

Legislative Council Service

Information Memorandum

DATE: May 22, 2014

TO: Members of the Legislative Health and Human Services Committee

FROM: Michael Hely, Staff Attorney, Legislative Council Service

SUBJECT: HEALTH CARE AND HUMAN SERVICES-RELATED LEGISLATION FROM
THE 2014 REGULAR SESSION

This is a summary of the health care and human services-related legislation that passed in the 2014 regular session of the New Mexico Legislature, as well as the major health care bills that were introduced but not enacted. Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico Legislative Council or any other member of its staff.

I. The following bills were passed by the legislature and signed into law by the governor.

A. **House Bill 9 (Chapter 7)** (Representative Nora Espinoza), a bill endorsed by the Legislative Health and Human Services Committee, amends the Public Health Act to require that the Department of Health adopt a screening test for critical congenital heart disease, to be added to the list of other health conditions for which the department has devised newborn testing under this section of law. This law requires that the test be performed before an infant is discharged from the facility where the infant was born and be performed by means of a pulse oximeter. A pulse oximeter is defined in the law as a device that measures oxygen saturation in arterial blood.

B. **House Bill 58 (Chapter 36)** (Representative Jim R. Trujillo and Senator Gay G. Kernan), endorsed by the Legislative Health and Human Services Committee, amends the Brain Injury Services Fund statute (Section 27-1-16 NMSA 1978) to expand the availability of services

through the fund to individuals with acquired brain injuries, in addition to the population of individuals living with traumatic brain injuries currently served by the fund. An acquired brain injury is defined as "an open or closed head injury" caused by an outside physical force, lack of oxygen, electrical shock, shaken baby syndrome, a toxic or chemical substance, near drowning, infection, a vascular lesion, a tumor or an event that results in either temporary or permanent impairments in the one or more areas of the brain. The Human Services Department estimates that this bill will increase the pool of individuals served by 550 individuals.

C. House Judiciary Committee Substitute for House Bills 92 & 101 (Chapter 9) (Representative David M. Gallegos) is popularly known as "Erin's Law" after an activist who started a movement to pass a law in each state requiring that children in all grades be taught, through age-appropriate curricula, about sexual abuse and assault, how to prevent them and how to report them. The bill requires all licensed school employees to receive training on the subject and every health education course to include a section on the subject. It also requires the Public Education Department to develop evidence-based curricular standards in consultation with school district personnel, the Human Services Department, the Children, Youth and Families Department (CYFD), the Department of Health and the federal Centers for Disease Control and Prevention.

D. House Bill 99 (Chapter 37) (Representative Elizabeth "Liz" Thomson) directs the Department of Health to establish a statewide community-based adult fall risk awareness and prevention program to reduce the significant public and private costs associated with older adult falls in accordance with the recommendations of a 2013 report issued by the state's Older Adult Falls Task Force.

E. House Judiciary Committee Substitute for House Health, Government and Indian Affairs Committee Substitute for House Bill 126 (Chapter 14) (Representative Nora Espinoza), endorsed by the Legislative Health and Human Services Committee, provides for the regulation of pharmacy benefits managers — those entities that manage prescription drug benefits, procure the drugs and dispense them to users. Pharmacy benefits managers serve as "middlemen" between drug manufacturers and distributors and managed care organizations or insurers. According to this act, a pharmacy benefits manager must be licensed and regulated by

the Office of Superintendent of Insurance. This act establishes requirements for maximum allowable cost pricing, according to which pharmacy benefits managers charge pharmacies for certain generic drugs. The act also requires pharmacy benefits managers to follow certain guidelines in their contracts with pharmacies.

F. **House Bill 271 (Chapter 16)** (Representative W. Ken Martinez) establishes the "Breakfast After the Bell" program to provide for breakfast served to students in classrooms after the school day starts for all students from kindergarten through high school. The bill provides that breakfast for middle and high school students will start in the first school year after the legislature provides funding for those students. The General Appropriation Act of 2014 includes an appropriation of \$1.9 million for breakfast for elementary school students.

