

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

**August 13-14, 2012  
Henderson Performing Arts Center  
San Juan College  
Farmington**

**August 15, 2012  
Shiprock Chapter House  
U.S. Highway 64  
Shiprock**

The third meeting of the Legislative Health and Human Services Committee was called to order by Senator Dede Feldman, chair, on August 13, 2012 at 10:30 a.m.

**Present**

Sen. Dede Feldman, Chair  
Rep. Nora Espinoza (August 13)  
Sen. Gay G. Kernan (August 13 and 14)  
Rep. Dennis J. Kintigh  
Sen. Linda M. Lopez (August 13 and 14)  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino

**Absent**

Rep. Danice Picraux, Vice Chair

**Advisory Members**

Sen. Rod Adair (August 14)  
Sen. Sue Wilson Beffort (August 13 and 14)  
Rep. Ray Begaye  
Rep. Eleanor Chavez (August 13 and 14)  
Rep. Miguel P. Garcia (August 14 and 15)  
Rep. James Roger Madalena  
Sen. Cisco McSorley (August 13 and 14)  
Rep. Bill B. O'Neill  
Sen. Mary Kay Papen (August 14 and 15)  
Sen. Nancy Rodriguez  
Sen. Sander Rue  
Rep. Mimi Stewart

Sen. Stephen H. Fischmann  
Sen. John C. Ryan  
Sen. Bernadette M. Sanchez  
Rep. James E. Smith

## **Guest Legislators**

Rep. Brian F. Egolf, Jr. (August 13)

Rep. Terry McMillan (August 13)

Rep. Thomas C. Taylor (August 14)

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

## **Staff**

Michael Hely, Legislative Council Service (LCS)

Shawn Mathis, LCS

Rebecca Griego, LCS

Theresa Rogers, LCS

## **Handouts**

The following handouts are in the meeting file:

1. Statement by Alan Rapport, M.D., M.B.A., Physician Surveyor, The Joint Commission, before the New Mexico Health and Human Services Committee (August 13, 2012);
2. Medical Staff Credentialing, Privileging and Peer Review (August 20, 2012);
3. Registered Nurse Staffing Guidelines (August 13, 2012);
4. New Mexico Hospital Association and New Mexico Organization of Nurse Executives, Guidelines: Registered Nurse Staffing;
5. Evidence-Based Nurse Staffing: Another Perspective to Staffing Conversations;
6. California's Historic RN-To-Patient Hospital Staffing Ratios Upgraded Again With New Year;
7. Hospital Nurse Staffing and Patient Mortality, Nurse Burnout and Job Satisfaction;
8. Implications of the California Nurse Staffing Mandate for Other States;
9. Nurse Staffing and Inpatient Hospital Mortality;
10. Headlines from the Hill, The RN Safe Staffing Act and What It Means for You;
11. American Journal of Infection Control, Nurse Staffing, Burnout and Healthcare-Associated Infection;
12. Presbyterian Presentation on Nurse Staffing Ratios;

13. Wisdom at Work: The Importance of the Older and Experienced Nurse in the Workplace;
14. New Mexico Healthcare-Associated Infections (HAI) Initiative;
15. New Mexico Healthcare-Associated Infections Report (August 10, 2012);
16. Medicaid to Stop Paying for Hospital Mistakes (including some infections);
17. Sole Community Provider Program — Quick Fact Sheet;
18. New Mexico Hospital Association, Sole Community Provider (SCP) and Disproportionate Share Hospital (DSH) Funding;
19. Human Services Department, Supplemental Payments to Hospitals — Impacts of Centennial Care and the Patient Protection and Affordable Care Act (August 13, 2012);
20. Comments of Mike Philips, Chief Strategy Officer, San Juan Regional Medical Center;
21. Section 501(r) Proposed Regulations;
22. New Mexico Hospital Association, Hospital Billing and Collection Practices;
23. Handouts from NMCAD;
24. The New Mexico Coalition Against Domestic Violence, *Speaking Out*, July 2011;
25. Robert F. Anda, MD, MS; *Overview of the Adverse Childhood Experiences (ACE) Study*;
26. Ellen Pinnes, *Navigators: Connecting People to Coverage in the Health Insurance Exchange*;
27. National Conference of State Legislatures, *Role of Navigators in State Health Insurance Exchanges (State Legislation)*;
28. Written Statement of Sara Kaynor;
29. House Joint Memorial 13;

