currently receiving home visiting services and in what model; state-funded programs are located in 22 counties serving just over 1,300 families;
- clarification regarding the nurse/family partnership model of home visiting; it is not currently funded by the state; however, a community may choose this model and seek CYFD funding;
- caseload sizes of caseworkers in protective services; there is no set requirement; a reasonable caseload is 25 to 30; and
- the number of pending protective services investigations.

Various committee members expressed thanks for the work done by the CYFD for the children of New Mexico.

### **Aging and Long-Term Services Department (ALTSD)**

Michael Spanier, secretary, ALTSD, and Matthew Onstott, deputy secretary, ALTSD, provided information about the programs and services of the ALTSD and the effect of budget cuts on the department. Secretary Spanier began with an overview of the department, identifying populations served and the mission of the department. He reviewed significant population projections and trends and the anticipated impact of those trends on the ALTSD for the future. Most remarkable is that by 2015, an estimated 16.8% of the population of the state will be over age 65, and by 2030, it is expected that more than 25% of the population will be over the age of 65. Factors for this trend were identified, including the aging of the population, New Mexico as a retirement destination and the departure of many youths who move away from the state. Federal funding formulas are determined by the size of the aging population relative to the rest of the nation. Secretary Spanier is advocating with the New Mexico congressional delegation for the formula to be altered to recognize the percentage of the population over age 65. He noted that New Mexico is now first in the nation in the number of Medicaid dollars spent on home and community-based services. He reviewed the department's priorities and related those priorities to the previously discussed trends and impacts. Support of volunteer caregivers has emerged as a critical work force issue, particularly in light of increasing needs and declining revenues. As was reported by the CYFD, instances of abuse, neglect and exploitation of elders are increasing in frequency and intensity. The issue of economic insecurity, especially food insecurity, was highlighted as a critical concern. Deputy Secretary Onstott addressed budget trends and cuts, identifying an overall 12% reduction in the budget. In fiscal year 2009, the ALTSD received \$51.9 million in general fund dollars; in fiscal year 2011, state general funding has been reduced to \$44.1 million, which is a reduction of \$6.9 million. The department will also lose an estimated

\$730,000 in ARRA funding, mostly used for meal programs. He provided specific information about the impact of cuts in each of the program divisions. Although the need for adult protective services is growing, funding has declined by 15% in the same period of time. Funding for home and community-based services covered largely by Medicaid has declined by 22%. Services offered through the aging network and senior centers, which are in greater demand due to cuts in other areas, have declined by 9%. Funding for the Consumer and Elder Rights Division of the ALTSD, in which the Aging and Disability Resource Center is located, has been reduced by 10%. The effects of these cuts were briefly identified. Administrative support, including information technology, staff for the aging network, legal services and other administrative costs, has been reduced by 17%.

Committee members had questions and comments in the following areas:

- whether meals are provided for the weekends when hot meals may not otherwise be available; some communities are able to provide additional meals, but not all;
- whether there are any grants to provide food to hungry seniors; ARRA funds have helped, but these funds will cease; there have been efforts to link seniors with the supplemental nutrition assistance program (SNAP);
- whether opportunities exist to consolidate programs, such as meals programs with other state and privately funded programs, to achieve economies of scale in feeding the hungry;
- an observation that home-delivered meal programs often provide the only point of contact that a particular senior has with others;
- whether there has been an increase in the number of people with Alzheimer's disease and the types of services available to them; this information will be provided;
- whether the Adult Protective Services Act is strong enough and how it compares to other states; there was a request for a meeting of key people to examine that issue;
- whether the money for the coordination of long-term services (CoLTS) program match is in the ALTSD; program dollars are in the HSD; some administrative dollars are in the ALTSD and some are in the HSD;
- whether the CoLTS program is effective; the model has benefits and the state is headed in the right direction; however, it is not perfect, and improvements should still be pursued;
- the average cost of a senior meal; it varies around the state;
- projections regarding the number of senior centers that are reducing served meals;
- clarification regarding the Aging and Disability Resource Center services; coordination of all of the ALTSD programs and services occur through the call-in center, which averages approximately 300 calls per day; the ALTSD, the HSD and the DOH are working to combine their efforts in this area;
- clarification regarding the percentage of grandparents with primary caregiving responsibility and whether the ALTSD has any programs that address this situation; the ALTSD provides free legal services to assist grandparents with guardianship issues; and
- whether other agencies hold revenues in reserve as the ALTSD does.

Secretary Spanier addressed areas in which the ALTSD is identifying efficiencies. The department has established a cost-savings task force, which has already saved money in telephone and transportation costs. House Memorial 43 calls for the development of a plan to reflect a

business model of operation for federal Older Americans Act of 1965 programs and services. Previously mentioned was the effort to integrate information technology systems. He spoke about the recommendation in the Carruthers report to consolidate the ALTSD with the HSD. The ALTSD would resist this recommendation. A document justifying keeping the ALTSD as a separate department of state government was distributed. He acknowledged that there is also discussion of consolidating all the Medicaid waiver programs within one department. Secretary Spanier believes that this is an idea worth exploring; however, it would be premature to consolidate those programs at this time, and such a move should be made slowly and deliberately.

### **Human Services Department**

Secretary Falls provided a brief overview of the organization and structure of the HSD and the programs for which it is responsible. She provided detailed information regarding the impacts of budget cuts to all divisions of the department, beginning with the Income Support Division, which is currently functioning with a 19% vacancy rate despite increases in enrollment of all programs, including SNAP, TANF, general assistance, Medicaid and medical assistance. The TANF program is a federal block grant amounting to \$110 million per year. Current enrollment projections indicate that TANF funding will be insufficient to meet the need for fiscal year 2011, with an anticipated shortfall of \$10.8 to \$12.4 million. The Child Support Enforcement Division has been supported through ARRA funding; however, it is functioning with a 17% vacancy rate. The Behavioral Health Services Division has been funded largely through grants that are ending or that have already ended. A large transformation state incentive grant in the amount of \$2.5 million has ended, and there is no general fund money to replace that funding. Substantial grants for substance abuse prevention are also ending without general fund replacement dollars. The Behavioral Health Services Division is functioning with a 33% vacancy rate. In the area of program support, the Administrative Services Division has a 15% vacancy rate, the Office of the Inspector General has a 28% vacancy rate, the Office of the General Counsel is functioning with a 17% vacancy rate and the Information Technology Division is down 25 positions with a 28% vacancy rate.

Secretary Falls reported that the Medical Assistance Division is projecting a shortfall for fiscal year 2011 of between \$36 million to \$196 million. The Centers for Medicaid and Medicare Services (CMS) has verbally indicated that the state coverage insurance program (SCI) will be eligible to receive an enhanced federal match for childless adults who were required to be moved to a new waiver. This amount, however, will result in New Mexico exceeding a budget cap that is a requirement of that waiver and could result in a shortfall of \$132.5 million. Secretary Falls is hopeful that an arrangement can be made with the CMS not to have this occur. The ARRA enhanced federal match for Medicaid will expire on December 31, 2010. If this match is not extended, the program will have an anticipated \$600 million combined federal fund and general fund shortfall. If the enhanced match is extended in a phased-in reduced manner, as proposed, the shortfall would be an estimated \$245 million. Combined with the current base shortfall, the shortfall in Medicaid is likely to be \$400 million. Cuts of this extent will require elimination of programs, and decisions to do that will have to be made prior to the next legislative session in order to notify beneficiaries on a timely basis. Secretary Falls reviewed cost-containment measures that the department has already implemented or has identified for implementation. Despite these actions, Medicaid will have a \$20 million shortfall in fiscal year 2010 that the HSD will be able to push forward to fiscal year 2011. She provided a breakdown of medical expenses by category. Long-term care services, particularly personal care option services, have seen a

significant growth rate. Additional cost-containment options under consideration were described, including provider taxes, limiting pharmacy benefits to mail order, limiting emergency room visits and revamping long-term care services and programs. An evaluation of steps taken or under consideration by other states has been conducted. The SCI program could be eliminated, although that would result in 52,000 people becoming uninsured. There are no easy options left; all the easy steps have been taken already.

Secretary Falls then identified the agencies whose missions and administrative functions overlap with the HSD. There might be opportunities for administrative consolidation with some of these programs or agencies.

Committee members had questions and comments in the following areas:

- the process by which current and anticipated cost-containment measures were identified; evaluation of other states' actions, work with advocates and providers, input from the Medicaid Advisory Committee and more; consideration will be given to what will have the greatest and least impact on consumers;
- how the HSD ensures that cuts do the least amount of harm;
- recognition of the profound impact of any decisions to cut programs from Medicaid;
- great concern for the disruption to these essential programs with a change of governor in November;
- whether opportunities exist to alter programs or services for people who account for a disproportionate amount of expenditures; most of the high-cost people are elderly, disabled or very high-risk; New Mexico has worked hard to limit the cost of their care by maximizing home and community-based care;
- recognition of the ethical dilemma of providing the greatest good for the greatest number of people versus meeting the needs of the sickest people;
- an observation that a type of rationing is already occurring;
- federal limitations in making cuts to Medicaid; New Mexico must provide certain mandatory services, some of which are costly such as nursing home care; additionally, the PPACA includes a maintenance of effort requirement between now and 2014, when all citizens at or below 133% of the federal poverty level will be eligible for Medicaid; among those restrictions is a prohibition against lowering eligibility;
- whether there is any scenario in which the HSD would consider eliminating managed care contracts and putting in place a simpler approach to administering Medicaid; a reliable alternative approach would have to be demonstrated first; medical homes and accountable care organizations might become a good model both to contain costs and manage care;
- whether it is really known how much money managed care organizations are actually spending and on what; a report has been given to the LFC reflecting 2009 encounter and claims data; a lot is known, but there are still opportunities to do a better job;
- whether data in the report are segmented by category of eligibility; no, it is provided by category of service; a request was made for data by category of eligibility, which the HSD will provide;
- clarification regarding cost savings for cost-containment measures already implemented; and
- whether cuts to providers result in poorer care to beneficiaries.

## Department of Health

Alfredo Vigil, secretary, DOH, introduced Mike Mulligan, deputy secretary for finance and administration, DOH. Deputy Secretary Mulligan talked about the effects of budget cuts in the department. The department has seen a decrease of approximately \$25 million in general funds and another \$25 million in ARRA funds. He reviewed the cuts beginning in fiscal year 2009 and how reductions were implemented. Inpatient facilities were held harmless. In fiscal year 2010, reductions of \$23.1 million resulted in cuts to the Facilities Division, the Trauma System Fund, the Public Health Division, the Scientific Laboratory Division, the Administrative Services Division and the Epidemiology and Response Division. Cuts were offset by \$16.2 million in ARRA funds. An additional \$10.3 million in cuts were required by executive order in 2010. In fiscal year 2011, \$9.7 million in cuts resulted in a reduction of funding to the Public Health Division, the Facilities Division and the Epidemiology and Response Division. Efficiencies were achieved by elimination of most travel, vacancies and other administrative actions. General fund contracts were reduced by \$8.8 million in the Public Health Division. Efforts were made to protect programs that provided direct patient care services. Other costs were reduced by reducing vaccines, medications, medical supplies, children's medical services and family planning. Tobacco settlement funds were also reduced in fiscal year 2011, affecting tobacco cessation, diabetes, HIV/AIDS and breast and cervical cancer programs. The Epidemiology and Response Division is working with an 18% vacancy rate and is seeking federal funding for emergency response activities. The Scientific Laboratory Division will maintain a 14% vacancy rate, and revenues to this division are further reduced by cuts to other agencies. The DOH is realigning general fund dollars to meet the needs of inpatient facilities managed by the DOH. The Facilities Division is maintaining a 6.2% vacancy rate, though the department is trying hard to hold this division harmless. The developmental disabilities (DD) waiver program will be badly hurt if the enhanced federal Medicaid match is not extended. If it is not extended, the DOH will need a \$16 million supplemental appropriation or it must drastically reduce services to individuals. Funding for certification and licensure was reduced by 16%. The Development Disabilities Support Division will maintain a 30% vacancy rate. A reduction in surveys, especially start-up surveys, will be impaired by this cut.

Secretary Vigil summarized the effect of budget cuts on the department, highlighting those areas with the largest impact. In many health programs, federal funding will be reduced if the department is unable to provide the level of expected services. Facilities and other programs in the DOH that require health care professionals will find it harder to hire needed staff as the department becomes less and less able to provide competitive wages. The DOH is committed to continuing most, if not all, of the programs with the help and partnership of communities and volunteers.

Jack Callaghan, director, Public Health Division, DOH, noted that last year is the ninetieth year of public health. New Mexico has 55 public health offices, without which the state is ill-prepared to deal with public health emergencies. The goal of the Public Health Division is simply to maintain the infrastructure.

Committee members had questions and comments in the following areas:

- ways in which public health offices and activities will be sustained; the department will continue to make cuts to programs that will have the greatest impact in the future; prevention programs will be reduced first;
- recognition of the devastating impact of cuts to public health that will be long-lasting;

- the intention of the DOH to maintain infrastructure so that when the funds come back, or when the next emergency event occurs, the state will have the ability to expand and respond;
- the potential for establishing regional public health offices that are smaller and more flexible;
- clarification regarding the "triage" system that the department is using to determine where to cut funding;
- whether there is a potential to get a federal waiver from some facility licensing requirements; most of the regulations are not things that the DOH would want to change as they are targeted to safe patient care;
- ongoing concerns regarding the DD waiver;
- the potential for a redesign of the DD waiver as a result of the required waiver resubmission by March 31, 2011; and
- clarification regarding the effects of reductions; adult vaccines were reduced or eliminated; children's medical services now require pre-authorization; and family planning programs were tightened to focus on populations meeting high-risk criteria.

Secretary Vigil declined to identify opportunities for restructuring and stated that the department is already excessively flat in organizational structure. He contended that moving the boxes around on the organizational chart would cost more money and would not help. The department has not done any analysis of what it would take to consolidate with other agencies; it has focused instead on dealing with budget cuts.

**Public Comment**

There being no public comment, the meeting was adjourned at 4:55 p.m.

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

**August 2-4, 2010**  
**Room 322, State Capitol**  
**Santa Fe**

The third meeting of the Legislative Health and Human Services Committee (LHHS) was called to order as a subcommittee by Senator Dede Feldman, vice chair, on August 2, 2010 at 9:10 a.m. Members of the audience and committee members introduced themselves. The committee was reminded that the meeting would be webcast. With the arrival at 9:15 a.m. of Representative Danice Picraux, chair, a quorum was established.

**Present**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Rep. Nora Espinoza  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Absent**

Sen. Rod Adair  
Rep. Joni Marie Gutierrez  
Sen. Linda M. Lopez

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Rep. Nathan P. Cote  
Rep. Miguel P. Garcia  
Sen. Gay G. Kernan  
Rep. Dennis J. Kintigh (8/2)  
Rep. James Roger Madalena (8/3, 8/4)  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill  
Sen. Mary Kay Papen (8/3, 8/4)  
Sen. Nancy Rodriguez  
Rep. Gloria C. Vaughn

Rep. Jose A. Campos  
Rep. Eleanor Chavez  
Rep. Keith J. Gardner  
Sen. Clinton D. Harden, Jr.  
Rep. John A. Heaton  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Sander Rue  
Rep. Jeff Steinborn  
Rep. Mimi Stewart  
Sen. David Ulibarri

(Attendance dates are noted for members not present for the entire meeting.)

**Guest Legislator**

Rep. Nick L. Salazar

**Staff**

Michael Hely, Staff Attorney, Legislative Council Service (LCS)  
Karen Wells, Researcher, LCS  
Zelda Abeita, LCS

**Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and written testimony are in the meeting file.

## **Monday, August 2**

### **Government Restructuring: Review of Agency Input**

Ms. Wells presented a summary of the testimony received from state agencies at the July meeting of the LHHS in which the agencies provided information on ways in which they have responded to budget cuts and suggestions or ideas they had for restructuring. Nancy Eisenberg, a public health graduate student and intern with the LCS, provided an in-depth overview of various programs within the Department of Health (DOH) based on interviews with key staff members of the DOH and a comparison of accepted principles of public health.

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

- the amount of savings that would be realized through contract revisions in the Children, Youth and Families Department (CYFD);
- the long-term impact of regionalization of public health offices in the DOH;
- a request to provide the committee with a complete list of long-term-care Medicaid waivers and related programs reflecting where and how each program is administered and the status of waiting lists for each program;
- a suggestion that the Medicaid program enhance access to non-emergency services rather than considering limiting visits to emergency departments;
- concerns regarding the impact of limiting prescription drugs to mail order in the Medicaid program;
- general opposition to merging the Aging and Long-Term Services Department (ALTSD) with the Human Services Department (HSD);
- whether there is potential for strengthening a partnership between the University of New Mexico (UNM) and the DOH; the current partnership is a research-based rather than an operational relationship;
- the need for clarification regarding the relationship between the state and counties in providing public health offices and services;
- clarification regarding the general fund portion of the Medicaid budget: approximately \$600 million in the current fiscal year, plus an additional \$62.5 million that is transferred to the DOH to administer the developmental disabilities waiver; currently, Medicaid constituents constitute approximately 11% to 13% of the general fund budget;
- the potential for UNM Hospital to become the contractor for medical services in the correctional facilities, thereby making available the discount prescription drug program pursuant to Section 340B of the federal Veterans Health Care Act of 1992; and
- whether national models exist for regionalization of public health offices.

### **Government Restructuring: Opportunities in the Federal Patient Protection and Affordable Care Act (PPACA)**

Mr. Hely identified elements in the PPACA that give rise to potential restructuring, including the establishment of health insurance exchanges (HIEs), health insurance regulation,

health information technology (HIT) and health care delivery and workforce planning. He provided additional details regarding each of these areas and identified PPACA mandates and options regarding HIEs with examples of how other states have structured them. Mr. Hely noted that the PPACA does not mandate that Medicaid be provided through the exchange but that it must be interoperable with insurance coverage available through the exchange for easy transitions between public and private coverage. Access to coverage is ensured in part through the requirement that states set up health insurance consumer assistance or ombudsman programs. The federal government will be involved in the regulation of insurance to the extent that rate setting and rate review will now be overseen by the federal Department of Health and Human Services. States will still be responsible for regulating insurance, which in New Mexico is handled by the Public Regulation Commission (PRC). Information technology (IT) needs will be profound, not only in the exchanges but also through community-based collaborative care networks, including telehealth, and other efforts to integrate care creating partnerships among caregivers. Workforce development planning and implementation is another major area of importance in the PPACA that could result in the restructuring of the State Workforce Development Board. Substantial grant funds are available for these efforts, including \$8 million for a state health care workforce planning grant and up to \$150 million for implementation. Up to \$7.5 million in additional funds will be available for workforce analysis center partnership grants, as well as numerous health professional student grants, loan repayment programs and scholarship programs. The PPACA establishes primary care extension programs to promote best practices in primary care, and that could result in new partnerships for that purpose. Mr. Hely noted several functions that could be consolidated in a state or other agency in New Mexico, such as data collection, coordination of planning and workforce education, outreach, recruitment and retention, and health care financing and administration. He described structures that have been established in other states for these purposes.

Questions and comments about Mr. Hely's presentation included:

- whether the structure of the high-risk pool could be used to establish an HIE; the answer was that this was possible;
- whether New Mexico has a statewide workforce investment board; Mr. Hely responded that there is, indeed, a statewide workforce investment board;
- where the legislature should start its planning and implementation pursuant to the PPACA's many requirements, including the establishment of an HIE, monitoring of data collection, workforce planning, collaboration and more;
- whether the state is partnering effectively with stakeholders regarding the exchange planning grant, the grant for consumer protection and others; the legislature would like input into those applications, as well as the ALTSD's ombudsman program and the attorney general's consumer protection agency responsibilities;
- a suggestion to use grant applications as opportunities to form advisory groups on these topics;
- workforce grants pursuant to the PPACA for which UNM has applied;
- the importance of coordination between entities applying for grants as grants are released;
- clarification regarding what data are currently being collected by the New Mexico Health Policy Commission;
- whether or not the PPACA mandates the creation of a new entity to collect workforce data; the answer was no;

- clarification regarding the essential benefits required by the PPACA and the role of an exchange in that regard;
- an observation regarding the potentially negative effects on insurance coverage in the state if no insurance company chooses to participate in an exchange;
- opportunities to adopt a structure that has already been developed in another state that would meet New Mexico's needs;
- acknowledgment that the high-risk pool is funded in part by awarding premium tax credits to participating insurance companies; there was recognition that those credits, especially to health maintenance organizations, will go away when the risk pool goes away;
- clarification regarding the current membership of the State Workforce Development Board; health care workforce expertise should be represented; and
- recognition of the difficulty of planning for an exchange prior to regulations being released.

### **Health Care Common Interests: Review of SJM 1, 2009**

Ruby Ann Esquibel, health policy coordinator, HSD, reviewed the findings of the SJM 1 (2009) "Health Care Services Common Interests" report, identifying the requirements of SJM 1 and the entities that participated in the process. She reviewed recommendations as they relate to the PPACA, including insurance exchange and insurance market reforms; essential benefits; systems and payment reform; electronic health records (EHRs) and HIT; and consumer protection and transparency. Ms. Esquibel noted that not all of these recommendations were uniformly endorsed by all participants, but all were discussed and included in the report as findings. She concluded by drawing the committee's attention to resources online, including the strategic plan of the governor's health reform leadership team and a link to grant applications that is updated weekly.

Questions and comments from committee members covered the following areas:

- the impact of prescription drug changes on small, local businesses;
- whether New Mexico will be able to unify IT requirements and opportunities in the PPACA;
- the potential for savings by consolidation of Interagency Benefits Advisory Committee participating agencies in insurance purchasing (savings could be enhanced through group purchasing in addition to group procurement);
- opportunities inherent in incentivizing lifestyle changes in favor of healthy choices;
- problems with fixed payment methodologies for rural hospital outpatient services and transparency; the PPACA requires much more reporting of payments and rates;
- the possibility of charging retirees more for more "Cadillac" coverage and not having the state pick up that expense;
- clarification regarding the level of insurance coverage for state retirees who are Medicare-eligible;
- the impact of pooling younger workers with older workers;
- concerns regarding pay for performance and the extent to which physicians can actually control outcomes of care;
- clarification regarding pharmaceutical cost-containment recommendations and the interface with Medicaid;

- clarification regarding grant applications that have been submitted and those that are planned, particularly the application for planning for an exchange, who is involved and how the application is being developed;
- a request for the LHHS to receive a copy of the exchange planning grant application before it is submitted;
- a request for a delineation of the grant applications that have already been made and by whom; weekly updates on the status of grant applications are posted on the web;
- whether any of the grants provide recurring funding; most of them do not;
- an observation that SJM 9 (2010) called for the implementation of many of the recommendations contained in the report discussed today;
- a request for the Legislative Finance Committee (LFC) to conduct a fiscal analysis of the recommendations in SJM 9 (2010); and
- whether the LFC is tracking grant applications independent of the executive, to which the answer was no.

### **Government Restructuring: Discussion and Committee Recommendations**

Committee members expressed opinions and offered ideas regarding potential restructuring of health and human services agencies and programs, many of which are characterized as follows: restructuring should not be implemented solely for the purpose of restructuring; it should only be done after a careful and deliberative process. The ALTSD has come a long way in its short history, and with the growth of the aging population, this department should be maintained. It was suggested that committee members should keep in mind that restructuring might not save money in the short run but would be good in the long run and that they should look at consolidating boards and commissions that serve health and human services agencies before cuts are made to vulnerable populations. The LHHS should look at the complete list of Medicaid cuts that are being considered. A request was made that Ms. Wells work with Brent Earnest of the LFC to look at restructuring the personal care option (PCO) program and to look at other programs providing home and community-based services within the context of the PPACA and restructuring. The SJM 1 Health Care Reform Working Group (HCRWG) is planning to make recommendations to the LHHS regarding the PPACA, and Secretary Kathryn "Katie" Falls, HSD, is working hard to keep legislators informed about the activity of the governor's health care reform leadership team. Concern was reiterated regarding the Workforce Solutions Department (WSD) recommendations and the need to look carefully at all WSD suggestions, especially those that affect health professional workforce issues. A request was made for the status of one-stop shop plans and the composition of the State Workforce Development Board in support of health professional workforce development. A suggestion was made that medical homes be explored more fully, with identification of ways in which this opportunity in the PPACA could be implemented. Mr. Hely was asked to make a summary of the medical home provisions in the PPACA.

### **Public Comment**

Doris Husted, public policy director, ARC of New Mexico, commented that the presentation made by the disability coalition to the HCRWG could be of value to the LHHS. She requested that care be taken to consider potential conflicts of interest when making restructuring recommendations.

Ruth Hoffman, director, Lutheran Advocacy Ministry, suggested that the HSD secretary's presentation of a Medicaid primer be made available to the committee.

James Ogle, president, National Association for the Mentally Ill-New Mexico, commented on recommendations to provide pharmacy benefits via mail order only. In his view, this would have a very detrimental effect on those with mental illness and would have a net cost increase in the long run.

The committee recessed at 4:00 p.m.

### **Tuesday, August 3**

Senator Feldman, vice chair, reconvened the meeting at 9:10 a.m.

#### **PPACA: IT Overview**

Bob Mayer, deputy secretary, Department of Information Technology, offered information regarding the IT landscape in New Mexico. He reviewed features contained in HITECH, the IT law included in the federal American Recovery and Reinvestment Act of 2009 (ARRA). Key provisions include incentive payments to health care providers to expand the use of EHRs, so long as they are able to demonstrate "meaningful use". Additional incentives assist New Mexico in expanding access to high-speed internet services through broadband accessibility. The state received a grant of \$7 million to implement an HIE and another \$6 million to establish an HIT extension center. Mr. Mayer noted that the state did not apply for workforce development grants that were available through the HITECH provisions of the ARRA, known as the Health Information Technology for Economic and Clinical Health Act, to train providers in the use of EHRs. Asked whether these funds are still available, Mr. Mayer said he does not know. A grant application has been made for mapping and broadband access that could amount to close to \$40 million. The combined impact of HITECH on the state has been impressive, including the establishment of an HIE, HIT, public health reporting and the sharing of immunization records. Medicaid is in the process of developing a definition for "meaningful use" consistent with federal regulations as well as mechanisms for making incentive payments to providers who participate in the incentive program.

Mr. Mayer described IT features of the PPACA that are intended to expand access and improve quality of care through the expansion of Medicaid; standard benefit plans; accountable care organizations; increased transparency and reporting of information; and the development of HIEs. Many opportunities exist through pilot and demonstration programs. IT implications arise in all of these areas. The HIE will consist of an online marketplace for the purchase of insurance, and it must allow frequent shifts in eligibility. The HIE must allow individuals to enroll in Medicaid if they are eligible. Medicaid expansions and any interface with the HIE will require updates in IT systems. Pilot projects rely on widespread sharing of medical information. Transparency requirements include publication of statistics on health care costs and outcomes. Mr. Mayer emphasized the urgent need for coordination, collaboration and communication among a state HIT coordinator, the Medicaid IT plan and the HIE strategic and operational plan to ensure effective implementation of these requirements. In New Mexico, Mr. Mayer is the state health information coordinator.

Questions and comments from committee members included the following:

- whether incentives for implementation of EHRs are available for any provider; providers must meet certain qualifying criteria;

- whether there is uniformity of health information systems being implemented throughout the state, and whether the systems will be able to effectively communicate and share information;
- ways in which HIEs are funded;
- an observation that implementation of EHR systems will disproportionately affect independent rural providers;
- whether Mr. Mayer is a member of the State Workforce Development Board (he is not);
- whether the work to establish an HIE could serve as the foundation for development of an HIE; it would be a new project;
- whether the sharing of health information is protected by privacy requirements;
- a request was made to communicate to community colleges and other eligible entities to encourage them to apply for available ARRA workforce development training funds;
- a request was made that Mr. Mayer be invited to serve as a member of the State Workforce Development Board;
- a motion was made to write an editorial notifying physicians and other health care providers that they are not permitted to require social security numbers to be divulged as a condition of receiving care; and
- clarification regarding "meaningful use" requirements.

### **Medicaid IT and the EHR Incentive Program**

Julie Weinberg, deputy director, Medical Assistance Division, HSD (MAD/HSD), offered more detailed information regarding the incentive program funded under the ARRA for health care providers to establish EHR systems. The purpose of the program is to offset the cost of establishing such a system, but is not intended to cover the entire cost. The Medicaid incentive program officially begins in January 2011 and lasts for any given provider for six years. Providers can start as early as 2011 or as late as 2016 and can receive a maximum of \$63,750 over that period of time. Incentive payments are awarded after a provider demonstrates compliance with requirements of the program. A provider can participate in either the Medicaid or the Medicare program, but not in both. The Medicare program contains penalties if goals are not met for meaningful use. The Medicaid program carries no penalties. Hospitals can also participate in the Medicaid incentive program, which can last from three to six years. Hospitals can participate in both the Medicaid and the Medicare programs. The amount of incentive a hospital receives is based upon a complex formula. Eligible providers were identified. Ms. Weinberg noted that legislation was introduced that will add behavioral health providers to the list of eligible providers. She described specific criteria that a provider must meet in order to be eligible to participate, including the volume of patients who are covered by Medicaid; adoption, implementation or upgrading of a certified EHR system; and qualifying as a meaningful user of the certified EHR system. Meaningful use criteria were described and examples were given. A state Medicaid HIT plan must be in place and approved by the federal Centers for Medicaid and Medicare Services (CMS) prior to implementation of this incentive program. Criteria and details for the plan were discussed. New Mexico received close to \$521,000 in federal planning funds and will be prepared to implement the program in January 2011. The HSD is in consultation with provider groups, managed care organizations (MCOs) and other stakeholders during this planning phase. Staffing needs to implement the program, funded 90% by federal funds, were identified. The MAD/HSD expects that there will be disbursement of \$300 million of federal funds into the New Mexico economy over the life of the program, that there will be cost savings to the Medicaid program and

other private health plans by eliminating duplication and that there will be improved care management of chronic conditions. A glossary of terms was included in Ms. Weinberg's handout.

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

- clarification regarding the vendors and ways in which they receive ARRA funds; vendors are software developers and manufacturers of equipment;
- whether information is currently available regarding which physicians in New Mexico serve Medicare and Medicaid patients; Medicaid information is well known by the MAD/HSD, but information is not currently available regarding the volume of Medicaid patients served;
- whether the percentage of physicians and dentists who serve Medicaid clients is available; the information will be provided;
- under what conditions a provider would choose to participate in Medicare versus Medicaid; some providers might meet the Medicare threshold for participation and not the Medicaid threshold;
- whether the incentives are considered taxable income; Ms. Weinberg stated that she did not know;
- whether patients can request that their records not be entered into an EHR system; Ms. Weinberg stated that patients could indeed request this;
- clarification regarding eligible providers and why behavioral health providers were not included in the original bill;
- ways in which the privacy of medical information will be protected; the process of certification of an EHR system requires privacy and security;
- how the planning funds will be distributed; and
- how widely available health information will be to health care providers, and how privacy can be assured in this situation.

### **PPACA: Medicaid Eligibility and the Exchange**

Carolyn Ingram, director, MAD/HSD, began her presentation by briefly describing the purpose and function of an HIE, noting that currently only Massachusetts and Utah have state-based exchanges operating at this time. Transitions between commercial and government programs must be seamless to the individual accessing the exchange. She highlighted enrollment and eligibility issues that will be part of the exchange, some of which are already handled in New Mexico through the Insure New Mexico web site, the New Mexico Health Insurance Alliance, the New Mexico Medical Insurance Pool (NMMIP) and the PRC. Key issues for Medicaid revolve around the requirement for a single application for Medicaid, the Children's Health Insurance Program and commercial plans within the exchange. The state is required to have an exchange implemented by 2014; by January 2013, the state will have to demonstrate its readiness to do this, or the federal government will step in and establish an exchange for the state. Other requirements of the law were described, including choices each state will need to make to operate an exchange. The state will have a role in tracking compliance, including interface with tribal governments. Significant IT challenges exist in operating an exchange in order to screen, link and enroll people into products, including public assistance and subsidies. Many states are beginning to consider regional purchase of some products that will be needed to accomplish these functions. The time line for making these decisions and being ready to implement an exchange is short. Ms. Ingram identified specific implications for the MAD/HSD in operating an exchange, including a seamless interface between Medicaid and the exchange. HSD technology issues will only be resolved

through replacement of the current Medicaid eligibility (ISD2) system, HIPAA 5010, which has subsequent privacy requirements; implementation of a new reimbursement system called ICD10; and implementation of an automated verification system that is now required. All of these IT requirements will be costly and are currently not funded.

