

MINUTES
of the
SENATE JOINT MEMORIAL HEALTH CARE REFORM WORKING GROUP
May 5, 2010
Room 322, State Capitol
Santa Fe, NM

The meeting of the Senate Joint Memorial (SJM) Health Care Reform Working Group was called to order on May 5, 2010 at 9:21 a.m. by Deborah Armstrong, chair. After general welcoming remarks, members of the working group introduced themselves.

Present

Deborah Armstrong, Executive Director,
New Mexico Medical Insurance Pool
(NMMIP), Chair
Rep. Ray Begaye
Kathryn "Katie" Falls, Secretary,
Human Services Department (HSD)
Sen. Dede Feldman
Rep. Keith J. Gardner
Sam Howarth, Director of Policy and
Performance, Department of Health
Sen. Gay G. Kernan
Rep. Larry A. Larrañaga
Mike Nunez, Executive Director
New Mexico Health Insurance
Alliance (NMHIA)
Rep. Danice Picraux

Absent

Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Joni Marie Gutierrez
Sen. Clinton D. Harden, Jr.
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Mary Kay Papen
Sen. Nancy Rodriguez

Guests

The guest list in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Wednesday, May 5

A motion to approve the agenda was adopted unanimously. A motion to approve the minutes of the April 7, 2010 meeting was adopted unanimously. Ms. Armstrong thanked the various association and advocacy groups in attendance for their interactions and willingness to participate in ongoing meetings.

Insurance Reforms

Presentation of the federal Patient Protection and Affordable Care Act (PPACA) was made by Brent Moore, general counsel, Insurance Division, Public Regulation Commission. Mr. Moore indicated that all presentation materials would be posted to the Insurance Division web

site. The source of the data presented was the National Association of Insurance Commissioners. Mr. Moore described the spreadsheets and federal registers that would be referred to during the presentation. Mr. Moore indicated that public comments on the medical loss ratio provisions and rate review provisions are due by May 14. Mr. Moore detailed the immediate health insurance market reforms required by the PPACA, including:

- annual and lifetime limits;
- rescissions;
- coverage of preventative health services;
- extension of adult dependent coverage;
- preexisting condition exclusions;
- uniform explanation of coverage documents and standardized definitions;
- provisions of additional information;
- prohibition on discrimination based on salary;
- ensuring quality of care;
- bringing down the cost of health care;
- the appeals process;
- patient protections;
- health insurance consumer assistance offices and ombudsmen;
- ensuring that consumers get value for their dollars;
- the temporary high-risk pool program;
- the temporary insurance program for early retirees;
- the web portal to identify affordable coverage options; and
- administration simplification requirements.

Discussion and questions from the working group members covered the following issues and concerns:

- which dependents up to age 26 will be covered;
- clarification regarding grandfathered plans versus compliant plans; 90-day waiting periods, lifetime limits, rescission, extension of dependent coverage to age 26, uniform summary of benefits and coverage and standardized definitions do apply to grandfathered plans. Provisions regarding coverage of preventative care without deductibles or co-payments, lifetime limits, preexisting condition exclusions, discrimination based on salary, quality of care and patient protections apply only to non-grandfathered plans;
- clarification regarding the required designations and preparations for the NMMIP to serve as the new, temporary high-risk pool effective July 1, 2010;
- concern regarding the adequacy of a network of primary care providers;
- the methodology of reimbursement for Medicare services; Secretary Falls indicated that the HSD had been asked to submit Medicaid data for review; and
- clarification regarding medical loss ratios; Tom Bowling, actuary, Insurance Division, responded.

Secretary Falls indicated that she has been appointed by the governor as the chair for the

governor's leadership team, which has been asked to collect and analyze data and identify resources relative to the implementation of the PPACA. The leadership team is charged with developing a strategic plan for implementation by July 1, 2010.

The impact of health care reform on Native American tribes was discussed. Mr. Moore indicated that the Indian Health Service is generally outside the insurance market. Secretary Falls indicated that under the Indian Health Care Improvement Act, which is included in the PPACA, individual mandates do not apply to tribal members. Mr. Moore will take a more serious look at the issue and conduct additional research and follow up with the group.

General questions were raised regarding how information will be communicated to New Mexicans. Mr. Moore indicated that the first step is a national web portal that is required to be up and running by July 1, 2010. Public comments on the portal are due by May 10, 2010.

The recent approved increase to Blue Cross Blue Shield of New Mexico rates was briefly discussed. Concern was voiced over rating practices in the individual market in which rate blocks are closed, resulting in what is known as a death spiral, wherein chronically ill or aging beneficiaries see ever-increasing premiums. This practice is likely to continue until 2014, when the PPACA is fully implemented. Mr. Moore indicated that the Insurance Division is interested in addressing this issue to strengthen provisions in state law and give the superintendent of insurance greater authority over rate increases.