30. New Mexico Center on Law and Poverty, *Close the Healthcare Gap for Adults, Close the Healthcare Gap for Children, How to Close the Healthcare Gap in New Mexico*;
31. Disability Rights New Mexico, *Health Care Reform and Medicaid Expansion: A Different Look at Projected Costs*;
32. New Mexico Voices for Children, *The Economic Benefits of Health Care Reform in New Mexico*, updated July 2012;
33. New Mexico Voices for Children, *The Tax Revenue Benefits of Health Care Reform in New Mexico*, updated August 2012;
34. July 17, 2012 letter to Governor Susana Martinez from organizations representing New Mexicans to implement the Medicaid expansion;
35. Bernalillo County Off-Reservation Native American Health Commission, *The Affordable Care Act and Off-Reservation Native Americans*;
36. Navajo Area Indian Health Service Health Profile 2012; and
37. New Mexico Department of Health, *Racial and Ethnic Health Disparities Report Card*, August 2010.

## **Monday, August 13 — San Juan College**

### **Welcome and Introductions**

Senator Feldman called the meeting to order and invited members of the committee and legislative staff to introduce themselves.

Dr. Toni Pendergrass, the new president of San Juan College, welcomed the committee and provided demographic information about the college's student body: the majority of its 11,500 students are female; 30% of the student body is Native American; 40% is Latino; the average age of students is 36; and a large percentage are the first generation of their family to attend a university.

Rick Wallace, chief executive officer of San Juan Regional Medical Center (SJRMC), joined in welcoming the committee. He explained that the SJRMC's service area extends north from Albuquerque, and that the population it serves is rural with a high concentration of Medicare patients. Accordingly, the SJRMC depends heavily upon sole community provider (SCP) and disproportionate share hospital (DSH) funding. He emphasized that these funding sources are "critical" to small rural hospitals.

## **Peer Review and Hospital Credentialing**

Representative McMillan, M.D., posed the question of whether there is a need for legislation to address conditions that made it possible for two physicians on the medical staff of Gerald Champion Regional Medical Center (GCRMC) to perform unorthodox operations outside their scope of practice. The GCRMC has recently filed for bankruptcy protection in the wake of lawsuits filed by former patients allegedly harmed by injections of Plexiglas-like bone cement. In a state that is as heavily rural as New Mexico, Representative McMillan believes that the current procedure of having the medical staff of a hospital police (through credentialing, privileging or peer review) one of their neighbors and colleagues is problematic.

David Johnson, an attorney with the Bannerman and Johnson Law Firm, is a nurse practitioner and legal expert on credentialing, privileging and peer review of physicians. He explained that credentialing is the process by which a hospital confirms that a physician is qualified by education and experience. Privileging is the hospital's decision regarding the scope of the physician's practice at the facility. Peer review is the hospital's periodic and ongoing review of the physician's performance. He explained that in a small rural community, physicians on a hospital staff may lack objectivity or have a conflict of interest when evaluating other staff physicians. Under federal and state law, the board of directors assumes overall responsibility for what happens in a hospital; the decision process for credentialing, privileging and peer review of physicians rests with the medical staff.

Karen Dawson, B.S.N., C.P.H.Q., director of clinical outcomes, Memorial Medical Center, walked the committee through the processes of credentialing, privileging and peer review. Jennifer Hoppe, associate director, state and external relations, Joint Commission, described how credentialing and privileging are incorporated into the process for accrediting hospitals. Joint Commission accreditation requirements serve as a foundation for objective, evidence-based decisions regarding appointment to a hospital medical staff, and recommendations to grant or deny initial and renewed privileges to physicians. There are also data collection requirements to support ongoing professional practice evaluation that should promptly identify performance problems.

Mr. Johnson provided a review of both state and federal laws and regulations that address the duties and responsibilities of the hospital's governing body and its medical staff to oversee staff physicians. He highlighted New Mexico's Review Organization Immunity Act, which limits the liability of medical staff organizations and their members who gather information to evaluate and improve the quality of care and authorizes, limits, suspends or revokes privileges. The act also limits the liability of persons providing information to medical staff organizations and makes documents and opinions created in the review process confidential.

## **Questions and Requests from Committee Members**

Several committee members were interested in the opinions of the presenters as to the root cause of the failure at the GCRMC. Acknowledging that he was not privy to details about the situation at the GCRMC that gave rise to litigation, Mr. Johnson believes that it was not due to lack of regulatory oversight; rather, there was a failure of "execution".