G. **Senate Judiciary Committee Substitute for Senate Bill 58 (Chapter 49)** (Senator Mary Kay Papen) provides for Department of Health certification of community health workers, who are qualified on the basis of their knowledge of the experience, language and cultures of their clients to provide direct services aimed at optimizing those clients' access to and benefits from health care. It also requires criminal history background screening for community health workers.

H. **Senate Bill 69 (Chapter 68)** (Senator Gerald Ortiz y Pino), endorsed by the Legislative Health and Human Services Committee, directs the Office on African American Affairs to conduct a one-year pilot program providing pregnant mothers and newborns with "centering" services that are known to address some of the risk factors for infant mortality and enhance health during pregnancy. The Office on African American Affairs is directed to establish benchmarks and collect data to measure the pilot program's success and to report by November 1, 2015 to the governor, the secretary of health and the Legislative Health and Human Services Committee on the program's outcomes. Fifty thousand dollars was appropriated in the General Appropriation Act of 2014 for this purpose, and Yvette Kaufman-Bell, director, Office on African American Affairs, has notified me that the program has garnered some matching funds and the office intends to carry out the pilot project.

I. **Senate Floor Substitute for Senate Judiciary Committee Substitute for Senate Bill 75 (Chapter 50)** (Senator Mark Moores and Representative Yvette Herrell) enacts new

sections of the Public School Code and the Public Health Act to allow public, charter and private schools to stock and provide or administer emergency medication to treat apparent respiratory distress or anaphylaxis. Pursuant to this law, school boards and governing bodies of charter schools may provide schools with albuterol aerosol canisters and spacers and epinephrine auto-injectors or other appropriate emergency medications that Department of Health practitioners have prescribed. These medications are to be stored in accordance with Department of Health rules and administered by school nurses. Schools must have at least one personnel member trained to administer epinephrine on the premises during operating hours.

J. **Senate Judiciary Committee Substitute for Senate Bill 98 (Chapter 47)** (Senator Sander Rue) establishes criminal history background screening for emergency medical service providers whose criminal histories are currently obtained by self-reporting. This act authorizes the Department of Health to exchange fingerprint data with the Federal Bureau of Investigation, the Department of Public Safety and any other law enforcement agency or organization.

K. **Senate Bill 119 (Chapter 3)** (Senator Benny Shendo, Jr.) allows for expedited licenses for nurses licensed in another state. The law covers licensed practical nurses, registered nurses, certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists. The Senate Judiciary Committee put a sunset on the bill, which is shown in each section as allowing expedited licenses from July 1, 2014 through June 30, 2019.

II. The following bills were passed by the legislature but were vetoed.

A. **House Bill 63** (Representative James Roger Madalena), endorsed by the Legislative Health and Human Services Committee, would have charged the Local Government Division of the Department of Finance and Administration with establishing a pilot project in Luna, Grant and Hidalgo counties to provide behavioral health services to individuals released from county detention center custody, with the aim of reducing recidivism. The governor's veto message, House Executive Message No. 144, mentions several grounds for the governor's opposition to the bill.

B. **House Bill 337** (Representative James Roger Madalena) was pocket-vetoed. It would have amended the Public Assistance Act to bar the Human Services Department from requiring

Medicaid recipients who identify as Native American to enroll in the Medicaid managed care program. It would have established requirements for notice of Medicaid recipients' rights pursuant to the act.

III. The following memorials were passed this session.

A. **House Memorial 65** (Representative James Roger Madalena) requests the Human Services Department, the New Mexico Health Insurance Exchange and the Office of Superintendent of Insurance to track and report data on enrollment in Medicaid and qualified health plans through the exchange and the department.

B. **House Joint Memorial 4** (Representative Tomás E. Salazar) requests the Aging and Long-Term Services Department to convene a family caregiver task force to study and report to the Legislative Health and Human Services Committee on the three-fourths of caregivers who are relatives of an elder for whom community care is provided.

C. **Senate Joint Memorial 5** (Senator Timothy M. Keller and Representative Elizabeth "Liz" Thomson), endorsed by the Legislative Health and Human Services Committee, requests the New Mexico Legislative Council in 2014 to appoint a Medicaid services oversight council made up of legislators and non-legislators, including disabled individuals, advocates and service providers, to oversee the Human Services Department's provision of Medicaid services to disabled individuals.

