

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

**November 2-4, 2011  
Room 307, State Capitol  
Santa Fe**

The fifth meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Senator Dede Feldman, chair, on November 2, 2011 at 9:40 a.m. in Room 307, State Capitol.

**Present**

Sen. Dede Feldman, Chair  
Rep. Danice Picraux, Vice Chair  
Rep. Nora Espinoza (11/3)  
Sen. Gay G. Kernan  
Rep. Dennis J. Kintigh  
Sen. Linda M. Lopez  
Rep. Antonio Lujan  
Sen. Gerald Ortiz y Pino (11/2)

**Absent**

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye (11/3, 11/4)  
Rep. Eleanor Chavez  
Sen. Stephen H. Fischmann  
Rep. Miguel P. Garcia  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill (11/3, 11/4)  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez (11/4)  
Sen. Sander Rue  
Sen. John C. Ryan (11/2)  
Sen. Bernadette M. Sanchez (11/2)  
Rep. Mimi Stewart (11/3, 11/4)

Sen. Rod Adair  
Rep. James Roger Madalena  
Rep. James E. Smith

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

## **Staff**

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

Rebecca Griego, Records Officer, LCS

Leslie Porter, Research Assistant, LCS

Kathleen Dexter, Researcher, LCS

Abenicio Baldonado, Intern, LCS

## **Wednesday, November 2**

### **Welcome and Introductions**

Senator Feldman welcomed the committee members and guests and invited the members to introduce themselves.

### **Using the Basic Health Plan to Make Coverage More Affordable to Low-Income Households**

Stan Dorn, J.D., senior fellow at the Urban Institute Health Policy Center (Urban Institute), appeared via webcast and discussed the Basic Health Plan (BHP) option provided to states pursuant to the federal Patient Protection and Affordable Care Act of 2010 (ACA). Mr. Dorn stated that the goal of the BHP option is to ensure that low-income children receive health coverage when their families do not qualify for Medicaid. His handout set forth:

- (1) health care affordability data (pages 5 through 7 of the handout):
  - (a) the premiums and actuarial value of coverage for a single, uninsured adult at various income levels qualifying for subsidies under the ACA;
  - (b) examples of health plans at various actuarial value levels; and
  - (c) perspectives on consumer costs;
- (2) federal law on the BHP (pages 10 through 12 of the handout);
- (3) health care options for New Mexico (pages 14 through 16 of the handout):
  - (a) building on existing plans to make coverage more affordable;
  - (b) subsidy eligibility in New Mexico under the ACA without the BHP; and
  - (c) subsidy eligibility in New Mexico, under one possible approach to the BHP;
- (4) modeling methodology (pages 18 and 19 of the handout);
- (5) charts and explanations illustrating the modeling results (pages 21 through 28 of the handout);
- (6) policy implications (pages 30 through 40 of the handout); and
- (7) conclusion of the presentation (page 41 of the handout):
  - (a) the BHP could improve affordability for low-income consumers, including some Medicaid adults who might otherwise be moved to the exchange;
  - (b) the BHP allows state Medicaid savings without imposing major cost increases on Medicaid beneficiaries;
  - (c) the trade-off for consumers being smaller provider networks;
  - (d) the trade-off for the exchange being fewer covered lives and higher individual market premiums;
  - (e) the trade-off for the providers being fewer financial gains from the ACA; and

(f) the key obstacle being waiting for guidance from the federal Centers for Medicare and Medicaid Services (CMS).

Mr. Dorn explained that the Urban Institute is a nonprofit located in Washington, D.C., that was established in the 1960s. He said that the institute is well-respected and that the staff works very hard to provide balanced perspectives.

The committee inquired whether the plan outlined is a program that will allow New Mexico to utilize federal funding to develop a more affordable health plan for low-income individuals who can join the exchange, thereby reducing state costs. Committee members asked if those patients will have a smaller provider network, which will result in the exchange having fewer people from which to draw.

Matthew Buettgens, senior research fellow at the Urban Institute, stated that without the ACA, 500,000 people would be uninsured in New Mexico, and with the ACA, there would be 23,100 uninsured individuals. He said that the difference is the result of the people who would be included in the exchange and in Medicaid.

Addressing committee concerns regarding employers offering consistent health plans to all employees, Dr. Buettgens explained that the ACA states that if employees cannot afford a health plan offered by an employer, those employees are allowed to move to the exchange and purchase a plan with the tax credit that is subsidized with their purchase. He further explained that in this scenario, the ACA requires the employer to pay a penalty for this. However, if the employee were enrolled in the BHP, the employer would not have to pay a penalty.

Dr. Buettgens stated that health care providers will be better off because they will have more paying customers.

In response to questions, Mr. Dorn said that the use of public funds is being expanded to provide health care for more people.