A member asked about the role of the New Mexico Medical Board (NMMB) in policing physicians. Mr. Johnson stated that the NMMB takes an active role in identifying and weeding out physicians who should not be practicing. A complaint to the NMMB initiates an investigation, which is conducted by a panel of experts. According to Mr. Johnson, if a complaint about the physicians at the GCRMC had been made, the NMMB would have had the authority to respond. \*A member requested staff to contact the NMMB to ask whether it has played any role in credentialing or would be interested in playing a role in credentialing.

\*Several committee members expressed an interest in utilizing third parties to credential, privilege or peer review physicians in order to minimize financial conflicts of interest on the part of the hospital or personality conflicts between medical staff physicians. Catherine Torres, secretary of health, was present in the audience and added that peer review may be outsourced and would be of particular value to small hospitals. One member suggested streamlining and centralizing the credentialing process to reduce duplication of effort. \*A member requested staff to research the number of state hospitals that use third parties to credential physicians.

In response to questions from members, panelists advised that physicians who have received their medical education abroad go through a credentialing process and, in addition, are required to pass a test to apply for a medical license in the United States. Emergency room services physicians or hospitalists who are typically independent contractors go through the same credentialing process as physicians who are employees of the hospital.

A member stated that she was impressed by the Joint Commission's accreditation process. Responding to a question, Ms. Hoppe confirmed that only 38 New Mexico hospitals are accredited by the Joint Commission and that not every hospital in the state is accredited by the Joint Commission. The member observed that if a hospital adhered to Joint Commission standards, legislative action would not be necessary.

A discussion took place between members and the panelists regarding the function and composition of a hospital's governing body.

### **Registered Nurse Staffing Guidelines**

Sharon Argenbright, M.S.N., R.N., C.C.R.N., vice president of the National Union of Hospital and Health Care Employees, District 1199, appeared before the committee to argue for safe nurse staffing legislation. She urged the collection of data from all New Mexico hospitals on the nurse-to-patient ratio. Ms. Argenbright provided the committee with research from the Center for Health Outcomes and Policy Research and other materials linking patient outcomes with nurse staffing ratios. She remarked that job dissatisfaction as a result of low staffing ratios contributed to burnout and high turnover. She requested the committee to support House Memorial 51 (2012).

Jeff Dye, president of the New Mexico Hospital Association, differed with Ms. Argenbright on the cause of high turnover in the nursing field. According to Mr. Dye, health

reform has spawned much change; the general health care work force shortage has created opportunities for nurses to pursue careers in positions that do not involve direct clinical care. Since there is a cost associated with turnover, hospitals are motivated to improve the workplace environment to retain staff. Mr. Dye indicated that the New Mexico Hospital Association has three initiatives directed to this end.

Suzanne Smith, chief nursing officer, SJRMC, and board member of the New Mexico Association of Nurse Leaders, advocated for sufficient support staffing for tasks that do not require a person with a nurse's training.

Laurie Lineweaver, a researcher and the clinical coordinator for Presbyterian Healthcare Services, advocated against staffing ratios because they stifle innovation. According to Ms. Lineweaver, Presbyterian is successfully using a real time workload intensity index to meet its Rio Rancho hospital's staffing needs. Outcome measures using this approach are very good, with readmissions reduced to 10% or less. This model has been replicated at other hospitals.

### **Questions and Requests from Committee Members**

Representative Chavez asked Secretary Torres when the Department of Health (DOH) would report on House Memorial 51, which requested a study of staffing ratios. The secretary stated that she hopes to present the department's findings in January.

In response to questions from committee members about California's mandated staffing ratios, Ms. Lineweaver stated that research on the effects of changing staffing ratios is "inconclusive". Further, she pointed out that nurse turnover is not necessarily indicative of inappropriate staffing, since a nurse's move from one hospital department to another is included in turnover statistics. Also, there are no data to correlate patient outcomes with nurse turnover.

\*A member requested nurse data from the NDIE database and data on best staffing practices.

### **Healthcare-Associated Infections (HAI) Advisory Committee Report**

Joan Baumbach, Infectious Disease Epidemiology Bureau chief, DOH, and Lisa Bowdey, the bureau's HAI program manager, updated the committee on developments in the state's HAI initiative. The August 10, 2012 HAI Advisory Committee Report is posted among the handouts for this meeting on the legislature's web site.