D. **Senate Joint Memorial 6** (Senator Jacob R. Candelaria), endorsed by the Legislative Health and Human Services Committee, requests the chancellor of health sciences at the University of New Mexico to create a health care work force working group to examine the state's health care work force needs and report to the governor and the legislature regarding those needs.

E. **Senate Memorial 79** (Senator Carlos R. Cisneros) requests the Behavioral Health Planning Council to partner with the local collaborative alliance to convene a task force made up of behavioral health resource providers and stakeholders to increase collaboration in working on shared goals.

IV. The Legislative Finance Committee compiled the following highlights relating to health care funding pursuant to **Senate Finance Committee Substitute for Senate Bill 313.**

A. Nine hundred seven million dollars is appropriated from the general fund for Medicaid and Medicaid behavioral health, a \$22 million, or 2.4 percent, decrease compared with fiscal year 2014. Key factors in this decrease are the availability of \$18.2 million in new drug rebate revenue and more federal funds and \$8 million in savings from an improved federal match rate, plus \$16 million in savings from updated Medicaid projections. The fiscal year 2015 general fund appropriation to Medicaid includes \$9 million to provide funding increases to hospitals, contingent on legislation to general county support Medicaid.

B. The Department of Health received an appropriation of \$307.1 million in general fund dollars, an increase of 1.6 percent over fiscal year 2014. This includes an increase of \$5.2 million to support an additional 672 infants and children in the Family Infant Toddlers Program and \$3.3 million to serve 175 more individuals under the developmental disabilities Medicaid waiver and reduce the waiting list. At the end of fiscal year 2013, 3,829 developmentally disabled clients were receiving services under the waiver, but 6,248 individuals awaited allocation. Senate Bill 313 also adds \$1 million for family infant toddler and developmental disabilities waiver provider rate increases.

The Department of Health appropriation also includes a \$1.1 million executive telehealth initiative, \$500,000 more for school-based health centers and \$650,000 for a state-funded developmentally disabled plan.

C. The Aging and Long-Term Services Department received an increase in general fund appropriations of 5.1 percent, or \$2.3 million. Most of this is allocated to the aging network.

D. The CYFD received \$230.2 million in general fund dollars, which represents a \$10.3 million, or 4.7 percent, increase from fiscal year 2014. This includes \$1.5 million for salary increases for front line protective services staff. It also represents increases in funding for child protective services care and support; domestic violence programming; foster parents reimbursement; full-year operations for the CYFD's juvenile justice facility; the home visiting program; extended-day pre-kindergarten; and quality initiatives for registered child care homes. Two hundred thousand dollars was appropriated from the federal Temporary Assistance for

Needy Families block grant for a supportive housing pilot project to provide permanent housing for families at risk.

E. The Workforce Solutions Department received \$11.3 million, a 223 percent increase in general fund appropriations over fiscal year 2014's appropriation, to fund technology modernization, replacement of decreased federal funds and increases in clients served.

V. The following did not pass but were "major" pieces of legislation.

A. There were four bills that related to credible allegation of fraud in the state's Medicaid program. None of these passed. **Senate Bill 33** (Senator Mary Kay Papen and Representative James Roger Madalena) and **Senate Bill 50** (Senator Timothy M. Keller and Representative Eliseo Lee Alcon) both died in the Senate Committees' Committee. **Senate Judiciary Committee Substitute for Senate Bill 181** (Senator Bill B. O'Neill) stalled in the Senate Finance Committee, and **Senate Bill 126** (Senator Bill B. O'Neill) did not receive a germaneness finding in the Senate Committees' Committee. Each of these bills would have made changes to the way that the Human Services Department accords due process to Medicaid service providers against which the department makes a credible allegation of fraud.

Senate Bill 33, endorsed by the Legislative Health and Human Services Committee, would have amended the Medicaid Provider Act to define "credible allegation of fraud" and give accused providers a right to judicial review of a credible allegation of fraud determination made by the Human Services Department. It also clarified that mere errors found during the course of an audit, human error and inadvertent billing and claims processing errors do not constitute fraud in the absence of clear and convincing evidence, which is the evidentiary standard required to support a finding of fraud in New Mexico courts.