Mr. Moore identified provisions in the PPACA that will become effective at a later date, but by 2014, including:

- preexisting condition exclusions for adults;
- federal oversight of health insurance premiums;
- prohibiting discrimination against individual participants and beneficiaries based on health status;
- prohibition on excessive waiting periods;
- provisions relating to offering of plans in more than one state;
- tax credits for small businesses to offer employee health insurance coverage; and
- minimum essential coverage requirements.

Discussion and questions from the working group members regarding the presentation covered the following issues and concerns:

- questions regarding the value of premiums and discrimination pricing;
- the entity responsible for assessment of penalties, which is the Internal Revenue Service;
- clarification regarding provision of medical care for an individual who chooses to ignore the individual mandate to purchase coverage; penalties are assessed, and the individual can be held responsible for covering medical claim expenses;
- what incentives exist for providers to participate; all willing providers are allowed under federal law; and

- whether insurers mandate in-network provision of services.

Mr. Moore indicated that there are no immediate requirements of the PPACA that necessitate legislative action. Some regulations will need to be revised to reconcile differences between state law and the PPACA regarding medical loss ratios, and legislation may need to be refined. In addition, carrier rebates that begin in 2011 need to be addressed. Mr. Moore agreed that litigation costs impact service delivery costs and are addressed through malpractice laws. He will follow up with the working group on court litigation. The Insurance Division will attempt to comment on federal medical loss ratio and rate review proposed regulations; comments will be provided to the working group.

High Risk Pool Update

Ms. Armstrong reported that the PPACA contains provisions for implementation of a high-risk pool for individuals with preexisting conditions but without insurance for a period of six months. The language in the federal law regarding high-risk pools was patterned after information from existing state high-risk pools. A total of 18 states elected not to participate and will allow the federal government to establish a national pool on their behalf. New Mexico notified the federal Department of Health and Human Services that it will participate with the state's existing high-risk pool. Ruby Ann Esquibel has been designated as the key state contact for this program. Funding of \$37.5 million has been set aside for New Mexico to fund coverage of qualified individuals for the next 3.5 years. The pool is intended as a bridge program to maximize coverage and access until full implementation of the insurance market reforms take place in 2014. During the 2010 legislative session, House Bill 216 was passed amending the NMMIP statute to provide authority for the NMMIP to offer different plans, eligibility and premium structure and accept funds from the federal government. Current NMMIP plans and the new federal high-risk coverage could coexist utilizing the same the same enrollment process as each program is tracked separately. Existing participants in the NMMIP are disqualified from participating in the federal pool because they are currently insured.

Additionally, the NMMIP does not have a waiting period, while the federal pool requires a six-month waiting period. Premiums for the NMMIP are set at 112% of the standard rate, while the federal pool premium will be set at 100%. Ms. Armstrong has developed a side-by-side analysis of the eligibility criteria for both pools, which will be provided to the working group. At the present time, all the guidelines and regulations are not known. As they become available, the high-risk pool will react accordingly.

Formation of Advisory Groups to the Working Group

Ms. Armstrong encouraged all interested parties to form advisory groups for input to the working group. At present, the following groups and volunteer leaders have formed:

- Medicaid, to be led by the Medicaid coalition;
- long-term care, to be led by the disability coalition;
- consumer protection and education, to be led by the Southwest Women's Law Center;

- and
- insurance and exchanges, to be led by the New Mexico Association of Health Underwriters;

Other advisory groups yet to be confirmed include:

- work force;
- business impact; and
- delivery systems.

Secretary Falls indicated that it is the intent of the governor's leadership team to utilize the same advisory groups. Additional sheets were provided to the general public to indicate interest in participating in each working group. As groups form, they are asked to meet and focus on the following questions:

- identify provisions of the law relating to the interest group;
- the time lines for implementation and decision-making;
- the key implementation or policy issues;
- the key decision points — legislative and administrative;
- what entity has primary responsibility (federal, state, agency or shared);
- funding opportunities, associated time lines and primary responsibility for grant applications; and
- any specific recommendations on policy or implementation issues and decision points.

Public Comment

Public comment was offered by the following individuals:

Jane Wishner, executive director, Southwest Women's Law Center, noted that a task force for consumer protection should be created. Additionally, grant opportunities need some planning and coordination to ensure that no funding is lost. The requirement for establishment of a web portal is a critical step in ensuring that consumers understand the new policies.

Ann Sperling, C.S.A., L.P.R.T., national vice chair for professional development for the National Association of Health Underwriters, read a letter to Kathleen Sebelius, secretary of health and human services, asking for adequate time to properly implement such provisions as medical loss ratios to avoid any unintended consequences.

Ms. Armstrong reviewed the proposed schedule for upcoming meetings of the SJM 1 Health Care Reform Working Group, which will meet monthly through October, and the topics to be addressed at each meeting. The next meeting is scheduled for June 3, 2010 and will address health insurance exchanges.

The meeting adjourned at 3:09 p.m.