### **Questions and Requests from Committee Members**

A member expressed concern that, despite progress made, the state is not mandating reporting on HAI from every hospital in the state, is only collecting data on certain infections and has not made this data readily available to the public for each hospital.

### **Sole Community Provider and Disproportionate Share Hospital Funding**

The next panel addressed concerns about changes in two Medicaid funding programs: DSH and SCP. Hospitals that serve a disproportionate share of Medicaid patients have

traditionally received additional funding from the federal government. SCP hospital payments are made to hospitals that function as the only hospital in rural or less populated areas. The SCP program is funded in the first instance by counties, which in turn receive matching federal funds through the state's Medicaid program.

Mr. Dye explained that most of New Mexico's total annual DSH payment of approximately \$35 million goes to the University of New Mexico Health Sciences Center. In contrast, annual SCP funding amounts to \$300 million, which is distributed to 28 rural hospitals. According to Mr. Dye, the SCP funding makes up most of each rural hospital's revenue and is critical to keeping its doors open.

The DSH payment is justified by a hospital's provision of uncompensated care. If, as a result of the insurance mandate under the federal Patient Protection and Affordable Care Act (PPACA), more New Mexicans have health insurance, this will reduce the DSH payment to the state. Brent Earnest, deputy director for the Human Services Department (HSD), explained that if there are fewer uninsured New Mexicans, there will be less need for uncompensated care.

Unrelated to the PPACA, but resulting from the HSD's changes to the state's Medicaid plan, the SCP payment is now at risk. According to Mr. Dye, since the services under the state's Medicaid plan will be provided as managed care under a capitated rate, the basis upon which previous SCP payments were made will no longer exist. According to Mr. Earnest, the state is seeking a waiver from the federal government to allow the state to put the SCP funds into two pools: one to be used to reimburse uncompensated care and the other to pay for delivery system reforms. Mr. Earnest explained that the SCP funds diverted from indigent care would be used for infrastructure, information technology or community access programs.

### **Questions and Requests from Committee Members**

In response to questions from committee members, Mr. Dye stated that a change in the current SCP funding stream is of concern to rural hospitals.

One committee member questioned why nearly the entire DSH payment went to the University of New Mexico Health Sciences Center.

Another member pointed out that, while the DSH might be reduced, hospitals would be getting paid for care provided to formerly uninsured patients.

### **Public Comment**

Three local child care facility owners appeared in support of the Children, Youth and Families Department.

The president of District 1199 of the National Union of Hospital Healthcare Employees appeared to voice support for nurse staffing legislation in New Mexico.

A representative of the New Mexico Hospital Workers Union appeared in support of a study of health care staffing. She urged collection of staffing data from every hospital in the state.

## **Tuesday, August 14 — San Juan College**

### **SJRMCM: SCP Funding, Work Force Recruitment and Retention and Health Care Reform**

Mike Philips, chief strategy officer of the SJRMCM, began his presentation with statistics about the facility's operations. Of note, 57% of its patients are covered by Medicare or Medicaid. The SJRMCM is also the largest employer in San Juan County, contributing \$100 million annually to the local economy.

Mr. Philips expressed concern that Centennial Care was not developed with input from the legislature or from the hospital industry and could therefore have unintended consequences. Programs that currently fund rural hospitals make it possible to provide services. He explained that historically, Medicaid reimbursement has not covered the cost of care, with the SCP payment making up the difference. SCP funding is essential to the SJRMCM as a rural hospital. Mr. Philips also noted that payment reforms will reduce reimbursement under Medicare.

The entire text of Mr. Philips' remarks has been posted on the legislature's web site.

### **Questions and Requests from Committee Members**

Members discussed New Mexico's Medicaid and Medicare rates. A member stated that the state's hospital rate for Medicaid may be lower than the rate for private insurance and for Medicare. \*A member requested committee staff to determine whether the PPACA brings Medicaid reimbursement rates into alignment with Medicare rates.

Committee and audience members commented that the PPACA's expansion of Medicaid and an increase in the number of privately insured patients would reduce the hospital's financial burden to provide uncompensated care. Nevertheless, Mr. Philips is concerned that patients will continue to show up in the emergency room because of the health care work force shortage. He indicated that the SJRMCM is conducting community health needs planning and recruiting of physicians years before they graduate.

