

**Consumer Protection and Education in Federal Health Care Reform Implementation:
September 2, 2010**

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**Consumer Protection and Education in Health Care Reform
Implementation in New Mexico**

Recommendations to the Senate Joint Memorial 1 Work Group and the Governor's Health Care
Reform Leadership Team
September 2, 2010

The following recommendations were prepared by an ad hoc working group that met to address consumer issues in health care reform (HCR) implementation in New Mexico for the Senate Joint Memorial 1 Work Group and Governor Richardson's Health Care Reform Leadership Team. The ad hoc consumer advisory group met regularly over the summer and included representatives from the following agencies:

Insurance Division, Public Regulation Commission
Consumer Protection Division, Office of the New Mexico Attorney General
Health Action New Mexico
New Mexico Legal Aid
Senior Citizens Law Office
Southwest Women's Law Center

EARLIER RECOMMENDATIONS ADDRESSED THROUGH THE STATE'S STRATEGIC PLAN

In June, this working group submitted recommendations to the Governor's executive leadership team. We would like to publicly thank Human Services Department Secretary Katie Falls, Ruby Ann Esquibel and the Leadership Team for integrating consumer protection and education strategies into the State's strategic plan and for helping to facilitate communication between state agencies and consumer advocates. The Strategic Plan includes a recommendation that the New Mexico Office of Health Care Reform develop and oversee a coordinated plan to address consumer education and protection and adopted specific recommendations made by this working group:

6. Develop a comprehensive and cost-effective consumer protection and education plan that (1) promotes widespread consumer education as components of PPACA are rolled out, (2) creates an independent consumer protection system with procedures and resources available for every county and tribal community, and (3) obtains funding through the PPACA to coordinate and advance consumer protection and education throughout New Mexico.

Implementing Federal Health Care Reform – A Road map for New Mexico, Strategic Plan at 7 (July 12, 2010)(<http://www.hsd/state.nm.us/nhcr/nhcriao.htm>). See also Strategic Plan at 42-44. This report builds on that commitment.

SUMMARY OF KEY RECOMMENDATIONS

1. The New Mexico Office of Health Care Reform should establish a **State Consumer Coordinating Committee** consisting of consumer advocates and staff members from key agencies who will be responsible for coordinating statewide consumer education and protection efforts. (See pages 42-44 of NM Strategic Plan)
2. The State should incorporate consumer education and consumer protection planning into each

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element of health care reform implementation.

3. Consumer education planning should address the complexity of an outreach program that will help ensure the estimated 300,000 New Mexicans who are currently uninsured will receive the maximum benefits available to them under health care reform.
4. State entities that address consumer protection in the health care and health insurance context should plan and coordinate their consumer protection, appeal and ombudsman programs.
5. The Legislature should provide funding for consumer education and protection programs to ensure accountability and effective implementation of federal health care reform.
6. New Mexico should establish an independent Consumer Health Assistance Program (CHAP) for consumer education and assistance that utilizes community-based agencies, community health workers, health care and social service providers, and advocates.
7. Transparency is essential to an effective consumer protection system and therefore the public should have access to key data from state agencies overseeing different health programs, and state agencies should provide this information in accessible, consumer-friendly formats.

THE LEGISLATURE AND EXECUTIVE BRANCH SHOULD ADDRESS CONSUMER EDUCATION AND PROTECTION ISSUES EARLY IN THE IMPLEMENTATION PROCESS

The Patient Protection and Affordable Care Act and the related Healthcare and Education Affordability Reconciliation Act (“PPACA”) will reform the health care system, public health programs, and the private health insurance market throughout New Mexico. Some provisions have the potential for improving public health outcomes in communities that are pro-active and are able to develop collaborative partnerships to take advantage of some of the competitive grant and funding programs authorized by the Act.

Consumer education and protection are critical to ensure that New Mexicans obtain the maximum benefits and protections created by PPACA. Consumer education and protection are not addressed solely in a single section or set of provisions within the Act; rather they permeate almost every aspect of the new law, including those addressing Medicaid expansion, Medicare provisions, the new insurance exchanges, the new protections applicable to employer-sponsored health insurance, and the significant funding opportunities for workforce development, community health centers and specific projects that could be available to communities throughout New Mexico.