Ms. Ingram identified the current state of eligibility for medical assistance programs. At present, 541,000 people are enrolled in Medicaid programs, with an additional estimated 273,000 individuals who will become eligible in 2014. At that time, new rules for eligibility through a process of modified adjusted gross income (MAGI) will be required. The MAD/HSD will have to track newly eligible individuals and currently enrolled populations, and certain populations that are exempt from MAGI will need to be tracked separately. Finally, Ms. Ingram described a PPACA option to create a "basic health program" to cover individuals between 133% and 200% of the federal poverty level. Individuals who enroll in such a program would not be eligible to obtain coverage through an HIE. The subsidies that would go to those individuals through an HIE would instead go to the state to cover the cost of the program. She presented questions and decision points that New Mexico will have to consider in determining what kind of HIE to establish. The overarching consideration is to have an exchange that is simple and easily understood. New Mexico should look at teaming up with other states in a regional approach to implementation. New Mexico's experience in operating the State Coverage Insurance (SCI) program teaches that insurance companies can make a profit in an HIE. She recommended that any insurance company that contracts with Medicaid be required to offer a product on an HIE.

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

- concern regarding individual mandates to purchase health insurance and possible constitutional conflicts of such mandates;
- clarification regarding adoption of MAGI and income disregards in New Mexico;
- the impact of adopting MAGI on current enrollees; New Mexico and other states are mapping out the impact;
- clarification regarding the application for the exchange planning grant and who is involved; a formal response will be provided;
- clarification regarding opportunities for partnering with other states to implement an exchange on a regional basis;
- clarification regarding the match rate should the state pursue a basic health program, and whether the match is permanent;
- the need for legislative as well as executive support in deciding the model of exchange to be implemented;
- clarification regarding New Mexico's obligation in implementing an automated verification system; this provision was originally passed in the federal Deficit Reduction Act of 2005, and New Mexico is charged with being a pilot state; Ms. Ingram has written letters without success to request that those obligations be dropped;
- clarification regarding uninsured residents in New Mexico and how many of them will, or already do, qualify for Medicaid;
- opportunities and challenges of enrolling Native Americans in Medicaid;
- opportunities for regional HIEs to standardize benefit packages and pools;
- a request for staff to write a letter to the National Conference of State Legislatures for guidance on regional exchanges and standardization on benefit packages and pools;

- whether a list is being developed regarding the actions the legislature will have to take to implement the PPACA; it has not been suggested, but it is a good suggestion;
- an observation that the LHHS should be proactive in recommending legislation to implement the PPACA;
- an observation that the HCRWG will be bringing legislative recommendations to the LHHS;
- whether the executive leadership team will have a specific recommendation regarding exchanges; yes, that is expected; and
- a reflection that a side-by-side comparison has been created that shows New Mexico insurance law versus PPACA insurance requirements.

### **Payment and Reporting for Health-Care-Acquired Infections**

Dr. Alfredo Vigil, secretary, DOH, and Dr. Joan Baumbach, Infectious Disease Epidemiology Bureau chief, DOH, presented an update on New Mexico's health-care-acquired-infections program. Dr. Baumbach provided a historical perspective. The National Nosocomial Infections Surveillance System (NNIS) was developed by the federal Centers for Disease Control and Prevention (CDC) during the 1970s. The National Healthcare Safety Network was developed by the CDC in 2005 and has replaced the NNIS. She defined "health-care-associated infection" (HAI). New Mexico's HAI program was developed to improve the health status of New Mexicans through improved health care outcomes. She provided the program's legislative history, beginning in 2007 with HJM 67, which called for a study of the feasibility of gathering statewide information about HAI. In 2008, an advisory committee was established in the DOH that recruited six hospitals to engage in a pilot project. These hospitals agreed to track and measure health care worker influenza vaccination rates and central-line bloodstream infections (CLBSI). In 2009, the New Mexico Legislature passed the Hospital-Acquired Infection Act, which formalized the advisory committee and established goals for the expansion of indicators and hospitals' involvement. The act also identified the composition of the advisory committee. Currently, 25 health care facilities are reporting influenza vaccination rates for health care workers, and 17 intensive care units are reporting CLBSI. A learning collaborative has been established by the advisory committee to help additional hospitals by sharing best practices regarding CLBSI. Currently, more than 20 health care facilities are participating in this learning collaborative regarding CLBSI. In 2010, two new indicators have been added, as required by law: CLBSI incidence outside of intensive care units; and *Clostridium difficile* infection (CDI), a condition whose symptoms include painful gastrointestinal issues. This month, New Mexico and nine other states will pilot a study to determine HAI prevalence among patients in acute health care facilities, with plans for nationwide implementation. The HAI advisory committee also is scheduled to provide training to various audiences regarding health care worker influenza vaccinations, to validate data that have been provided on CLBSI and to start a second learning collaborative on CDI. The findings of 2009-2010 will be published in October 2010, and a public HAI web site will be launched. Dr. Baumbach asked the committee for input on ways to improve communication on this important topic. The first annual report with facility-specific data is planned for publication by July 2011. The advisory committee is eager to serve as a resource to the legislature. Dr. Baumbach noted that CMS recently passed a rule that ties reporting of CLBSI to reimbursement that will go into effect in 2013, and with which New Mexico facilities are well positioned to comply. Funding to sustain this program is an ongoing issue. Secretary Vigil emphasized the critical nature of training of health care facility personnel in ensuring a reduction in HAI.

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

- clarification regarding the ultimate goal of the program;
- clarification regarding the causes of CLBSI;
- whether hospitals have the authority to require visitors to take precautions to limit the spread of CLBSI and other infections; policies exist, but they vary based on the condition of the patient and are very hard to enforce;
- clarification regarding the corporate status and size of participating hospitals;
- clarification regarding ARRA funds received in support of this program; ARRA funding has resulted in the hiring of more staff;
- clarification regarding the proposed web site reporting HAI data;
- whether the study in New Mexico and elsewhere has resulted in reduced deaths due to HAI;
- where the ultimate authority rests for poor compliance with hospital safety and infection control practices;
- why CDI was chosen as an indicator instead of the indicators recommended in the state law and at what point will training begin on CDI;
- whether the DOH intends to ask for money to continue the HAI program; it is very unlikely that the DOH will ask for additional general fund dollars during this current fiscal crisis; and
- an observation that the DOH is not protecting public health programs and infrastructure sufficiently; the real value of public health must be better publicized.

Ellen Pinnes, Esq., health policy consultant, was recognized for public comment to respond to previous questions regarding Medicaid home and community-based services waivers. She distributed a summary fact sheet that was developed by Jim Jackson, Esq., the executive director of Disability Rights New Mexico.

### **Physician Quality and Outcome Reporting**

Dan Jaco, chief executive officer, New Mexico Medical Review Association (NMMRA), introduced Dr. John Seibel, medical director, NMMRA. Mr. Jaco presented on the reporting of physician data both now and in the future. He provided a historical perspective of the NMMRA and its role in quality improvement in the health care system and then identified key activities in which the NMMRA is involved. Mr. Jaco recognized Dr. Seibel as an innovator in the field of EHRs who is nationally recognized by the American Medical Association. He offered basic information and definitions regarding performance measurement, quality indicators and quality measures. To be valid, indicators must be evidence-based and process- or outcome-oriented. He made the point that, currently, physicians are paid mostly in terms of the volume of services provided, although the system is changing to one of value-based purchasing. He recognized the trend toward greater transparency in the system. Public reporting on physicians will allow patients to make informed choices and be more aware of unintended consequences of treatment. In 2006, federal legislation established the Physician Quality Reporting Initiative (PQRI), which provided incentive payments to physicians for reporting to the CMS using evidence-based quality measures. The PQRI has not been widely embraced by physicians, but the CMS continues to try to improve the program. He noted the critical importance of establishing an electronic infrastructure for capturing, exchanging and reporting physician data. The ARRA, which contains incentive funding to encourage development of EHRs by physicians, is important in advancing this goal. The PPACA contains a national strategy to improve the quality of health care in the country. It

reinforces payment penalties for failing to submit data on quality measures for covered services and provides for timely feedback to physicians on data submitted. The PPACA also contains numerous payment reform pilots, demonstrations and models to transform the delivery system through bundled payments, medical homes, accountable care organizations and more. According to Mr. Jaco, New Mexico is well positioned with regard to mandated physician reporting due to work that is already underway to expand broadband access, establish an HIE and encourage participation in ARRA-funded incentives to embrace EHRs. The Robert Wood Johnson Foundation has funded an initiative known as "Aligning Forces for Quality" that is bringing together providers, health plans, businesses and consumers around quality initiatives such as those already mentioned.

Dr. Seibel noted that he has been involved in approval of practice guidelines for physician practices. An unresolved question involves how data that can be extrapolated from these guidelines will demonstrate real quality. Progress has been made toward a process that will allow physicians to gather data easily from EHRs and submit the required data. Regulations and guidance are not yet finalized.

Committee members had questions and comments on the following topics:

- the ultimate cost of implementing EHRs within a physician's practice;
- the median age of a physician in New Mexico and whether there is a correlation between age and the reluctance of the physician to establish an EHR system; there does not appear to be a correlation;
- whether noncompliance of patients serves as a disincentive to physicians to participate in outcome-based reimbursement; and
- clarification regarding the concept of bundled payments, and who gets the payment.

### **Medical Homes and PPACA**

At the request of the chair, Mr. Hely provided information to the committee regarding medical home demonstrations that are funded in the PPACA. Section 6860 of the PPACA provides for community-based teams to support the patient-centered medical home that is based on a model of medical homes that exists in Vermont. Section 2703 of the PPACA provides that Medicaid medical home demonstration projects will be funded for individuals with two or more chronic conditions or one serious and persistent mental illness. The project is more limited than the pilot project that is being implemented in New Mexico pursuant to state law. Sections 3021 and 10,306 provide for the establishment of the Center for Medicare and Medicaid Innovation within the CMS to test payment and delivery models, including medical homes, in order to reduce expenditures while improving quality of care. Section 5301 will fund training in family medicine, general internal medicine, pediatrics and physician assistantship that includes training in medical home models of care. The primary care extension program, Sections 5405 and 10,501 of the PPACA, will offer grants to states to promote best practices in primary care, including medical homes. Finally, Sections 1001, 10,101 and 1004 all contain reporting requirements for group health plans and insurers on quality of care, including care coordination through medical home models of care.

Committee members had questions and comments in the following areas:

- whether state matching funds are required for grant applications. Mr. Hely indicated that there are state matching funds required for some grants, but that some requirements may be met through existing funding streams;
- how the training grants will raise awareness of the medical home model of care; federal Department of Health and Human Services regulations, when issued, will flesh out the intention of this section;
- whether requests for proposals have been issued for any of these projects; and
- whether the core service agencies being established through the Interagency Behavioral Health Purchasing Collaborative would qualify as a medical home for the purposes of the Section 2703 grant for Medicaid "health homes" that can cover serious mental illness.

### **Public Comment**

Ms. Husted stated that she believes that the Presbyterian Health Plan is working to develop a medical home model for commercial lines of business.

### **Wednesday, August 4**

The meeting was reconvened by Representative Picraux at 9:05 a.m. Committee members were reminded that the meeting is being webcast.

### **Health Reform Leadership Team: Strategic Plan; and HM 43: Native American Medicaid Category**

Secretary Falls provided a report on the plans for implementation of the PPACA as recommended by the governor's health care reform leadership team established on April 20, 2010 by Executive Order 2010-012. She noted that the strategic plan is an evolving document because many of the provisions of the PPACA have not yet been implemented and further guidance and regulations will be needed. She identified the membership of the team. The team organized and reflected its work in a series of matrices per department represented on the team. A comprehensive matrix summarizes all of the work and the progress of all of the departments to date. Secretary Falls also noted that through the HCRWG, there is important coordination and collaboration around the steps that will need to be taken to implement the PPACA. After receiving the strategic plan, the governor recommended several measures that should be pursued immediately. These measures include the continuation of the leadership team; expansion of membership to include other executive agencies such as the Higher Education Department and Department of Finance and Administration; creation of an office of health care reform to be attached to the HSD; identification of state statutes that will require amendment or enactment to be in compliance with the PPACA; and tribal consultation regarding health care reform initiatives. Links were provided to the full report and other resources.

Secretary Falls noted that the strategic plan is organized with decision points, a number of which she highlighted for the committee. In addition to the measures already recommended by the governor, she identified the importance of fiscal analysis to identify the impact of the PPACA on New Mexico. Analysis will also need to be conducted to update demographics and conduct mapping of the number of uninsured, the impact on the health care market and the impact on Medicaid. Analysis of the federal tax and subsidy options and their impact on the state will be needed. A list of options for Medicaid, SCI and other Insure New Mexico programs will be

examined, and legislation that may be needed will be identified. The leadership team will consider whether New Mexico should develop a basic health plan option, and how it could be enacted. Decisions to create an HIE will be key and will involve many decisions. New Mexico will need to determine whether it will develop one exchange or two separate exchanges, one for individuals and one for small businesses. The type of exchange is an important decision to be made; options include allowing the federal government to establish an exchange for New Mexico, whether it should be operated by a nonprofit agency or by state government, whether New Mexico should join in a regional effort to establish an exchange, and/or whether New Mexico should have regional exchanges within the state. Identifying the legislation that will be needed to establish an exchange will be necessary. Consideration will need to be given to establishing a seamless interface between the exchange and Medicaid. A request for proposals has been issued, and the HSD will be applying for a planning grant that will provide about \$1 million in funds to assist in making these decisions. A handout highlights health reform grants that have been or will be submitted by New Mexico. The DOH is monitoring and tracking all grant opportunities, including those that are outside of state government.

Secretary Falls spoke briefly about HSD activity in response to HJM 43, which called for establishment of a separate category of Medicaid eligibility for Native Americans. The HSD has established a tribal-state work group to look at this and other Medicaid issues. The goals of the work group include developing and recommending a protected Indian plan within Medicaid; reviewing and making recommendations regarding cost containment within Medicaid; and planning for national health reform and authorization of the Indian Healthcare Improvement Act within the PPACA. A concept paper has been drafted and a letter submitted to the CMS to establish the separate Medicaid category for Native Americans.

Committee members had questions and comments in the following areas:

- concern regarding cuts to important Native American programs and access to services;
- recognition that Native Americans have serious health problems that need unique attention;
- the importance of applying for all grants, especially health professional workforce grants;
- whether New Mexico State University (NMSU) has applied for or intends to apply for any workforce grants; NMSU is remaining attentive to grant opportunities and is collaborating with other institutions of higher learning; there was a request for a list of all grants for which NMSU has applied or is considering applying;
- concern regarding the magnitude of the mandates in the PPACA, especially the mandate for an individual to purchase insurance;
- clarification regarding who in the HSD will be developing the exchange planning grant application; there was a request that small businesses, in particular, be involved in the planning for an exchange;
- the possibility of collaborating with other states both to establish an HIE and to purchase the needed IT;
- clarification regarding who will conduct needed fiscal analyses and how that activity will be funded; the HSD has some bonus funding it is hoping to use to obtain outside help with these analyses;
- recognition of the level of assistance that is needed to help nonstate agencies to apply for available grants; for example, assistance for school-based health centers;

- ways in which communication regarding grant opportunities is occurring;
- whether the executive or the legislature will determine the type of HIE New Mexico will have; the leadership team expects to make a recommendation, but the legislature will make the ultimate decision through legislation;
- the nature of anticipated cuts to Medicaid and whether Native Americans will be spared; Native Americans will be spared to the extent that they receive services through the Indian Health Service;
- recognition of Regina Roanhorse as an important advocate of Native American health care issues;
- clarification regarding to whom the 100% federal medical assistance percentage (FMAP) for Medicaid will apply in 2014; only those who are "newly eligible" for Medicaid;
- clarification regarding who will run the office of health care reform; Secretary Falls has assigned Ms. Esquibel to lead the office with staff from other departments identified as resources to the office;
- ways in which the transition of knowledge and expertise occurs when a new administration take office; classified employees are being appointed as lead personnel regarding PPACA implementation efforts; and
- clarification regarding the impact of the PPACA on small businesses and tax penalties on individuals who do not comply with the mandate to purchase health insurance.

The chair interrupted the questions and comments to read an email just delivered that stated the United States Senate had taken preliminary action to support a phased-down extension of the enhanced Medicaid FMAP through the second calendar quarter of 2011. Secretary Falls provided some clarification regarding the impact of this information, although the exact details of the measure were not, at that time, fully known. A quorum being present, Senator Feldman made a motion, which Representative Lujan seconded, to send a letter requesting members of the New Mexico congressional delegation to vote in support of the proposed amendment to H.R. 1586 to extend the enhanced FMAP. Representative Espinoza made a motion for a roll call vote, which Senator Kernan seconded. As the roll call vote was called, Representative Espinoza excused herself from the room. After brief discussion, the motion carried with four members voting in support: Representative Picraux, Senator Feldman, Senator Ortiz y Pino and Representative Antonio Lujan, and one member absent from the vote, Representative Espinoza. Clarification regarding the rules by which a vote is valid were reviewed. A comment was made that the vote sends a misleading message regarding the meaning of the vote. A suggestion was offered that the letter state that the majority of the committee voted in favor of the motion.

Questions and comments resumed as follows:

- clarification regarding how emergency care is provided to undocumented residents, and whether they are eligible to be covered under the PPACA;
- clarification that the PPACA requires insurers to allow dependents to be covered under parents' policies until the age of 26;
- clarification regarding the portions of the PPACA that have already been implemented;
- recognition that implementation of major health reform is occurring at a complex time when many other major initiatives are also underway; and
- the importance of the timing of imposing any new taxes on employers because taxes may compromise the ability of many businesses to remain in business.

### **Health Reform and Medicaid: Challenges to the Provider Community**

Steven Hansen, chief executive officer, Presbyterian Medical Services (PMS) highlighted key features of the PPACA that are expected to both help and challenge federally qualified health centers (FQHCs) in New Mexico. Mandatory federal grant funding of \$11 billion will be available between fiscal years 2011 and 2015 to expand FQHC sites and operations through the PPACA; however, it is not certain how much of that New Mexico will be able to obtain. He described the anticipated breakdown, by payer source, of patients who will receive health care services through FQHCs in 2014, once the PPACA is fully implemented. Specific challenges that he expects the PMS will face include provider recruitment, a pent-up demand for services, a need for facility improvements and infrastructure development and a disproportionate share of the uninsured seeking services at PMS clinic sites.

Robert Garcia, vice president for regional administration, Presbyterian Healthcare Services (PHS), offered remarks about the specific impact of the PPACA on hospitals in the challenging fiscal environment. He characterized the PHS as an integrated delivery system and provided information about how it is structured and how it currently serves New Mexico. He noted that hospitals agree that they are facing dramatic challenges, including reductions in payments, but together with the executive and legislature, they believe they can rise to the occasion. Hospitals believe that quality care will be more cost-effective; individuals will take more responsibility for their own care; and emergency room care will be truly emergency care. Pilots and demonstrations to bundle payments and develop accountable care organizations will alter the way in which health care is delivered. Mr. Garcia asked the committee to continue to look at ways to increase the supply of health care providers in New Mexico, especially mid-level providers.

Dr. Larry Shandler, a pediatrician and member of the Medicaid Advisory Committee, observed that the PPACA contains many provisions to increase support for training and stipends to promote workforce development. He expressed the need for more pediatric specialists. He noted that more women are entering the profession of medicine, especially in primary care and pediatrics. He observed that although primary care physicians are paid less than specialists, physicians practicing in primary care tend to have more job satisfaction and remain in practice longer. Laws now limit the hours that residents can work before taking a break; the impact of this on the profession has yet to be fully evaluated. Physicians continue to argue for better reimbursement for their services. The PPACA requires that Medicaid reimbursement rates move closer to Medicare rates; New Mexico is already close, but Medicare reimbursement is lower in the state than elsewhere in the nation. Additionally, Medicaid reimbursement is about two-thirds of commercial payments. The PPACA has many opportunities, but there are still challenges.

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

- ways in which bundled-payment mechanisms work, including who distributes the dollars and how out-of-network providers participate; it was explained that much is not yet known about this;
- an observation that the rising cost of health care is of major concern to patients;
- an observation that many system reforms in the PPACA are already underway, such as medical homes;

- clarification regarding a medical home pilot project at the Pueblo of Isleta; early findings seem to indicate individuals enrolled have shorter lengths of stay in hospitals and better outcomes;
- an observation that community health clinics and FQHCs have been providing care in the medical home model for decades;
- clarification regarding the amount of federal support received for FQHCs under the ARRA and what is anticipated through the PPACA; the PMS received around \$2 million under the ARRA for capital improvements; under the PPACA, the grants are very competitive, and New Mexico might be in a disadvantaged position to receive any money because the state already has a large number of clinics; early indications are that the first round of grant dollars will go to establishing new sites around the country;
- whether the addition of a fourth SALUD! provider has made either a positive or negative difference in the provision of health care to New Mexicans; Mr. Garcia stated that he did not know;
- the difficulty of understanding and negotiating reimbursement rates with new HSD rules that govern MCOs and the MCOs independent initiatives around reimbursement;
- whether all SALUD! MCOs negotiate the same rates with their providers;
- how emergency room physician staffing is determined and by whom; Dr. Garcia stated that it varies based on the demand;
- clarification regarding the number of psychiatrists employed by the PMS in clinics, and where the clinics are located; the PMS utilizes telehealth to reach rural New Mexico;
- clarification regarding where health care provider shortages are the most profound;
- the urgent need for trauma providers;
- the importance of telemedicine;
- whether enough primary care providers are graduating; the answer was no, federal caps have limited the number of providers who can go into residency programs; and
- an observation that primary care providers have great job satisfaction and tend to stay in the profession longer.

### **Report from the HCRWG**

Debbie Armstrong, chair, HCRWG, provided an update on the progress of the working group, noting that it will meet on August 5 at 9:00 a.m. to discuss workforce issues and system reform issues. Advisory groups have been formed on a voluntary basis and will draw on their own networks statewide to gather information and provide a report and recommendations to the LHHS in November 2010. The HCRWG has been looking at major key provisions, time lines for implementation and granting opportunities. Ms. Armstrong updated the committee on grants that have already been applied for and some that are currently being developed. The federal high-risk pool, one of the first mandates of the PPACA, has been established under the aegis of the NMMIP. Ms. Armstrong updated the committee on how this was accomplished, including a decision by the NMMIP board to extend subsidies to low-income enrollees by using state resources because the federal grant does not permit use of its funds for that purpose.

Committee members had questions and made comments as follows:

- clarification regarding the \$37 million in federal funds for the federal pool; those funds are to pay claims of participants enrolled in the federal plan;
- clarification regarding the differences between the state high-risk pool and the new federal high-risk pool;

- information regarding the characteristics of the new enrollees in the federal program;
- an update about exchanges and recommendations from the HCRWG; this will be discussed at the October meeting and brought to the LHHS in November;
- clarification regarding other areas in which the HCRWG will be making recommendations;
- an observation that the request for proposals for the exchange planning grant must be submitted by a state agency and requires stakeholder input; and
- clarification regarding maintenance of effort requirements for high-risk pools.

**Public Comment**

There being no public comment, the committee adjourned at 3:15 p.m.

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

**August 31-September 1, 2010**  
**Room 307, State Capitol**  
**Santa Fe**

The fourth meeting of the Legislative Health and Human Services Committee (LHHS) was called to order as a subcommittee by Representative Danice Picraux, chair, on Tuesday, August 31, 2010, at 8:45 a.m. Committee members were reminded that the meeting was being webcast.

**Present**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Sen. Rod Adair  
Rep. Nora Espinoza  
Rep. Joni Marie Gutierrez  
Sen. Linda M. Lopez  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Absent**

Rep. Jose A. Campos  
Rep. Keith J. Gardner  
Sen. Clinton D. Harden, Jr.  
Rep. Rodolpho "Rudy" S. Martinez  
Rep. Bill B. O'Neill  
Rep. Jeff Steinborn  
Rep. Mimi Stewart  
Sen. David Ulibarri

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Rep. Eleanor Chavez  
Rep. Nathan P. Cote (9/1)  
Rep. Miguel P. Garcia  
Rep. John A. Heaton (8/31)  
Sen. Gay G. Kernan (8/31)  
Rep. Dennis J. Kintigh  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Sen. Mary Kay Papen (9/1)  
Sen. Nancy Rodriguez  
Sen. Sander Rue (9/1)  
Rep. Gloria C. Vaughn

**Guest Legislators**

Rep. Gail Chasey (8/31)  
Rep. Edward C. Sandoval

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Michael Hely, Staff Attorney, Legislative Council Service (LCS)

Karen Wells, Researcher, LCS  
Zelda Abeita, LCS

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts are in the meeting file.

## **Tuesday, August 31**

### **Welcome and Introductions**

Representative Picraux welcomed the committee and members of the audience. The committee members' attention was drawn to several documents provided in response to previous questions asked by committee members. Committee members introduced themselves.

### **Patient Protection and Affordable Care Act (PPACA) Opportunities: Delivery System and Financing of Health Care**

Enrique Martinez-Vidal, vice president, Academy Health, and director, Robert Wood Johnson Foundation State Coverage Initiative (SCI) Program, described what the environment of health care delivery is likely to look like when the PPACA is fully implemented in 2014. Measures intended to reform the health care delivery system are designed to reform reimbursement, improve quality and emphasize outcomes through structures such as medical homes and accountable care organizations (ACOs).

According to Mr. Martinez-Vidal, payment reform is a very important aspect of the law as reimbursement inevitably has a huge impact on how care is delivered and how the provider system is organized. Principles of reimbursement in the PPACA involve aggregation of payment through such vehicles as bundled payment arrangements, shared savings and capitation. In a bundled payment arrangement, payments are made based on an episode of care, over a period of time, for patients with a specific condition. Difficulties occur when determining who actually gets the payment and by what means it is distributed. In shared-savings models, providers agree on a budget of risk-adjusted expenditures for a population. Capitation is a widely used model of reimbursement, especially in Medicaid. Of the models described, capitation has the strongest financial/budget-management incentives.

Mr. Martinez-Vidal identified two major areas of health policy innovation in the PPACA: medical homes and ACOs. Medical homes are based on a presumption that coordinated care coupled with disease management can result in improved outcomes of care. Multipayer medical home initiatives bring major insurers together to implement changes in the interaction between primary care providers and patients. Funding for patient-centered medical homes can be difficult, as the medical home generally provides additional services not traditionally covered. The economic downturn has made funding of medical homes difficult for states. The September 2009 decision of the federal Centers for Medicare and Medicaid Services (CMS) to allow Medicare to participate in medical home models eliminated a previous hurdle to reimbursement.

Mr. Martinez-Vidal briefly described the characteristics of medical homes and reasons why this is an important model to promote. He described the relationship between medical homes and ACOs. Medical homes bring payers of care together around primary care while ACOs bring a wider array of providers together, including hospitals and specialists. ACOs represent emerging models around which there is no agreement, ranging from virtual organizations to actual models, such as integrated delivery systems. An ACO is a network of providers that come together to assume clinical and financial responsibility for the care of a patient and a population and among whom payment and risk are apportioned. The ability to manage across a continuum of care is vital. ACOs must be able to integrate the elements of financing, patient care and performance measurements. The PPACA affords ACOs the opportunity to offer great flexibility of organization with new payment models, improved risk adjustment and a measure to forestall cuts in fee-for-service models of payment.

Concerns around ACOs include a fear that ACOs will restrain market forces and, if they are successful in reducing costs, about how and to whom the savings will be accrued. Components of an ACO infrastructure include local accountability for cost, quality and capacity; shared savings; and performance measurements. Networks that are created in an ACO are not shown to disrupt a patient's tendency or ability to go to one particular network of providers. ACOs in some ways resemble managed care, but without the intention to limit choice to a specific array of providers. However, providers are incentivized to manage the care because they are responsible for the outcomes of care, regardless of whether or not the patients receive the care from providers in the ACO network.

There remain many questions about what an ACO is and how it can be made to work. The PPACA has funding for demonstrations to promote experimentation with various approaches to implementing ACOs. Pat Montoya, director, Alliance for Quality, New Mexico Medical Review Association, noted that there are entities in New Mexico that are currently attempting to establish an ACO. One difficulty is that much of the patient population is already enrolled in a particular network, making for challenging decisions about new payment reimbursement models. Mr. Martinez-Vidal commented that local experimentation will ultimately lead to new innovations in delivery systems and reimbursement of care. ACOs can only be successful with local leadership and engaged stakeholders, including payers, purchasers, providers and patients. He briefly described the state action on avoidable rehospitalizations initiative, which is seeking to identify ways to set up systems that will improve transitions out of the hospital and into the next setting of care. Many states are looking to implement this initiative for a "quick win" in improving care and reducing the costs of health care.

Mr. Martinez-Vidal provided an overview of specific delivery system and payment reform opportunities in the PPACA. Detailed information was included in his handout. A critical element is the establishment of the CMS Center for Medicare and Medicaid Innovation, which will be funded at \$10 billion over the next 10 years and will serve as the center for the accomplishment of many of the goals of the PPACA.

Payment reform and new reporting requirements for physicians, hospitals and health plans are contained in the PPACA. Numerous pilot programs are targeted to innovations in Medicaid for medical homes, community health teams, a pediatric ACO, primary care extension hubs, bundled payments and chronic care activities. A significant section of the PPACA focuses on

"dual eligibles", i.e., those individuals who are very poor and at high risk of illness. Most of these demonstrations are geared toward changing the reimbursement in order to change the way in which delivery of care is provided. Because Medicare and Medicaid are such major payers of health care, changes to those programs are ultimately expected to affect private insurance. Challenges were identified, such as the role of the federal government versus that of the states, whether there are enough primary care providers to accomplish the goals, how major health plans will participate and how to influence consumers to take responsibility for their own health care.

Mr. Martinez-Vidal covered population health, prevention and wellness measures contained in the PPACA. This is a big area with significant funding. There is a growing recognition that integration of prevention and wellness into treatment is critical. Public health, behavioral health and environmental issues are seen as big drivers of health care costs. Some ideas that other states have put into practice were detailed in the handout. Specific grants promoting population health, prevention and wellness, including ways in which states can participate, were detailed.

Mr. Martinez-Vidal then discussed transparency and all-payer claims databases. The SCI has issued a policy brief on this topic. The purpose of an all-payer claims database is to provide health care information to many different parties. Created by state legislation, these databases typically include data derived from multiple sources, and they are far more inclusive and consolidated than what is currently available through traditional sources. He identified the uses and benefits of all-payer claims databases. Ten states currently have all-payer claims databases. States vary in how these databases are funded and governed. Stakeholder input should identify and determine how the data will be used.

Finally, Mr. Martinez-Vidal described provisions in the PPACA regarding comparative effectiveness, consumer engagement and health information technology. He concluded his remarks by noting that the rising cost of health care is a major impetus to reform, but little has yet been proven to contain those costs. The PPACA provides an avenue for experimentation to see what works, and it is a rare opportunity for active states.

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

- clarification regarding the differences between a medical home and an existing primary care practice (medical homes provide team-based care);
- whether ACO team members are in the office of the primary care provider (Mr. Martinez-Vidal informed the committee that they can be);
- what payments are included in payment reform models and ways in which primary care physicians benefit from these models;
- the challenges of ensuring quality in an ACO and the importance of performance measurements;
- the necessity for encryption and extreme attention to privacy when collecting and reporting on health care data;
- the extent to which patients are able to choose a provider under an ACO;
- whether changes to reimbursement will automatically generate delivery system changes (probably not);
- why an all-payer claims database would exclude denied claims (this has been what states with such databases have decided; a state could include denied claims);

- whether the PPACA includes a "physician compare" web site (yes);
- what "RBRVS" means (it means "resource-based relative value system", and it is the system by which physician payment rates are determined for Medicaid and Medicare);
- whether states will have the ability to apply for grants to participate in payment reform demonstrations (yes; the time line for grant applications is not yet known);
- ways in which tobacco prevention and cessation programs have informed opportunities or models for prevention and wellness efforts;
- an observation that in the 1970s, the country engaged in unbundling of health care payments, and now that trend is being reversed;
- clarification that ACOs are intended to be more outcome-oriented than other models;
- whether ACOs will assume risks; this is a critical issue for those who are trying to figure out how to develop and implement ACOs;
- an observation that disease management companies have not generated the improved outcomes that were expected and how ACOs will be different (the chronic care management will be done much more locally and personally);
- what states are doing to establish health insurance exchanges, given all the technical challenges and issues (all states are struggling with the requirements of the eligibility system in an exchange; the possibility might exist for the federal Department of Health and Human Services to develop an "off-the-shelf" system for determining eligibility);
- whether medical homes serve only patients with chronic care needs, or if they serve everyone (it can be both; different models handle the question differently);
- the extent to which public health efforts will be enhanced in the PPACA (there are numerous measures in the PPACA regarding public health; Mr. Martinez-Vidal will provide information); and
- ways in which the medical home team assists the primary care physician to manage care.

A quorum being present, the minutes of the August meeting were approved.

### **Consolidated Environmental Review Act — Steps for Improved Health**

Representative Chasey described the goals of the proposed Consolidated Environmental Review Act as the improvement of public health and the environmental health of communities and the streamlining of a cumbersome and duplicative process. Kitty Richards, Bernalillo County Place Matters Team, provided a summary of a proposed bill, the intent of which is to provide environmental protection across all communities, to use evidence-based science to aid the permit decision-making process and to increase transparency of governmental actions regarding environmental protection. The bill requires an environmental assessment for all projects that require a permit under the federal Clean Air Act, the federal Clean Water Act of 1977 and the state Hazardous Waste Act in order to identify the environmental impact on communities early in the permitting process.