### **Infection Control in Ambulatory Surgical Centers**

Ms. Mathis informed the committee that inadequate infection control in ambulatory surgical centers (ASCs) is a national industry-wide concern. While nearly 75% of all surgeries and procedures now occur in ASCs instead of hospitals, ASCs have been subject to far less regulatory oversight than hospitals. She advised the committee that New Mexico's ASCs are inspected infrequently according to records provided by the DOH. Her remarks are posted among the meeting handouts on the legislature's web site.

### **Questions and Requests from Committee Members**

\*A member advocated legislation to fund more frequent DOH inspections of the state's ASCs.

\*Other members support development of an online infection control program for periodic refresher training of licensed health care professionals and others who work in ASCs.

### **Hospital Billing and Collection**

Mr. Dye advised members about a change in the Internal Revenue Code that was enacted as part of the PPACA. New Section 501(r) of the Internal Revenue Code requires hospitals that claim tax-exempt status as charitable organizations to: 1) conduct a community health needs assessment every three years; 2) adopt a written financial assistance policy and a policy relating to emergency medical care; 3) limit the amount of charges to individuals eligible for financial assistance for emergency or other medically necessary care; and 4) limit the use of extraordinary collection actions before making reasonable efforts to determine a patient's eligibility for financial assistance. Mr. Dye indicated that this provision would apply to 15 tax-exempt hospitals in New Mexico. According to Mr. Dye, the average amount of hospital gross revenues claimed as "community benefit" by 12 of the 15 nonprofit hospitals is 5%. The American Hospital Association's objections to provisions of this federal law are posted on the legislature's web site.

Mr. Philips told members that his hospital's guidelines provide for charitable care to persons earning up to 400% of the federal poverty level; however, patients are expected to take the initiative to apply for this benefit.

Representative Chavez requested members to reconsider passage of House Bill 16 (2012), which she sponsored to condition hospital licensure upon the hospital's agreement not to charge an uninsured patient more than 115% of the applicable Medicare rate for emergency and general health care services and to utilize a sliding scale to assess charges to uninsured patients whose gross household income is less than 500% of the federal poverty level.

Dr. Jesse Barnes, who practices at Casa de Salud in Albuquerque's South Valley, told committee members that medical debt is a huge problem for patients. In his opinion, a patient without insurance should be charged "a fair price". He explained that hospital rates do not typically reflect the actual cost of services; instead, they are inflated for negotiations with health insurance companies. He recommends standard policies for what an uninsured patient will be charged.

### **Questions and Comments from Committee Members**

Several members of the committee expressed opposition to the practice of charging self-pay patients more than insured patients and urged hospitals to provide greater transparency in rates charged.

### **Domestic Violence**

Pamela Wiseman, executive director of the New Mexico Coalition Against Domestic Violence, spoke of the connection between trauma and domestic violence on the nation's health and well-being.

Susan Kimbler, executive director of New Beginnings at the Navajo United Methodist Center in Farmington, told the committee that intimate partner violence is higher among Native American women in New Mexico than for Hispanics or non-Hispanic whites. Providing shelter for this population is critical.

Michael Patch, Family Crisis Center in Farmington, explained that San Juan County experiences family violence at three times the national average. His organization runs two facilities for children who have witnessed abuse.

### **Questions and Comments from Committee Members**

Ms. Wiseman told the committee that funding for statewide programs had been severely cut. She would like a return to the 2007 funding level of \$4 million and requested a direct appropriation to the coalition. The chair directed Ms. Wiseman to come back to the committee with a specific funding request to be considered by the committee at the end of the interim.

### **Health Insurance Exchange — Navigators, Outreach, Enrollment**

Ellen Pinnes, a health policy consultant, presented an overview of the role of navigators for a contemplated state health insurance exchange under the PPACA. She explained that the approximately 300,000 persons expected to qualify for insurance on the exchange will need assistance from navigators. Also present was Jessica Kendall, outreach director of Enroll America, a 501(c)(3) organization whose mission is to help the public enroll in health insurance through the exchange. According to Ms. Kendall, approximately 417,000 non-elderly uninsured New Mexicans are likely to enroll through the exchange. Leah Stimel, director of the University of New Mexico Health Sciences Center's Office of Community Affairs, also appeared to discuss connecting vulnerable adults to coverage in Bernalillo County and rural New Mexico.