Senate Bill 50, endorsed by the Legislative Health and Human Services Committee, would have eliminated a provision in the Procurement Code that exempts a state agency from following normal procurement procedures when it contracts for health-care-related services. (The Human Services Department has routinely used this exemption when contracting with vendors and consultants.) The bill also clarified that suspending payments to providers based upon a determination by the Human Services Department of a credible allegation of fraud is not

an emergency that justifies a noncompetitive emergency procurement. (This was the way the Human Services Department hired the five Arizona providers brought in to assume operations for the 15 suspended New Mexico behavioral health agencies.) The bill also required state agencies that would need to hire auditors or others as a result of a health care fraud investigation or of a suspension of payment to a health care provider to do so on an annual basis, in advance, following normal procurement procedures. The legislation gave the attorney general, state auditor and Legislative Finance Committee standing to seek judicial review of agency purchasing practices that do not comply with state procurement laws. Finally, the bill required the state auditor to compile and maintain a list of approved audit firms to be used for state and federal health care program audits.

Senate Bill 126 would have required the Human Services Department to have an audit performed by an auditor approved by the Office of the State Auditor with expertise in the area audited. It would ban the emergency procurement of external Medicaid auditor services. It excluded error from the grounds on which a credible allegation of fraud could be made. It would have established a credible allegation of fraud determination to be a decision appealable to the district court. It would have required the Human Services Department to provide notice of pending and determined credible allegation of fraud to providers, along with a right to a fair hearing to determine whether good cause, as specified in the bill, exists not to suspend Medicaid provider payments.

Senate Judiciary Committee Substitute for Senate Bill 181 would have required the Human Services Department to provide notice and fair hearings for good cause not to suspend provider payments in credible allegation of fraud actions.

B. **House Bill 306** (Representative Dennis J. Roch) and **Senate Bill 76** (Senator Benny Shendo, Jr., and Representative Dennis J. Roch) would have enacted legislation to create a new dental health profession, "dental therapy".

C. **Senate Bill 52** (Senator Timothy M. Keller and Representative Elizabeth "Liz" Thomson) would have amended the New Mexico Insurance Code to establish mandated brain injury services in most health coverage for individuals who have incurred a brain injury. It would ban lifetime limits on this coverage, which would have included cognitive rehabilitation;

neurocognitive therapy and rehabilitation; neurobehavioral, neurophysiological, neuropsychological and psychophysiological testing and treatment; neurofeedback therapy; remediation for treatment of a brain injury; and post-acute transition services and community reintegration services, including outpatient day treatment services or other post-acute care treatment services related to a brain injury.

D. **Senate Bill 63** (Senator Jacob R. Candelaria) would have required the New Mexico Health Insurance Exchange to provide applicants for health coverage to be offered an opportunity to register to vote.

E. **Senate Bill 66** (Senator Gerald Ortiz y Pino) would have banned the CYFD from requiring a provider of infant or early childhood mental health treatment services to hold an endorsement from or membership in any organization to be eligible for reimbursement.

F. **Senate Bill 70** (Senator Gerald Ortiz y Pino) would have amended the Home Visiting Accountability Act to require that the CYFD prioritize at-risk children for services.

G. **Senate Bill 321** (Senator Howie C. Morales) died in the Senate Committees' Committee. This bill would have established a claims resolution framework to globally and cost-effectively settle and compromise certain claims against the state by persons who preserve their claims in accordance with the Tort Claims Act and who allege violations of their constitutional rights as a result of the suspension and referrals of the 15 suspended New Mexico behavioral health providers by the Human Services Department to the attorney general for investigation.

H. **Senate Joint Resolution 7** (Senator Timothy M. Keller and Representative Elizabeth "Liz" Thomson), endorsed by the Legislative Health and Human Services Committee, died in the Senate Rules Committee. This resolution proposed an amendment to the Constitution of New Mexico to create an independent health care cost and quality transparency commission charged with making health care costs and other financial and quality data available for use by consumers, taxpayers and policymakers.