Representative Chasey noted that the bill should reduce lawsuits that emerge due to the lack of transparency and early involvement by communities.

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

- the potential health dangers and economic benefits in reopening the uranium mines in New Mexico (the proposed act would ensure full review of these costs and benefits);

- whether the proposed act would apply to activities occurring on federal and tribal lands;
- clarification regarding the effects of this proposed bill (anything that is required by the listed federal acts);
- the potential for this proposed bill to have a negative economic impact;
- an observation that the nuclear processing facility in New Mexico has generated significant economic development and more than 20 applications are underway to replicate this facility in the state;
- a concern that the proposed bill might discourage economic endeavors coming to New Mexico from other states;
- a request for a list of different permits in the state currently regulated as required by federal law, the type of assessments being conducted and the cost of all of this (this information will be provided);
- the current process in place in the Department of Environment and how this bill would change that (this bill would consolidate the process and eliminate duplication);
- whether the Department of Environment could establish this now without legislation (yes, but currently there is no incentive for it to do so);
- whether this could be part of the Government Restructuring Task Force's (GRTF) work (proponents have viewed this proposal as a means of streamlining a process for stakeholders as well as government);
- a general concern regarding overregulation of businesses;
- consideration by the GRTF regarding the consolidation of the Department of Environment and the Energy, Minerals and Natural Resources Department; and
- clarification that the proposed measure does not increase or change regulations, but that it would merely require an environmental assessment and allow communities more input regarding environmental impacts in their neighborhoods.

### **Committee Consideration of Restructuring Options**

Ms. Wells described the complexity of health care financing and administration in New Mexico state government. The presentation included a visual depiction of the effect of certain ideas for consolidation that have been discussed by the GRTF and the LHHS at previous meetings, including the consolidation of the administration of some Medicaid waiver programs from the Aging and Long-Term Services Department into the Medical Assistance Division of the Human Services Department and consolidation of certain functions of the Interagency Benefits Advisory Committee (IBAC) agencies, such as insurance benefits and/or governance. Brent Earnest, analyst, Legislative Finance Committee (LFC), was invited to join the discussion because he and other LFC staff members contributed financial information to the presentation. Following the presentation, Ms. Wells went over a list of ideas mentioned at previous meetings that could be construed as restructuring ideas. The LHHS has been asked to provide recommendations on restructuring to the GRTF for consideration at the GRTF's September meeting.

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

- the amount of funding in DWI block grants (the amount for the current fiscal year is approximately \$10 million);
- the way in which Texas manages prison health and whether that approach could be replicated in New Mexico;
- a request to move slowly on restructuring to allow time to evaluate the impact of the PPACA;

- a request to revisit the requirements of HB 666, passed in 2003, which requires reporting of prescription drug information;
- recognition that a failure to act on the IBAC consolidation could result in cuts to benefits for recipients as budget cuts are implemented;
- an observation that many health care programs and services, especially Medicaid, exist in silos and could be centralized;
- whether behavioral health services could be put back into the Salud! Program to eliminate the contract with a statewide entity for behavioral health;
- the extent to which the IBAC agencies would benefit from a common actuarial analysis;
- whether savings could be achieved through consolidation of health care rules and regulations; and
- a reluctance to vote on any ideas without full information and an assessment of the unintended consequences of such a vote.

Anna Otero Hatanaka, executive director, Association of Developmental Disability Community Providers (ADDCP), stated that the ADDCP feels strongly that the developmental disabilities (DD) waiver should be kept in the Department of Health and administered with other related disability programs.

After an attempt to vote on ideas to be presented to the GRTF failed, the committee decided not to take action at this time.

### **Public Comment**

Deborah Dennison read a letter from a consumer who experienced a poor transition from a nursing home to the Coordination of Long-Term Services (CoLTS) Program waiver and a lack of sufficient services in the community.

Ms. Hatanaka told the committee about the ninetieth birthday celebration of former New Mexico Representative J. Paul Taylor in Mesilla, New Mexico.

Ellen Pinnes noted that the state law called Money Follows the Person in New Mexico Act (MFP) is a model for moving people from institutions into the community by taking the money being spent by the state to cover their care in an institution and using that money to cover their care in the community. She said that the state has refused to implement the MFP. Instead, the state is using a mechanism called "community integration" to accomplish this, which does not increase the number of people being served in the community. The PPACA has a provision to fund a new iteration of grants for the MFP, and New Mexico can apply.

Representative Espinoza suggested that the state be called to task regarding its refusal to implement the law. She moved that a letter be written to ask the responsible departments why they are not implementing the MFP. The motion was seconded by Senator McSorley and adopted by the committee.

Gail Thompson thanked the committee for thinking about ideas to restructure and said she appreciates the position that restructuring should not be rushed. She recommended that the committee take the time to study the PPACA and what other states have done. She also provided

personal testimony about an experience she had that resulted in one overnight stay in a hospital and a charge of \$10,000. She urged the committee to incorporate best practices and stop wasting money by overtesting and overtreating patients.

### **New Mexico State University (NMSU) and the Future of the Health Care Work Force**

Telahun Adera, Ph.D., dean, College of Health Sciences, NMSU, addressed what NMSU is doing in response to provisions in the PPACA and what the state can do to take advantage of its opportunities. He spoke briefly about what NMSU is doing to address work force needs and the future. Dean Adera spoke about the history of public health in the country and in New Mexico. He identified some successes and failures in past initiatives. Health disparities remain, with New Mexico standing at thirty-first out of the 50 states — a decline from 2008 when the state was thirty-eighth in the nation. Poor graduation rates, poor child health, high numbers of uninsured people and poor prenatal care are contributing factors. He noted that the cost to the state of obesity alone is \$430 million per year. The PPACA promises much change, especially in ensuring greater access to insurance and care. The law offers unprecedented opportunities to highlight prevention and wellness and put it in the forefront. It includes many measures to increase the size of the health care work force. As a state, New Mexico can focus on Title 4 (prevention of chronic disease and improving public health) and Title 5 (health care work force). NMSU has been training health care professionals in various ways; it has more than 30 degree programs related to health care. The College of Health and Social Services offers pre-dental, pre-pharmacy, nutrition, training of health educators, counseling and psychology and social worker degrees.

Pamela Schultz, Ph.D., interim director, School of Nursing, NMSU, noted that NMSU offers a bachelor of science in nursing degree plus three online nursing programs. NMSU was the first school in the state to establish a doctorate of nursing in clinical psychiatry; however, the program has not been implemented due to lack of funding. The need for this program is crucial in the southern part of the state.

Questions and comments from the committee included the following:

- clarification on how implementation is being held up (the LFC must review and approve the funding request);
- whether there has been any effort at NMSU to examine why people leave the health care field (no concerted effort to examine this has occurred, but it is a concern; in the field of nursing, the working environment has become a more critical factor than salaries);
- whether NMSU students are being denied admission to the University of New Mexico (UNM) School of Medicine and then go elsewhere (there have been some denials, but Dean Adera does not know if there has been a systematic effort to refuse acceptance to NMSU students; he can provide this information);
- a suggestion that NMSU be demanding regarding its funding for health care programs in order to be able to fill jobs and create economic opportunity in the state (NMSU was urged to make a strong case about the need for a program in clinical psychology); and
- whether NMSU has applied for any work force grants (it has applied for a rural work force grant program for nurses' training for \$3.6 million over five years).

### **Medical Homes: Background, Opportunities in the PPACA and New Mexico's Experience**

Nancy Eisenberg, a public health student at UNM who is serving a practicum with the LCS, provided information about the development of medical homes in New Mexico. She identified the interviews she conducted, noting that she provided the names of interviewees in an attachment. She described medical homes, where they are located and how they earn recognition by the National Committee for Quality Assurance (NCQA). The NCQA identifies three levels of recognition to become a medical home site. One drawback to the NCQA is that it does not recognize nurse practitioners as primary care providers, as provided for in New Mexico law. The PPACA does not mandate using medical homes, but it provides funding for several demonstration projects. Ms. Eisenberg discussed findings from her interviews, noting leadership is needed at all levels to move forward on implementing medical home models of care. It is challenging to develop such a model in rural areas of the state. Payment is an important and unresolved issue. There are successful models in other parts of the country that can serve to guide New Mexico in this effort.

Questions and comments from the committee included the following topics:

- whether medical homes in New Mexico are multipayer (the Taos model has multiple payers); and
- whether medical homes will result in shared savings (Dr. Sun of Molina Healthcare mentioned that Molina is interested in pursuing pay for performance and shared savings).

There being no further questions, the committee recessed at 5:10 p.m.

### **Wednesday, September 1**

The committee reconvened at 8:45 a.m. The chair announced that the meeting was being webcast. Members of the committee and staff introduced themselves.

### **Native Americans and the PPACA**

Alvin Warren, secretary, Indian Affairs Department (IAD), greeted the committee in his native language. He reminded the committee of tragic health problems that persist among Native American populations and the federal trust to provide health care to Indian tribes, pueblos and nations in the country. Despite that responsibility, it is well-documented that the Indian Health Service (IHS) continues to be severely underfunded. He noted that the state has an opportunity to hold the federal government accountable in this area.

Health care is one of the four top priorities of the IAD, Secretary Warren said. He identified five areas in which the PPACA will have the largest impact on states and their Native American populations: (1) health exchanges; (2) Medicaid and the Children's Health Insurance Program (CHIP, formerly known as the State Children's Health Insurance Program, or SCHIP); (3) the IHS; (4) the federal Indian Health Care Improvement Act; and (5) grant opportunities for Native Americans, tribes and tribal organizations. The establishment of health insurance exchanges will benefit Native Americans by providing special monthly enrollment periods; by eliminating cost-sharing for Indians enrolled in insurance through the exchange as well as through the IHS; and because there will be no penalties for a failure to carry minimum coverage.

Lisa Marie Gomez, policy analyst, IAD, discussed provisions related to Medicaid and CHIP that are relevant to Native Americans. The IHS, Indian tribes, tribal organizations and urban Indian organizations are identified in the PPACA as eligible to serve as "express-lane agencies", thereby facilitating the enrollment of Indian children into CHIP. Grants are available to fund outreach and enrollment efforts. The IHS is identified in the PPACA as the payer of last resort, and the sunset provision for Medicare Part B services furnished by IHS hospitals and clinics is eliminated by the act. Ms. Gomez noted that the PPACA permanently authorizes the Indian Health Care Improvement Act. Among the provisions in this act are direction to the IHS to establish comprehensive behavioral health, prevention and treatment services; authorization for hospice, assisted living, long-term care and home- and community-based services; and updates to current law regarding collection of reimbursements from Medicare, Medicaid and CHIP by Indian health facilities.

Secretary Warren highlighted PPACA provisions that expand the Community Health Aide Program (CHAP), allowing Indian tribes to elect to implement a dental health aide program, as has been done in Alaska. Grant opportunities that can benefit Indian tribes include funding for maternal and child health services (three tribes have applied) and trauma centers and to strengthen and improve tribal primary care and other work force occupations. He concluded that, as a member of the executive health reform leadership team, he made sure that specific goals were included in the strategic plan. First, grant opportunities should be coordinated to address Native American needs and disparities. Second, tribal consultations should occur as state agencies pursue policies that will have an impact on Native Americans. Third, state agencies should address actions to implement the PPACA. Finally, an ad hoc work group should be established to ensure adherence with and effective implementation of the Indian Health Care Improvement Act.

Three general recommendations were offered to committee members: (1) read the strategic plan; (2) be mindful of Native American provisions in legislation; and (3) inquire about and hold state agencies accountable for coordination with tribes.

Questions and comments from the committee covered the following areas:

- whether the migration of tribal members to other states will be affected by this act (the PPACA does not address this; special enrollment periods in exchanges might mitigate the problem);
- whether restructuring proposals being considered by the GRTF will help or harm Native Americans (Secretary Warren is not aware of any proposals affecting the IAD);
- whether Native American businesses will be obliged to provide health insurance to workers (this is not known yet);
- whether the Bernalillo County Off-Reservation Native American Health Commission will be able to serve as an "express-lane" enrollment entity (probably not, as it is a county-based entity and is not mentioned in the act);
- clarification about other individuals who are exempt from the requirement to obtain health insurance (e.g., those who are incarcerated, those with economic hardships and others);
- clarification regarding the percentage of Indians who receive health care services primarily through IHS facilities (Secretary Warren will try to obtain this information);
- whether measures have been taken to increase the Native American work force (not at a state level due to budgetary considerations);

- what behavioral health services are needed for Native Americans in New Mexico (many recommendations have been made through the Interagency Behavioral Health Purchasing Collaborative, and negotiations are underway with OptumHealth; substance abuse and suicide are critical issues, and a greater commitment to their prevention is necessary; the Native American treatment delivery system needs to be recognized as a best practice and thus be eligible for reimbursement);
- whether the IHS system is adequate and if it is comparable to other providers (many IHS facilities are good, but they are faced with challenges due to lack of funding; there remains a lack of services and a lack of providers);
- whether tribal representatives are working with the newly created Office of Health Care Reform (yes); and
- whether the education system is sufficient to train a Native American health care work force (Indian youths have a graduation rate below 50%; recruitment into health care career paths must start before the end of elementary school).

### **UNM Health Sciences Center (UNM/HSC) and the Future of the Health Care Work Force**

Paul Roth, M.D., executive vice president for health sciences, UNM/HSC, began with a review of the programs and schools at the UNM/HSC to train health care professionals. He provided information regarding known and projected shortages, noting that New Mexico will need 6.5% growth per year in primary care physicians to have an adequate supply by 2035. He provided updated information on students enrolled in the UNM School of Medicine's Bachelor of Arts-to-Medical Doctor (BA/MD) Program, two-thirds of whom are from rural New Mexico. In order to fund the continuation of the BA/MD program, the UNM/HSC is requesting funding of \$732,900. Dr. Roth highlighted a new part of the curriculum of the school of medicine, called poverty medicine, in recognition that socioeconomic issues greatly affect health and the subsequent treatment for illness. The UNM/HSC has developed the first public health certificate program in the nation to be required of all medical school students. The focus of the program is disease prevention, health promotion, health policy development and other elements of a public health curriculum.

Dr. Roth noted that the UNM/HSC is striving to maintain the physician assistant program despite severe budgetary constraints. He provided information regarding the critical need for dentists in New Mexico, especially for Navajo children. New Mexico subsidizes nine dental students per year through the Western Interstate Commission on Higher Education, and the UNM/HSC developed a dental residency program in 2004; 37 residents have gone through the program since then. Dr. Roth described plans to increase the number of dentists, which include the creation of a bachelor of arts and regional doctor of dental surgery degree and, when feasible, the establishment of a dental school. He provided information about nursing shortages in the state. New Mexico ranks last in the nation for registered nurses per 100,000 population. The UNM/HSC estimates that more than 100 additional faculty members are needed to address the shortage. The goal is to train more advanced practice nurses. He highlighted the partnership with NMSU for a cooperative pharmacy program and noted that 91 students are enrolled for the fall semester in the College of Pharmacy program at UNM. Allied health professionals are being trained in a variety of programs, including physical therapy, occupational therapy, dental hygiene, emergency medical services, medical laboratory sciences and radio/nuclear imaging.

Dr. Roth identified a capital request of \$11,250,000 to complete the Domenici Center for Health Sciences Education and a program request for \$732,900 for the seventh year of the BA/MD program. In conclusion, he identified underlying objectives for the PPACA that serve to increase health insurance coverage, alter reimbursement for providers to focus on quality and cost, address the health professional shortages, invest in wellness and prevention and cut waste in the system. He noted that the UNM/HSC has established work groups to track grants, guidance and development of regulations in the areas of Medicaid and insurance reform, value-based performance, the work force and alternative delivery models. Seminars and retreats are planned to address these areas.

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

- concern that New Mexico is not well represented regionally in the numbers of doctors trained at the UNM/HSC who are practicing in underserved areas (geographic maldistribution is an ongoing concern; many approaches have been tried to address this, but it remains a problem; the UNM/HSC does not control where graduates will practice);
- whether a dental school must be located in Albuquerque (it does not have to be; it will just cost more to hire additional faculty to locate it elsewhere);
- concern regarding the effect of the PPACA provision imposing penalties for readmission to a hospital and whether the PPACA addresses the behavior of patients that leads to readmission (the regulations and details have not yet been developed);
- concern regarding the lack of dental care for Navajo children;
- clarification regarding the need for increasing the nursing faculty (the projections are based on estimated future retirements coupled with the number of qualified applicants the school is currently not able to accept);
- whether provisions in the PPACA will unduly reduce reimbursement to physicians (the goal of the act is more focused on increasing the size of the primary care work force);
- concern regarding a negative impact on specialty care physicians and whether the supply of specialty care physicians will be reduced as a result of the PPACA (reimbursement for hospitals and physicians should reflect patient acuity);
- whether the UNM/HSC can require community service as a condition of graduation (Dr. Roth stated that he does not think so);
- the percentage of medical students who go into the practice of primary care medicine (about half; however, the number is declining in New Mexico and nationwide);
- ways in which public health and the poverty-in-medicine curriculum are integrated into practice (students do rotations in clinics; further details will be provided);
- where pharmacy students are coming from and what is known about their future plans (information will be provided);
- the importance of developing a pipeline into health care professions beginning in middle school and high school (the PPACA has funding opportunities that the UNM/HSC is seeking to use to reinvigorate that pipeline; it just received a grant to work with Indian children);
- whether geriatric medicine is being offered or promoted at UNM (fewer students are electing this as a specialty nationally; the new trend is to build geriatrics into primary care training in medicine as well as in nursing);

- a request for specific information regarding the number of applicants from Chaves County who are denied admission at the UNM School of Medicine (Dr. Roth noted that more than 225 New Mexicans apply and the school is only able to accept 75);
- whether penalties regarding readmission to a hospital will apply to behavioral health readmissions (behavioral health is not included right now; further details will be forthcoming in the regulations);
- clarification regarding clinical pharmacists and their role (pharmacists who undergo additional training and certification can obtain prescriptive authority); and
- a request for an update on Project ECHO (this telehealth program is very successful and ongoing; it has been expanded to incorporate 10 or more clinical conditions that can be treated; Dr. Sanjeev Aurora received an international award for developing this program and technology).

### **Accountable Health: The Hidalgo Proposal and Institute for Healthcare Improvement (IHI) Support of Learning**

Charles Alfero, M.A., chief executive officer, Hidalgo Medical Services (HMS), offered a brief overview of the array of services provided at HMS. HMS cares for approximately 50% of the population of Hidalgo and Grant counties in the southwest corner of New Mexico. He described four components of an effective health care delivery system as prevention, diagnosis, treatment and management of care. He identified the current payment paradigm as one that mostly benefits expensive procedures and pays the least for primary care under a relative value system. This system results in a spiraling cost cycle wherein subspecialty training and high cost procedures are encouraged. One way to change this paradigm is to focus more on health care outcomes and to have goals to keep people healthy and out of hospitals. The HMS initiative, called accountable health services, places greater emphasis on prevention and care management to address patient health, health care costs, community priorities and population health. In order to pursue this goal, HMS has joined the IHI "triple aim" collaborative, a program dedicated to the pursuit of population health, enhanced individual care and controlled costs. He identified national and international sites that are prototype sites for the triple aim project. The project focuses on three dimensions of value: population health, experience of care and per capita cost. Mr. Alfero described the design of a triple aim enterprise. He provided an example of one such enterprise: an entity in Bolton, England, that established disease registries to allow intentional focus on specific diseases. This entity was successful in reducing hospital admissions for myocardial infarction threefold.

Mr. Alfero described the organizational focus of HMS, which involves patient self-management, primary care redesign, prevention and health promotion, integration and linking and cost control at the population level. He noted that high school graduation is the single most important predictor of the cost of health care. HMS has been successful in reducing teen pregnancies, and Mr. Alfero noted that the rate of teen mothers attending college has risen in the counties served by HMS. Working with two of the Salud! entities, HMS was successful in reducing by 72% the cost of the most expensive Medicaid care and services. The IHI model is predicated on change happening at the organizational level. HMS is learning to set measurable goals and measure results. Elements of a triple aim site were described. Mr. Alfero is interested in developing legislation that would use HMS as a pilot site to carve out the populations HMS serves, to require HMS to apply for a Medicaid waiver to serve that population and to test the triple aim model. He supports holding HMS accountable for outcomes of care. HMS would continue to

provide all core services, and it would commit to capitated payments utilizing a primary care team. There are development costs, and HMS would like legislative support to cover them.

Committee members had questions and comments in the following areas:

- whether HMS is applying for federal PPACA grant money (yes);
- whether state legislation is needed in support of HMS grant applications (legislative support is needed to promote the triple aim model, much like the legislation requiring the establishment of medical homes under Medicaid);
- clarification regarding contracts with Salud! managed care organizations (MCOs); HMS has contracts with all the Salud! MCOs but has special contracts with two of them to manage the health care costs of high-cost patients;
- whether the HMS model will ultimately result in a different mix of needed health care providers (nationally, there is a need to move toward a mix with more primary care physicians and fewer specialists);
- whether there is the potential for group outpatient counseling for drug-addicted youths at federal qualified health centers after hours;
- clarification regarding how the graduation and college entry rates were raised for teen mothers (HMS works collaboratively with the educational system and promotes child care, home schooling, child development and other things that will keep children in school); and
- clarification regarding the waiver that HMS is seeking (the reference to a waiver was hypothetical; any reform that involves Medicaid might require a waiver).

### **Behavioral Health and Health Professional Managed Care Concerns and the Proposed Amendment to the Patient Protection Act**

Hannah-Leigh Bull, M.A., licensed marriage and family therapist, described the purpose of the state's Patient Protection Act, which is to regulate aspects of managed health care and specify patient and provider rights. Senator Ortiz y Pino has agreed to sponsor an amendment to that act to strengthen the protections to all health care providers and their patients. Behavioral health providers today are facing serious challenges at the hands of the MCOs, resulting in provider staffing and financial hardship issues. Among the challenges are recoupment at a much later date than payments previously received; problems with timeliness and denial of claim payments; the burden of multiple credentialing requirements; and technological and other administrative requirements. Problems are exacerbated in rural areas and safety net facilities by the long distances providers must drive, by a fragile rural health care infrastructure and by difficulties ensuring continuity of care for seriously mentally ill patients. Some providers are experiencing stress and burnout, and provider turnover is high.

Ms. Bull described the proposed amendments, which will require real-time reporting of managed care data, especially claims data, and stronger notification and appeal rights for recoupments. The amendments establish communication protocols and streamline the credentialing process with uniform, online credentialing applications. MCOs would be required to provide immediate technical assistance for providers building information technology infrastructure and to ensure ongoing training. Providers would be reimbursed for administrative tasks required by MCOs. A managed health care ombudsman office would be created to investigate and resolve provider complaints. These amendments are being proposed as a means of

sustaining the network of rural and safety net providers and to maintain continuity of care for patients.

Dora Wang, M.D., licensed psychiatrist and assistant professor at the UNM/HSC, spoke in favor of the proposed legislation to amend the state's Patient Protection Act. She summarized the complex and costly process by which providers get reimbursed by MCOs and how the advantages all appear to rest with the MCOs. She elaborated on what she characterized as a tedious mechanism for obtaining prior authorization to provide care. MCOs do not need to deny claims if they do not approve them in the first place, Dr. Wang said. She asked for legislative support to give health care providers more protection. Dr. Wang described the history of health care in the nation and in New Mexico. She contends that health care does not work in a free market system. She provided an example of a physician whose practice and patients suffered under a for-profit system of reimbursement. In her personal experience, the care at the UNM Mental Health Center likewise suffered. John Hyde, a former patient of the physician previously described, shot five people, leading to consideration of Kendra's Law requiring mandatory outpatient treatment. Dr. Wang feels the impact of changing the health care system to a for-profit system is demonstrated by these examples. According to one study, managed care in a for-profit environment has led to much poorer outcomes for those suffering with mental illness. These and other indicators have led her to support the idea that health care providers are in need of protection in order to ensure safe and quality care for patients.

Committee members had questions and comments in the following areas:

- whether this measure should be a separate bill rather than an amendment to the Patient Protection Act (Senator Ortiz y Pino told the committee that he was willing to have it redrafted as a separate act instead of as amendments to the Patient Protection Act).
- a comment that the health care environment for people with mental illness may be better as a result of outreach, education and parity laws;
- an observation that the PPACA has some provisions that protect providers and patients and provides for appeals (on September 23, 2010, a number of provisions will go into effect, including limits on the medical loss ratio and prohibitions on rescissions);
- an observation that the proposed bill needs to be reviewed in light of PPACA changes and a suggestion that the proposers contact the Insurance Division of the Public Regulation Commission (ID/PRC) with these questions;
- Ms. Pinnes testified that some of the requested measures are already addressed in the current law; the issues may be more of a need for enforcement than a need for new legislation;
- an agreement that the system for reimbursing mental health care providers has failed and a reminder that OptumHealth was fined \$1 million for its mistakes;
- a reflection that John Hyde is not the best "poster boy" for reform of the mental health system;
- agreement that a measure like this is necessary, but in a separate bill;
- an observation that whatever happens to harm providers has an effect on patients as well;
- an observation that the Patient Protection Act includes all the definitions that are needed for this measure;
- clarification regarding the percentage of patients that are Medicaid recipients; Ms. Bull stated that about 50% of her patients are Medicaid recipients;

- whether Medicaid is subject to the Patient Protection Act (according to Ms. Pinnes, it is; yet over the years, various Medicaid directors have ignored that provision);
- a suggestion that careful review be conducted of the existing Patient Protection Act and regulations pursuant to that act with the ID/PRC, and whether the law is being enforced;
- the need for a common credentialing process (this measure might be better handled in a separate bill);
- commendation for Dr. Wang's book;
- clarification regarding the reasons given for recoupment (lapsed policies after prior authorization was granted);
- an observation that MCOs do not reimburse interpreters for deaf people in need of mental health services; and
- the importance of working with the New Mexico Medical Society and others on the bill.

### **Public Comment**

Dr. Bill Weise commented that in his personal experience with the UNM Family Practice Clinic, the clinical structure did not meet either the needs of his patients or his ability to provide care for them. In his view, this is a primary reason why physicians leave their practices. Additionally, he has had numerous experiences with physicians "gaming the system" for their own economic gain. He is convinced that it is a widespread problem. The expansion of coverage and the anticipated demand for services will lead to huge problems unless the cost of care can be contained. The issue of system reform has to be addressed. He recommends supporting well-thought-out innovation, such as the HMS proposal; considering a mandate that would lead Medicaid to commit to promoting accountability of care; and revisiting the current "lock-in" of the Medicaid MCOs. Senate confirmations of new cabinet members should hold them to a commitment to accountability. The system of capital investment needs to be restrained.

Katheryn Veilleaux, a family practice provider, said that her credentialing process took a year before she could get reimbursed for services. Additionally, Presbyterian Health Plan has resisted paying for some of her clients, stating that the clients were not eligible at the time of care.

Paula Ingerson, a nurse practitioner, expressed support for the proposed legislation. Accounting challenges keep her up until 1:00 a.m. each night; she would prefer to take care of patients.

There being no further business, the committee adjourned at 5:10 p.m.

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

**October 5-7, 2010  
Room 322, State Capitol  
Santa Fe**

The fifth meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by the chair at 9:24 a.m.

**Present**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Rep. Nora Espinoza (Oct. 5)  
Sen. Linda M. Lopez (Oct. 5, 6)  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Absent**

Sen. Rod Adair  
Rep. Joni Marie Gutierrez

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Rep. Eleanor Chavez  
Rep. Nathan P. Cote  
Rep. Miguel P. Garcia  
Rep. Keith J. Gardner (Oct. 6)  
Sen. Gay G. Kernan  
Rep. Dennis J. Kintigh (Oct. 5, 6)  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Sen. Nancy Rodriguez  
Sen. Sander Rue  
Rep. Mimi Stewart  
Rep. Gloria C. Vaughn

Rep. Jose A. Campos  
Sen. Clinton D. Harden, Jr.  
Rep. John A. Heaton  
Rep. Rodolpho "Rudy" S. Martinez  
Rep. Bill B. O'Neill  
Sen. Mary Kay Papen  
Rep. Jeff Steinborn  
Sen. David Ulibarri

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Michael Hely  
Karen Wells  
Zelda Abeita

**Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts are in the meeting file.

### **Tuesday, October 5**

#### **Welcome and Introductions**

The chair welcomed the committee and members of the audience. She reviewed the agenda for the day and reminded members that the meeting was being audiocast. Committee members introduced themselves.

#### **Overview of Health Benefits Exchange Provisions in the Federal Patient Protection and Affordable Care Act (PPACA)**

Marguerite Salazar, regional director, Region 8, United States Department of Health and Human Services (DHHS), provided a brief overview of the provisions in the PPACA regarding a health insurance exchange (exchange). She indicated that her office is available to assist New Mexico to establish an exchange, noting that if the state takes no action, the federal government will establish one for the state. Grant money is available to help states establish information technology systems. The exchange must be operated by either a state agency or nonprofit entity. The state will need to decide if it wants to have one exchange (combining both individual markets and small business markets) or two separate exchanges, or if it wants to participate in a regional exchange. Deadlines for having an operational exchange were identified. She noted that the Human Services Department (HSD) was recently awarded a grant of \$1 million to engage in planning for an exchange. She highlighted a provision that will make Native Americans eligible for federal employee health benefits. She noted that exchange models are emerging in other states that may prove instructive for New Mexico. She acknowledged that the DHHS will recognize exceptions as it develops guidelines for an exchange.

#### **Minutes and Miscellaneous Business**

A quorum being present, the minutes of the September meeting of the LHHS and the minutes of the Disabilities Concerns Subcommittee were approved. Mr. Hely drew the committee's attention to several handouts in the members' packets.

#### **Health Benefit Exchange Planning Grant**

Kathryn "Katie" Falls, secretary, HSD, informed the committee about the details of the exchange planning grant received by the HSD. She reviewed the overall goals of a New Mexico exchange. The grant funds will be used to study issues and to provide information to the legislature and the governor to aid in the decision-making process regarding an exchange. She described activity that has already taken place, including obtaining stakeholder input, the work of the Executive Health Care Reform Leadership Team (leadership team) and the work of the SJM 1 Health Care Reform Working Group (SJM 1 HCRWG). She reviewed elements of a "decision tree" that is guiding much of the work that is now underway. The leadership team and the governor desire an exchange that is as transparent and accessible as possible. Details were provided about the primary activities of the grant, which are: to develop a financial modeling tool; to study and begin to carry out the details of implementing an exchange; to explore the information technology needed to implement health care reform in New Mexico; to identify and develop the business operations of an exchange, such as necessary interfaces, eligibility determinations, plan

qualifications and more; and to provide follow-up research and analysis, including recommended legislation that will be needed for health reform in the state. She noted that none of the grant funding will be used to support HSD funding. The HSD is moving as quickly as possible to accomplish the goals of the planning grant prior to the legislative session in January. The budget for use of the grant funds is as follows:

- \$275,000 — financial modeling tool;
- \$225,000 — oversight by experts;
- \$200,000 — information technology assessment; and
- \$300,000 — stakeholder involvement and input.

Secretary Falls recognized Ruby Ann Esquibel and Melinda Silver, who put the grant application together.

### **Western States Regional Exchanges: Lessons from Utah, Massachusetts, California and Florida**

Cheryl Smith and Daniel Schuyler, directors, Leavitt Partners, LLC, identified their former roles in establishing an exchange for Utah. The importance of having a vision, developing a concrete plan, understanding the target demographic, engaging stakeholders in the process and developing a time line for important steps were identified as critical considerations. Ms. Smith emphasized that 2011 is an important year for passing authorizing legislation. Many details can be developed at a later time. She noted that the Utah exchange was established with a very limited budget, and experience is now available to other states as they struggle to build an exchange in difficult economic times. Mr. Schuyler noted that information technology challenges are large, but that numerous vendors are already developing products to meet the needs of an exchange. He described the way in which the Utah exchange functions. Ms. Smith highlighted the similarities and differences between the Utah and Massachusetts exchange models. The governance and the roles and responsibilities of the exchange are important to determine. The Massachusetts exchange is a quasi-governmental entity that serves as a contracting agent, while Utah's exchange is located in a state agency and serves a more limited role as a market facilitator. The ability of an exchange to accomplish risk adjustment is critical. Florida established a quasi-governmental exchange in 2008 that serves as a market facilitator.

Mark Reynolds, general counsel, HSD, shared key issues in implementing a state health insurance exchange within the requirements of the PPACA developed by the legal group of the leadership team. Possible approaches to addressing these key issues were described. The legal group feels that it will be critical to institute measures to avoid adverse selection and to minimize the number of people selecting products outside the exchange. In order for an exchange to be successful, to attract insurers and to achieve economies of scale, a sufficient number of people will need to be enrolled in the exchange. The cost of establishing an exchange could be significant, as will be the governance of the exchange. He identified some potential legal challenges should a private entity be selected to operate the exchange. Whatever model is chosen, the exchange must be employer-friendly to encourage the participation of small businesses. The regulatory role of the exchange and rate health insurance plans will need to be determined, as well as the way in which the exchange will serve as an information clearinghouse. Finally, the exchange will be required to seamlessly facilitate public eligibility determinations; the interface between Medicaid and the exchange will be essential.