Presentation handouts are posted on the legislature's web site.

### **Questions and Comments from Committee Members**

Several committee members expressed concern regarding the lack of both detail and transparency from the state's executive branch regarding the exchange; several members complained about the lack of legislative oversight or opportunity for legislative input.

Another member was critical of establishing a state exchange when no one appears to be able to provide any projections of the cost. The member questioned whether it would be more cost-effective for the state to participate in a federal exchange.

In response to a question, Ms. Stimel indicated that it costs \$800,000 per year to fund a program to connect 1,688 adult clients with extensive services, including home health care, housing and food security programs.

A member noted that there are deadlines to apply for federal funds to establish state exchanges and stated that he fears the state would not qualify for such funding because of the delay in creating the exchange.

### **Low-Income Energy Assistance**

Sarah Kaynor, executive director of ECHO, Inc., is a board member of Prosperity Works. She appeared before the committee in support of House Joint Memorial 13 (2012) that requests the New Mexico Legislative Council to appoint an interim legislative low-income energy assistance task force to study ways to provide additional energy assistance to low-income customers. Copies of her remarks and HJM 13 are posted on the legislature's web site.

### **Questions and Comments from Committee Members**

The chair requested Ms. Kaynor to come back with proposed legislation for the committee at the end of the interim.

### **Public Comment**

Ms. Argenbright spoke in favor of health reform.

Senator Ortiz y Pino recognized Ms. Pinnes for her op-ed piece supporting the expansion of Medicaid that appeared in the Las Cruces newspaper.

### **Wednesday, August 15 — Shiprock Chapter House**

Proceedings were translated by Paul George, Navajo court interpreter.

### **Welcome and Introductions**

The committee was welcomed by the following officials of the Shiprock Chapter of the Navajo Nation: William Lee, president; Donald Benally, vice president; and Lula Jackson, secretary/treasurer. Russell Begaye, Navajo Council delegate of the Navajo Nation, identified himself as a member of Representative Begaye's clan. He gave the committee a brief overview of the importance of Shiprock within the Navajo Nation, including its industrial and agricultural history. He reminded the committee that radiation and mercury contamination are the legacy of uranium mining in the area. Phillip Harrison, an advocate for uranium workers, told the committee about onerous provisions of federal programs established to compensate these "cold war patriots".

Representative Begaye welcomed audience members in Navajo.

### **Medicaid Enrollment and Expansion**

Quela Robinson, staff attorney for the New Mexico Center on Law and Poverty, urged the committee to reduce the administrative burden for those who already qualify for Medicaid. According to Ms. Robinson, the HSD ended outreach efforts in 2009, despite the fact that there are 50,000 children in New Mexico who presently qualify for Medicaid but are not enrolled. With regard to the proposed Medicaid expansion, she advised that 200,000 low-wage New

Mexico workers would become eligible if the state expanded eligibility to 138% of the federal poverty level. Handouts are posted on the legislature's web site.

Sovereign Hager, staff attorney for DNA People's Legal Resources, works in a legal medical partnership to assist those with legal problems impacting their health. Her client, Stanford Washburn, was too ill to attend the meeting. However, Ms. Hager told the committee about Mr. Washburn's difficulties in obtaining medical care because he lacks transportation, which would be provided by Medicaid but is not provided by the Indian Health Service (IHS). Mildred Bennally, who was accompanied by her son, is another of Ms. Hager's clients. Mrs. Bennally requested assistance because she no longer qualifies for home health services she was receiving under Supplemental Security Income. Mrs. Bennally lives in a remote area of the reservation and her son has had to move back home to take care of her. Both Mr. Washburn and Mrs. Bennally's circumstances illustrate how gaps in services under various governmental health programs lead to unintended consequences.

### **Questions and Comments from Committee Members**

In response to questions, committee members were advised that:

- the HSD has been asked by public interest groups about outreach to those who already qualify for Medicaid, but the department has not included outreach in Centennial Care;
- Medicaid provides transportation services;
- there are many Navajo-owned medical transportation companies in the community;
- the only way for Mrs. Bennally to qualify for Medicaid would be for her to enter a nursing home; and
- there are 17,000 persons on the waiting list for the Medicaid medically fragile waiver.