New Mexico needs a coordinated plan to address consumer education and protection to:

- ensure that the new benefits and protections created by PPACA are implemented efficiently and in a timely manner;
- create a system of accountability for government agencies and private insurance companies that are primarily responsible for implementation and operation of the new systems created by the Act;
- minimize the significant confusion among consumers, health care providers, insurers and employers as different provisions of the law go into effect, beginning in 2010;
- create opportunities for New Mexicans to obtain the maximum protections available under the Act;
- protect New Mexicans from fraudulent practices and scam artists who are already preying on the elderly and other vulnerable consumers under the guise of health care reform;
- ensure that members of tribal communities – both on and off tribal land – receive accurate information about unique choices and opportunities available under the Act;

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- ensure that New Mexicans with limited English proficiency are included in the Act's implementation and obtain comprehensive information and assistance to navigate the new system;
- ensure that technological requirements in the Act and technology and information systems created to implement the Act do not create barriers to New Mexicans who lack access to the internet; and
- ensure that implementation in New Mexico includes alternative (non-internet based) mechanisms for consumers/patients to obtain essential information, sign up for Medicaid and/or obtain subsidies for purchase of private insurance.

CONSUMER EDUCATION AND CONSUMER PROTECTION: RELATED BUT DISTINCT ISSUES AND CHALLENGES

To best serve the needs and interests of consumers/patients in New Mexico, consumer education and consumer protection strategies are necessary. But they are not the same thing. Consumer health assistance bridges both consumer education and consumer protection.

Numerous organizations, public, private and nonprofit, will engage in **consumer education** efforts around PPACA, most likely focusing on specific issues that affect those organizations or about which that organization has expert knowledge and information. There will also be misinformation, confusion, and potentially even fraud. Developing mechanisms for wide dissemination of accurate materials, targeting populations with particular needs or interests impacted by the new law, and sharing summaries and fact sheets prepared by national and local agencies are all among the strategies that should be explored.

Consumer protection refers to the specific systems established to enable consumers who are denied coverage, insurance, reimbursement or who are improperly charged for services to challenge such decisions and have some mechanism for redress of their grievances. There are two elements to an effective consumer protection system: (i) the system for considering and resolving consumer grievances and complaints; and (ii) an effective consumer assistance program independent of the agency that will resolve the complaints. A viable consumer protection system needs to address both the system for considering consumer complaints/appeals/inquiries as well as a system of information, education and representation that will inform consumers of their rights to bring a complaint or appeal and to know when they may have been denied access to services or coverage to which they are entitled. An effective **consumer protection** system requires sufficient **consumer education** regarding consumers' rights and responsibilities under the PPACA.

A **Consumer Health Assistance Program (CHAP)** addresses both areas by helping consumers navigate and access health coverage as well as pursue complaints when benefits are denied. Federal funding will be made available to support **consumer navigator** systems. This is a critical element of consumer health assistance. CHAPs can help families and communities perplexed by or unaware of the benefits provided to them under health care reform. They can also provide assistance and support if a consumer is denied coverage or benefits and wants to challenge such a decision. CHAPs can:

- help consumers enroll in Medicaid or with an appropriate insurance plan;
- educate health care consumers about how to use their health insurance to get the care they need;
- inform consumers of their rights;
- provide tools to help consumers resolve problems with their health plans; and

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- provide valuable feedback to policy makers.

One particularly important aspect of CHAPs is that they are grassroots, and their strength lies in the relationships they build with a given community. Meaningful consumer health assistance in New Mexico should be coordinated but not centralized and run from the top down. One size will not fit all. People who might not otherwise seek assistance for health issues from the Division of Insurance or the Human Services Department will seek help from a community agency.

One of the core recommendations of this work group is that New Mexico develop a ***Consumer Health Assistance Program*** that takes advantage of new federal funding opportunities and builds on a network of existing community programs throughout the State so that New Mexicans will be able to access meaningful assistance and support in the communities where they live.

Thus the strategies regarding consumer education and consumer protection are related but distinct. Attorneys and those trained to handle consumer complaints, both within state agencies (such as the Attorney General's Office) and in legal services agencies (such as New Mexico Legal Aid) are particularly equipped to handle consumer protection complaints. But a much wider array of individuals and organizations can provide invaluable help in: educating consumers about PPACA generally and specific benefits that apply to them; assisting consumers in navigating their choices and helping them sign up for coverage; and informing consumers about their rights and the consumer protection procedures available in the State.