Mr. Reynolds covered the elements of the exchange law recently enacted in California, which requires the establishment of an independent, statewide public entity. Measures in the law to ensure state budget neutrality were described, as was the governance. California's law establishes a strong market facilitator model of an exchange. The exchange was given substantial regulatory authority.

### **Western States Regional Exchange**

John Franchini, superintendent of insurance, Insurance Division, Public Regulation Commission (ID/PRC), spoke about the results of a meeting of the Western States Association of Superintendents of Insurance. Following the meeting, a number of western states all agreed to pursue the potential of establishing a multistate regional exchange that maximizes leveraging of resources while allowing for recognition of the unique needs and demographics of each individual state.

### **Questions and Comments for Morning Panelists**

Questions and comments for all the morning panelists covered the following areas:

- ways in which the Utah plan manages to contain costs of the plans offered in the exchange: through risk adjustments and offering affordable plans such as health savings accounts;
- clarification regarding the functions that Superintendent Franchini identified as those that could be handled on a regional basis: underwriting, policy issuing, collections, cancellations, renewals and other functions;
- whether the federal Employee Retirement Income Security Act of 1974 (ERISA) considers it a conflict of interest for insurance companies to be included as board members of an exchange; the ERISA may consider exchanges as fiduciary entities;
- clarification regarding the federal poverty level (FPL) that will result in Medicaid coverage under the PPACA; including income disregards, it will be 138% FPL;
- clarification regarding the grants being awarded under the PPACA; some are competitive, but the exchange planning grant was not a competitive grant;
- concern regarding the establishment of an interstate regional exchange; western insurance superintendents are hoping to maximize economies of scale while preserving states' individual needs;
- clarification regarding what constitutes a sufficient number of participants to make an exchange successful; around 10,000 people are enough to avoid adverse selection;
- how Utah achieved the cooperation of health plans in instituting a defined contribution requirement;
- the role of the Utah exchange in handling customer service issues; one of the technology vendors provides this service at no cost to the state;
- clarification regarding tribal opportunities and challenges in the PPACA;
- the number of businesses and individuals in Utah that are enrolled in the Utah exchange; more than 200 businesses since September 1, 2010;
- whether the Utah exchange meets the requirements of the PPACA; the answer was no;
- whether insurance companies, under the PPACA, can choose not to participate in the exchange; insurance companies are not required to participate; however, the PPACA contains incentives for them to do so;
- whether the State Coverage Insurance (SCI) Program will still exist after implementation of the PPACA; this will need to be determined; the SCI Program could serve as the basis for a basic state plan option, in which case the tax subsidies available through the exchange

would go to the state to manage that option; analysis of this and other options will be necessary;

- whether establishment of a quasi-governmental entity to operate an exchange would be problematic for the Risk Management Division of the General Services Department;
- concern regarding privacy issues with the broader use of information technology required in the PPACA;
- whether there will be an ongoing need for the federal high-risk pool; the answer was no, it is a temporary pool;
- clarification regarding important time lines in implementing an exchange;
- recognition of the importance of transparency and public awareness;
- a request for information regarding what other states are doing with regard to establishing an exchange; Ms. Salazar will provide that information;
- how the implementation grant money for stakeholders will be distributed; the Procurement Code will be followed, and the input will be analyzed by the HSD in an objective fashion;
- whether there is time to implement a state exchange if the state is not ready to make a decision in 2011; that is unlikely;
- concern regarding the amount of unknown details at this point in time;
- the pros and cons of allowing the federal government to establish an exchange for New Mexico;
- whether the rates and benefits for insurance are higher inside the exchange than outside the exchange in Utah; the answer was no, they are required to be the same; and
- whether what is required of the legislature now is enabling legislation to allow the process to go forward; the answer was yes; however, details about the major elements of an exchange can be determined by the legislature in the future.

### **Costs of Exchanges: Options for States**

Mary Feldblum, executive director, Health Security for New Mexicans Campaign, provided information to the committee on the anticipated cost to the state of establishing a New Mexico exchange and some alternative approaches. She said that the state has the opportunity to decide whether or not to invest in a health insurance exchange. Two key questions that must be answered are how the cost of setting up an exchange will affect the general fund, and whether an exchange will be able to reduce the rising costs of health care. Federal grants are available through the PPACA to cover the costs of establishing an exchange, and New Mexico has already received a planning grant, but there is no guarantee that implementation costs, and especially information technology costs, will be funded through future grants. It is unknown whether after January 1, 2015, when the PPACA requires that the exchange be self-sustaining, the enrollment or assessments on insurance companies will be sufficient to cover administrative costs of operating an exchange. Experts in the field have raised concerns about how exchanges will be funded and whether administrative costs will be sustainable. Ms. Feldblum contends that the PPACA does not contain strong enough provisions to hold down the rising cost of health insurance premiums. Continued reliance on a complex system that relies on health insurance ensures that cost shifting will continue to occur, and flaws in the current system will still contribute to the rising costs of health care. She noted that the experience in Massachusetts demonstrates that an exchange does not hold down health care costs. Ms. Feldblum presented an alternative to an exchange provided by the PPACA, called a waiver for state innovation, which is an option to be available in 2017. Work in Congress is underway to move that date up to 2014. A waiver such as this would be required to ensure coverage that is as comprehensive as that required by the PPACA and would cover as many people. She believes that New Mexico does not need to act in the 2011 session to

establish an exchange; there is time to consider an alternative approach. Ms. Feldblum suggested that the legislature consider passing a memorial and/or writing a letter requesting the congressional delegation to remove the 2017 date from the waiver for state innovation option. She believes a legislative cost analysis, such as is underway in Vermont, is a critical step, and she emphasized the importance of determining the cost to the state before investing in an exchange.

Committee members had questions and raised concerns in the following areas:

- support for the idea of waiting for another year in order to understand more fully what the potential cost to the state might be;
- concern regarding the potential cost of establishing an exchange when the state is facing a huge budget deficit; there is a desire to wait and see what other states do first;
- clarification that the losses experienced by Massachusetts are over a four-year period and are derived in part by state funding of subsidies;
- clarification that the potential for a larger pool of insured individuals in an exchange should lower the cost of insurance premiums; large pools do reduce administrative costs, but high health care costs are likely to continue;
- the likelihood of the 2017 date being removed, given the anticipated changes in the composition of Congress; Senator Ron Wyden of Oregon is reportedly planning to introduce a bill to do this, and the measure has bipartisan support;
- whether the state has the option to choose to allow the federal government to set up an exchange rather than electing to establish a New Mexico exchange; the answer was yes; however, not implementing an exchange brings its own costly risks;
- recognition that the change in the executive branch of government in New Mexico introduces more uncertainty into an already uncertain environment;
- clarification regarding the practical result of deferring a decision to establish an exchange, including a penalty for not establishing an exchange by 2014;
- clarification that federal implementation grants will be available in the spring of 2011 and that those funds will be able to be used for information technology costs; and
- a desire to move cautiously and examine other models besides an exchange.

### **Previous Models of Health Insurance Exchanges in New Mexico**

Dr. J.R. Damron presented information about the history of bills previously introduced in New Mexico to create a health insurance exchange. Bills were introduced in 2007 and 2008; and in 2009, a joint memorial was introduced to create a task force to study the principles and parameters of an exchange. He identified the goals and principles inherent in all those pieces of legislation, many of which have been addressed through the PPACA, including the requirement for the establishment of an exchange. The state has the choice of determining whether to house such an exchange in a state agency or in a quasi-governmental entity such as the New Mexico Medical Insurance Pool (NMMIP) or the New Mexico Health Insurance Alliance (HIA). Dr. Damron highlighted elements of the bills formerly introduced in New Mexico, including a mandate for coverage or a demonstration of personal responsibility, governance issues, integration of public and private coverage offered through the exchange and other features. Morris "Mo" Chavez, Esq., former superintendent of insurance, ID/PRC, noted that New Mexico was far ahead of the curve in exploring the potential for establishment of an exchange. As a result of HJM 57 in 2009, a group of stakeholders, including health plans, brokers, consumers and the ID/PRC, was convened to study various elements of an exchange and what it would mean for New Mexico to have one. The report of this task force addressed such issues as governance, the type of entity to house an

exchange and the duties and responsibilities of an exchange. The benefits of a quasi-governmental entity and the need for extensive outreach to consumers were identified. Guidance for New Mexico regarding an exchange is provided through the findings of this task force. Mr. Chavez noted that an exchange will potentially make available a great deal of useful data. The parameters of the exchange in the PPACA closely mirror those conclusions drawn by the task force.

Questions and comments by committee members covered the following areas:

- clarification regarding the provisions included in the 2007 bill that passed the senate; many of the provisions in the bill could be modified and adopted;
- a request for suggestions regarding provisions that should be included in an exchange at this time; it should meet the PPACA requirements and encourage participation by health plans; Dr. Damron supports enabling legislation that allows the state the flexibility to develop the details at a later time;
- whether exchange planning could proceed without enabling legislation; that is not known; however, there are many decisions that the PPACA requires a state to make; and
- an observation that the NMMIP and/or the HIA could serve as an exchange, which would require legislative amendments to existing statutes.

### **Exchange Recommendations from SJM 1 HCRWG**

Deborah Armstrong, executive director, NMMIP, and chair, SJM 1 HCRWG, described the process and presented the conclusions of the SJM 1 HCRWG relative to an exchange. The SJM 1 HCRWG supports New Mexico establishing an exchange and that the exchange combine both the individual and small group markets, that it be implemented by a quasi-governmental entity and that the functions to be performed exceed what is required in the PPACA. The SJM 1 HCRWG rejected the idea of establishing multiple exchanges within the state but recommended that the door be kept open for participation in an interstate regional exchange. She reported that there was general concern that not all the details and requirements are now known; however, the SJM 1 HCRWG feels there is a higher risk in delaying the process. Support was expressed for establishing an exchange utilizing existing quasi-governmental models such as the NMMIP and/or the HIA, which would allow the state to get started on essential planning with a low up-front cost, with the details to be filled in later.

Representative Picraux acknowledged the hard work of Ms. Armstrong in chairing the working group. She asked whether there was objection to a bill being drafted that reflects the suggested elements recommended by the SJM 1 HCRWG to be considered for endorsement at the November meeting. Questions were raised about whether such a request would reflect the reticence previously expressed by committee members regarding the establishment of an exchange. Clarification was offered that a bill draft simply puts into bill form what has been offered as a concept. It was noted that any committee member can request a bill draft to be considered in November. Requests were made to see bill drafts prior to the meeting so that members have the time to carefully review them prior to having to vote on them.

### **Public Comment**

Dick Mason, Health Action New Mexico (HANM), commented that California, the only state that has passed legislation in response to the PPACA, concluded that the federal government would bear all of the costs to establish a state-run exchange. He noted that Massachusetts incurred substantial debt because it started its exchange without federal support.

Tara Sillers asked the committee to change the rules of the State Children's Health Insurance Program (SCHIP). The program does not allow coverage of a child if a parent has private insurance. Her husband is a disabled veteran who has coverage through CHAMP VA, which is inadequate to meet the needs of her special needs child. She would like the rule either removed or at least to allow the opportunity of a parent to appeal.

Marco Gonzales, lobbyist for Molina, suggested that an exchange provide for optional participation of health plans without negatively affecting the plans' ability to contract with a state to provide Medicaid benefits. Molina provides only public program coverage.

There being no further comment, the committee recessed for the day at 5:00 p.m.

### **Wednesday, October 6**

The meeting was reconvened by the vice chair at 9:15 a.m. The agenda for the day was reviewed. Committee members introduced themselves.

#### **Rate Review: Factors, Procedures and Administration**

Sondra Roberto, staff attorney with Consumers Union, was joined by Michael Murray, chief actuary, Presbyterian Health Plan, to present a general overview of the health insurance rate-setting process. Ms. Roberto discussed elements of the PPACA relative to rate review, which include a provision for the DHHS to review "unreasonable" increases and requirements for insurers to post a public justification for rate increases. She emphasized that responsibility and authority for rate review, process and transparency still will reside primarily with the states. She identified statistics regarding the individual insurance market, which historically pays higher out-of-pocket costs for health insurance. Ms. Roberto described various elements that contribute to higher rates for the individual market, including rising medical costs, adverse selection, fragmented individual markets and lax oversight of rate setting. Traditionally, rate review involves prior approval for a rate increase, rate filing, a desk review by the ID/PRC and a comparison against standards for approval. She described the phenomenon of "death spirals" in which an individual market block becomes limited to the individuals with the highest medical expenses and then is ultimately closed by the insurer so that no more people may buy policies within that block. Limits of actuarial justification were described. New Mexico's standards are considered to be very discretionary, with many factors not fully described in law or regulation. The New Mexico law does not consider the end effect on the consumer and lacks transparency. In order to have effective rate review, the entire financial position of the insurer should be reviewed, including the insurer's profitability. Ms. Roberto described elements of modern rate review as demonstrated in Oregon, Colorado and Rhode Island statutes that could be incorporated in New Mexico. Strong laws have the potential to promote reimbursement reform and an overall reduction in the cost of medical care. Several states were highlighted for particular elements of their rate review process, such as actuarial projections, affordability, risk pooling and transparency. She concluded by suggesting several steps that New Mexico could pursue to strengthen its rate review process, including a thorough examination of current weaknesses, legislative changes, a study of provider reimbursements and market conditions, development of a finite, allowable surplus range for insurers and an examination of insurer charters and missions.

Mr. Murray noted that the new state law regarding medical loss ratios limits an insurer's ability to have flexible pools. He described an industry view of the basics of insurance rating, including that insurance rates must be low enough to be competitive and affordable and high enough to cover losses. Premiums must cover projected claims, projected administrative costs and a target margin of profitability. He described the typical components of health insurance costs and market dynamics that can affect costs. He contrasted the current rate regulation process with the anticipated effect of changes in such factors as the minimum loss ratio, which was made more strenuous by legislation passed during the 2010 New Mexico legislative session and by the PPACA. Mr. Murray noted that in setting premium rates, insurance companies are more driven by their ability to attract more members than by their profit margins. He commented that Presbyterian Health Plan would support a more rigorous and transparent rate-setting process.

Committee members had questions and comments in the following areas:

- whether the industry believes the process should be more transparent; the answer was yes, within limits; Mr. Murray feels that the actual rate filings would not be useful as they are very complex;
- clarification regarding how pools become more and more unhealthy over time;
- clarification regarding the administrative structure of the Presbyterian Health System and Presbyterian Health Plan, including the long-term viability of the system;
- clarification regarding the effect of personal health choices on rating the risks of individuals;
- concern regarding the suggestion that rate setting be used as a vehicle for provider reimbursement reform;
- the anticipated effect on premiums of the inclusion of individuals with high risks being included in the same pool with healthier individuals in exchanges in the future;
- clarification regarding the tenure of rate review reforms in the states mentioned by Ms. Roberto; it varies; however, the process of reform in this area is relatively new;
- whether there are inherent dangers in the self-regulation of actuaries as a profession;
- whether standardized and more detailed documentation should be required from insurance companies; and
- which recommendations Mr. Murray would agree should be included in a reformed rate-setting process; Mr. Murray stated that his opinions are his own and not the industry's or his employer's; he feels that transparency and limits regarding reserve funds and all steps in the actuarial process should be included in the filing.

### **Rate Review in New Mexico: Existing Law and Procedures and Potential Changes**

Superintendent Franchini commented on the importance of the PPACA. Thomas Bowling, chief life and health actuary, ID/PRC, provided background information regarding the actuarial process in rate review in New Mexico as provided in law and by regulation. He noted that New Mexico traditionally uses the National Association of Insurance Commissioners (NAIC) guidelines, and he commented on the effect of changes in the medical loss ratio in New Mexico. He identified anticipated legislative actions pursuant to the awarding of a grant under the PPACA to review the premium rate review process. Christine Baca, bureau chief, Managed Health Care Bureau, Life and Health Bureau, ID/PRC, clarified the definition of "small employer" as provided in the PPACA. She spoke about the process of rate review, and she identified deadlines and requirements for insurers seeking premium rate increases not already described by Mr. Bowling.

She noted that the PPACA grant will allow the ID/PRC to strengthen the process and make it more transparent and consumer-friendly.

Brian Harris, assistant attorney general and consumer advocate, provided details about the process of holding a hearing on rate review. Once a consumer requests a hearing, a hearing must be held, and the process becomes quite adversarial. He acknowledged the complexity of actuarial data and the difficulty the general public has in understanding rate filings. He commented that he welcomes the opportunity to participate in rate review reform.

Superintendent Franchini reviewed steps that the ID/PRC has taken to address rate increase requests since he became superintendent. He described changes that have been made to change the hearing process to better serve the needs of the public. Kimberly Scott, ID/PRC, reviewed in detail the rate review project underway thanks to a \$1 million grant received through the PPACA. She described prior efforts of the ID/PRC to research what other states have done to strengthen rate review, and she described four rate review models from other states that were obtained as a result of this research. The ID/PRC is using these best practices in considering reform in this area with the PPACA grant. She believes Oregon's model has emerged as the best model after which New Mexico should pattern its model. The ID/PRC would like to develop a web portal that will make information much more available to consumers. Other changes for which the ID/PRC will be seeking legislative support involve development of a consumer and business services bureau with four staff positions, a stakeholder advisory committee, actuarial and web development contracts and other enhancements to the current system. Ms. Scott described data collection efforts that are currently underway as part of the grant process. A time line was presented with key activities highlighted. Activities will be pursued as funding increments are received. She concluded by reviewing common questions and answers provided by the DHHS.

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

- the necessity for balancing the interests of the public's desire for the lowest possible rates and the fiscal viability of the insurance companies; both must be considered in the rate review process;
- whether the process of rate review should be altered pursuant to the PPACA; the federal government, through the PPACA, has already given the ID/PRC more tools to accomplish this;
- whether the superintendent supports standardization of filing forms; the answer was yes, using NAIC guidelines;
- whether health insurance rate filings are subject to the same requirements as utilities; the answer was no, insurance companies are not regulated as a monopoly and are not entitled to any set profit;
- whether physicians are participating in the grant stakeholder group; they have been invited and will be involved in a formal advisory group in the future;
- clarification regarding the meaning of "actuarially sound"; it differs in private and public settings, but it basically means the premium is sufficient to pay claims that arise;
- whether the concept of protecting consumers is included in the model that the ID/PRC is proposing;
- clarification regarding the information that is needed to best determine the reasonableness of rate increases; specific justification of submitted information;

- clarification regarding which changes can be accomplished by regulations and which will require legislation; much will be done by regulations, but legislative requests will be brought forward at a later time;
- clarification regarding the ID/PRC's remedial plan to address the poor audit review and probationary status under which it is currently operating; the ID/PRC is currently accredited, but must address four specific areas to be taken off probation; the process of complying is anticipated to take about one year;
- whether the Workers' Compensation Administration definition of "small employer" and the ID/PRC's definition should be in alignment; the superintendent will explore this;
- whether it is a goal of the ID/PRC to attract more competition; the answer was yes; and
- whether there is an appropriate role in the ID/PRC in regulating hospital reimbursement; the superintendent is in dialogue with the secretary of health on this issue.

### **Overview: the PPACA and Health Insurance Reforms; Potential Changes to the New Mexico Insurance Code**

Superintendent Franchini was joined by Melinda Silver, Esq., Melinda Silver Enterprises, Mr. Reynolds and Marisela Chavez, legal intern, University of New Mexico (UNM) School of Law, to discuss the insurance provisions in the PPACA and changes to the New Mexico Insurance Code that may be required as a result of this new federal law. Ms. Chavez began by describing a chart she created while serving as an intern to the Legislative Council Service that compares the insurance provisions of the PPACA to the New Mexico Insurance Code. Ms. Silver provided a very brief history of health insurance in the United States, noting that each time Congress passed insurance reform laws, states needed to examine their own insurance laws and amend them to align with federal law. She commented that some insurance reforms in the PPACA have already gone into effect. She described "grandfathered plans" that do not need to comply with the requirements of the PPACA. New Mexico has already implemented some measures that will not need to be changed to align with the PPACA requirements. New Mexico's consumer protection law is quite strong and probably does not need any revision. Ms. Silver identified numerous measures in New Mexico law that differ from the PPACA, particularly those that are effective in 2010 and 2011, and time lines for implementation.

Superintendent Franchini stated that the ID/PRC is already in the process of informing New Mexico residents about their rights under their health insurance coverage. Insurers have been informed through a formal bulletin. He distributed a list of potential changes to the New Mexico statutes and New Mexico Administrative Code as a result of the PPACA. He identified four specific areas of law that he believes will need to be changed, including Chapter 59A, Article 22 NMSA 1978, individual health insurance contracts; Chapter 59A, Article 23 NMSA 1978, group blanket health insurance contracts; Chapter 59A, Article 46 NMSA 1978, health maintenance organizations; and Chapter 59A, Article 47 NMSA 1978, nonprofit health care plans.

Mr. Reynolds presented an alternative approach that he called a "catch-all" provision to allow the ID/PRC to implement insurance reforms to ensure compliance with the PPACA. He provided information about three states that have already enacted such legislation, as well as a discussion draft of a bill that could suffice as a catch-all solution in New Mexico. Mr. Hely clarified that the bill was drafted at the request of the leadership team and loosely mirrors Maryland's approach. Superintendent Franchini stated that he supports a measure like this. Ms. Silver noted that if New Mexico does nothing, the federal law will prevail, and consumers with questions would have to seek guidance from federal statutes.

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

- an observation that the Government Restructuring Task Force (GRTF) is considering changes to the PRC, and that if these changes are adopted, it could affect the superintendent and the responsibilities of that position;
- clarification regarding whether the suggested statutory changes to the New Mexico Insurance Code would be affected by a restructuring of the PRC; the superintendent thinks not;
- an observation that recently released bulletins related to the internal claims appeal process and external review process should be closely reviewed to evaluate the possible conflict should the PRC be reorganized; these rules are being promulgated by the Consumer Relations Division of the PRC;
- whether moving the health insurance regulatory responsibilities of the ID from the PRC to another entity would require a constitutional amendment;
- an observation that proposed legislation seeking to align state and federal law could include a successor provision to circumvent problems that arise from restructuring;
- whether the catch-all language will address those New Mexico provisions that are stricter than the federal law; the answer was yes;
- whether the ID/PRC is prepared to issue rebates to consumers who are affected by an insurance company's violation of the federal medical loss ratio provision;
- a suggestion that the draft bill covering catch-all language be amended to change "may" to "shall"; a quorum being present, a motion was made to instruct Mr. Hely to make that change; the motion carried;
- a motion was made and seconded to adopt the discussion draft bill 202.182097, as amended, as a committee-endorsed bill; a roll call vote was requested and the vote was unanimous; and
- clarification that the stricter of the two laws prevails when there is a conflict between state and federal law.

### **Public Comment**

Albert Dugan, M.D., National Alliance for the Mentally Ill (NAMI), objected to the earlier discussion regarding risk pools and the position that healthy individuals should not be burdened by bearing the risk of those who do not take personal responsibility for health. He contends that all individuals are at risk of illness regardless of whether they have taken good care of themselves. Members of the NAMI desire robust and fair risk pools.

A request was made for handouts in advance of the next day's meeting. No handout materials are currently available. A suggestion was made that in the future, materials be requested prior to the meeting.

Representative Kintigh clarified his position regarding risk pools and personal responsibility for health care in response to earlier public comment.

There being no further comment, the committee recessed for the day at 3:05 p.m.

**Thursday, October 7**

The meeting was reconvened by the chair at 9:05 a.m. She reviewed the agenda for the day and for the November meeting. She reminded the committee that the meeting is being audiocast.

### **Governance of Health Care Finance and Administration: Restructuring Opportunities**

James Tryon, M.D., described his background in medicine and his significant contributions to health policy in New Mexico. Background information was offered about the cost of the current system of health care. The system is complex, difficult to control, dynamic and constantly changing. In general, it can be seen as a social structure not inclined to be self-organizing or self-correcting. He contends that there is really no such thing as competition or a free market in health care. The primary financing mechanism is based on a private, competitive approach. The problem is not in the financing model. The problem is that health care delivery has evolved into a more and more fragmented system. The mechanism to bring order to this fragmented system is the exchange. An exchange allows pooling of resources and efficiency of scale, but it must be established and implemented very carefully. A properly governed exchange can accommodate the continually changing aspect of health care delivery; can focus on cost, quality and disparities in health care; and can deal with persistent public fears about the system. It is critical to keep in mind the "control knobs" of the health sector, which include finance, payment, organization, regulation and behavior. Change to one control knob can result in changes to all the others. Governance should be subject to constant evaluation to determine its ongoing effectiveness, particularly with regard to responsiveness to stakeholders. A well-governed exchange will have a process for consultation with stakeholders and regularly consider changes to policy based on their input. Properly set up and governed, an exchange will operate as a business. The PPACA requires an exchange to be self-sustaining by 2015. Dr. Tryon concluded by noting that a well-designed exchange will serve to simplify the administrative aspects of managing a physician practice in such areas as prior authorization. Unbridled health care costs demand that action be taken. Doing nothing is not a choice.

Brent Earnest, senior fiscal analyst, Legislative Finance Committee (LFC), provided a different approach to the discussion of restructuring by focusing on opportunities for a health care financing agency. Goals of a health care financing agency could include health care cost containment, improvement in health outcomes, delivery system design, a data clearinghouse and consumer education. Such an agency could consolidate and manage the public purchasing of health care and serve as the center for research and data collection to inform policy for the state. Other key legislative considerations include governance, the relationship of such an entity to an exchange, legislative oversight, reporting requirements, evaluation and the possibility of a sunset clause. Mr. Earnest described two models for a health care authority, including Oklahoma and Kansas. Oklahoma's authority is charged with controlling health care costs, ensuring appropriate standards of care and ensuring access to care. It does not include state employees. The governing board is made up of seven members appointed by each legislative chamber and the governor. The duties and responsibilities of the board and the organizational structure were described. The Kansas Health Policy Authority was established in 2005 as the principal health care agency for the state. All public programs, including state employees, are under this authority. Its purpose combines the effective purchasing and administration of health care with public health strategies. Its governing board has nine members appointed by the governor and the house and senate leadership. The Oregon Health Authority is the newest of the described models, having been established in 2009. Its purpose is to organize most health-related programs into a single agency and to maximize its purchasing power. The establishment of the authority is to be phased in over two years, and the authority will be charged with establishing an exchange. The Oregon Health

Authority is Organized within the state's Department of Human Services, and it will be governed by a nine-member board appointed by the governor and approved by the senate. Mr. Earnest described a possible New Mexico health care financing authority that could consolidate data collection and planning, behavioral health services, the Interagency Benefits Advisory Committee (IBAC) and Medicaid under a board. It holds the potential for incorporating an exchange into the authority or as an adjunct to the authority. He concluded by identifying a phased approach to consolidation of the IBAC that was presented to the GRTF. It would begin with consolidated purchasing and lead to administrative and risk pool consolidation over a three-year period.

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

- the net cost to the state of creating a new state agency through consolidation; whether consideration has been given to the effect on existing agencies; major savings would probably not be seen in the short run, but efficiency would improve in the delivery and outcomes of health care;
- whether credentialing and recoupment would be helped by establishment of an exchange; credentialing might be simplified; it is unknown whether recoupment would be improved;
- the overall penetration of health insurance in New Mexico;
- whether Oklahoma, Kansas and Oregon operate their Medicaid programs through managed care;
- whether the ID/PRC would have a role in a health care authority in New Mexico; it would depend on how an exchange fits into the picture;
- the amount that could be saved through consolidation of IBAC agencies; consolidation of the pharmacy formulary alone is estimated to realize \$5 million to \$10 million per year; Mr. Earnest will provide the LFC estimate for combined estimated savings from purchasing a similar benefit package, which could total \$10 million to \$50 million;
- ways in which an exchange could affect the health care delivery system; over time, benefit packages will reflect evidence-based practice, prevention and wellness on a greater scale;
- whether a health authority would have a role in future planning as in a certificate of need process; this is a critical issue for New Mexico to consider;
- differences between health care delivery in rural and urban areas and how to address both in a coordinated fashion;
- the potential benefits of standardization; and
- whether restructuring would provide opportunities to expand the health care provider supply through more clinics or better use of telehealth; the development of mid-level practitioners is vital, especially in rural areas.

### **Public Comment Regarding Restructuring**

Liz Stefanics reminded the committee that the New Mexico Health Policy Commission could be amended in statute to serve as a health care authority.

Nandini Kuene, independent health policy consultant, commented on the impact of rising health insurance premiums. She noted that more than 40% of the uninsured in New Mexico are working people who cannot afford health insurance. She contended that a primary goal of an exchange should be to ensure that health insurance is affordable. She urged the committee to consider the benefits of a robust exchange such as the Massachusetts model.

Bill Wiesel, M.D., Center for Health Policy, UNM, noted that the current system of health care delivery does not focus on quality of care or patient care but unduly emphasizes the quality of care provided. The primary focus of health reform should be on the causes of the rising cost of health care. The key is accountability.

Mr. Mason reported that HANM has been conducting forums on health reform around New Mexico. An exchange will have a vital role in representing individual consumers. HANM believes in the four major elements of an exchange: it is quasi-governmental; it has an availability of plans; it is transparent and accountable; and it is a strong purchaser.

Ellen Pinnes, health policy consultant, offered a correction to information previously provided about the Medicaid budget. The shortfall referenced should not accrue to Medicaid as the enhanced federal medical assistance percentages (FMAP) go away. The enhanced FMAP allows the state to divert Medicaid funds to other programs, and those dollars should now come back to Medicaid. She stated that reform should incentivize providers to provide good care rather than more care. She noted that funding health and wellness efforts in the short term will have great cost savings in the long run. The Commonwealth Fund has done research on this topic. She encouraged the members to look more at where the state can do better and less at where cuts can be made.

Becky Becket, former chair of the Behavioral Health Planning Council, spoke as a parent of a child with mental illness. She commented that the original lofty goals of the Interagency Behavioral Health Purchasing Collaborative (IBHPC) have not been realized. The system is not working and has lost sight of patient needs.

Patsy Romero, Romero and Associates, represents rural behavioral health providers. She commented that restructuring of the behavioral health system is resulting in many mental health care providers closing their doors, thereby limiting services to consumers. Core service agencies are not benefiting New Mexico. She contends that it will not reduce costs.

### **Committee Discussion and Direction: Health Care Financing and Restructuring Opportunities**

Mr. Hely noted that the GRTF has asked for input from the LHHS on this topic and that this is an opportunity to discuss this and other options. Senator Feldman noted that this discussion need not repeat the discussion that occurred around the establishment of an exchange.

Comments were offered on this topic as follows:

- whether the GRTF has considered an actual bill; the answer was yes; it primarily addresses phase one of the proposed consolidation of IBAC agencies;
- a reminder that the SJM 1 HCRWG report reflected numerous points of agreement to consolidate and simplify certain administrative functions, including an all-payer claims database; one third-party administrator; a common enrollment process; common data reporting and plan year; linked web sites; joint outreach and marketing; a common contract for actuarial services; and a cost-benefit analysis;
- a suggestion that the LHHS consider this bill at the November meeting;
- recognition that consideration of IBAC consolidation would be highly controversial and generate a lot of fear;

- a belief that there is not much more savings that can be achieved through more IBAC consolidation;
- interest in moving forward on establishing a health care authority as a quasi-governmental body that could house the exchange;
- whether a new health care agency would carve out current employees from existing departments; the agency would have to be cost-neutral in order to pass;
- the extent to which information technology is, or is not, already consolidated;
- efforts should be focused on whether New Mexico is getting the best service for its dollar and whether health care needs are being met;
- instruct staff to draft a bill creating a health care financing and administration agency; use goals of health care cost containment, improved health outcomes, delivery system design, data clearinghouse and consumer education;
- the bill should give the agency the ability to redo managed care contracts; accountability should be ensured, especially in the mental health managed care contracts; and factors of shared risk and wellness should be added;
- consider a previous bill of Senator Timothy M. Keller to create an open bidding process to save 5% of the cost of the contract; Mr. Earnest clarified that this concept refers to an open rate-setting process versus an open rate-negotiation process;
- suggestion that a previous bill that was developed by the committee with a facilitator serve as a starting point;
- a process should be considered to negotiate directly with providers;
- the authority should be focused on state-run programs;
- whether county indigent fund programs should be included; this would be controversial;
- the lack of providers is a recurring theme with the LHHS this interim; a suggestion was offered that a bill could be drafted to work with a private medical school in Arizona to fund 20 slots for dental students; this approach would be more affordable than starting a New Mexico dental school; admission should be tied to a guarantee of service in rural New Mexico;
- pursue enhancing mid-level providers, particularly in the behavioral health area;
- clarification: re-embolden the New Mexico Health Policy Commission and all of its functions; this entity would combine Medicaid and other New Mexico public program oversight and contracting; it could be a health care planning and financing entity;
- whether a defined contribution concept should be included; it should have broad direction and leave responsibility for details to the board;
- consider using the Oklahoma authority as a model for New Mexico; and
- an authority must interact with an exchange.