Senator Feldman thanked the presenters for studying this topic specifically for New Mexico's situation. She urged committee members to keep in mind that New Mexico was the first state to extend Medicaid to children in poverty to 185% of the federal poverty level. Representative Picraux added that reform should be viewed through a bottom-up lens.

### **Public Comment**

Kelsy Heilman, New Mexico Center on Law and Poverty, said that the BHP holds promise. It is critical that, at the state level, there is clear agreement about affordability on cost-sharing to make sure it results in better coverage. The BHP presents a great opportunity, she stated, but the state needs to make sure the BHP will actually be better than the protections afforded through a health insurance exchange. State law will have to close any gaps in protections in federal law.

Mary Feldblum, executive director of the Health Security for New Mexicans Campaign, stated that the BHP would increase the number of people insured while decreasing the number of people in the exchange. She questioned the number of people who will enroll in an exchange. She stated that an exchange must have substantial numbers to attract insurers for better plans to be provided, creating competition for affordable premiums. She offered a brief cost analysis of exchanges, participation rates and market share projections for New Mexico. She provided a handout from the Washington State Health Care Authority, dated November 24, 2010. Her handout is available in the meeting file. She drew the committee's attention to a quote in her handout from researchers David Reimer and Alain Enthoven, who stated that an exchange would need a "critical mass" of covered individuals — "at least 20 percent of the insured population that does not already receive Medicaid or Medicare.". *Id.* at 1. "Only a pool of this size could attract serious bids from insurers," according to Mr. Reimer and Mr. Enthoven.

Marco Gonzales, lobbyist for Molina Healthcare, extended the organization's support of the BHP and said that it agrees with what has been said about additional coverage without additional cost. He said Molina Healthcare will provide a detailed briefing if it is the desire of the committee.

### **Minutes**

The minutes from the LHHS meeting in October were approved.

### **Bachelor's to D.D.S. Degree Report**

Gary Cuttrell, D.D.S., J.D., chair, Department of Dental Medicine, University of New Mexico School of Medicine (UNM SOM), and Peter Jensen, D.D.S., M.S., M.P.H., director, Residency Program, Department of Dental Medicine, UNM SOM, provided information on the bachelor of arts degree program to a dental school to obtain a doctor of dental science or doctor of dental surgery degree (BA/DDS). A handout was provided setting forth:

- (1) residency success (page 2 of the handout);
- (2) UNM Hospital statistics and outreach efforts (pages 3 and 4 of the handout);
- (3) the legislation creating the BA/DDS program, Senate Bill 133 and other dental feasibility studies (pages 5 and 6 of the handout);
- (4) the costs of a dental school in New Mexico (pages 7 and 8 of the handout);
- (5) specifics of the BA/DDS program:
  - (a) to alleviate the dentist shortage in New Mexico;
  - (b) to recruit talented high school students to UNM and the program;
  - (c) 10 years of incremental and permanent funding commitment; and
  - (d) a three-phase program with an affiliation agreement with a regional dental school as long as New Mexico does not have a dental school;
- (6) student and background information (pages 9 and 10 of the handout):
  - (a) planning is for 20 students with an affiliated dental school; and
  - (b) the Western Interstate Commission for Higher Education funds 10 spots annually;

(7) legislative funding requests and requirements (pages 10 and 11 of the handout), include:

- (a) a new program development request of \$400,000;
- (b) pre-dental undergraduate costs of \$2 million;
- (c) dental school costs of \$6 million; and
- (d) residency costs of \$8 million; and

(8) New Mexico's unique dental challenges include:  
1,000 persons;

- (b) a bottom quartile ranking in the number of dentists per 1,000 persons;
- (c) 70% of dentists practice within the four-county Rio Grande urban corridor;

and

(d) 25 of 33 counties are health professional shortage areas that comprise 42% of the population.

In response to inquiries from the committee, Mark Saavedra, lobbyist for UNM, said that the BA/MD program is in its second year. He said he would provide the committee with the dropout rate of the cohort group.

Committee members engaged in conversation with Dr. Jensen about the undergraduate degree structure, inquiring about why the degree is a bachelor of arts versus a bachelor of science.

Committee members inquired about the residency aspect of the program and the need for residents in rural New Mexico. Dr. Jensen explained that residents currently practice in rural New Mexico. He added that there is not enough clinic space for the cohort group, so the program must go beyond Albuquerque. He said the program has established relationships with alternate clinical sites in order to rotate residents, and as the faculty is established, more students can transition to the rural areas. Conversation ensued regarding these regional agreements.

The topic of a dental school in New Mexico arose. Dr. Cuttrell emphasized that this is not something he is advocating. Members requested that a copy of the study concerning this be distributed to the interested members.