RECOMMENDATIONS

1. **The New Mexico Office of Health Care Reform should establish a *State Consumer Coordinating Committee* consisting of consumer advocates, and staff members from key agencies who will be responsible for coordinating statewide consumer education and protection efforts. (See pages 42-44 of NM Strategic Plan)**
 - a. Without significant additional resources, no single state agency can develop the knowledge and expertise to effectively oversee and ensure consumer education to the myriad populations, communities and health systems impacted by HCR. Some new programs and benefits have already been implemented under HCR; many others will go into effect for new health plans created after September 23, 2010. A collaborative system utilizing the expertise of diverse agencies, consumer advocates and professionals can devise the best methods for informing New Mexicans of the new benefits and programs of HCR. Informal, ad hoc communication and networking – and the use of the internet – can help promote education and outreach with the use of limited resources in the short-term as longer-term plans are being developed. We recommend that the following agencies, at a minimum, be included in a Consumer Coordinating Committee: the Division of Insurance of the Public Regulation Commission (DOI), the Consumer Protection Division of the Office of the NM Attorney General (NMAG), the Human Services Department (HSD), the Department of Health (DOH), the Children Youth and Families Department (CYFD), the Department of Indian Affairs, and the Aging and Long-Term Services Department (ALTSD).
 - b. The NM Office of Health Care Reform should develop a listserv of interested individuals and agencies who are consumer advocates in NM and communicate with them about planning and specific educational efforts related to consumer education and protection.
 - c. Consumer representatives on the Coordinating Committee should include racially and ethnically diverse communities and advocates including but not limited to anti-poverty, legal

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services, aging, women's, immigrant, tribal, disability rights, and other organizations with experience working in communities of uninsured New Mexicans. The Southwest Women's Law Center and the Senior Citizens Law Office have prepared sample materials with information particularly relevant to the communities they serve. These sample materials are attached to this report as examples of the kinds of resources that can be developed by non-governmental entities and widely disseminated by the State.

- d. The Coordinating Committee should hold regular public meetings and convene ad hoc working groups on specific issues as implementation deadlines approach to maximize consumer education and protections under HCR.

2. The State should incorporate consumer education and consumer protection planning into each element of health care reform implementation.

- a. While the overall plan and specific elements of consumer education and protection need to be developed in a coherent and coordinated way, the State should not address consumer education and protection issues in isolation; rather it should integrate them into other major planning and implementation efforts.
- b. Planning and implementation grants from the federal government should include input and in-person meetings with consumer advocates. This may take a form similar to that of the Division of Insurance's Rate Review Grant.
- c. Consumer education and protection are core elements of the Insurance Exchanges authorized by PPACA, and New Mexico's planning and implementation of a State Insurance Exchange should incorporate strong consumer protection and consumer assistance provisions.
- d. The Legal Work Group of the Executive Leadership Team should seek out and incorporate input from consumer advocates regarding recommended changes in law that can strengthen consumer protections as HCR is implemented in New Mexico.

3. Consumer education planning should include the following key elements to ensure the estimated 300,000 New Mexicans who are currently uninsured will receive the maximum benefits available to them under health care reform:

- a. Identifying the numerous stakeholders who can provide information to consumers/patients, such as:
 - o Health care providers (e.g., hospitals, public health clinics, community health centers, family planning clinics, nursing homes, home health providers, pharmacies, private medical practices, oral health providers, vision providers, associations of health care providers, school-based health clinics, birthing centers, mental health centers);
 - o Health Insurance companies, brokers;
 - o Employers, chambers of commerce, and other business associations, including those that can address the needs of small business owners;
 - o Government agencies (state, federal, local), particularly agencies already working with low-income populations (e.g., ISD offices);
 - o Nonprofits that provide services and support at the community level (e.g., legal

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- services providers, counseling, youth programs, services for domestic violence and sexual assault survivors);
 - o Other consumer and community-based advocacy and service organizations;
 - o Housing agencies; and
 - o Schools.
 - b. Developing a timeline for key implementation dates and integrating community education campaigns to target those stakeholders most likely to reach the populations that will be affected at each stage of implementation – priority should be given to immediate changes going into effect in 2010 and 2011 and the most vulnerable populations who will be impacted by those changes;
 - c. Identifying the state agencies that have responsibility for different aspects of the new law and identifying the consumer/patient information relating to each and the constituencies that need to be informed about the new law, particularly with respect to Medicaid, Medicare, the new insurance exchange, and insurance regulation;
 - d. Developing State-wide strategies to implement the web-based health insurance information system required under the Act and to develop meaningful alternative means of communication to New Mexicans who do not have ready access to the internet and/or who have limited English proficiency;
 - e. Developing specific strategies and efforts to reach out to primary care providers and community health centers that currently serve indigent populations who will benefit from HCR and who will continue to need critical safety net services offered by community health clinics; and
 - f. Developing creative and diverse marketing strategies that will reach as many uninsured New Mexicans as possible and ensuring that all consumer materials include information regarding consumers’ rights along with the hotline number, street address and email address for consumers to use in seeking information and bringing complaints regarding benefits and coverage.
- 4. State entities that address consumer protection in the health care and health insurance context should plan and coordinate their consumer protection, appeal and ombudsman programs.**
- a. Whether through the Legal Work Group or a separate ad hoc group of agency experts that address consumer protection, complaints, appeals, due process and overall ombudsman programs, the State should develop recommendations on how best to coordinate such programs.
 - b. In addition to the executive branch agencies, the Division of Insurance and the Office of Attorney General should participate in this planning.
 - c. Legal services providers and other consumer advocates should be included in this planning process.
 - d. This coordination should be built into DOI’s consumer protection/ombudsman planning grant and program.