Mr. Hely noted that bills may have overlapping functions and that prior bills have focused on health care reform in the state; he has questions before he can draft. He requested that the committee appoint a person or persons with whom to work out the details. The committee agreed that the chair and the vice chair should serve that function.

### **Behavioral Health Caucus: Early Detection and Treatment of Schizophrenia; Telehealth in Behavioral Health Treatment; Causes and Prevention of Suicide in New Mexico**

A meeting of the legislative behavioral health caucus was conducted during the lunch hour. Jim Ogle, Albuquerque NAMI, reminded committee members of the role and function of the caucus. He announced that the presentation was intended to be educational and the NAMI would

like feedback about its usefulness. He introduced Steven Adelsheim, M.D., director, Center for Rural and Community Behavioral Health, UNM, who presented information regarding a public health approach to decreasing the incidence of mental illness. Three topics were covered, including the EARLY program, designed to provide treatment to youths with early signs of serious mental illness; youth suicide, with a special focus on Native American youth suicide; and the emerging importance of behavioral telehealth programs. Dr. Adelsheim introduced Dr. Braveheart, who has been hired to focus specifically on mental health issues among Native Americans.

Committee members had questions and comments in the following areas:

- whether the NAMI has bill requests that could be brought before the committee for endorsement;
- the extent of efforts to address mental health issues with the Mescalero Apache Tribe; Dr. Braveheart will be working to develop and enhance existing programs that are culturally appropriate;
- clarification regarding the extent of need among middle school students and how student needs can be met; if students are reached early enough, they do not need the same level of service as when needs go unrecognized;
- how telehealth expands access to services at a lower cost;
- whether the OptumHealth contract could be reconfigured to optimize mental health benefits for youths;
- the severity of the heroin overdose problem, which far exceeds DWI incidents; marijuana use may be an even bigger problem; prescription drugs can also be gateway drugs to heroin addiction;
- whether the IBHPC has been a successful venture;
- a recommendation to look at treatment models in other states;
- the importance of offering programs in public schools; and
- the challenge of increasing funding for these vital behavioral health programs in such an austere budget year; establishing budget priorities will be more critical than ever.

Mr. Ogle offered thanks all around for the opportunity and reiterated the request for feedback on this format of this educational approach.

### **Long-Term Care: the PPACA and Restructuring**

Matthew Onstott, Ph.D., deputy secretary, Aging and Long-Term Services Department (ALTSD), introduced Emily Kaltenbach, director of policy and planning, ALTSD, and outlined the format of the presentation. He highlighted the growth in population for individuals over the age of 60 over the next five years. By the year 2030, it is expected that there will be more people over the age of 65 than under the age of 18. He briefly described long-term services currently available in New Mexico through the ALTSD. He noted that New Mexico is first in the nation in the proportion of Medicaid long-term services dollars for home- and community-based services compared to nursing home care. Statistics were provided regarding the number of people enrolled in the various programs overseen by the ALTSD.

Ms. Kaltenbach described long-term care provisions in the PPACA and the opportunities that may arise as a result of this. The emphasis on home- and community-based services is considered the most significant since the passage of the federal Olmstead Act of 1999. She highlighted several opportunities, beginning with the Medicaid Community First Choice Option,

which provides incentives to states to provide personal attendant services as a state plan benefit with an enhanced FMAP. This program is similar to the personal care option program already in effect in New Mexico. The Medicaid State Plan Benefit somewhat mirrors the Coordination of Long-Term Services "C" Waiver, with some exceptions. Originally developed under the federal Deficit Reduction Act of 2005, it has a more robust service package than the Community First Choice Option. Individuals do not have to meet the same level of care as in the current waivers, and the eligibility criteria must be less stringent than the institutional level of care determinations. This option allows states to target populations, and some states are considering using it to serve individuals with mental health or substance abuse issues. A state could have multiple programs of this sort serving different targeted populations. States may not establish waiting lists or cap enrollment for the eligible populations in this option. Money Follows the Person is an existing demonstration program that has been extended to 2015, with additional dollars appropriated to cover the cost. The program is intended to offer the opportunity for individuals in nursing facilities to receive services in the home and community. Then the state has an opportunity to target specific populations and will receive an enhanced FMAP for one year for individuals transitioned into the community. Requirements for eligibility have been relaxed. New Mexico has applied for and will receive planning grant funds in the amount of \$200,000 to engage stakeholders, analyze current system capabilities, develop a programmatic and fiscal impact report, identify target populations and develop operational protocols.

Ms. Kaltenbach described a voluntary, new long-term care insurance program called the federal Community Living Assistance Services and Support (CLASS) Act. Regulations are under development. Medicare changes enhance prescription drug coverage, preventive care and improved health outcomes. Higher payments to Medicare Advantage plans will be phased out. Within the PPACA is the Elder Justice Act, which authorizes grants to states to enhance protection and provide support for adult protective services. Mr. Onstott described the federal Nursing Home Transparency and Improvement Act of 2009, which makes information about the quality of nursing home care more easily accessible to consumers. Other grants enhance aging and disability resource centers (ADRC) (the ALTSD received \$500,000), healthy aging and living well projects and work force development. A summary slide highlighted funding opportunities within the PPACA. He concluded by briefly discussing the work that is underway to respond to HM 43, which calls for the ALTSD to work with area agencies on aging to develop a new business model of service delivery for federal Older Americans Act of 1965 services. Changes are suggested not only to respond to funding constraints and restructuring potential, but to address the changing demographics with the aging of the baby boomer generation.

Ms. Kaltenbach presented recently published data and policy recommendations emerging from the Elder Economic Security Initiative. The ALTSD is partnering with Wider Opportunities for Women and the University of Massachusetts, Boston, on this project. On average, seniors need between \$17,000 and \$18,000 per year to be economically secure in New Mexico, an amount that exceeds the FPL by \$7,000 to \$8,000 per year. Policy recommendations were derived directly from interviews with elders.

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

- clarification regarding the resources provided in the Elder Economic Security Initiative;

- clarification regarding grants that have been awarded and may yet be awarded for long-term care;
- clarification regarding the impact of cuts to Medicare Advantage plans; it appears that premiums have not substantially increased yet, but there are 14 Medicare Advantage plans in New Mexico, and information is not known about all of them at this time;
- a request for follow-up on changes to Tricare; ADRC counselors are well-versed in this area;
- a request for the telephone number of the ADRC: 1-800-432-2080; and
- recognition that in-migration to New Mexico may decline in the coming decade due to the poor economy.

### **Office of Ombudsman: Consumer and Business Outreach**

Jane Wishner, Esq., executive director, Southwest Women's Law Center (SWWLC), spoke about the importance of outreach to consumers. She described three legislative proposals as follows: 1) establish in statute and adequately fund an office of health care reform implementation; 2) establish an independent consumer health assistant program (CHAP) for consumer education and assistance that utilizes community-based agencies, community health workers and health care and social services providers and advocates; and 3) require the public dissemination of key data regarding health care coverage and services obtained by the HSD, the ID/PRC and any exchange that is created. Ms. Wishner noted that Barbara Webber, HANM, provided a handout that summarized the input of consumers obtained during public education meetings conducted by HANM.

Ms. Scott described the process of external review currently available to consumers who have unresolved complaints regarding coverage through managed care plans. Jill Janov provided a personal story about her experience of erroneous denials and a complicated appeals process and made recommendations for improvements in New Mexico. Her recommendations include: establishment of a statewide public awareness campaign about the right of appeal; funding of advocates in the community to help navigate the appeals process; funding of a wide network of providers to serve on managed care appeal hearings; and creation of an emergency appeals process.

Ms. Scott presented information about the consumer assistance grant application submitted by the ID/PRC. If awarded, \$226,436 will be awarded to create an ombudsman position and a consumer telephone hotline to establish a language line to serve culturally diverse populations and to partner with consumer advocates, health care professionals and other state agencies with existing consumer assistance services.

Comments and questions from committee members covered the following areas:

- clarification regarding an existing ombudsman program; the ALTSD operates an ombudsman program to assist with nursing home complaints;
- whether insurance companies should be penalized for making bad-faith denials;
- whether a statutory change is needed to allow the ID/PRC to serve as the office of the ombudsman; it might help to clarify that in the PPACA;

- whether the ID/PRC could intervene in Medicaid complaints if this statutory change is made; Medicaid has a separate appeals and fair hearing process;
- whether the current ID/PRC appeals process is efficient;
- a suggestion to include in state regulations a requirement that health insurers notify members of the availability of the ID/PRC avenue of appeals;
- whether there is overlap between the recommendations of the SWWLC and the responsibilities of the Consumer Division of the Office of the Attorney General; and
- whether there is PPACA funding for the navigator program; the HSD requested funding for this in the exchange planning grant.

### **Public Comment**

Ed Steller spoke representing the disability community, most of whom were attending the Southwest Disability Conference in Albuquerque. He commented that the Mi Via program is in need of funding and oversight. It is an important program, but it does not have adequate services or support. Written comments will be provided.

Eric Buckley, New Mexico Society for Acupuncture and Asian Medicine, contended that New Mexico does not have enough primary care providers to meet anticipated needs. Doctors of oriental medicine are trained and capable of helping the state to meet that need. Their profession is predicated on minimal intervention, which is at the heart of preventive medicine. Written comments were provided.

Ms. Pinnes noted that most of the recommendations regarding consumer outreach, appeals, complaints and other items are included in the state's Patient Protection Act, which was passed 12 years ago. An ombudsman bill was passed in 1999 but was vetoed by Governor Gary Johnson.

There being no further business, the meeting was adjourned at 4:40 p.m.

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

**November 8-10, 2010  
Room 309, State Capitol  
Santa Fe**

The sixth meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative Danice Picraux, chair, at 9:14 a.m. on November 8, 2010 in Room 309, State Capitol.

**Present**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Sen. Rod Adair  
Sen. Linda M. Lopez  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Absent**

Rep. Nora Espinoza  
Rep. Joni Marie Gutierrez

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye (11/9, 11/10)  
Rep. Eleanor Chavez (11/9, 11/10)  
Rep. Nathan P. Cote  
Rep. Miguel P. Garcia  
Rep. Keith J. Gardner  
Rep. Dennis J. Kintigh  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Rep. Rodolpho "Rudy" S. Martinez  
Rep. Bill B. O'Neill  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. Gloria C. Vaughn

Rep. Jose A. Campos  
Sen. Clinton D. Harden, Jr.  
Rep. John A. Heaton  
Sen. Gay G. Kernan  
Sen. Sander Rue  
Rep. Jeff Steinborn  
Rep. Mimi Stewart  
Sen. David Ulibarri

**Guest Legislators**

Rep. Gail Chasey (11/9)  
Rep. Edward C. Sandoval (11/8)

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Michael Hely  
Karen Wells  
Zelda Abeita

Rebecca Griego

### **Minutes Approval**

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

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts are in the meeting file.

### **Monday, November 8**

#### **Welcome and Introductions**

The chair welcomed the committee and members of the audience. She reviewed the agenda for the day.

#### **Staff Report of Government Restructuring Task Force**

Raúl E. Burciaga, director, Legislative Council Service (LCS), updated the committee members on the actions and progress of the Government Restructuring Task Force (GRTF). He reviewed the purpose of the GRTF, its membership and the topics covered to date, noting that it will meet for an additional two meetings during this interim. Areas covered by the GRTF were highlighted, with education and health care emerging as the top two items of discussion. Mr. Burciaga described testimony provided to the GRTF, including that from Kathryn "Katie" Falls, secretary, Human Services Department (HSD) who provided an overview of the status of the Medicaid budget and identified areas that could result in greater efficiency. Secretary Falls identified concerns and areas that should not be subject to restructuring due to requirements of the federal Patient Protection and Affordable Care Act (PPACA). The GRTF explored opportunities to relocate the home- and community-based services (HCBS) waiver programs from the Aging and Long-Term Services Department (ALTSD) to the HSD. Mr. Burciaga noted that Ms. Wells, LCS, presented information to the task force on the PPACA, the current structure of health care in New Mexico and ideas for restructuring identified by the LHHS. Brent Earnest, Legislative Finance Committee (LFC), together with Mr. Hely, LCS, also presented opportunities for consolidation of Medicaid programs, consolidation of Interagency Benefits Advisory Council (IBAC) agencies and programs and the potential for a health care administration and financing department. Mr. Burciaga briefly described other areas for possible consolidation that have been considered by the GRTF, noting that no final recommendations have been made. Final recommendations will be considered at the GRTF's last two meetings. Greater legislative oversight is being considered over both executive salaries and benefits as well as regulatory control. He concluded by stating that the GRTF is hopeful that recommendations regarding restructuring health care will be forthcoming from the LHHS.

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

- whether cuts to Medicaid will result in hospitals refusing to accept Medicaid patients; probably not; federal law requires hospital emergency departments to admit patients for the purpose of stabilization and transfer;
- whether the GRTF has discussed state government taking over the provision of the Medicaid program from managed care organizations; no;
- whether there is a list of which commissions and boards are being considered for consolidation or elimination; yes;
- clarification regarding changes that can or cannot be made to Medicaid as a result of the passage of the PPACA; Secretary Falls stated that eligibility categories cannot be changed; however, benefits can be changed;
- clarification regarding the higher education funding formula, and whether consideration is being given to altering it;
- concern regarding whether any of the recommendations will save enough money to solve the state's budget problems;
- an observation that four areas contribute major costs to the state: private prisons, branch colleges and universities, Medicaid and managed care and public school funding, none of which are likely to be politically acceptable to change;
- agreement that expansion of college campuses without legislative approval has led to budget obligations and should be discussed;
- clarification regarding consolidation of the IBAC agencies and which agencies are in IBAC; they are the Risk Management Division of the General Services Department (GSD), the Retiree Health Care Authority (RHCA), Albuquerque Public Schools and the Public School Insurance Authority;
- clarification regarding the extent to which IBAC agencies are already consolidated; procurement for purchasing of insurance is consolidated;
- a request for Wayne Propst, executive director, RHCA, to clarify the anticipated impact of consolidation on retirees; Mr. Propst noted that the board of the RHCA opposes consolidation and would have many questions if a bill is introduced;
- whether IBAC consolidation would result in savings to the state; Mr. Propst suggested that consolidation would initially cost money, if for no other reason than that the need to consolidate information technology systems would cost millions of dollars;
- whether combining risk pools of the IBAC agencies would result in lower premiums; probably, but no significant savings are anticipated;
- what opportunities remain for consolidation; consolidated purchasing is a good idea, governance restructuring and administrative consolidation is not;
- whether the IBAC agencies are cooperating on legislation that they would jointly support; Mr. Propst is not aware of any such efforts;
- whether the GRTF requested information regarding public relations, administrative functions and legislative liaison positions that exist in state agencies; no; and
- an assertion that restructuring efforts should be reasonable and make sense; the effect on constituents must be considered before any restructuring is done.

Mr. Burciaga noted that he will bring the comments and concerns expressed by the committee back to the GRTF. Many of these concerns have also been recognized and expressed by the GRTF.

## **Senate Joint Memorial 1 Health Care Reform Working Group (SJM 1 HCRWG) — Final Report**

Deborah Armstrong, chair, SJM 1 HCRWG, provided an overview of the process of the working group in addressing the requirements of the memorial. She reviewed the schedule and work plan, identifying the topics that were covered at each meeting. She described the self-formed advisory groups and recognized the work they did and the recommendations they made.

General recommendations were highlighted, including the following:

- continued coordination with the LHHS and the Health Care Reform Executive Leadership Team (Leadership Team);
- careful comparison of PPACA insurance requirements with the New Mexico Insurance Code;
- appointment of an executive agency to be tasked with coordinating and tracking grant opportunities and to take full advantage of these opportunities; and
- establishment of a single New Mexico health insurance exchange that administratively combines both individual and small group markets, that is operated by a legislatively created, quasi-governmental entity, that is open to interstate partnering and that performs robust functions.

Ms. Armstrong, along with Mike Nunez, executive director of the New Mexico Health Insurance Alliance (NMHIA), reported that the New Mexico Medical Insurance Pool (NMMIP) board met jointly with the NMHIA board to discuss opportunities to partner on the operation of an exchange. Both boards agreed that they are ready, willing and able to work jointly to implement an exchange for New Mexico. They are committed to transitioning their current statutes and administrative structures in whatever ways would be needed to accomplish this. They noted that both boards currently accomplish many of the required elements of an exchange, and both support a merger in the future.

A question was asked regarding whether the true cost of establishing an exchange is known; no.

### **Report — Leadership Team**

Secretary Falls provided a general overview of the components of health care reform that have been addressed by the Leadership Team, including Medicaid reform, a health insurance exchange, health care delivery system reform and insurance reform. She noted that required expansions in Medicaid eligibility will substantially reduce the number of uninsured people in the state. The primary cost of the Medicaid expansion will be borne by the federal government. She highlighted areas about which there are still outstanding questions, including the full impact on the population and on the Medicaid budget, specifics regarding what is called a "benchmark" benefit plan for newly eligible Medicaid recipients and many questions regarding how the interface between the exchange and Medicaid will be accomplished. The Leadership Team recommends using the exchange planning grant to conduct population and fiscal mapping to identify needs of New Mexicans and the cost to the state. The Leadership Team believes a decision should be made as soon as possible regarding what entity will operate an exchange to facilitate coordination with the HSD, invest in and develop information technology systems and adopt policies to facilitate

coordination of coverage. As best as possible, the Leadership Team urges Medicaid cost containment consistent with implementation of the PPACA. Secretary Falls reviewed options and opportunities for establishing a health insurance exchange for New Mexico. Legislation is needed in this upcoming session to ensure adequate time for planning and implementation of an exchange. New federal funding is being made available to assist in building an exchange as well as to replace Medicaid eligibility systems. The HSD will need to release a request for proposals to replace the department's information technology eligibility system in order to meet the PPACA time frames. She noted that numerous things are not yet known about exchanges, including the perspective of Governor-Elect Susana Martinez. A tribal consultation will be held to discuss tribal options in operating an exchange. The options that New Mexico chooses regarding an exchange will guide the ways in which the planning grant money is going to be spent. Secretary Falls noted that much overlap exists between the insurance reforms required by the PPACA and the requirements for a health insurance exchange. In spite of requirements and incentives in the PPACA, adverse selection can threaten the success of a New Mexico exchange and must be addressed carefully. To be successful, the exchange should attract healthy, young people to serve a more robust function to manage the market and ensure that the exchange does not merely become a high-risk pool. The Leadership Team believes that the tax credits to lower the cost of health insurance are probably not sufficient to drive people to purchase health care coverage. Initially, the penalties for not purchasing insurance are minimal, and many people may choose to pay the penalty rather than purchase insurance. The Leadership Team believes a strong and healthy exchange should be established that will create continuity between plans offered within and outside the exchange. A comprehensive consumer education plan should be developed. Incentives should be created to attract young, healthy individuals to participate in the exchange, and a vigorous marketing plan will be needed. Health care delivery system reform was briefly addressed. A key issue is access to health care providers in order to meet the needs of new enrollees. Between now and 2014, New Mexico should aggressively seek to increase the health professional work force in the state. Secretary Falls concluded by stressing the critical need for the executive and the legislature to work together in planning and implementation of the PPACA. Appropriate staffing will be needed and expertise and leadership developed in order to move forward. Support for updated information technology and education and outreach to constituents is critical.

Representative Picraux interrupted the agenda to read a certificate of appreciation for Representative Vaughn and recognize her contribution to the committee. Members of the committee offered personal reflections and memories of Representative Vaughn, including a remembrance of her husband, Jim. On behalf of the committee, Senator Feldman presented Representative Vaughn with the certificate and a gift. The committee and audience members gave her a standing ovation. Senator Feldman additionally extended thanks and appreciation to Representative Cote. Representative Picraux read a certificate prepared for him. The certificate was presented and a standing ovation given. Senator Feldman also recognized Representative John Heaton in his absence and read a certificate prepared for him. These members will not be returning next year.

Returning to the presentation of Secretary Falls, committee members had questions and made comments in the following areas:

- thanks were expressed to Secretary Falls for her great contributions to the HSD and to the implementation of the PPACA in New Mexico;
- support for the concept of a central health care planning agency;
- clarification regarding what is known and what is not known about the PPACA and how it will impact New Mexico;
- whether Medicaid or the exchange should screen individuals for Medicaid eligibility; coordination will be essential;
- whether there is a potential to combine the eligibility and claims information technology systems in Medicaid; the ISD2 eligibility system will have to be replaced, regardless of the PPACA;
- whether there is a provision in the PPACA requiring plans that contract with Medicaid to offer a plan through the exchange; no;
- clarification regarding the amount of PPACA grant dollars received so far in New Mexico; close to \$63 million;
- clarification regarding the option for a basic health plan to be offered to individuals whose incomes fall between 133% and 200% of the federal poverty level;
- clarification regarding the extent to which the state can control health plans offered within and outside of an exchange;
- whether health savings accounts (HSAs) will be required to be offered in the exchange; no; however, people under the age of 30 will be offered a catastrophic plan through the exchange; HSAs could be looked at as a way to attract healthy, young people to participate in the exchange;
- incentives for individuals to purchase private insurance rather than be covered under Medicaid;
- a request for an update on the behavioral health contract; progress has been made to restoring edits into the system; oversight of OptumHealth will be ongoing until the HSD is satisfied that OptumHealth is in compliance with the contract; OptumHealth is currently in the second year of a four-year contract; and
- concern regarding the potential negative impact of cutting prevention and wellness efforts as basic benefits; the PPACA requires a list of benefits that must be offered in Medicaid as well as in private insurance plans.

### **Public Comment**

Jim Stower stated that efforts and funding to support emergency medical services will again be brought before the legislature in the upcoming session.

Dick Mason, Health Action New Mexico (HANM), presented principles upon which the HANM believes an exchange should be based. Numerous entities have signed a letter of support for the HANM's concepts.

Lydia Pendly, HANM, spoke to the issue of the cost of establishing exchanges. The HANM held a conference call with Frederick Isassi, health aide to U.S. Senator Jeff Bingaman, in which they learned that money for subsidies and to establish exchanges has been appropriated through 2014.

Raphael Nevins, Andele Tutors, spoke in favor of behavioral health funding for tutoring of underserved New Mexicans.

Bill Wiese, associate director, Robert Wood Johnson Foundation Center for Health Policy, raised the issue of the cost of health reform efforts. He testified that the current method of reimbursement for health care coverage is inherently inefficient and costly, and that through the exchange, these inefficiencies can be addressed.

Nandini Kuene, health policy consultant, urged the committee to endorse a strong exchange and legislation that holds the exchange accountable for its results. Additionally, she would like to see opportunities embraced to expand medical homes.

Dana Middleton, National Organization for Women, spoke in favor of the Health Security Act. She urged the committee to obtain accurate cost predictions of the anticipated cost of implementing an exchange.

### **Discussion of Legislative Endorsements on Restructuring and Health Care**

Mr. Hely, staff attorney, LCS, oriented the committee members to a packet of bill drafts and a matrix that briefly describes the bills in the packet. He noted that only three bills are intended for discussion at this time. He began with the bill to phase in consolidation of purchasing and administrative functions of the IBAC agencies (.182941.2). Mr. Hely presented a time line and graphic depicting the proposed actions in the bill. He noted that the bill was drafted for the GRTF, but no action has yet been taken by it.

Committee members had questions and comments as follows:

- clarification regarding when various provisions in the bill would be implemented;
- clarification regarding the governance of the IBAC agencies; in the bill, the IBAC agencies will develop and make recommendations on this topic by November 1, 2012;
- an observation that the bill does not repeal the IBAC agencies or their governance;
- clarification regarding statutory authority over the Albuquerque Public Schools; it is a local body and an instrumentality of the state;
- concerns regarding whether quality, conflict of interest, governance and accountability measures should be included in the bill;
- whether the GRTF gave any direction regarding this bill; the GRTF has not seen this bill and is looking to the LHHS for direction;
- whether considerations regarding the establishment of an exchange as suggested by Mr. Wiese should be incorporated;
- whether the requirement for an actuarial analysis should not precede the requirement to consolidate purchasing and administrative functions;
- clarification regarding the position of the RHCA board; the board supports consolidated purchasing and that some administrative activities be conducted jointly; it opposes further consolidation;
- whether the bill permits benefit packages that more uniquely meet the needs of the different populations;

- clarification regarding an amount of \$3,500, which appears in existing law and which was originally intended to cover the cost of early intervention services for insured, developmentally disabled children; the amount was established in negotiation with insurance companies; many eligible children are covered from federal and other funds; a desire was expressed to add a clause that allows for a cost-of-living index adjustment to that amount; no action was taken on that point;
- a suggestion that the bill be divided and the more controversial elements postponed; Mr. Propst noted that the RHCA supported specific language included in a previous bill, HB 662, introduced in 2009, and that this 2010 bill currently under consideration seems to go beyond what was previously supported;
- a suggestion that the LFC be included among the legislative entities to whom the parties must report; and
- an expression of support for HB 662 instead of this bill.

A motion was made by Senator Feldman, seconded by Representative Picraux, to direct staff to work with Mr. Propst to develop a bill that reflects the provisions of HB 662; the motion was unanimously accepted. Mr. Hely noted that he would not be able to accomplish this by Wednesday. A request was made for a letter to be drafted to the GRTF to reflect the concerns on this bill, the support for HB 662 and a desire to work with the IBAC agencies to draft such legislation.

Mr. Hely then described the bill to transfer the HCBS waivers and other long-term services programs from the ALTSD to the HSD (.182859.5), and he noted there is a graphic depicting the proposed change. This measure has already been endorsed by the GRTF. He described the services and programs that would be transferred and the steps the HSD would be directed to take to effectuate the transfer.

Committee members discussed various aspects of this proposed bill as follows:

- clarification regarding the number of full-time-equivalent personnel in the ALTSD whose jobs would be eliminated with this transfer; Michael Spanier, secretary of aging and long-term services, testified that approximately 25 employees currently work in that division; Mr. Earnest stated the LFC analysis indicated that 16 employees would lose their jobs to achieve \$1.4 million in savings;
- whether the HSD has the resources to accomplish this work with no new personnel; no; Secretary Falls suggested that a better approach would be to redo the waivers into a different type of waiver that would allow for greater administrative efficiency;
- recognition that the GRTF probably anticipated consolidation of office space and other administrative functions, but that not all personnel would be eliminated;
- an observation that the GRTF discussed this bill in the context of consolidation of entire departments, and there was an expectation that further analysis would be needed;
- Mr. Earnest noted that the intent of the bill was to transfer personnel through the budget process;
- Sam Howarth noted that the ALTSD performs many functions in administering the waivers that are not currently being performed by the HSD; to move the programs without explicitly moving personnel would be dangerous; and

- Senator Feldman suggested that the bill be amended to include the transfer of an appropriate number of full-time-equivalent employees; no action was taken in response to this suggestion.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion that the bill not be endorsed by the LHHS but that modifications to how waivers are managed be considered; Representative Lujan stated he felt a consolidation such as this puts vulnerable populations at too great a risk. The motion not to endorse the bill was unanimously adopted.

Mr. Hely directed the committee's attention to the bill (.183052.4) and accompanying graphics to create the health policy and finance department. The bill would transfer a number of divisions and programs to this new department. He reviewed the time line of events to implement the transfer and establishment of the new department.

Committee members had questions and comments in the following areas:

- recognition that this proposal represents an enormous expansion of state government;
- an observation that the proposal needs a provision for evaluation;
- an observation that the inclusion of an all-payer claims database is a measure within the bill that will be essential to future health care and policy planning for a number of years due to the volatile nature of health care reform;
- an observation that this bill repeals the IBAC agencies and instructs an advisory council to make recommendations regarding consolidation of these entities;
- whether any preliminary fiscal impact report has been developed; no;
- whether this bill eliminated the Interagency Behavioral Health Purchasing Collaborative; no; it identifies the new department as the entity to operate the collaborative; and
- an observation that a new agency of this magnitude places a lot of power with one secretary and flies in the face of recent years' trends in the legislature.

Senator Feldman moved and Senator Lopez seconded that the bill be presented to the GRTF without endorsement. Mr. Hely suggested that the date of repeal of the IBAC be changed in various places in the bill to January 1, 2014 to allow time for the legislature to act on the recommendations of the advisory committee on how to consolidate their functions. (Page 22, line 4, from 1/1/13 to 1/1/14; page 31, line 23, from 1/1/13 to 1/1/14 and page 32, lines 6, 12 and 17.) The technical amendment was accepted as part of the original motion. By a roll call vote, the motion passed by a vote of four in favor and with Senator Ortiz y Pino opposed.

Mary Feldblum asked which bills are expected to be presented on Tuesday and which on Wednesday. Mr. Hely noted the exchange bill and the patient protection measures were previously requested to be heard on Tuesday. Ms. Feldblum requested that the Health Security Act and the memorial to delay the waiver for innovation date be heard on Wednesday. There being no objection, those bills will be heard on Wednesday.

There being no further business, the committee recessed for the night.

**Tuesday, November 9**

**Call to Order — Welcome and Introductions**

The meeting was reconvened by the chair at 9:15 a.m.

**HM 50 (2010): Statewide Nursing Education Plan**

Deborah Walker, R.N., M.S.N., director, Board of Nursing, Pat Boyle, R.N., M.S.N., director, Center for Nursing Excellence, Nancy Ridenauer, R.N., Ph.D., dean, University of New Mexico College of Nursing (UNM/CoN), and Pamela Schultz, R.N., Ph.D., interim dean and associate director, School of Nursing, New Mexico State University (NMSU) were invited to make a presentation on the findings and recommendations of HM 50, which called for the development of a statewide nursing education plan. Ms. Walker provided an overview of the purpose of the memorial. She thanked the members of the legislature for their strong support for nursing education, which has led to a steady increase in the number of nurse practitioners practicing in the state. She described the composition of the HM 50 Task Force, which included nurse educators, the hospital association, the Higher Education Department (HED) and the Department of Health (DOH). Dr. Ridenauer spoke about the New Mexico Nursing Education Consortium, which served as the core membership of the task force, meeting on a regular basis to address the goals of HM 50. The goal of the consortium is to increase the number of baccalaureate and graduate-prepared nurses to improve the quality and educational outcomes of nursing education and to increase workplace diversity. Consortium member schools represent nursing education across the state. Goals have been pursued through the development of partnerships that facilitate nurses to progress from R.N. to B.S.N. status. Dr. Schultz noted that collaborations among nursing programs have been greatly enhanced and are now well established in the pursuit of improved nursing education. Tele-education and simulation partnerships have been developed to promote opportunities for nursing education in remote and rural locations. A simulation institute was held in Las Cruces in August of this year to assist faculty and nurses in the use of simulation for clinical education. She stressed that NMSU and UNM/CoN have strengthened their collaborative efforts for efficient use of faculty and other resources and to further opportunities for B.S.N.-educated nurses becoming Ph.D. nurses. Ms. Boyle noted that many collaborative relationships have been developed through the consortium. A goal of the task force was to develop a uniform, statewide curriculum within 18 months. She identified the challenges and recommendations that emerged from the work of the task force. Recommendations included the development of policies and procedures to address administrative issues such as workload, salaries, funding challenges, core curricula among nursing education institutions and student financial aid; the development, by the HED, of a compensation package for nursing faculty; and development of a report on the economic benefit and impact of nurses in New Mexico. Legislative support was requested for health care professional work force planning statewide, including improved data collection efforts and partnerships with licensing boards to collect and analyze data.

Representative Chavez, sponsor of the memorial, congratulated the task force for the work that has been accomplished and for the report that was presented. She noted the importance of the availability of nursing education in rural areas and the importance of supporting job growth in the field of nursing because health care is one of the few occupational areas experiencing growth in the current economy. Ms. Boyle noted that rural nurses must have a different skill set than nurses

in urban settings, and that one of the goals in a rural nurse residency program is to develop the skill set needed in those locations. Much of this is accomplished through tele-education and simulation models. Representative Chavez also addressed issues of burnout and the possibility of using older nurses as faculty.

Questions and comments focused on the following areas:

- whether data is available regarding the number of students who drop out of nursing education programs and the number of nurses who leave the profession; approximately 13% of nurses leave their jobs within four years, but it is unclear how many leave the nursing profession;
- whether students are adequately prepared to expect the rigors of the professional world; modifications to the clinical training of students, particularly through simulation models, is enhancing critical thinking for student nurses; and
- whether any nursing educators have been invited to become members of the state workforce development board; no.

Senator Beffort suggested that the LHHS write a letter to the secretary of workforce solutions requesting representation of health professionals on the state workforce development board. Representative Lujan made a motion to this effect, and Senator Feldman seconded the motion. Mr. Howarth clarified that the Workforce Solutions Department (WSD) applied for a workforce planning grant, which will lead to an implementation grant through the PPACA. In the planning grant application, the WSD created an advisory committee that includes health professionals. He noted that the money to fund regional workforce development centers has been authorized but not yet appropriated in the PPACA. He suggested that the letter include a request for an update on the status of the planning grant. Senator Beffort stated her belief that the state workforce development board, with or without the planning grant, should include health professional representation. Representative Lujan offered an amendment to his motion to request a status update on the implementation of the grant, including when the nursing community would be contacted for inclusion. Senator Ortiz y Pino seconded the motion. The amendment was adopted. The original motion passed without objection.