### **Medicaid Expansion — Perspectives from the Association of Commerce and Industry of New Mexico (ACI/NM)**

David Foster, chair of the Health Care Committee of the ACI/NM, requested legislative support for: 1) sufficient funds to provide access to health care; 2) adequate reimbursement rates for providers; and 3) relief from regulations in the form of an Administrative Procedures Act. Mr. Foster explained that providers in the health care community struggle with regulations and laws that are contradictory, and the ACI/NM advocates for state rules and regulations that are consistent with federal rules and regulations. In addition, the ACI/NM encourages the development of infrastructure that will direct those who are eligible for government health programs to take advantage of them and to provide for audits of providers. Finally, the organization is concerned about the period of transition while provisions of the PPACA are being implemented and requests the legislature to push state agencies to develop transition plans.

Celia Ameline, vice chair of the Health Care Committee for the ACI/NM, told the committee that the organization supports the Medicaid expansion. The ACI/NM sees the expansion as an opportunity to increase access to care and create jobs. The expansion will relieve both large and small employers from many health care costs. According to Ms. Ameline, even many Walmart employees would qualify for Medicaid coverage or the health insurance

exchange. Ms. Ameline was appointed by Governor Martinez to the New Mexico Health Insurance Alliance.

### **Medicaid Enrollment and Expansion: The Impact on the State's Budget and New Mexico's Economy**

Jim Jackson, executive director of Disability Rights New Mexico, presented an analysis of the impact of health care reform and the Medicaid expansion on the state budget. According to Mr. Jackson, the HSD has been overstating the cost of expansion. He explained that, should Medicaid be expanded, there will actually be a net savings because of the decrease in State Coverage Insurance. He reminded the committee that in addition to providing increased access to health care, dollars spent on health reform and the Medicaid expansion would have a multiplier effect on the state's economy. A copy of Mr. Jackson's report is posted on the legislature's web site.

### **Questions and Comments from Committee Members**

Members and presenters discussed the discrepancy in provider rates under Medicaid and Medicare, and enhanced rates called for under the Medicaid expansion. \*A member requested information on the rates that primary care providers will be paid for the first two years of the Medicaid expansion.

Mr. Jackson stated that New Mexico's Medicaid rate is in the top 10 in the country. In general, New Mexico pays a better rate than other states. However, those who have insurance pay more to cover uncompensated care provided to the uninsured. Nick Estes, New Mexico Voices for Children, advised that a Hilltop Institute study commissioned by the HSD estimated a \$2.5 billion savings in uncompensated care to providers under the Medicaid expansion.

In response to questions, Ms. Ameline stated that when New Mexico receives federal dollars, they are taxed through insurance premiums and gross receipts taxes. She noted that the PPACA reduces the federal deficit by \$1 trillion over the next 20 years.

A member expressed concern that purported benefits of the expansion to the state treasury were overly optimistic.

### **Public Comment**

Nancy Evans, who works for Navajo Social Services, spoke in her individual capacity. She stated that she works with New Mexico, Arizona and Utah and that New Mexico has the best Medicaid services. In her opinion, in-home services for those who live in remote areas are the best and most cost-effective. She also advocates using local workers and placing more focus on prevention.

Dolores Hardin is the parent of two disabled children. She is concerned that families of disabled children are not aware of changes in programs for these children. She also advised the

committee that she had to travel to Albuquerque to obtain dental care for her disabled children because no dental providers in Farmington accept Medicaid.

An elderly Navajo lady spoke through a translator, explaining that she also lacks transportation to a dialysis facility. She is almost 80 years old and requests more home care programs.

Another member of the audience was concerned about the rising cost of private insurance. He was also concerned about the danger of patients becoming addicted to prescribed drugs.

Mr. Begaye requested the committee to consider: 1) the impact that liquor dealers located on the border of the reservation have on rates of alcoholism; 2) the delay in receipt of health services; 3) the limited number of health facilities in remote areas and the need for more outpatient clinics; 4) how medical debt discourages individuals from seeking needed medical treatment; 5) including traditional healing as a covered service; 6) a Navajo-owned health company; 7) the need for clean water for agriculture and livestock, including assistance with the drilling of water wells; 8) attention to veterans needing psychiatric assistance; 9) more enforcement against illegal dumping of medical waste and establishment of proper disposal sites; 10) regularly providing the tribes and nations with information about programs and funding available to them; and 11) more local services.