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5. **The Legislature should provide funding for consumer education and protection programs to ensure accountability and effective implementation of PPACA.**
 - a. Funding is needed to coordinate meaningful consumer education and dissemination of information to New Mexico's geographically diverse populations.
 - b. In the short run, using public websites to provide links to summaries, fact sheets and other materials available about health care reform is extremely valuable. But resources will be needed to create brochures and other written materials in different languages and for those who do not have easy access to the internet.
 - c. A commitment should be made to ensure that consumer assistance resources are not simply allocated to existing programs and used to move money around among existing programs. New Mexico needs a vibrant and meaningful consumer health assistance system to ensure New Mexicans in every part of the state realize the benefits provided under PPACA.
6. **New Mexico should establish an independent Consumer Health Assistance Program (CHAP) for consumer education and assistance that utilizes community-based agencies, community health workers, health care and social service providers, and advocates.**

As a preliminary matter, the following steps will assist in developing an effective consumer health assistance system in New Mexico:

- a. Evaluate current community resources to assist patients in signing up for and obtaining particular benefits under government-funded health programs and pursuing complaints and appeals if requests are denied.
- b. Analyze Consumer Health Assistance Programs operated in other states that provide consumer protection resources independent from the agencies that provide health care coverage and benefits.
- c. Prepare a summary of the existing consumer appeal, consumer protection, consumer ombudsman systems and procedures currently existing within various government agencies related to health programs, insurance, and other benefits, including HSD, DOH, ALTSD, CYFD, the Attorney General's Office, and the Division of Insurance.
- d. Analyze the different legal/procedural requirements needed for different agencies and benefits (e.g., entitlement programs which trigger due process protections versus other systems currently in effect) – recognize that some differences in procedures may be required by law.
- e. Evaluate the effectiveness of current systems in New Mexico to address insurance fraud and other scams that could harm New Mexicans during and after implementation.
- f. Review the timeline for implementation developed by the Executive Leadership Team to identify priority populations and communities for piloting effective consumer health assistance efforts.

Following a review of existing systems, the Consumer Coordinating Committee—in coordination with the DOI's consumer protection and rate review planning efforts and HSD's planning efforts around creation of a state insurance exchange—should:

- Make specific recommendations on how to ***coordinate existing consumer protection, complaint and appeals systems within government agencies*** consistent with current law while ensuring that such systems have an independent decision-maker to consider consumer complaints; and

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- Make specific recommendations on the creation and support of an ***independent non-governmental consumer health assistance program or system***, which will be a resource for local communities, legal service providers, advocates, and consumer “navigators” throughout New Mexico.

An effective consumer assistance program should:

- Provide consumer assistance for private employer-based insurance, subsidized insurance, individual plans, and public benefits programs including Medicaid and Medicare, including a guide to finding and obtaining health insurance coverage;
- Establish minimum standards for such assistance programs, including cultural and linguistic competency, experience working with vulnerable populations and capacity and training to respond to consumer concerns; and
- Provide sufficient resources to assist consumers throughout the state, including in every county and tribal community.

7. Transparency is essential to an effective consumer protection system and therefore the public should have access to key data from state agencies overseeing different health programs, and state agencies should provide this information in accessible consumer-friendly formats.

- a. Transparency is essential to help consumers make informed decisions about their own health care coverage and to enable the public to evaluate and make recommendations regarding public policies impacting availability of health care services and coverage.
- b. Many different types of data should be made public in ways that protect patient confidentiality but provide the public with information regarding insurance companies and public entities that provide health coverage, including:
 - quality assurance data;
 - benefits and pricing information;
 - multi-year data on premium increases;
 - financial statements about medical loss ratios;
 - rate review information;
 - data regarding complaints filed and how they were resolved; and
 - actuarial summaries.

PPACA requires states agencies to gather and submit much of this data to the federal government. State agencies should make all such information readily available to the public. Meaningful consumer protection cannot occur without transparency in the establishment and administration of insurance pricing.