Questions and comments were as follows:

- recognition of the budget challenges that will impact the HED, and a request that the HED focus on funding education in areas where it is known that jobs exist, such as health care education;
- acknowledgment that the nursing education community has instituted many initiatives to expand access to nursing education; however, funding will likely not be available to increase the number of funded slots for students;
- clarification regarding the funding formula for higher education; the formula is currently being reviewed and priorities reexamined;
- a reminder that a strong and consistent stand by the LHHS made a difference in the funding of social workers in years past and could have a similar effect with funding for the nursing profession;

- whether veterans who have served in the military and now are seeking to enter nursing school are being supported; yes; they can receive advanced placement and be put on a fast track for admission;
- whether PPACA funds are available to enhance faculty salaries; grants are available to develop new programs but are not ongoing sources of funding, and they probably can not be used to increase salaries for existing faculty; and
- whether any nursing education programs include a community service component to encourage students to remain in New Mexico upon graduation; there are two loan-for-service programs that repay nursing loans upon service in a rural community.

**Reports: Substance Abuse Services for Pregnant Women (SM 19 — 2009) and Economic Security for Women and Families (HM 35 — 2010)**

Giovanna Rossi-Pressley, executive director, Office of the Governor's Council on Women's Health, began with an overview of HM 35, noting that many women are facing major challenges in balancing education, work and family. A facilitated task force examined six areas that impact the economic security of women and families, including compensation; family-friendly workplaces; benefits and supports; business development and education for women in the workforce; education for future workers; and dependent care for working families. Lee Reynis, UNM Bureau of Business and Economic Research, spoke about the gains made by women in New Mexico in improving wages and economic security; however, earning gaps remain for women in the workplace. Ms. Rossi-Pressley identified the short- and long-term policy goals that arose from the work of the task force in the six categories of the study. On a short-term basis, the task force recommends establishment of an advisory group to report regularly to the legislature on this topic and the development of a program to reward family-friendly businesses in both the public and private sectors. She briefly highlighted several long-term goals that are listed in the report.

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

- an expression of thanks for the work of the task force;
- an observation that the data may change with the publication of census data;
- recognition that cuts to the temporary assistance for needy families (TANF) program and child care reimbursement rates constitute a crisis with no easy solution in the upcoming legislative session; disenrollment of children from TANF is anticipated without additional funding;
- recognition that 24,000 children are currently receiving subsidized child care services per month, and 3,900 children are on the waiting list; a request was made for the number of children who will be disenrolled with program reductions; and
- recognition that reimbursement reductions may result in daycare centers closing and many other trickle-down effects.

Susan Loubet, New Mexico Women's Agenda, noted that the WSD now has more available data to inform employers and to promote more equitable economic policies for women and families.

Ms. Rossi-Pressley described the findings and recommendations that arose from SM 19. This task force worked for two years to address the issues and problems of pregnant women with

substance abuse problems. A comprehensive state plan was developed with recommendations, including reducing unnecessary referrals to the CYFD, increasing home visitation, increasing access to substance abuse treatment and family planning services, increasing access to supportive services, increasing treatment over incarceration for non-violent drug-related crimes, education to change attitudes about substance abuse and increasing research and data collection. Angie Vacchio, co-chair of the task force, spoke about the need for proactive systems to ensure that high-risk women receive prenatal care and treatment for their substance abuse issues. Currently, the system is reactive and expensive and results in many women with substance abuse problems being incarcerated and separated from their children. She stressed the importance of increased availability of contraception when requested.

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

- clarification regarding federal legislation that requires states to report drug use as child abuse, and the requirement to adopt this federal language to receive federal funding; the definition in federal law is misleading; the task force is working to provide education regarding the real impact of the federal law;
- recognition of the critical need for women to be able to self-disclose an addiction without fear of reprisal to avoid the birth of addicted babies;
- an observation that the Commission on the Status of Women is being considered for sunset or consolidation by the GRTF;
- congratulations on the comprehensiveness of the report;
- clarification regarding the number of women in New Mexico who were addicted and pregnant teenagers; there is a very high correlation between addicted teens and addicted adults; more treatment options are needed to prevent addicted teens from becoming addicted adults;
- whether there are treatment options available for addicted adolescents; very few; and
- recognition of the importance of prevention and safe after-school programs to keep adolescents from becoming addicted in the first place; the relationship between the need for family-friendly workplaces and this problem was identified.

Francis Mulligan offered public comment supporting the work of the task force and highlighted the unique needs of individuals enrolled in a methadone program.

Calvin Boyd, M.D., who is currently pursuing a master's degree in public health at UNM, provided historical perspective on cocaine use in St. Paul, Minnesota, among pregnant women. Efforts to provide an avenue for women to self-disclose their addiction in Minnesota failed to pass the legislature and generated legislation of more punitive measures. He recognized that the effort is likely to face an uphill battle in New Mexico, and he supported the recommendations of the task force.

#### **Update: Federal High-Risk Pool**

Ms. Armstrong, executive director, NMMIP, provided an update on the implementation of a federal high-risk pool, now called the preexisting insurance program (PCIP), comparing and contrasting it to the well-established NMMIP. The establishment of a federal high-risk pool was the first provision of the PPACA to be implemented in New Mexico, and it now has approximately

150 enrollees. It is ultimately projected to serve 1,000 enrollees, capping enrollment in 2012. New Mexico is allocated \$37 million through the life of the program, which will end in 2014 when the PPACA is fully implemented. Ms. Armstrong highlighted the differences in eligibility requirements between the NMMIP and the federally funded PCIP. New Mexico elected to offer low-income subsidies to PCIP enrollees, as is the practice in the NMMIP. Numerous other efforts were implemented to ensure that the two risk pool programs were similar and easy for potential enrollees to understand and access. She noted that although enrollment in PCIP around the country has been slower than expected, in New Mexico, enrollment is close to what was projected, perhaps due in part to the low-income subsidies that are available here.

Committee members had questions and comments in the following areas:

- clarification regarding out-of-pocket costs in each pool; the NMMIP strives to keep them similar;
- whether the coverage through the pools is comparable to what can be obtained on the private market; yes;
- clarification regarding the standard risk rate; it is what a healthy individual would have paid for a comparable product in the private market; the federal PCIP requires premiums to be capped at 100% of the standard risk rate;
- clarification regarding the use of state funds to offer subsidies to low-income individuals; the federal government denied New Mexico's request to use federal funds to offer low-income subsidies, so the NMMIP board elected to use state funds to provide that discount;
- an observation that funds unspent in other states for the PCIP could be diverted to New Mexico;
- recognition that assessments on insurance plans, and the federal allocation, cover the difference in the cost of coverage and the premiums paid by enrollees;
- whether other states have state high-risk pools; 35 states have them, although in many states, the premiums are unaffordable; 21 states elected to use their high-risk pools to implement the PCIP;
- clarification regarding the ultimate disposition of the NMMIP and the PCIP; the PCIP will be abolished when the PPACA is fully implemented; the NMMIP may continue to exist for a while longer;
- whether affordable plans will be available through an exchange for individuals who are now helped by the premium subsidies in the NMMIP; yes;
- concern that the NMMIP, a successful system of covering the uninsurable, may be at risk with the implementation of the PPACA;
- whether an exchange could offer a high-risk policy; potentially, yes, through the NMMIP; and
- clarification regarding the ultimate disposition of the premium tax credits and assessments that insurance plans pay to the NMMIP when the PPACA is implemented; it is possible that the assessments will be used to fund the exchange.

### **Treatment Foster Care Legislation**

Representative Chasey stated that her co-presenter, Michael Hart, is unavailable today. Additionally, there is no new proposal to offer. Julianna Koob is available to answer questions on

the issue. Representative Chasey noted that the state has a legal obligation to any child in the state's custody. Treatment foster care children are largely cared for under private contractual situations, thereby shielding the state from the potential risk of lawsuits. Had the children been in foster care through the CYFD, the state would be held liable and the children offered greater protection. Representative Chasey carried legislation in 2009 that attempted to address this issue. A possible solution is to require treatment foster care providers to obtain insurance for intentional acts of abuse. Anna Otero Hatanaka, Association for Developmental Disabilities Community Providers (ADDCP), testified that many years ago there was a lawsuit against a community provider due to a disagreement between the family and the provider regarding the needs of the developmentally disabled child. The courts decided that DDCPs can be held liable. Ms. Koob stated that the real problem is that treatment foster care children and children who are in foster care through the CYFD are being treated differently. The legislature may wish to clarify that there is no intent to treat abused children differently. Questions were asked about the background checks to which treatment foster care providers are subjected. The level of skill is higher than foster parents. Ms. Koob will provide clarification.

### **My Community Task Force: HM 49 — 2010**

Leora Yeager, consultant, provided background information about My Community, New Mexico (MCNM), its partnership with the DOH and a task force that was convened to assess the benefits of MCNM as the state's comprehensive, bilingual resource directory for underserved populations. Hundreds of organizations are currently collecting information, and millions of dollars are spent each year to collect this information. MCNM has a free, online database that could be better used to consolidate and disseminate information. Ms. Yeager identified numerous partners with whom MCNM collaborates, including the Coalition to End Homelessness and the Indian Affairs Department. Plans are under way for adding more partners, especially in research and training organizations, and developing a community calendar, customized reports and linkages to other resources. Through surveys, the task force identified valuable information about the needs for community data collection efforts, highlighting the need to avoid duplication of efforts and costs. Seventy-eight percent of community organizations with data needs have stated that budget cuts negatively impacted their ability to collect data. Most organizations are actually collecting very similar information. MCNM is seeking legislative support to encourage state agencies, committees and contractors to utilize them in collecting and sharing information in support of underserved New Mexicans. MCNM are hoping for in-kind support from state agencies. Information entered into a centralized database would belong to the state and, therefore, be protected from loss. As an example, managed care contractors could be required by contract to utilize this database. Additionally, MCNM is seeking funding in state agency budgets to cover the cost of data entry customization tools and to provide technical support.

Venice Ceballos, community health worker trainer, noted that a big role of the community health worker is to link clients to services. Wider use of MCNM would assist community health workers to be much more efficient in assisting clients to find services.

Madeline Krasner, Children's Medical Services, is a social worker involved in serving children with special medical needs. Centralized data such as this would make her job of making appropriate referrals easier. She hopes this resource directory grows in partnerships.

Committee members had questions and comments in the following areas:

- agreement that data required to be collected under a state contract should belong to the state;
- recognition that the work of MCNM is very important and should be supported; and
- clarification regarding how private information is protected in the database.

Ms. Yeager closed by saying that legislative support is critical to expanding this effort statewide. No money is currently being requested, as the database can charge for its services.

### **Ending Child Homelessness in New Mexico: HM 7 — 2010**

Representative O'Neill made introductory comments about the importance of addressing this topic. Kim Cobbs, bureau chief, Community-Based and Behavioral Health Services Bureau, CYFD introduced Wendy Wintermute, statewide coordinator, New Mexico Campaign to End Child Homelessness. The issue of child homelessness generates great support from all quarters once people become aware of the problem. Between 2008 and 2009, over 14,500 children and youth in New Mexico were homeless. Families with children now comprise one-third of all the homeless people in the state; 40% of the homeless are under the age of six. It is known that the current number of homeless children is already larger than 14,500 and will grow this year. The impact of homelessness on children is traumatic and leads to more trauma. Ms. Wintermute presented a set of recommendations to end child homelessness in New Mexico, beginning with a comprehensive, coordinated approach among state agencies, services providers and community leaders. Legislative support is sought for a stable, fully funded continuum of services for children and their families, including housing, early childhood development and care, education and health care, and for the establishment of a New Mexico interagency council to end homelessness.

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

- information was provided about Cuidando Los Ninos, a program that serves the needs of 500 homeless children with a budget of \$1.2 million to \$1.4 million;
- an observation that 20 times that amount would be needed to meet the needs of 14,500 children; it would be much less expensive to prevent homelessness in the first place;
- clarification regarding the cost to provide services for the children who are currently homeless; the amount is not known; however, a council on homelessness could develop and identify that figure;
- clarification regarding the cost per child of caring for a homeless child and whether or not they are in school; the number is not known; and
- whether graduation rates for homeless children is known; no.

Hank Hughes, New Mexico Coalition to End Homelessness, testified that he believes the cost will be less than expected.

A quorum being present, a motion was made and seconded to approve the minutes for October; the motion passed.

### **Discussion and Approval of Legislative Endorsements**

Mr. Hely directed the committee to a bill to enact the Health Care Work Force Data Collection, Analysis and Policy Act (.182459.2), a new version of which was distributed. Dr. Dan Derksen was present to answer questions. Dr. Derksen noted the New Mexico Medical Society is in support of the bill, and that a planning grant for work force development awarded under the PPACA should fund this effort. The bill requires the DOH to collect specific data from professional licensing boards. It will facilitate the collection of real-time data to be used in planning and implementation of efforts to meet the current and future health professional work force needs of New Mexico.

Senator Feldman moved and Representative Lujan seconded a motion for adoption of the bill, with an amendment for a technical correction. The motion was endorsed unanimously.

An observation was made regarding the current difficulty of licensing health care providers. A concern was expressed that this requirement could further delay the licensing of needed practitioners in the state. An additional concern was expressed that a provider who declines to fill out the survey required in this bill would not be licensed.

Mr. Hely then described a bill that amends the existing law regarding medical homes to require managed care organizations that contract with Medicaid to include specifications for funding and tracking the implementation of medical home models of care (.182663.2).

Questions and comments were offered as follows:

- clarification regarding the HSD's requirements in this bill; the HSD is requested only to make contract specifications regarding medical home implementation; it puts current practice in statute;
- whether other health plans besides managed care will be subject to this requirement; no;
- whether the bill would require OptumHealth to put all its discretionary funds into core service agencies; no, the bill does not specify amounts, and it is not clear that core service agencies qualify as medical homes;
- whether the bill, as written, would apply to behavioral health services; yes, to the extent that they provide primary care medical homes or a component of the health commons model; and
- an observation that home care is added to the list of providers that can qualify as medical homes.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion to endorse the bill. The motion passed without objection.

Mr. Hely described a bill directing the secretary of human services to establish an accountable care organization task force in Medicaid, the state children's health insurance program and the state coverage insurance program (SCI) in Hidalgo County (.183222.2). Charlie Alfero, executive director, Hidalgo Medical Services (HMS), provided background information about accountable care organizations, which are intended to link health care provider reimbursement to quality outcomes. HMS wants to work with Medicaid and Medicare to design the features and

develop a health care delivery system model that will work in New Mexico. HMS has been engaged in similar projects for the last two years and has demonstrated an ability to reduce the cost of care for individuals with chronic illnesses through care management. The bill makes no general funding request; funding would come through managed care organization contract requirements to use discretionary funds to fund the task force. Mr. Hely noted that HMS would assume risk under the model.

Questions and comments from committee members covered the following areas:

- a statement of support for this innovative approach;
- clarification that the model is intended to include primary care; it would include primary medical, dental and other services; patients are referred to specialists, so by extension they would be included as well;
- concern that a system not be developed that discourages physicians from accepting the sickest patients; the model allows the full costs of all levels of care to be delineated and accounted for; the model is based on best practices;
- clarification regarding the assumption of risk by the accountable care organization; the development of the model would identify how that would occur;
- whether there is grant funding available in the PPACA to fund such an effort; the demonstration projects funded by the PPACA are for implementation, not planning; and
- an expression of thanks and appreciation to Mr. Alfero and the services and work of HMS.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion to endorse the bill. The motion passed without objection.

There being no further business, the meeting recessed for the night.

### **Wednesday, November 10**

#### **Call to Order**

The meeting was reconvened by the chair at 9:30 a.m.

#### **Discussion and Approval of Legislative Endorsements**

Kim Bannerman, staff attorney, LCS, described a bill (.182632.2), to enact the Health Care Provider Protection Act. This act provides protections for health care providers working with managed care plans, including provisions addressing reimbursement, recoupment of payments, technical assistance and training, credentialing and re-credentialing. The ombudsman provision in the act is closely modeled after legislation previously introduced in 1999, which passed but was vetoed by Governor Johnson. Senator Ortiz y Pino, sponsor of the measure, noted that the bill does not make any changes to the Patient Protection Act. The bill has been reviewed by a variety of interested parties including the Insurance Division of the Public Regulation Commission (PRC/DOI), the New Mexico Medical Society, the New Mexico Hospital Association and other advocates.

Question and comments were made as follows:

- whether the ombudsman office is a duplication of the office of managed care within the PRC/DOI; this bill would fund that office, provide protections and expand the authority of that office;
- clarification regarding the funding mechanism; it is funded through a surcharge paid by insurance plans;
- whether there is any potential conflict between this act and the PPACA; according to the PRC/DOI, probably not;
- clarification regarding who would actually be the ombudsman; that person is designated by the superintendent of insurance;
- clarification regarding the location of the fund; the state treasury;
- clarification regarding how much, in dollars, the assessment represents; it is based on 1% of the annual insurance premium, which could be as small as \$10.00 per year; and
- concern that accumulated fees and assessments will translate into increased premiums for consumers.

Senator Feldman moved endorsement; Representative Lujan seconded the motion. The motion was unanimously adopted.

Ms. Bannerman then described a bill (.180628.1) that mandates insurance coverage for amino-acid-based nutritional formulas that are exempt from federal Food and Drug Administration (FDA) nutritional labeling requirements. These formulas are expensive and are necessary treatment for the management of specific disorders. Surrounding states, including Texas and Arizona, already mandate this coverage.

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

- clarification regarding the number of children who need the formulas; according to the Kaiser Family Foundation, a very small number of children, perhaps between 100 and 600 in the state;
- whether the PPACA prohibits states from adopting new insurance mandates; no; however, state mandates that exceed the essential benefit package that are offered through the exchange must be paid for by the state;
- recognition that the essential benefit package required by the PPACA has not yet been determined;
- whether this is already a benefit of Medicaid; yes;
- whether the formulas require a prescription; no; however, in order for insurance to pay for a formula, a physician would have to write an order indicating it is medically necessary;
- whether the formulas are covered by the Women, Infants, and Children (WIC) program; yes, up to 185% of the federal poverty level; and
- concern regarding adding another mandate and the potential increased premium cost.

Doris Husted, public policy director, ARC of New Mexico, stated that coverage for this already exists in statute; it was passed in 2003. Based on that information, bill endorsement will be deferred until the drafter can review the existing statute.

Mr. Hely described a bill (.182696.2SA) amending the Motor Vehicle Code to provide for a fee to be assessed on driver's license renewals to fund the Disability Fund, which funds disability-related activities. Jim Parker, director, Governor's Commission on Disability (GCD), identified some of the purposes to which such funds could be used, including home modifications, guardianship, sign language interpreters and accessible rural transportation. This bill was previously presented to the Disabilities Concerns Subcommittee of the LHHS.

Questions and comments were offered as follows:

- whether the bill would add an administrative burden; no; the GCD would establish an oversight committee to determine and oversee the uses of the funds;
- clarification regarding the Motor Vehicle Suspense Fund because a portion of the fee goes to that fund; it is used by the Motor Vehicle Division (MVD) of the Taxation and Revenue Department for administration;
- how much the fee is expected to raise; approximately \$10 million, \$6 million of which would go to the Disability Fund;
- a suggestion that the amount of the fee be reduced, and either no amount or a much smaller amount be given to the MVD for administration; support for this was expressed by several committee members;
- an observation that the Disability Fund exists but has no money and no mechanism to put money into it; this bill provides such a mechanism and would fund essential activities and services;
- clarification regarding a previous measure that provides services for people living with disabilities that is also unfunded; according to Secretary Falls, it is the People with Disabilities Act; and
- clarification regarding the way in which funds are to be distributed and by whom; the fund is not managed by the MVD.

Senator Feldman moved and Senator Ortiz y Pino seconded the motion to endorse the bill. After discussion regarding the amount proposed to go to the Disability Fund and the amount to go to the Motor Vehicle suspense fund, Senator Feldman withdrew her motion to endorse the bill. Representative Lujan moved that the bill be endorsed, with an amendment to reduce the amount to go to the Motor Vehicle Suspense Fund from \$2.00 to \$1.00 with \$4.00 to go to the Disability Fund. Senator Feldman seconded the motion. Senator Adair opposed the motion, and Senators Ortiz y Pino and Feldman and Representatives Picraux and Lujan supported it. The motion was adopted. Senator Adair noted the merits of the bill; however, he feels the budget process should reflect priorities and include services for the disabled and that services should not be funded through expansions such as this. It is not correct to assume that all good things should be funded.

Mr. Hely next presented a new version of a bill (.183271.1) dealing with the rate review process for health insurance. It establishes greater transparency and requires a greater burden of proof by clear and convincing evidence to justify premium rate increases requested by insurance

companies. Mr. Hely compared and contrasted the current process with the new standards proposed in this bill. This bill states that the superintendent of insurance shall disapprove a request for an increase if certain conditions are not met or if the increase is not found to be actuarially sound.

Questions and comments by committee members covered the following areas:

- an observation that the bill is modeled after language in an application the PRC/DOI submitted to the federal Department of Health and Human Services for a PPACA grant and that the bill has been reviewed by the PRC/DOI;
- whether the solvency of the insurance companies is ensured in this bill; yes;
- whether insurance companies would be penalized by a decision to withdraw their business from New Mexico due to these new requirements; no;
- a suggestion that the bill requires that insurance companies demonstrate that they are following existing insurance mandates;
- agreement that insurance companies may not be following current mandates and that the DOI should provide better oversight over this;
- clarification regarding the role of the Office of the Attorney General (OAG) in representing policyholders in disputes and whether OAG representation of individual policyholders violates the anti-donation clause; the OAG would only represent a class of policyholders and not individuals;
- whether the OAG also has the responsibility to represent the state and the superintendent of insurance; that conflict would have to be resolved;
- clarification regarding how classes are established; by the OAG;
- clarification regarding the requirement to provide information on marketing when requesting a premium increase, and whether this information should not be protected as confidential;
- concern regarding the requirement to disclose business expenses generally considered to be proprietary;
- an observation that not all requests for rate increases represent profiteering; there was a concern that this bill would eliminate competition in the market;
- whether the provisions of this bill would affect Medicaid contracts; possibly;
- an observation that Medicaid and other publicly financed insurance coverage plus the uninsured constitutes approximately 85% of the population of the state; this bill unfairly targets insurance companies covering only 15% of the population; and
- recognition that the bill is aimed at the individual and small group markets that have sustained 75% increases over the last three years.

Senator Ortiz y Pino moved and Senator Feldman seconded a motion to endorse the bill. Clarification was sought regarding limiting the amount of rate increase requests to the medical price index; the sponsor requested that language be included to keep rate increases within a range of affordability. The motion to endorse was approved by a vote of five to one, with Senator Adair opposed.

Mr. Hely directed the committee members to the Health Security Act (.182913.3), which provides for a system for comprehensive statewide health care coverage, health care planning and cost-containment measures. It directs the LFC to develop and make recommendations on financing of the plan. If it is found to be feasible to be implemented, a commission would implement the act. The bill includes a November 2012 implementation date, but with a five-year phase-in plan for implementation. Comprehensive benefits are identified in the bill, as is a plan for collecting premiums, which would be maintained in a fund. The commission created by the bill is also charged with data collection duties. A prescription drug committee would develop a formulary of covered prescription drugs. The commission is charged with submitting waiver requests to the federal government to accomplish several of the provisions of the act and to allow coverage for individuals covered by the federal Employee Retirement Income Security Act plans. Agreements with the HSD would be necessary to allow the Health Security Act to provide Medicaid coverage.

Committee members had questions and comments as follows:

- whether this represents an approach of conducting health care business that excludes the governor; no; a nominating committee would recommend members of the commission that would then be appointed by the governor;
- recognition that this bill reflects a paradigm shift that is based on a citizen's board, rather than a state agency or the governor; it has legislative and executive checks and balances;
- clarification regarding the number of people who would be covered; it is not specified;
- clarification regarding the number of commission meetings; at least monthly;
- whether passage of this bill precludes proceeding on establishing a health insurance exchange; no; the Health Security Act would require the passage of a waiver and demonstration that this approach meets the goals of the PPACA; and
- recognition that it is impossible to know what the new Congress will do relative to the PPACA.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion to endorse the bill. Senator Adair opposed the motion; five voting members voted in favor. The motion carried.

Mr. Hely next presented a memorial requesting the New Mexico congressional delegation to actively seek to amend the PPACA to remove the 2017 date for states to request a waiver of innovation to implement alternatives to a health insurance exchange (.183089.1). Currently, the PPACA is implemented, along with exchanges, in 2014, but waivers of innovation may not be sought until 2017.

Committee members had questions and comments as follows:

- whether the congressional delegation has been queried about its support of this proposal, and what the reaction has been; the delegation and Congress in general have been very supportive; U.S. Senator Ron Wyden is introducing language to remove the 2017 date; and

- clarification regarding conditions that must be met to have a waiver approved; budget neutrality and coverage of the same number of people with comparable coverage.

There being no quorum present, no action was taken.

Mr. Hely presented .183033.5, the health insurance exchange bill. He provided background information regarding the PPACA requirements for exchanges. He identified required elements of a health insurance exchange, as required by the PPACA. He noted the bill addresses the recommendations of the SJM 1 HCRWG for New Mexico to have an exchange, for the exchange to be operated by a not-for-profit, quasi-governmental entity, for the individual market and the small business market to be administratively combined in one exchange and for the exchange to have robust authority and act as a market regulator rather than restricting its activity to merely organizing and distributing insurance products.

Senator Feldman made a motion to endorse the bill; the motion was seconded by Senator Ortiz y Pino. Technical amendments were offered and accepted by the committee.

Questions and comments from committee members covered the following areas:

- whether the bill provides for New Mexico to offer a basic health plan; no; there was no direction from the SJM 1 HCRWG to do so; Secretary Falls noted that the state should analyze the pros and cons of offering a state basic health plan; Mr. Hely noted the exchange is required to enroll people in state and local health plans, so if New Mexico chooses to offer one, the exchange would have to offer it as well; the bill does not provide for the exchange to create the basic health plan;
- clarification regarding whether individuals must be enrolled in Medicaid by the exchange; Sec. 1311, D4f of the PPACA was read; exchanges must screen and enroll eligible individuals in Medicaid;
- recognition that many details still must be clarified by the federal government;
- clarification regarding the inclusion of pediatric dental benefits; it is required by the PPACA;
- clarification regarding the requirements for health plans to participate in the exchange in order to do business in New Mexico;
- concern regarding the cost of providing access to basic benefits required in the bill and in the PPACA;
- concern that the PPACA only requires a state to establish a framework at this time and that this bill explicitly creates an exchange absent rules and guidance from the federal government;
- an observation that now the federal government is recommending an exchange be up and running by October 1, 2013;
- Secretary Falls noted that information regarding the business rules of an exchange are expected to be available by early 2011;
- whether the bill is more detailed than what was recommended by the SJM 1 HCRWG; no;
- an observation that the bill is actually not overly detailed for a complex health care bill; much of the language is general and "boiler-plate";

- support for the concept of an exchange and a general willingness for bipartisanship efforts in establishing an exchange;
- clarification that the bill does not preclude cooperation with other states in a regional exchange;
- whether the committee desires to change the date of the creation of the board to reflect the emergency clause;
- whether the Native American community is being consulted in establishing an exchange; Secretary Falls reported that the HSD held a tribal consultation and discussed many options that are open to tribes; and
- an observation that this bill reflects the principles recommended by the SJM 1 HCRWG as directed by the LHHS at the October meeting; other provisions in the bill are either in the PPACA or in a model bill developed by the NAIC.

Technical amendments were offered to align establishment of the board of the exchange with the emergency clause and to correct a few typographical errors. Senator Feldman moved and Senator Lopez seconded a motion to adopt the recommended amendments. Senator Adair opposed the motion; five voting members voted in favor. The amendments carried. Senator Feldman moved endorsement of the bill as amended and the motion was seconded by Senator Ortiz y Pino, Senator Adair and Senator Lopez opposed the motion. Representatives Picraux and Lujan and Senators Feldman and Ortiz y Pino voted in favor of the motion. Two voting members were absent; the motion carried.

A quorum being present, Senator Ortiz y Pino moved and Representative Lujan seconded a motion to endorse the memorial urging Congress to delay the date for submission of a waiver of innovation. Senator Adair opposed the measure. Senators Feldman, Lopez and Ortiz y Pino and Representatives Picraux and Lujan voted in favor of the motion. The motion carried.

Mr. Hely noted that a bill endorsed at the October meeting to align the New Mexico Insurance Code with insurance requirements in the PPACA violates the Constitution of New Mexico, which prohibits legislation that incorporates federal law by reference. Other states can do this type of bill; however, the Constitution of New Mexico precludes this action. Senator Ortiz y Pino noted that Ms. Bannerman is still researching the bill on nutritional supplements.

Senator Feldman thanked the staff and committee for their hard work during the interim. Representative Vaughn was again thanked for her participation on the LHHS. Representative Picraux thanked all members. There being no further business, the committee was adjourned at 1:15 p.m.

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

**November 8-10, 2010**  
**Room 309, State Capitol**  
**Santa Fe**

The sixth meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative Danice Picraux, chair, at 9:14 a.m. on November 8, 2010 in Room 309, State Capitol.

**Present**

Rep. Danice Picraux, Chair  
Sen. Dede Feldman, Vice Chair  
Sen. Rod Adair  
Sen. Linda M. Lopez  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Absent**

Rep. Nora Espinoza  
Rep. Joni Marie Gutierrez

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye (11/9, 11/10)  
Rep. Eleanor Chavez (11/9, 11/10)  
Rep. Nathan P. Cote  
Rep. Miguel P. Garcia  
Rep. Keith J. Gardner  
Rep. Dennis J. Kintigh  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Rep. Rodolpho "Rudy" S. Martinez  
Rep. Bill B. O'Neill  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. Gloria C. Vaughn

Rep. Jose A. Campos  
Sen. Clinton D. Harden, Jr.  
Rep. John A. Heaton  
Sen. Gay G. Kernan  
Sen. Sander Rue  
Rep. Jeff Steinborn  
Rep. Mimi Stewart  
Sen. David Ulibarri

**Guest Legislators**

Rep. Gail Chasey (11/9)  
Rep. Edward C. Sandoval (11/8)

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Michael Hely  
Karen Wells  
Zelda Abeita

Rebecca Griego

### **Minutes Approval**

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

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts are in the meeting file.

## **Monday, November 8**

### **Welcome and Introductions**

The chair welcomed the committee and members of the audience. She reviewed the agenda for the day.

### **Staff Report of Government Restructuring Task Force**

Raúl E. Burciaga, director, Legislative Council Service (LCS), updated the committee members on the actions and progress of the Government Restructuring Task Force (GRTF). He reviewed the purpose of the GRTF, its membership and the topics covered to date, noting that it will meet for an additional two meetings during this interim. Areas covered by the GRTF were highlighted, with education and health care emerging as the top two items of discussion. Mr. Burciaga described testimony provided to the GRTF, including that from Kathryn "Katie" Falls, secretary, Human Services Department (HSD), who provided an overview of the status of the Medicaid budget and identified areas that could result in greater efficiency. Secretary Falls identified concerns and areas that should not be subject to restructuring due to requirements of the federal Patient Protection and Affordable Care Act (PPACA). The GRTF explored opportunities to relocate the home- and community-based services (HCBS) waiver programs from the Aging and Long-Term Services Department (ALTSD) to the HSD. Mr. Burciaga noted that Ms. Wells, LCS, presented information to the task force on the PPACA, the current structure of health care in New Mexico and ideas for restructuring identified by the LHHS. Brent Earnest, Legislative Finance Committee (LFC), together with Mr. Hely, LCS, also presented opportunities for consolidation of Medicaid programs, consolidation of Interagency Benefits Advisory Council (IBAC) agencies and programs and the potential for a health care administration and financing department. Mr. Burciaga briefly described other areas for possible consolidation that have been considered by the GRTF, noting that no final recommendations have been made. Final recommendations will be considered at the GRTF's last two meetings. Greater legislative oversight is being considered over both executive salaries and benefits as well as regulatory control. He concluded by stating that the GRTF is hopeful that recommendations regarding restructuring health care will be forthcoming from the LHHS.