In response to a query, Dr. Cuttrell said that a benefit of the program is that students know that they have a guaranteed spot in a dental school. Students are allowed to leave the program if they decide that they no longer wish to continue to dental school once they have earned their bachelor of arts degrees.

### **Health Insurance Rate Review, Grievance Procedures and Ombudsman Programs**

Christine Baca, bureau chief, Life and Health Rate and Form Filing Bureau and Managed Health Care Bureau (MHCB), Insurance Division (ID), Public Regulation Commission (PRC), discussed the functions of the bureau. She said the MHCB requires insurance companies to

provide grievance procedures in a culturally linguistic manner. Ms. Baca provided a handout explaining the Annual Health Plan Grievance Report setting forth:

- (1) the total number of grievances reported by insurance companies subject to the MHCBC grievance procedure (page 2 of the handout);
- (2) health insurance complaints by type and determinations (pages 3 through 8 of the handout); and
- (3) dollars saved to the consumer by insurance carrier (page 9 of the handout).

Craig Dunbar, deputy superintendent of insurance, ID, PRC, explained the time lines for the rate request, the general hearing request and the hearing appeals and provided charts. Regarding the rate requests, he said that there is a 60-day rate review process: 12 days for the rate increase request to be posted on the web site; 30 days for a comment period on the web site; and 18 days for actuaries to review the information. Concerning the general hearing requests, Mr. Dunbar said that a hearing must be held within 90 days, and the hearing officer must make a recommendation to the superintendent of insurance, who will issue a final order within 60 days of the hearing. He said that from this issuance, an appeal to the PRC can take place. Finally, he explained the hearing appeals process, which requires a hearing to be held within 40 days and 90 days for the PRC to make a decision.

Mr. Dunbar also discussed web site enhancements to be made to the search/display rate filings; consumer notifications; interactive services; and calendar. He said the upgrades should be completed between December 1, 2011 and January 1, 2012. He said these modifications are to make the web site consumer-friendly. In addition, he briefly discussed the budget narrative and said he is looking forward to collaborating with the federal government to secure funding.

Mr. Dunbar introduced Ashley Purdy, who has recently been hired as the ombudsman in the consumer assistance program. Ms. Purdy stated that she is familiar with the grant process and insurance procedures. She informed the committee that she plans to assist consumers with the filing complaints and appeals processes as well as collecting data, tracking inquiries and educating consumers on their rights.

Committee members inquired about ACA insurance mandates, such as no cost for preventative care. Some members supposed that these mandates would result in increased insurance rates due to the provider cost reimbursements. They inquired whether insurance companies have the ability to opt out of the insurance requirements by withdrawing from the state insurance market. Ms. Baca confirmed this analysis and said that if a company chooses to withdraw, it must notify its policyholders 180 days prior to doing so, and it is prohibited from conducting that service in the area for five years. Further discussion took place regarding insurance company bankruptcy and whether there is a mechanism in place for policyholders to migrate to other companies. Ms. Baca replied that this occurs through reinsurance. She said changes to this need to be made through the legislature, and committee members requested that she analyze the proposed changes and provide language to the committee. Ms. Baca clarified

that the MHCB has an examination team that can investigate the matter if there is reason to believe that an insurance company is becoming insolvent.

Responding to an inquiry, Ms. Baca explained that when an insured individual is denied a service, that person has the opportunity to appeal that denial internally within the insurance company. If the insurance company upholds the denial, the individual may then contact the MHCB, where the external reviews are conducted.

A request was made for Ms. Baca to submit information to the committee pertaining to the number of cases in which a consumer was determined to be correct and those in which the insurance company was determined to be correct.

A brief discussion took place about the most common types of consumer complaints received, how the calls are handled and the amount of staff available to take the calls. A suggestion was made that the hiring of additional staff for this purpose may fall within the purview of grant funding. Further discussion took place about the number of grants applied for and the number received.

A request was made for the MHCB to provide the committee with data on the insurance budgets for all 50 states.

Members of the committee asked how New Mexico rates in relation to other states. Ms. Baca responded that the MHCB is working to update the consistent changes to interim final rule and to the federal regulations. Mr. Dunbar stated that New Mexico is average in updating and negotiating these new regulations. Concern was expressed about the need for state money and new statutes to be enacted prior to 2014, when all federal regulations go into effect. Ms. Baca said a financial crisis is rapidly approaching because the internal claims process and external review procedure will apply to comprehensive plans that are traditional fee-for-service plans and are not typical HMO or PPO plans. She said those plans are also subject to the grievance procedure. She said solutions to this are included in the proposed regulation, and she said the MHCB will be the single point of contact for all grievances. Discussion took place about giving the insurance companies the option to submit their grievance data to the ID to ease the strain on the ID.

A request was made for the MHCB to provide data concerning how New Mexico's rate of claims to grievances compares to that of other states.