#### **Home for Women and Children, Inc. (HWC)**

Gloria Champion, executive director of the HWC, thanked the committee for its support and provided a snapshot of its staff and what the organization does. The HWC is the largest shelter on the Navajo Nation. The HWC's work includes providing counseling to men under court supervision for domestic violence, working with children in schools, assisting clients to apply for assistance such as Temporary Assistance for Needy Families and Medicaid, and legal advocacy. The center's primary focus is to strengthen families in the community through Navajo language and traditional culture. Ms. Champion advised that statistics show that 85% of women return to their perpetrators 11 times.

#### **Questions and Comments from Committee Members**

A discussion took place regarding providing reimbursement to the shelter.

\*Representative Begaye requested Greg Geisler, Legislative Finance Committee, to determine whether Medicaid would reimburse the shelter.

Another member suggested that the state's health family budget might provide for financial support or payments to the shelter.

Another member recalled that there may be funding for removing batterers from the home.

### **Off-Reservation Native American Health Care and the PPACA**

Roxane Spruce Bly, director of the Bernalillo County Off-Reservation Native American Health Commission, explained that the commission is funded by the state. It conducts outreach advocacy for Native Americans, regardless of where they live. She pointed out that provisions in the PPACA that apply to Native Americans are not based upon place of residence. While Native Americans are exempt from the PPACA mandate to obtain insurance, she urges them to purchase health insurance because it will strengthen the Indian health system. Further, the Indian Health Care Improvement Act was permanently reauthorized as part of the PPACA and provides funding for Native Americans to purchase insurance.

Medicaid is financed differently for Native Americans. Native American health services provided by the IHS or a tribal 638 provider are paid 100% by the federal government. Further, providers of services to Native Americans are allowed to charge a higher rate. In 2009, the state received \$65.9 million in federal funds for services provided to Native Americans.

She pointed out that the IHS is not insurance, it is a discretionary program funded at the will of Congress, typically funded at 50% of the actual need. This means that Native Americans are essentially uninsured. Further, the IHS typically denies two-thirds of claims for payment for contract services.

### **Navajo Nation: Health Care Update**

Gayle Diné Chacon, M.D., surgeon general of the Navajo Nation, spoke to the committee about the lack of data on Native American health status and care. According to Dr. Chacon, health data gathered by states are not tribe-specific. Further, agreements between states and tribes do not address Native Americans who live off-reservation. She advised the committee that the Navajo Nation is considering becoming a "state" for purposes of Medicaid to assume responsibilities for its people. A copy of the Navajo Area IHS Health Profile 2012 is posted on the legislature's web site. Dr. Chacon also supports incentives to providers who decrease health disparities.

Roselyn Begay, program evaluation manager, Office of Planning, Research and Evaluation for the Navajo Division of Health of the Navajo Nation, spoke regarding the impact of the Medicaid expansion on the Navajo Nation. Ms. Begay advised the committee that 170,000 people live on the Navajo Nation, with 38% living below the poverty level and an unemployment rate of 50%. According to Ms. Begay, 10% of New Mexico's population is Native American.

Ms. Begay stated that the age group between 15 and 45 years old will be impacted by health reform. Currently, for men between the ages of 19 and 65 with chronic diseases, no government programs provide health care. The Medicaid expansion would be 100% federally funded for the first three years and would go far in closing the gap in health disparities for Native Americans. A racial and ethnic disparities report card is posted on the legislature's web site.

### **Questions and Comments from Committee Members**

The committee also heard about communication and coordination challenges in public health emergency preparedness for the Navajo Nation and the several states that it borders.

In response to a question, Ms. Begay stated that she opposed mandatory enrollment of Native Americans in Centennial Care, as there is a record of failure with managed care. Nevertheless, she believes that the Medicaid expansion is critical to addressing the needs of off-reservation Native Americans.

Ms. Begay elaborated on the Navajo Nation's study to evaluate whether it can become a certified Medicaid agency. The study was made possible through the reauthorization of the Indian Health Care Improvement Act, and a report is due to Secretary of Health and Human Services Kathleen Sebelius and Congress by the end of the year. She also volunteered that the Navajo Nation self-insures health coverage for its 6,000 employees and for 16 Navajo enterprises with 24,000 beneficiaries.

In response to a question, Ms. Begay indicated that the Navajo Nation has not taken a position on the expansion of Medicaid in New Mexico.

### **Tour of the Navajo Regional Behavioral Health Center**

Members of the committee adjourned to tour the Navajo Regional Behavioral Health Center.