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

- whether cuts to Medicaid will result in hospitals refusing to accept Medicaid patients; probably not; federal law requires hospital emergency departments to admit patients for the purpose of stabilization and transfer;

- whether the GRTF has discussed state government taking over the provision of the Medicaid program from managed care organizations; no;
- whether there is a list of which commissions and boards are being considered for consolidation or elimination; yes;
- clarification regarding changes that can or cannot be made to Medicaid as a result of the passage of the PPACA; Secretary Falls stated that eligibility categories cannot be changed; however, benefits can be changed;
- clarification regarding the higher education funding formula, and whether consideration is being given to altering it;
- concern regarding whether any of the recommendations will save enough money to solve the state's budget problems;
- an observation that four areas contribute major costs to the state: private prisons, branch colleges and universities, Medicaid and managed care and public school funding, none of which are likely to be politically acceptable to change;
- agreement that expansion of college campuses without legislative approval has led to budget obligations and should be discussed;
- clarification regarding consolidation of the IBAC agencies and which agencies are in IBAC; they are the Risk Management Division of the General Services Department, the Retiree Health Care Authority (RHCA), Albuquerque Public Schools and the Public School Insurance Authority;
- clarification regarding the extent to which IBAC agencies are already consolidated; procurement for purchasing of insurance is consolidated;
- a request for Wayne Propst, executive director, RHCA, to clarify the anticipated impact of consolidation on retirees; Mr. Propst noted that the board of the RHCA opposes consolidation and would have many questions if a bill is introduced;
- whether IBAC consolidation would result in savings to the state; Mr. Propst suggested that consolidation would initially cost money, if for no other reason than that the need to consolidate information technology systems would cost millions of dollars;
- whether combining risk pools of the IBAC agencies would result in lower premiums; probably, but no significant savings are anticipated;
- what opportunities remain for consolidation; consolidated purchasing is a good idea, governance restructuring and administrative consolidation is not;
- whether the IBAC agencies are cooperating on legislation that they would jointly support; Mr. Propst is not aware of any such efforts;
- whether the GRTF requested information regarding public relations, administrative functions and legislative liaison positions that exist in state agencies; no; and
- an assertion that restructuring efforts should be reasonable and make sense; the effect on constituents must be considered before any restructuring is done.

Mr. Burciaga noted that he will bring the comments and concerns expressed by the committee back to the GRTF. Many of these concerns have also been recognized and expressed by the GRTF.

**Senate Joint Memorial 1 Health Care Reform Working Group (SJM 1 HCRWG) — Final Report**

Deborah Armstrong, chair, SJM 1 HCRWG, provided an overview of the process of the working group in addressing the requirements of the memorial. She reviewed the schedule and work plan, identifying the topics that were covered at each meeting. She described the self-formed advisory groups and recognized the work they did and the recommendations they made.

General recommendations were highlighted, including the following:

- continued coordination with the LHHS and the Health Care Reform Executive Leadership Team (Leadership Team);
- careful comparison of PPACA insurance requirements with the New Mexico Insurance Code;
- appointment of an executive agency to be tasked with coordinating and tracking grant opportunities and to take full advantage of these opportunities; and
- establishment of a single New Mexico health insurance exchange that administratively combines both individual and small group markets, that is operated by a legislatively created, quasi-governmental entity, that is open to interstate partnering and that performs robust functions.

Ms. Armstrong, along with Mike Nunez, executive director of the New Mexico Health Insurance Alliance (NMHIA), reported that the New Mexico Medical Insurance Pool (NMMIP) board met jointly with the NMHIA board to discuss opportunities to partner on the operation of an exchange. Both boards agreed that they are ready, willing and able to work jointly to implement an exchange for New Mexico. They are committed to transitioning their current statutes and administrative structures in whatever ways would be needed to accomplish this. They noted that both boards currently accomplish many of the required elements of an exchange, and both support a merger in the future.

A question was asked regarding whether the true cost of establishing an exchange is known; no.

### **Report — Leadership Team**

Secretary Falls provided a general overview of the components of health care reform that have been addressed by the Leadership Team, including Medicaid reform, a health insurance exchange, health care delivery system reform and insurance reform. She noted that required expansions in Medicaid eligibility will substantially reduce the number of uninsured people in the state. The primary cost of the Medicaid expansion will be borne by the federal government. She highlighted areas about which there are still outstanding questions, including the full impact on the population and on the Medicaid budget, specifics regarding what is called a "benchmark" benefit plan for newly eligible Medicaid recipients and many questions regarding how the interface between the exchange and Medicaid will be accomplished. The Leadership Team recommends using the exchange planning grant to conduct population and fiscal mapping to identify the needs of New Mexicans and the cost to the state. The Leadership Team believes a decision should be made as soon as possible regarding what entity will operate an exchange to facilitate coordination with the HSD, invest in and develop information technology systems and adopt policies to facilitate coordination of coverage. As best as possible, the Leadership Team urges Medicaid cost containment consistent with implementation of the PPACA. Secretary Falls reviewed options and

opportunities for establishing a health insurance exchange for New Mexico. Legislation is needed in this upcoming session to ensure adequate time for planning and implementation of an exchange. New federal funding is being made available to assist in building an exchange as well as to replace Medicaid eligibility systems. The HSD will need to release a request for proposals to replace the department's information technology eligibility system in order to meet the PPACA time frames. She noted that numerous things are not yet known about exchanges, including the perspective of Governor-Elect Susana Martinez. A tribal consultation will be held to discuss tribal options in operating an exchange. The options that New Mexico chooses regarding an exchange will guide the ways in which the planning grant money is going to be spent. Secretary Falls noted that much overlap exists between the insurance reforms required by the PPACA and the requirements for a health insurance exchange. In spite of requirements and incentives in the PPACA, adverse selection can threaten the success of a New Mexico exchange and must be addressed carefully. To be successful, the exchange should attract healthy, young people to serve a more robust function to manage the market and ensure that the exchange does not merely become a high-risk pool. The Leadership Team believes that the tax credits to lower the cost of health insurance are probably not sufficient to drive people to purchase health care coverage. Initially, the penalties for not purchasing insurance are minimal, and many people may choose to pay the penalty rather than purchase insurance. The Leadership Team believes a strong and healthy exchange should be established that will create continuity between plans offered within and outside the exchange. A comprehensive consumer education plan should be developed. Incentives should be created to attract young, healthy individuals to participate in the exchange, and a vigorous marketing plan will be needed. Health care delivery system reform was briefly addressed. A key issue is access to health care providers in order to meet the needs of new enrollees. Between now and 2014, New Mexico should aggressively seek to increase the health professional work force in the state. Secretary Falls concluded by stressing the critical need for the executive and the legislature to work together in planning and implementation of the PPACA. Appropriate staffing will be needed and expertise and leadership developed in order to move forward. Support for updated information technology and education and outreach to constituents is critical.

Representative Picraux interrupted the agenda to read a certificate of appreciation for Representative Vaughn and recognize her contribution to the committee. Members of the committee offered personal reflections and memories of Representative Vaughn, including a remembrance of her husband, Jim. On behalf of the committee, Senator Feldman presented Representative Vaughn with the certificate and a gift. The committee and audience members gave her a standing ovation. Senator Feldman additionally extended thanks and appreciation to Representative Cote. Representative Picraux read a certificate prepared for him. The certificate was presented and a standing ovation given. Senator Feldman also recognized Representative Heaton in his absence and read a certificate prepared for him. These members will not be returning next year.

Returning to the presentation of Secretary Falls, committee members had questions and made comments in the following areas:

- thanks were expressed to Secretary Falls for her great contributions to the HSD and to the implementation of the PPACA in New Mexico;
- support for the concept of a central health care planning agency;

- clarification regarding what is known and what is not known about the PPACA and how it will impact New Mexico;
- whether Medicaid or the exchange should screen individuals for Medicaid eligibility; coordination will be essential;
- whether there is a potential to combine the eligibility and claims information technology systems in Medicaid; the ISD2 eligibility system will have to be replaced, regardless of the PPACA;
- whether there is a provision in the PPACA requiring plans that contract with Medicaid to offer a plan through the exchange; no;
- clarification regarding the amount of PPACA grant dollars received so far in New Mexico; close to \$63 million;
- clarification regarding the option for a basic health plan to be offered to individuals whose incomes fall between 133% and 200% of the federal poverty level;
- clarification regarding the extent to which the state can control health plans offered within and outside of an exchange;
- whether health savings accounts (HSAs) will be required to be offered in the exchange; no; however, people under the age of 30 will be offered a catastrophic plan through the exchange; HSAs could be looked at as a way to attract healthy, young people to participate in the exchange;
- incentives for individuals to purchase private insurance rather than be covered under Medicaid;
- a request for an update on the behavioral health contract; progress has been made to restore edits into the system; oversight of OptumHealth will be ongoing until the HSD is satisfied that OptumHealth is in compliance with the contract; OptumHealth is currently in the second year of a four-year contract; and
- concern regarding the potential negative impact of cutting prevention and wellness efforts as basic benefits; the PPACA requires a list of benefits that must be offered in Medicaid as well as in private insurance plans.

### **Public Comment**

Jim Stower stated that efforts and funding to support emergency medical services will again be brought before the legislature in the upcoming session.

Dick Mason, Health Action New Mexico (HANM), presented principles upon which the HANM believes an exchange should be based. Numerous entities have signed a letter of support for the HANM's concepts.

Lydia Pendly, HANM, spoke to the issue of the cost of establishing exchanges. The HANM held a conference call with Frederick Isassi, health aide to U.S. Senator Jeff Bingaman, in which it learned that money for subsidies and to establish exchanges has been appropriated through 2014.

Raphael Nevins, Andele Tutors, spoke in favor of behavioral health funding for tutoring of underserved New Mexicans.

Bill Wiese, associate director, Robert Wood Johnson Foundation Center for Health Policy, raised the issue of the cost of health reform efforts. He testified that the current method of reimbursement for health care coverage is inherently inefficient and costly, and that through the exchange, these inefficiencies can be addressed.

Nandini Kuene, health policy consultant, urged the committee to endorse a strong exchange and legislation that holds the exchange accountable for its results. Additionally, she would like to see opportunities embraced to expand medical homes.

Dana Middleton, National Organization for Women, spoke in favor of the Health Security Act. She urged the committee to obtain accurate cost predictions of the anticipated cost of implementing an exchange.

### **Discussion of Legislative Endorsements on Restructuring and Health Care**

Mr. Hely, staff attorney, LCS, oriented the committee members to a packet of bill drafts and a matrix that briefly describes the bills in the packet. He noted that only three bills are intended for discussion at this time. He began with the bill to phase in consolidation of purchasing and administrative functions of the IBAC agencies (.182941.2). Mr. Hely presented a time line and graphic depicting the proposed actions in the bill. He noted that the bill was drafted for the GRTF, but no action has yet been taken by it.

Committee members had questions and comments as follows:

- clarification regarding when various provisions in the bill would be implemented;
- clarification regarding the governance of the IBAC agencies; in the bill, the IBAC agencies will develop and make recommendations on this topic by November 1, 2012;
- an observation that the bill does not repeal the IBAC agencies or their governance;
- clarification regarding statutory authority over the Albuquerque Public Schools; it is a local body and an instrumentality of the state;
- concerns regarding whether quality, conflict of interest, governance and accountability measures should be included in the bill;
- whether the GRTF gave any direction regarding this bill; the GRTF has not seen this bill and is looking to the LHHS for direction;
- whether considerations regarding the establishment of an exchange as suggested by Mr. Wiese should be incorporated;
- whether the requirement for an actuarial analysis should not precede the requirement to consolidate purchasing and administrative functions;
- clarification regarding the position of the RHCA board; the board supports consolidated purchasing and that some administrative activities be conducted jointly; it opposes further consolidation;
- whether the bill permits benefit packages that more uniquely meet the needs of the different populations;
- clarification regarding an amount of \$3,500, which appears in existing law and which was originally intended to cover the cost of early intervention services for insured, developmentally disabled children; the amount was established in negotiation with insurance companies; many eligible children are covered from federal and other funds;

a desire was expressed to add a clause that allows for a cost-of-living index adjustment to that amount; no action was taken on that point;

- a suggestion that the bill be divided and the more controversial elements postponed; Mr. Propst noted that the RHCA supported specific language included in a previous bill, HB 662, introduced in 2009, and that this 2010 bill currently under consideration seems to go beyond what was previously supported;
- a suggestion that the LFC be included among the legislative entities to which the parties must report; and
- an expression of support for HB 662 instead of this bill.

A motion was made by Senator Feldman, seconded by Representative Picraux, to direct staff to work with Mr. Propst to develop a bill that reflects the provisions of HB 662; the motion was unanimously accepted. Mr. Hely noted that he would not be able to accomplish this by Wednesday. A request was made for a letter to be drafted to the GRTF to reflect the concerns on this bill, the support for HB 662 and a desire to work with the IBAC agencies to draft such legislation.

Mr. Hely then described the bill to transfer the HCBS waivers and other long-term services programs from the ALTSD to the HSD (.182859.5), and he noted there is a graphic depicting the proposed change. This measure has already been endorsed by the GRTF. He described the services and programs that would be transferred and the steps the HSD would be directed to take to effectuate the transfer.

Committee members discussed various aspects of this proposed bill as follows:

- clarification regarding the number of full-time-equivalent personnel in the ALTSD whose jobs would be eliminated with this transfer; Michael Spanier, secretary of aging and long-term services, testified that approximately 25 employees currently work in that division; Mr. Earnest stated the LFC analysis indicated that 16 employees would lose their jobs to achieve \$1.4 million in savings;
- whether the HSD has the resources to accomplish this work with no new personnel; no; Secretary Falls suggested that a better approach would be to redo the waivers into a different type of waiver that would allow for greater administrative efficiency;
- recognition that the GRTF probably anticipated consolidation of office space and other administrative functions, but that not all personnel would be eliminated;
- an observation that the GRTF discussed this bill in the context of consolidation of entire departments, and there was an expectation that further analysis would be needed;
- Mr. Earnest noted that the intent of the bill was to transfer personnel through the budget process;
- Sam Howarth, Department of Health (DOH), noted that the ALTSD performs many functions in administrating the waivers that are not currently being performed by the HSD; to move the programs without explicitly moving personnel would be dangerous; and
- Senator Feldman suggested that the bill be amended to include the transfer of an appropriate number of full-time-equivalent employees; no action was taken in response to this suggestion.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion that the bill not be endorsed by the LHHS but that modifications to how waivers are managed be considered; Representative Lujan stated he felt a consolidation such as this puts vulnerable populations at too great a risk. The motion not to endorse the bill was unanimously adopted.

Mr. Hely directed the committee's attention to the bill (.183052.4) and accompanying graphics to create the health policy and finance department. The bill would transfer a number of divisions and programs to this new department. He reviewed the time line of events to implement the transfer and establishment of the new department.

Committee members had questions and comments in the following areas:

- recognition that this proposal represents an enormous expansion of state government;
- an observation that the proposal needs a provision for evaluation;
- an observation that the inclusion of an all-payer claims database is a measure within the bill that will be essential to future health care and policy planning for a number of years due to the volatile nature of health care reform;
- an observation that this bill repeals the IBAC agencies and instructs an advisory council to make recommendations regarding consolidation of these entities;
- whether any preliminary fiscal impact report has been developed; no;
- whether this bill eliminates the Interagency Behavioral Health Purchasing Collaborative; no; it identifies the new department as the entity to operate the collaborative; and
- an observation that a new agency of this magnitude places a lot of power with one secretary and flies in the face of recent years' trends in the legislature.

Senator Feldman moved and Senator Lopez seconded that the bill be presented to the GRTF without endorsement. Mr. Hely suggested that the date of repeal of the IBAC be changed in various places in the bill to January 1, 2014 to allow time for the legislature to act on the recommendations of the advisory committee on how to consolidate functions. (Page 22, line 4, from 1/1/13 to 1/1/14; page 31, line 23, from 1/1/13 to 1/1/14; and page 32, lines 6, 12 and 17.) The technical amendment was accepted as part of the original motion. By a roll call vote, the motion passed by a vote of four in favor and with Senator Ortiz y Pino opposed.

Mary Feldblum asked which bills are expected to be presented on Tuesday and which on Wednesday. Mr. Hely noted the exchange bill and the patient protection measures were previously requested to be heard on Tuesday. Ms. Feldblum requested that the Health Security Act and the memorial to delay the waiver for innovation date be heard on Wednesday. There being no objection, those bills will be heard on Wednesday.

There being no further business, the committee recessed for the night.

**Tuesday, November 9**

**Call to Order — Welcome and Introductions**

The meeting was reconvened by the chair at 9:15 a.m.

### **HM 50 (2010): Statewide Nursing Education Plan**

Deborah Walker, R.N., M.S.N., director, Board of Nursing, Pat Boyle, R.N., M.S.N., director, Center for Nursing Excellence, Nancy Ridenauer, R.N., Ph.D., dean, University of New Mexico College of Nursing (UNM/CoN), and Pamela Schultz, R.N., Ph.D., interim dean and associate director, School of Nursing, New Mexico State University (NMSU), were invited to make a presentation on the findings and recommendations of HM 50, which called for the development of a statewide nursing education plan. Ms. Walker provided an overview of the purpose of the memorial. She thanked the members of the legislature for their strong support for nursing education, which has led to a steady increase in the number of nurse practitioners practicing in the state. She described the composition of the HM 50 Task Force, which included nurse educators, the hospital association, the Higher Education Department (HED) and the DOH. Dr. Ridenauer spoke about the New Mexico Nursing Education Consortium, which served as the core membership of the task force, meeting on a regular basis to address the goals of HM 50. The goal of the consortium is to increase the number of baccalaureate and graduate-prepared nurses to improve the quality and educational outcomes of nursing education and to increase workplace diversity. Consortium member schools represent nursing education across the state. Goals have been pursued through the development of partnerships that facilitate nurses to progress from R.N. to B.S.N. status. Dr. Schultz noted that collaborations among nursing programs have been greatly enhanced and are now well established in the pursuit of improved nursing education. Tele-education and simulation partnerships have been developed to promote opportunities for nursing education in remote and rural locations. A simulation institute was held in Las Cruces in August of this year to assist faculty and nurses in the use of simulation for clinical education. She stressed that NMSU and UNM/CoN have strengthened their collaborative efforts for efficient use of faculty and other resources and to further opportunities for B.S.N.-educated nurses becoming Ph.D. nurses. Ms. Boyle noted that many collaborative relationships have been developed through the consortium. A goal of the task force was to develop a uniform, statewide curriculum within 18 months. She identified the challenges and recommendations that emerged from the work of the task force. Recommendations included the development of policies and procedures to address administrative issues such as workload, salaries, funding challenges and core curricula among nursing education institutions and student financial aid; the development, by the HED, of a compensation package for nursing faculty; and development of a report on the economic benefit and impact of nurses in New Mexico. Legislative support was requested for health care professional work force planning statewide, including improved data collection efforts and partnerships with licensing boards to collect and analyze data.

Representative Chavez, sponsor of the memorial, congratulated the task force for the work that has been accomplished and for the report that was presented. She noted the importance of the availability of nursing education in rural areas and the importance of supporting job growth in the field of nursing because health care is one of the few occupational areas experiencing growth in the current economy. Ms. Boyle noted that rural nurses must have a different skill set than nurses in urban settings, and that one of the goals in a rural nurse residency program is to develop the skill set needed in those locations. Much of this is accomplished through tele-education and

simulation models. Representative Chavez also addressed issues of burnout and the possibility of using older nurses as faculty.

Questions and comments focused on the following areas:

- whether data are available regarding the number of students who drop out of nursing education programs and the number of nurses who leave the profession; approximately 13% of nurses leave their jobs within four years, but it is unclear how many leave the nursing profession;
- whether students are adequately prepared to expect the rigors of the professional world; modifications to the clinical training of students, particularly through simulation models, is enhancing critical thinking for student nurses; and
- whether any nursing educators have been invited to become members of the state workforce development board; no.

Senator Beffort suggested that the LHHS write a letter to the secretary of workforce solutions requesting representation of health professionals on the state workforce development board. Representative Lujan made a motion to this effect, and Senator Feldman seconded the motion. Mr. Howarth clarified that the Workforce Solutions Department (WSD) applied for a workforce planning grant, which will lead to an implementation grant through the PPACA. In the planning grant application, the WSD created an advisory committee that includes health professionals. He noted that the money to fund regional workforce development centers has been authorized but not yet appropriated in the PPACA. He suggested that the letter include a request for an update on the status of the planning grant. Senator Beffort stated her belief that the state workforce development board, with or without the planning grant, should include health professional representation. Representative Lujan offered an amendment to his motion to request a status update on the implementation of the grant, including when the nursing community would be contacted for inclusion. Senator Ortiz y Pino seconded the motion. The amendment was adopted. The original motion passed without objection.

Questions and comments were as follows:

- recognition of the budget challenges that will impact the HED, and a request that the HED focus on funding education in areas where it is known that jobs exist, such as health care education;
- acknowledgment that the nursing education community has instituted many initiatives to expand access to nursing education; however, funding will likely not be available to increase the number of funded slots for students;
- clarification regarding the funding formula for higher education; the formula is currently being reviewed and priorities reexamined;
- a reminder that a strong and consistent stand by the LHHS made a difference in the funding of social workers in years past and could have a similar effect with funding for the nursing profession;
- whether veterans who have served in the military and now are seeking to enter nursing school are being supported; yes; they can receive advanced placement and be put on a fast track for admission;

- whether PPACA funds are available to enhance faculty salaries; grants are available to develop new programs but are not ongoing sources of funding, and they probably cannot be used to increase salaries for existing faculty; and
- whether any nursing education programs include a community service component to encourage students to remain in New Mexico upon graduation; there are two loan-for-service programs that repay nursing loans upon service in a rural community.

**Reports: Substance Abuse Services for Pregnant Women (SM 19 — 2009) and Economic Security for Women and Families (HM 35 — 2010)**

Giovanna Rossi-Pressley, executive director, Office of the Governor's Council on Women's Health, began with an overview of HM 35, noting that many women are facing major challenges in balancing education, work and family. A facilitated task force examined six areas that impact the economic security of women and families, including compensation; family-friendly workplaces; benefits and supports; business development and education for women in the work force; education for future workers; and dependent care for working families. Lee Reynis, UNM Bureau of Business and Economic Research, spoke about the gains made by women in New Mexico in improving wages and economic security; however, earning gaps remain for women in the workplace. Ms. Rossi-Pressley identified the short- and long-term policy goals that arose from the work of the task force in the six categories of the study. On a short-term basis, the task force recommends establishment of an advisory group to report regularly to the legislature on this topic and the development of a program to reward family-friendly businesses in both the public and private sectors. She briefly highlighted several long-term goals that are listed in the report.

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

- an expression of thanks for the work of the task force;
- an observation that the data may change with the publication of census data;
- recognition that cuts to the temporary assistance for needy families (TANF) program and child care reimbursement rates constitute a crisis with no easy solution in the upcoming legislative session; disenrollment of children from child care is anticipated without additional funding;
- recognition that 24,000 children are currently receiving subsidized child care services per month, and 3,900 children are on the waiting list; a request was made for the number of children who will be disenrolled with program reductions; and
- recognition that reimbursement reductions may result in daycare centers closing and many other trickle-down effects.

Susan Loubet, New Mexico Women's Agenda, noted that the WSD now has more available data to inform employers and to promote more equitable economic policies for women and families.

Ms. Rossi-Pressley described the findings and recommendations that arose from SM 19. This task force worked for two years to address the issues and problems of pregnant women with substance abuse problems. A comprehensive state plan was developed with recommendations, including reducing unnecessary referrals to the Children, Youth and Families Department (CYFD), increasing home visitation, increasing access to substance abuse treatment and family

planning services, increasing access to supportive services, increasing treatment over incarceration for non-violent drug-related crimes, education to change attitudes about substance abuse and increasing research and data collection. Angie Vacchio, co-chair of the task force, spoke about the need for proactive systems to ensure that high-risk women receive prenatal care and treatment for their substance abuse issues. Currently, the system is reactive and expensive and results in many women with substance abuse problems being incarcerated and separated from their children. She stressed the importance of increased availability of contraception when requested.

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

- clarification regarding federal legislation that requires states to report drug use as child abuse, and the requirement to adopt this federal language to receive federal funding; the definition in federal law is misleading; the task force is working to provide education regarding the real impact of the federal law;
- recognition of the critical need for women to be able to self-disclose an addiction without fear of reprisal to avoid the birth of addicted babies;
- an observation that the Commission on the Status of Women is being considered for sunset or consolidation by the GRTF;
- congratulations on the comprehensiveness of the report;
- clarification regarding the number of women in New Mexico who were addicted and pregnant teenagers; there is a very high correlation between addicted teens and addicted adults; more treatment options are needed to prevent addicted teens from becoming addicted adults;
- whether there are treatment options available for addicted adolescents; very few; and
- recognition of the importance of prevention and safe after-school programs to keep adolescents from becoming addicted in the first place; the relationship between the need for family-friendly workplaces and this problem was identified.

Francis Mulligan offered public comment supporting the work of the task force and highlighted the unique needs of individuals enrolled in a methadone program.

Calvin Boyd, M.D., who is currently pursuing a master's degree in public health at UNM, provided historical perspective on cocaine use in St. Paul, Minnesota, among pregnant women. Efforts to provide an avenue for women to self-disclose their addiction in Minnesota failed to pass the legislature and generated legislation of more punitive measures. He recognized that the effort is likely to face an uphill battle in New Mexico, and he supported the recommendations of the task force.

#### **Update: Federal High-Risk Pool**

Ms. Armstrong, executive director, NMMIP, provided an update on the implementation of a federal high-risk pool, now called the preexisting insurance program (PCIP), comparing and contrasting it to the well-established NMMIP. The establishment of a federal high-risk pool was the first provision of the PPACA to be implemented in New Mexico, and it now has approximately 150 enrollees. It is ultimately projected to serve 1,000 enrollees, capping enrollment in 2012. New Mexico is allocated \$37 million through the life of the program, which will end in 2014 when the PPACA is fully implemented. Ms. Armstrong highlighted the differences in eligibility

requirements between the NMMIP and the federally funded PCIP. New Mexico elected to offer low-income subsidies to PCIP enrollees, as is the practice in the NMMIP. Numerous other efforts were implemented to ensure that the two risk pool programs were similar and easy for potential enrollees to understand and access. She noted that although enrollment in PCIP around the country has been slower than expected, in New Mexico, enrollment is close to what was projected, perhaps due in part to the low-income subsidies that are available here.

Committee members had questions and comments in the following areas:

- clarification regarding out-of-pocket costs in each pool; the NMMIP strives to keep them similar;
- whether the coverage through the pools is comparable to what can be obtained on the private market; yes;
- clarification regarding the standard risk rate; it is what a healthy individual would have paid for a comparable product in the private market; the federal PCIP requires premiums to be capped at 100% of the standard risk rate;
- clarification regarding the use of state funds to offer subsidies to low-income individuals; the federal government denied New Mexico's request to use federal funds to offer low-income subsidies, so the NMMIP board elected to use state funds to provide that discount;
- an observation that funds unspent in other states for the PCIP could be diverted to New Mexico;
- recognition that assessments on insurance plans, and the federal allocation, cover the difference in the cost of coverage and the premiums paid by enrollees;
- whether other states have state high-risk pools; 35 states have them, although in many states, the premiums are unaffordable; 21 states elected to use their high-risk pools to implement the PCIP;
- clarification regarding the ultimate disposition of the NMMIP and the PCIP; the PCIP will be abolished when the PPACA is fully implemented; the NMMIP may continue to exist for a while longer;
- whether affordable plans will be available through an exchange for individuals who are now helped by the premium subsidies in the NMMIP; yes;
- concern that the NMMIP, a successful system of covering the uninsurable, may be at risk with the implementation of the PPACA;
- whether an exchange could offer a high-risk policy; potentially, yes, through the NMMIP; and
- clarification regarding the ultimate disposition of the premium tax credits and assessments that insurance plans pay to the NMMIP when the PPACA is implemented; it is possible that the assessments will be used to fund the exchange.

### **Treatment Foster Care Legislation**

Representative Chasey stated that her co-presenter, Michael Hart, was unavailable today. Additionally, there is no new proposal to offer. Julianna Koob was available to answer questions on the issue. Representative Chasey noted that the state has a legal obligation to any child in the state's custody. Treatment foster care children are largely cared for under private contractual situations, thereby shielding the state from the potential risk of lawsuits. Had the children been in

foster care through the CYFD, the state would be held liable and the children offered greater protection. Representative Chasey carried legislation in 2009 that attempted to address this issue. A possible solution is to require treatment foster care providers to obtain insurance for intentional acts of abuse. Anna Otero Hatanaka, Association for Developmental Disabilities Community Providers (ADDCP), testified that many years ago there was a lawsuit against a community provider due to a disagreement between the family and the provider regarding the needs of a developmentally disabled child. The courts decided that DDCPs can be held liable. Ms. Koob stated that the real problem is that treatment foster care children and children who are in foster care through the CYFD are being treated differently. The legislature may wish to clarify that there is no intent to treat abused children differently. Questions were asked about the background checks to which treatment foster care providers are subjected. The level of skill is higher than foster parents. Ms. Koob will provide clarification.

### **My Community Task Force: HM 49 — 2010**

Leora Yeager, consultant, provided background information about My Community, New Mexico (MCNM), its partnership with the DOH and a task force that was convened to assess the benefits of MCNM as the state's comprehensive, bilingual resource directory for underserved populations. Hundreds of organizations are currently collecting information, and millions of dollars are spent each year to collect this information. MCNM has a free, online database that could be better used to consolidate and disseminate information. Ms. Yeager identified numerous partners with which MCNM collaborates, including the New Mexico Coalition to End Homelessness and the Indian Affairs Department. Plans are under way for adding more partners, especially in research and training organizations, and developing a community calendar, customized reports and linkages to other resources. Through surveys, the task force identified valuable information about the needs for community data collection efforts, highlighting the need to avoid duplication of efforts and costs. Seventy-eight percent of community organizations with data needs have stated that budget cuts negatively impacted their ability to collect data. Most organizations are actually collecting very similar information. MCNM is seeking legislative support to encourage state agencies, committees and contractors to utilize them in collecting and sharing information in support of underserved New Mexicans. MCNM is hoping for in-kind support from state agencies. Information entered into a centralized database would belong to the state and, therefore, be protected from loss. As an example, managed care contractors could be required by contract to utilize this database. Additionally, MCNM is seeking funding in state agency budgets to cover the cost of data entry customization tools and to provide technical support.

Venice Ceballos, community health worker trainer, noted that a big role of the community health worker is to link clients to services. Wider use of MCNM would assist community health workers to be much more efficient in assisting clients to find services.

Madeline Krasner, Children's Medical Services, is a social worker involved in serving children with special medical needs. Centralized data such as this would make her job of making appropriate referrals easier. She hopes this resource directory grows in partnerships.

Committee members had questions and comments in the following areas:

- agreement that data required to be collected under a state contract should belong to the state;
- recognition that the work of MCNM is very important and should be supported; and
- clarification regarding how private information is protected in the database.

Ms. Yeager closed by saying that legislative support is critical to expanding this effort statewide. No money is currently being requested, as the database can charge for its services.

### **Ending Child Homelessness in New Mexico: HM 7 — 2010**

Representative O'Neill made introductory comments about the importance of addressing this topic. Kim Cobbs, bureau chief, Community-Based and Behavioral Health Services Bureau, CYFD, introduced Wendy Wintermute, statewide coordinator, New Mexico Campaign to End Child Homelessness. The issue of child homelessness generates great support from all quarters once people become aware of the problem. Between 2008 and 2009, over 14,500 children and youth in New Mexico were homeless. Families with children now comprise one-third of all the homeless people in the state; 40% of the homeless are under the age of six. It is known that the current number of homeless children is already larger than 14,500 and will grow this year. The impact of homelessness on children is traumatic and leads to more trauma. Ms. Wintermute presented a set of recommendations to end child homelessness in New Mexico, beginning with a comprehensive, coordinated approach among state agencies, services providers and community leaders. Legislative support is sought for a stable, fully funded continuum of services for children and their families, including housing, early childhood development and care, education and health care, and for the establishment of a New Mexico interagency council to end homelessness.

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

- information was provided about Cuidando Los Ninos, a program that serves the needs of 500 homeless children with a budget of \$1.2 million to \$1.4 million;
- an observation that 20 times that amount would be needed to meet the needs of 14,500 children; it would be much less expensive to prevent homelessness in the first place;
- clarification regarding the cost to provide services for the children who are currently homeless; the amount is not known; however, a council on homelessness could develop and identify that figure;
- clarification regarding the cost per child of caring for a homeless child and whether or not they are in school; the number is not known; and
- whether graduation rates for homeless children is known; no.

Hank Hughes, New Mexico Coalition to End Homelessness, testified that he believes the cost will be less than expected.

A quorum being present, a motion was made and seconded to approve the minutes for the October meeting; the motion passed.

### **Discussion and Approval of Legislative Endorsements**

Mr. Hely directed the committee to a bill to enact the Health Care Work Force Data Collection, Analysis and Policy Act (.182459.2), a new version of which was distributed. Dr. Dan

Derksen was present to answer questions. Dr. Derksen noted the New Mexico Medical Society is in support of the bill, and that a planning grant for work force development awarded under the PPACA should fund this effort. The bill requires the DOH to collect specific data from professional licensing boards. It will facilitate the collection of real-time data to be used in planning and implementation of efforts to meet the current and future health professional work force needs of New Mexico.

Senator Feldman moved and Representative Lujan seconded a motion for adoption of the bill, with an amendment for a technical correction. The motion was endorsed unanimously.

An observation was made regarding the current difficulty of licensing health care providers. A concern was expressed that this requirement could further delay the licensing of needed practitioners in the state. An additional concern was expressed that a provider who declines to fill out the survey required in this bill would not be licensed.

Mr. Hely then described a bill that amends the existing law regarding medical homes to require managed care organizations that contract with Medicaid to include specifications for funding and tracking the implementation of medical home models of care (.182663.2).

Questions and comments were offered as follows:

- clarification regarding the HSD's requirements in this bill; the HSD is requested only to make contract specifications regarding medical home implementation; it puts current practice in statute;
- whether other health plans besides managed care will be subject to this requirement; no;
- whether the bill would require OptumHealth to put all its discretionary funds into core service agencies; no, the bill does not specify amounts, and it is not clear that core service agencies qualify as medical homes;
- whether the bill, as written, would apply to behavioral health services; yes, to the extent that they provide primary care medical homes or a component of the health commons model; and
- an observation that home care is added to the list of providers that can qualify as medical homes.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion to endorse the bill. The motion passed without objection.

Mr. Hely described a bill directing the secretary of human services to establish an accountable care organization task force in Medicaid, the state children's health insurance program and the state coverage insurance program in Hidalgo County (.183222.2). Charlie Alfero, executive director, Hidalgo Medical Services (HMS), provided background information about accountable care organizations, which are intended to link health care provider reimbursement to quality outcomes. HMS wants to work with Medicaid and Medicare to design the features and develop a health care delivery system model that will work in New Mexico. HMS has been engaged in similar projects for the last two years and has demonstrated an ability to reduce the cost

of care for individuals with chronic illnesses through care management. The bill makes no general funding request; funding would come through managed care organization contract requirements to use discretionary funds to fund the task force. Mr. Hely noted that HMS would assume risk under the model.

Questions and comments from committee members covered the following areas:

- a statement of support for this innovative approach;
- clarification that the model is intended to include primary care; it would include primary medical, dental and other services; patients are referred to specialists, so by extension they would be included as well;
- concern that a system not be developed that discourages physicians from accepting the sickest patients; the model allows the full costs of all levels of care to be delineated and accounted for; the model is based on best practices;
- clarification regarding the assumption of risk by the accountable care organization; the development of the model would identify how that would occur;
- whether there is grant funding available in the PPACA to fund such an effort; the demonstration projects funded by the PPACA are for implementation, not planning; and
- an expression of thanks and appreciation to Mr. Alfero and the services and work of HMS.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion to endorse the bill. The motion passed without objection.

There being no further business, the committee recessed for the night.

### **Wednesday, November 10**

#### **Call to Order**

The meeting was reconvened by the chair at 9:30 a.m.

#### **Discussion and Approval of Legislative Endorsements**

Kim Bannerman, staff attorney, LCS, described a bill (.182632.2), to enact the Health Care Provider Protection Act. This act provides protections for health care providers working with managed care plans, including provisions addressing reimbursement, recoupment of payments, technical assistance and training, credentialing and re-credentialing. The ombudsman provision in the act is closely modeled after legislation previously introduced in 1999, which passed but was vetoed by Governor Johnson. Senator Ortiz y Pino, sponsor of the measure, noted that the bill does not make any changes to the Patient Protection Act. The bill has been reviewed by a variety of interested parties, including the Insurance Division of the Public Regulation Commission (PRC/DOI), the New Mexico Medical Society, the New Mexico Hospital Association and other advocates.

Question and comments were made as follows:

- whether the ombudsman office is a duplication of the office of managed care within the PRC/DOI; this bill would fund that office, provide protections and expand the authority of that office;
- clarification regarding the funding mechanism; it is funded through a surcharge paid by insurance plans;
- whether there is any potential conflict between this act and the PPACA; according to the PRC/DOI, probably not;
- clarification regarding who would actually be the ombudsman; that person is designated by the superintendent of insurance;
- clarification regarding the location of the fund; the state treasury;
- clarification regarding how much, in dollars, the assessment represents; it is based on 1% of the annual insurance premium, which could be as small as \$10.00 per year; and
- concern that accumulated fees and assessments will translate into increased premiums for consumers.

Senator Feldman moved endorsement; Representative Lujan seconded the motion. The motion was unanimously adopted.

Ms. Bannerman then described a bill (.180628.1) that mandates insurance coverage for amino-acid-based nutritional formulas that are exempt from federal Food and Drug Administration nutritional labeling requirements. These formulas are expensive and are necessary treatment for the management of specific disorders. Surrounding states, including Texas and Arizona, already mandate this coverage.

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

- clarification regarding the number of children who need the formulas; according to the Kaiser Family Foundation, a very small number of children, perhaps between 100 and 600 in the state;
- whether the PPACA prohibits states from adopting new insurance mandates; no; however, state mandates that exceed the essential benefit package that are offered through the exchange must be paid for by the state;
- recognition that the essential benefit package required by the PPACA has not yet been determined;
- whether this is already a benefit of Medicaid; yes;
- whether the formulas require a prescription; no; however, in order for insurance to pay for a formula, a physician would have to write an order indicating it is medically necessary;
- whether the formulas are covered by the Women, Infants, and Children program; yes, up to 185% of the federal poverty level; and
- concern regarding adding another mandate and the potential increased premium cost.

Doris Husted, public policy director, ARC of New Mexico, stated that coverage for this already exists in statute; it was passed in 2003. Based on that information, bill endorsement will be deferred until the drafter can review the existing statute.

Mr. Hely described a bill (.182696.2SA) amending the Motor Vehicle Code to provide for a fee to be assessed on driver's license renewals to fund the Disability Fund, which funds disability-related activities. Jim Parker, director, Governor's Commission on Disability (GCD), identified some of the purposes to which such funds could be used, including home modifications, guardianship, sign language interpreters and accessible rural transportation. This bill was previously presented to the Disabilities Concerns Subcommittee of the LHHS.

Questions and comments were offered as follows:

- whether the bill would add an administrative burden; no; the GCD would establish an oversight committee to determine and oversee the uses of the funds;
- clarification regarding the Motor Vehicle Suspense Fund because a portion of the fee goes to that fund; it is used by the Motor Vehicle Division (MVD) of the Taxation and Revenue Department for administration;
- how much the fee is expected to raise; approximately \$10 million, \$6 million of which would go to the Disability Fund;
- a suggestion that the amount of the fee be reduced, and either no amount or a much smaller amount be given to the MVD for administration; support for this was expressed by several committee members;
- an observation that the Disability Fund exists but has no money and no mechanism to put money into it; this bill provides such a mechanism and would fund essential activities and services;
- clarification regarding a previous measure that provides services for people living with disabilities that is also unfunded; according to Secretary Falls, it is the People with Disabilities Act; and
- clarification regarding the way in which funds are to be distributed and by whom; the fund is not managed by the MVD.

Senator Feldman moved and Senator Ortiz y Pino seconded the motion to endorse the bill. After discussion regarding the amount proposed to go to the Disability Fund and the amount to go to the Motor Vehicle Suspense Fund, Senator Feldman withdrew her motion to endorse the bill. Representative Lujan moved that the bill be endorsed, with an amendment to reduce the amount to go to the Motor Vehicle Suspense Fund from \$2.00 to \$1.00 with \$4.00 to go to the Disability Fund. Senator Feldman seconded the motion. Senator Adair opposed the motion, and Senators Ortiz y Pino and Feldman and Representatives Picraux and Lujan supported it. The motion was adopted. Senator Adair noted the merits of the bill; however, he feels the budget process should reflect priorities and include services for the disabled and that services should not be funded through expansions such as this. It is not correct to assume that all good things should be funded.

Mr. Hely next presented a new version of a bill (.183271.1) dealing with the rate review process for health insurance. It establishes greater transparency and requires a greater burden of proof by clear and convincing evidence to justify premium rate increases requested by insurance companies. Mr. Hely compared and contrasted the current process with the new standards proposed in this bill. This bill states that the superintendent of insurance shall disapprove a request for an increase if certain conditions are not met or if the increase is not found to be actuarially sound.

Questions and comments by committee members covered the following areas:

- an observation that the bill is modeled after language in an application the PRC/DOI submitted to the federal Department of Health and Human Services for a PPACA grant and that the bill has been reviewed by the PRC/DOI;
- whether the solvency of the insurance companies is ensured in this bill; yes;
- whether insurance companies would be penalized by a decision to withdraw their business from New Mexico due to these new requirements; no;
- a suggestion that the bill requires that insurance companies demonstrate that they are following existing insurance mandates;
- agreement that insurance companies may not be following current mandates and that the PRC/DOI should provide better oversight over this;
- clarification regarding the role of the Office of the Attorney General (OAG) in representing policyholders in disputes and whether OAG representation of individual policyholders violates the anti-donation clause; the OAG would only represent a class of policyholders and not individuals;
- whether the OAG also has the responsibility to represent the state and the superintendent of insurance; that conflict would have to be resolved;
- clarification regarding how classes are established; by the OAG;
- clarification regarding the requirement to provide information on marketing when requesting a premium increase, and whether this information should not be protected as confidential;
- concern regarding the requirement to disclose business expenses generally considered to be proprietary;
- an observation that not all requests for rate increases represent profiteering; there was a concern that this bill would eliminate competition in the market;
- whether the provisions of this bill would affect Medicaid contracts; possibly;
- an observation that Medicaid and other publicly financed insurance coverage plus the uninsured constitute approximately 85% of the population of the state; this bill unfairly targets insurance companies covering only 15% of the population; and
- recognition that the bill is aimed at the individual and small group markets that have sustained 75% increases over the last three years.

Senator Ortiz y Pino moved and Senator Feldman seconded a motion to endorse the bill. Clarification was sought regarding limiting the amount of rate increase requests to the medical price index; the sponsor requested that language be included to keep rate increases within a range of affordability. The motion to endorse was approved by a vote of five to one, with Senator Adair opposed.

Mr. Hely directed the committee members to the Health Security Act (.182913.3), which provides for a system for comprehensive statewide health care coverage, health care planning and cost-containment measures. It directs the LFC to develop and make recommendations on financing of the plan. If it is found to be feasible to be implemented, a commission would implement the act. The bill includes a November 2012 implementation date, but with a five-year phase-in plan for implementation. Comprehensive benefits are identified in the bill, as is a plan for collecting premiums, which would be maintained in a fund. The commission created by the

bill is also charged with data collection duties. A prescription drug committee would develop a formulary of covered prescription drugs. The commission is charged with submitting waiver requests to the federal government to accomplish several of the provisions of the act and to allow coverage for individuals covered by the federal Employee Retirement Income Security Act plans. Agreements with the HSD would be necessary to allow the Health Security Act to provide Medicaid coverage.

Committee members had questions and comments as follows:

- whether this represents an approach of conducting health care business that excludes the governor; no; a nominating committee would recommend members of the commission that would then be appointed by the governor;
- recognition that this bill reflects a paradigm shift that is based on a citizen's board, rather than a state agency or the governor; it has legislative and executive checks and balances;
- clarification regarding the number of people who would be covered; it is not specified;
- clarification regarding the number of commission meetings; at least monthly;
- whether passage of this bill precludes proceeding on establishing a health insurance exchange; no; the Health Security Act would require the passage of a waiver and demonstration that this approach meets the goals of the PPACA; and
- recognition that it is impossible to know what the new Congress will do relative to the PPACA.

Representative Lujan moved and Senator Ortiz y Pino seconded a motion to endorse the bill. Senator Adair opposed the motion; five voting members voted in favor. The motion carried.

Mr. Hely next presented a memorial requesting the New Mexico congressional delegation to actively seek to amend the PPACA to remove the 2017 date for states to request a waiver of innovation to implement alternatives to a health insurance exchange (.183089.1). Currently, the PPACA is implemented, along with exchanges, in 2014, but waivers of innovation may not be sought until 2017.

Committee members had questions and comments as follows:

- whether the congressional delegation has been queried about its support of this proposal, and what the reaction has been; the delegation and Congress in general have been very supportive; U.S. Senator Ron Wyden is introducing language to remove the 2017 date; and
- clarification regarding conditions that must be met to have a waiver approved; budget neutrality and coverage of the same number of people with comparable coverage.

There being no quorum present, no action was taken.

Mr. Hely presented .183033.5, the health insurance exchange bill. He provided background information regarding the PPACA requirements for exchanges. He identified required elements of a health insurance exchange, as required by the PPACA. He noted the bill addresses

the recommendations of the SJM 1 HCRWG for New Mexico to have an exchange, for the exchange to be operated by a not-for-profit, quasi-governmental entity, for the individual market and the small business market to be administratively combined in one exchange and for the exchange to have robust authority and act as a market regulator rather than restricting its activity to merely organizing and distributing insurance products.

Senator Feldman made a motion to endorse the bill; the motion was seconded by Senator Ortiz y Pino. Technical amendments were offered and accepted by the committee.

Questions and comments from committee members covered the following areas:

- whether the bill provides for New Mexico to offer a basic health plan; no; there was no direction from the SJM 1 HCRWG to do so; Secretary Falls noted that the state should analyze the pros and cons of offering a state basic health plan; Mr. Hely noted the exchange is required to enroll people in state and local health plans, so if New Mexico chooses to offer one, the exchange would have to offer it as well; the bill does not provide for the exchange to create the basic health plan;
- clarification regarding whether individuals must be enrolled in Medicaid by the exchange; Sec. 1311, D4f of the PPACA was read; exchanges must screen and enroll eligible individuals in Medicaid;
- recognition that many details still must be clarified by the federal government;
- clarification regarding the inclusion of pediatric dental benefits; it is required by the PPACA;
- clarification regarding the requirements for health plans to participate in the exchange in order to do business in New Mexico;
- concern regarding the cost of providing access to basic benefits required in the bill and in the PPACA;
- concern that the PPACA only requires a state to establish a framework at this time and that this bill explicitly creates an exchange absent rules and guidance from the federal government;
- an observation that now the federal government is recommending an exchange be up and running by October 1, 2013;
- Secretary Falls noted that information regarding the business rules of an exchange are expected to be available by early 2011;
- whether the bill is more detailed than what was recommended by the SJM 1 HCRWG; no;
- an observation that the bill is actually not overly detailed for a complex health care bill; much of the language is general and "boiler-plate";
- support for the concept of an exchange and a general willingness for bipartisanship efforts in establishing an exchange;
- clarification that the bill does not preclude cooperation with other states in a regional exchange;
- whether the committee desires to change the date of the creation of the board to reflect the emergency clause;

- whether the Native American community is being consulted in establishing an exchange; Secretary Falls reported that the HSD held a tribal consultation and discussed many options that are open to tribes; and
- an observation that this bill reflects the principles recommended by the SJM 1 HCRWG as directed by the LHHS at the October meeting; other provisions in the bill are either in the PPACA or in a model bill developed by the National Association of Insurance Commissioners.

Technical amendments were offered to align establishment of the board of the exchange with the emergency clause and to correct a few typographical errors. Senator Feldman moved and Senator Lopez seconded a motion to adopt the recommended amendments. Senator Adair opposed the motion; five voting members voted in favor. The amendments carried. Senator Feldman moved endorsement of the bill as amended and the motion was seconded by Senator Ortiz y Pino; Senator Adair and Senator Lopez opposed the motion. Representatives Picraux and Lujan and Senators Feldman and Ortiz y Pino voted in favor of the motion. Two voting members were absent; the motion carried.

A quorum being present, Senator Ortiz y Pino moved and Representative Lujan seconded a motion to endorse the memorial urging Congress to delay the date for submission of a waiver of innovation. Senator Adair opposed the measure. Senators Feldman, Lopez and Ortiz y Pino and Representatives Picraux and Lujan voted in favor of the motion. The motion carried.

Mr. Hely noted that a bill endorsed at the October meeting to align the New Mexico Insurance Code with insurance requirements in the PPACA violates the Constitution of New Mexico, which prohibits legislation that incorporates federal law by reference. Other states can do this type of bill; however, the Constitution of New Mexico precludes this action. Senator Ortiz y Pino noted that Ms. Bannerman is still researching the bill on nutritional supplements.

Senator Feldman thanked the staff and committee for their hard work during the interim. Representative Vaughn was again thanked for her participation on the LHHS. Representative Picraux thanked all members. There being no further business, the committee was adjourned at 1:15 p.m.

**FIRST MEETING  
of the  
DISABILITIES CONCERNS SUBCOMMITTEE  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**August 30, 2010  
Room 307, State Capitol  
Santa Fe**

The first meeting of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee (LHHS) for the 2010 interim was called to order by Senator Nancy Rodriguez, chair, on Monday, August 30, 2010, at 9:15 a.m. in Room 307 of the State Capitol in Santa Fe. She announced that the meeting would be webcast (audio only) on the internet.

**Present**

Sen. Nancy Rodriguez, Chair  
Sen. Rod Adair  
Rep. Keith J. Gardner  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino (for  
    Sen. Mary Kay Papen)  
Rep. Danice Picraux

**Absent**

Sen. Mary Kay Papen

**Staff**

Michael Hely, Staff Attorney, Legislative Council Service (LCS)  
Karen Wells, Researcher, LCS  
Zelda Abeita, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts and written testimony are in the meeting file.

**Monday, August 30**

**Welcome and Introductions**

Senator Rodriguez reminded committee members that the subcommittee was created pursuant to a bill that she sponsored. She recognized Nannie Sanchez and Rosemary Sanchez, who were instrumental in passage of the bill, and introduced members of the committee and staff.

**Evaluation of the Developmental Disabilities (DD) Waiver Program: Report of the Legislative Finance Committee (LFC)**

Pamela Galbraith, LFC program evaluator, provided background information regarding the DD waiver program report and noted that it was originally presented to the LFC in June 2010. Following that LFC presentation, the Department of Health (DOH) has taken actions that will be reported by Secretary of Health Alfredo Vigil. Ms. Galbraith provided historical background on

the establishment of the DD waiver and identified appropriations from 2006 to the present. At the time the study was conducted, the DD waiver was serving 3,792 individuals, with 4,555 individuals on a waiting list. She highlighted issues and recommendations from the report. First was the issue of unsustainable funding due to a critical budget situation in the state, declining federal funding and the rising cost of services per individual. Key to this finding is a determination that the DOH lacks an adequate assessment tool to evaluate properly the needs of clients. Additionally, the DOH has poor access to real-time information. Compared to other states, New Mexico's distribution of client acuity is skewed, with New Mexico participants receiving assessments that recommend a far higher level of care and support than the levels of care and support indicated in other states. The number of individuals being added to the waiting list far outpaces allocations to the DD waiver. The LFC recommended that the DOH complete a cost-benefit analysis of the purchase of an evidence-based assessment tool, integrated information system and rate validation study. The staff at the DOH and LFC are working together to address these issues and recommendations. Ms. Galbraith noted that the report found that increased program oversight, improved cost management and benefit redesign will be necessary to maintain or expand the DD waiver. The report identified certain provider outliers whose services exceed national norms. In general, New Mexico provides therapy services to approximately 70% of its clients, while other states, on average, provide 25% of their clients with therapy services. A possible conflict of interest exists between case management agencies and service provider agencies in some situations, suggesting a need for closer surveillance of these arrangements. The LFC also recommends a closer look at the provision of support services, home modifications and goods and services, all of which have seen dramatic cost increases in recent years. Ms. Galbraith commented on the cost of the *Jackson v. Ft. Stanton* lawsuit and the work by the DOH to resolve the lawsuit. She noted that it is a complicated process. Finally, she noted that the DOH has a highly structured quality monitoring system and has received very favorable national rankings for outcome performance. Enhanced reporting to the legislature and the public could help build on positive benefits of the program.

Secretary Vigil testified that the DOH is trying very hard to increase quality and access and to resolve the *Jackson* lawsuit in the face of budget constraints. He commented that the program is dynamic, changing all the time. Realistically, the cost of the program cannot be reduced all at once, but efficiencies can be put in place that will have a positive effect over time. The DOH is making in an aggressive effort to disengage itself from the *Jackson* lawsuit and has made significant progress toward completing a settlement.

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

- clarification regarding the waiver options available to potential clients;
- clarification regarding Mi Via, a self-directed waiver program that is jointly managed by the DOH and the Aging and Long-Term Services Department (ALTS);
- clarification regarding who makes the care decisions if clients cannot make their own decisions;
- ways in which the waiting list is managed; each region has a separate waiting list that is managed on a first-come, first-served basis; this is done to ensure that rural areas have reasonable access to the waiver;
- clarification regarding the Money Follows the Person in New Mexico Act, which is an approach to ensuring access to home and community-based services that is not, in itself, a waiver program;

- whether clients are at risk of being thrown off the waiver if the cost is too high; CMS could intervene with the department, but individual clients are not at risk;
- clarification regarding family-based versus agency-based services; services are available through family-living, community-living and supported-living settings; all services are available to any client who is on the DD waiver;
- whether there is any indication of which setting is the most expensive; supported living is more expensive than independent or family living, but the figures do not include other services that a client receives;
- whether the LFC report suggests that services that are not needed are being approved in care plans; the complexity of the program makes the question difficult to answer; addressing any one component of the program would make only a small difference; multiple factors must be addressed;
- the extent to which administrative expenses and bureaucracy are factors; fragmentation and duplication do contribute to the overall cost of the program;
- clarification regarding the role of Molina Healthcare; it is contracted to develop initial care plans for clients, which plans are then intended to be approved by the client's case manager;
- clarification regarding the role of Affiliated Computer Services (ACS); ACS is the fiscal agent that processes claims for payments;
- clarification regarding the process for writing the new DD waiver, which is being written jointly by the DOH and the Human Services Department (HSD);
- clarification regarding the roles and responsibilities for resolving the *Jackson* lawsuit; an observation that the addition of a community monitor seems to have resulted in a vastly increased cost to the suit;
- an observation that the cost of the *Jackson* lawsuit is unsustainable, and the lawsuit is composed of many elements that have little or nothing to do with ensuring quality care to clients;
- a request for a list of remaining elements of the lawsuit that still require disengagement; the DOH will provide the list;
- an observation that this lawsuit has lasted for 23 years, while other states in similar situations saw resolution in an average of eight years;
- a request for monthly, detailed reporting on this topic; a list of components to be resolved can be provided monthly, the request was made for this report to be provided by the November meeting of the LHHS;
- whether people on the DD waiting list are receiving any services; Secretary Vigil indicated that the answer is yes, but these are not DD waiver services; there is a process by which a person with critical needs can get on the waiver quickly;
- recognition that some individuals on the waiting list may have dire needs of which there is no public knowledge; and
- clarification regarding the process of reporting of abuse, neglect and exploitation of individuals on a waiting list.

Nannie Sanchez and Rosemary Sanchez, advocates; Larry Maxey, director of Alegria Family Services; and Carol Romero, executive director, Advocacy Partners, LLC, made remarks regarding the DD waiver program. Nannie Sanchez testified that, as an advocate for developmentally disabled individuals, she is interested in maintaining quality of life and support

for individuals to remain in the community. She fears that the DD waiver program will sustain cuts and that the DOH will require waiver recipients to live in group-home settings, which she said would be an abrogation of the recipients' freedom to live as they choose. She voiced further concerns that the rewrite of the waiver will reduce access to needed services. The DD waiver is a good program and should be maintained. She supports continued availability of community services, group services and other elements of the waiver. Although not everyone needs all services, each of the services is important for some people and helps people to remain as independent as possible.

Rosemary Sanchez expressed the concerns of many regarding anticipated cuts in the DD waiver, describing the impact should such cuts be made. She testified that the DOH is reluctant to share information and questioned the education and training of staff. Plans of care should be developed with individual needs in mind and with the assistance of service providers. She feels extensive monitoring of the program and more accountability for outcomes should be accomplished.

Mr. Maxey noted that he is the director of a small agency in Albuquerque. He shared the concerns of Ms. Galbraith regarding family living and supportive living. He believes that the state is receiving value from family-living services being provided. Of the 1,600 people receiving family services, 600 to 700 people are at the highest acuity level. He believes that the family services they are receiving save the state a significant amount of money. If these recipients did not receive family-living services, they would need residential services. He described "family living" as services provided in a small group-home setting where a caregiver, usually a parent, lives with the individual in need. Supported-living services serve a larger number of individuals, and the caregivers work on a shift basis. The services are very similar; however, family living is more cost-effective. Proposed and actual cuts disproportionately affect family-living providers. Cuts should be equitable and across the board. He identified case management as a core service. He advocates for in-state accomplishment of system monitoring rather than outsourcing such activities.

Ms. Romero identified herself as a mother and a guardian of adults who receive services from the DD waiver and whose needs are unique. She described the value of the DD waiver and the successes each recipient has experienced due to the support services that the waiver provides. Intensive support is needed for clients who are able to live independently. She summarized her remarks by noting that clients and their families are strong advocates, and they desire a voice to be heard as the waiver is rewritten.

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

- whether any recommendations could be offered regarding the Molina and ACS contracts; both are recognized as additional administrative layers, but they may be providing necessary services; delays in payment can be significant through ACS, especially when a client is in transition from one agency to another; and
- recognition that managed care organization capitation rates over time appear to have cost the state more than \$91 million in reimbursement for services that were never rendered.

## **HM 56: Consolidated Caregiver Training**

Secretary Vigil provided an update on HM 56, relating to consolidated training of caregivers. Jennifer Thorne-Lehman, deputy director, Developmental Disabilities Supports Division, DOH, explained that the DOH does not have the resources to create a task force as requested in the memorial, but it does work closely with experts in developing a training system for caregivers. She described the statewide system of training that the DOH conducts. The curriculum in colleges does not at this time meet the requirements of disengagement required by the *Jackson* lawsuit.

Subcommittee members had questions and comments in the following areas:

- whether the sponsor of the memorial is satisfied with the DOH contention that the DOH cannot meet the requests of the memorial; the DOH met with the sponsor and the advocate behind the memorial and answered their concerns; and
- clarification regarding the extent and nature of DOH caregiver training; the DOH has researched national trends and best practices for curricula; training is personalized and tailored to the needs of the client.

## **Governor's Commission on Disability (GCD) — Recommendations and Funding Issues**

Jim Parker, director, GCD, testified that the GCD is requesting the establishment of a disability fund to be funded with a \$5.00 add-on to the motor vehicle registration fee. The fund could be used for a variety of purposes, including home modifications, service and support personnel, accessible rural transportation, an adaptive driving program, reasonable accommodations in employment settings, guardianships, sign language interpreters, the New Mexico Conference on Aging, the Southwest Conference on Disability, Freedom Day (to promote disability awareness), centers for independent living, the state Independent Living Council, base funding for the GCD and the New Mexico disability history project. Subcommittee members reviewed bill drafts amending sections of the Motor Vehicle Code to establish the disability fund and to implement various fees, including initial applications and applications for replacement of handicapped parking placards, that would be distributed to the disability fund. A portion of the funding would cover the administrative costs of manufacturing the placards.

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

- whether the Commission for the Deaf and the Commission for the Blind are equally treated in these requests; Mr. Parker answered that the Commission for the Blind is eligible for a federal match for which the Commission for the Deaf is not eligible;
- recognition of the importance of independent living centers; a number of these centers are beginning to enter the housing market;
- clarification regarding the GCD; it is a statutory commission;
- whether efforts have been made in the past to obtain direct appropriations to the GCD; the request for the establishment of a fund is for unmet needs that have not received appropriations through general funds or that have received only limited funds;
- clarification regarding the amount the fund would generate; Mr. Parker indicated that he expected that the fund would generate a little over \$10 million per year;
- a concern about requiring a fee for placards and the potential negative impact of the fee on those needing placards; Mr. Parker replied that the amount proposed is only \$5.00 over a four-year period and that the fee would benefit the disability community; and

- a suggestion that informational materials provide more comprehensive information about the potential uses of the funding.

The chair noted that the bill draft regarding the placard would need an opinion of the attorney general before proceeding. Senator Ortiz y Pino made a motion, seconded by Representative Lujan, for the subcommittee to endorse the bill recommendations brought to the subcommittee, to be presented to the full LHHS for consideration.

### **Public Comment**

Anna Otero Hatanaka, executive director, Association of Developmental Disability Community Providers (ADDCCP), spoke to the issue of government restructuring. She stated her opposition to consolidating the DD waiver into the HSD or the ALTSD. The waiver should remain in the DOH, Ms. Otero Hatanaka said, to ensure cooperation between all the programs that serve the DD population. Additionally, she commented that the ADDCCP supports the tiering of clients based on need and that funding should be based on acuity. The ADDCCP is working very closely with the DOH and the HSD to identify efficiencies and cost-cutting measures.

### **Disability Provisions of the Patient Protection and Affordable Care Act (PPACA)**

Ms. Wells offered a presentation summarizing the provisions in the PPACA that affect or benefit the disability populations. Provisions include the Community First Choice option, a new approach to waiver services for targeted populations, the Money Follows the Person Rebalancing Demonstration and the Community Living Assistance Services and Support (CLASS) Act. She described expansions to insurance and Medicaid coverage. The PPACA contains a "sense of the senate" statement exhorting Congress to address long-term services in a comprehensive way that promotes community-based care and guarantees that disabled and elderly individuals get the care they need.

### **Entities Related to Disabilities in New Mexico State Government**

Mr. Hely reviewed state agencies and agency subdivisions that house various activities and services related to disabilities. These agencies include the Department of Finance and Administration, the HSD, the DOH, the Veterans' Services Department, the ALTSD, the Children, Youth and Families Department, the Public Education Department and the Higher Education Department. Additionally, the Interagency Behavioral Health Purchasing Collaborative and the Interagency Committee on Long-Term Care are statutory entities with responsibilities to address disabilities. Numerous commissions, boards and councils address disabilities, and various state educational institutions target persons with disabilities. Areas of overlapping responsibilities and functions were highlighted. Business support for disabilities was identified. Mr. Hely focused briefly on agencies and programs that specifically provide employment services, health and home care and business support services to persons with disabilities. Finally, he described the transportation services and housing and support services by which the state provides support to persons with disabilities.

Committee members sought clarification regarding the New Mexico Council on Purchasing from Persons with Disabilities. Attorney Marina Cordova, Cordova Law Firm, stated that the council provides first right of refusal to persons with disabilities seeking contracts with the state.

No further discussion occurred; the committee members stated a preference to discuss restructuring with the full LHHS.

### **Public Comment**

Deborah Dennison, an advocate for the New Vistas program, testified about transitional services that assist a person to leave a nursing home and be reintegrated into the community. There is an inadequate number of community services to meet the needs of people who transition in this way. She contends that the Money Follows the Person in New Mexico Act, which would make a wider array of services available in the community, is not being followed.

A request was made that additional testimony regarding the Mi Via program be presented to the full LHHS. Ms. Dennison provided personal testimony regarding emergency placement of her son on the DD waiver. She told the committee that her son "fell through the cracks" due to a discrepancy between state and federal regulations regarding emergency placements.

Ken Cable of La Vida Felicidad in Albuquerque stated that the DD waiver program generates money for the state due to the federal match and, with the multiplier effect, actually serves as an economic engine for the state. He further noted that 9.5% of all the clients on the developmental disabilities waiver consume 65% of the developmental disability resources. It costs less to have clients in family living than in independent living.

Doris Husted, a parent and guardian of an adult daughter with developmental disabilities and the public policy director for the ARC of New Mexico, stated that family-based services, though critical for some, are not appropriate for everyone. The state needs to conduct an accurate assessment of need and make an appropriate allocation of resources for all levels of need.

Ms. Cordova contended that the DOH is violating the federal Medicaid Act by not giving public notice of changes in reimbursement and rates. She has had numerous clients express concern about this. She also believes that the DOH is violating a requirement for a public process regarding the rewriting of the DD waiver.

Bernard and Lorraine McArdle presented themselves as a successful family-living unit. They are fearful for the life of their son, Bernard, Jr., should anything happen to them. They believe that it has been demonstrated that group homes do not support independence or safety for clients. Their son has been to New York and the Grand Canyon, has ridden on a motorcycle, has held a job and, in general, has thrived in the home environment. Mr. and Ms. McArdle expressed the opinion that the DOH is unresponsive to the needs of family caregivers like them. They voiced concern that the DOH is trying to promote the group home model of care.

A question was asked about whether a person with cerebral palsy is generally cared for in a group home. Ms. Husted answered that a group home is the most common environment for such a person if a family environment is unavailable.

A subcommittee member asked that the subcommittee take note of the lack of responsiveness of the DOH and report back to the full LHHS.

Marie Garcia introduced Valerie, a person with a developmental disability. Ms. Garcia is a surrogate provider. She is concerned that small providers are being closed down due to poor payment practices, and she contends that the Mi Via program is out of control. Some providers have gone without pay for three months. Small family-based providers are contracted to an agency; when that agency closes down, the small provider is left without income. If more clients could be taken out of a group home and cared for by a family-based provider, the state would save money and the clients would gain a home. Mr. Cable added that the attorney general closed the agency being described due to alleged Medicaid fraud and that money is being held in the Attorney General's Office pending further litigation. The subcontractors were given no notice, and many lost at least a month's pay.

The chair assured all those making public comment that their concerns would be examined further.

There being no further business, the subcommittee was adjourned at 4:10 p.m.