Senator Feldman brought forth the issue that the ID was placed on probation due to the lack of actuarial analysis on rate reviews. Mr. Dunbar informed the committee that a meeting is taking place on the day of this meeting and that he does not know the decision as to whether or not to take the ID off probation. He clarified that this probation is due to actions of the previous administration. Senator Feldman said the ID has failed to update the ability to look up the actual files or for an individual to sign up to be ratified if an insurance carrier is asking for a rate review. Senator Feldman and Mr. Dunbar discussed staffing needs.

### **Thursday, November 3**

The meeting reconvened at 9:40 a.m.

Upon the request of Senator Feldman, Mr. Hely brought an email message from Mr. Dorn to the committee's attention, illustrating the ratio for Medicaid provider rates. These figures showed New Mexico Medicaid provider rates to be among the higher, but not the highest, provider rates. Mr. Hely said the email provides information on the BHP and clarifies several points raised on November 2 during Mr. Dorn's presentation. Mr. Hely noted an article included in the committee materials titled the *Quiet Health-Care Revolution*, by Adrain Slywotzky and Tom Main, which is a counterpoint to the Urban Institute's data.

#### **Anti-Cancer Drug Pricing Parity (SB 385, 2011 Regular Session)**

Barbara McAneny, M.D., chief executive officer, New Mexico Oncology Hematology Consultants, Ltd., presented on the implementation of a bill passed in the 2011 regular session, sponsored by Senate President Pro Tempore Timothy Z. Jennings, that requires parity in pricing between intravenous and oral anti-cancer drugs. Previously, oral therapies for these anti-cancer medications were not covered by insurance plans, as oral therapies do not involve treatment in the medical office, unlike intravenous treatments. Dr. McAneny explained that these oral therapies are included among pharmacy benefits, which have tiered coverage. Intravenous drugs are considered to be inpatient treatments and are not tiered. Everyone is one chronic disease away from devastation, she reminded the committee, and she discussed how most people are unable to pay for these treatments at \$5,000 to \$1 million a bottle. Dr. McAneny said that insurance companies claim they cannot afford to offer better rates and that these insurers included anti-cancer oral therapy in the same coverage tiers as cosmetic or discretionary treatments, such as Botox. She stated that health insurance is supposed to protect individuals against the high costs incurred when they are sick, yet most bankruptcies are due to medical situations. She extended her appreciation for the legislation.

Sandra Adondakis, New Mexico government relations director, American Cancer Society (ACS) Cancer Action Network, said this law is a recent example of how the legislature is considering proven strategies that prevent and treat cancer. She offered further examples that set New Mexico apart from other states, including tobacco funding and the breast cancer license plate. She said that despite these efforts, cancer remains a significant problem. She provided a handout that offered data on:

- (1) cancer facts (page 2 of the handout);
- (2) estimated new cancer cases for select sites in New Mexico (page 3 of the handout);
- (3) estimated cancer deaths for select sites in New Mexico (page 4 of the handout);
- (4) anti-cancer drug pricing (page 5 of the handout):
  - (a) the ACS works to eliminate cost barriers to patient access to cancer treatment;

and

(b) New Mexico joins 13 states in passing anti-cancer drug pricing parity laws;  
and

(5) a chart setting forth cancer incidence rates in the United States from 2003 through 2007 (page 7 of the handout).

Members of the committee inquired about co-pays and tiering and asked if the fault lies with the link between the insurance companies and pharmaceutical companies. Dr. McAneny replied that the drugs are incredibly expensive, and there are no apologies from the pharmaceutical industry. She said that in an ideal world, there would be cost control, which may require research and development subsidies, as determined by Congress. Co-pays should be determined by medical necessity and effectiveness, she suggested, because oncology doctors are guilty of using expensive drugs that improve survival for a month and that should have higher co-pays.

A committee member pointed out that if the insurance companies are paying for the treatments, as opposed to the patient, premiums increase for the pool to cover a few individuals' diseases. The member warned that, given this scenario, one should be careful to not demonize the pharmaceutical and insurance companies. Dr. McAneny agreed that insurance premiums have gone up 180% over the past decade, which is faster than medical inflation. She said an additional problem exists when generic drugs become inexpensive to the point of not being profitable for the pharmaceutical companies and those companies opt to stop producing those drugs.

A few committee members asked if reports are received from the Indian Health Service about cancer outbreaks on Native American land. Dr. McAneny said this information is gathered and that there is a cancer center in Gallup for this purpose. She said the Navajo Nation does better than most communities in gathering information because tobacco use and uranium mining are aspects of the problem. She said the increased cost of insurance goes beyond what many residents of McKinley County can pay and that the patients in Gallup will benefit tremendously from the legislation.

Senator Feldman asked about ethnic disparities in terms of the incidence of cancer and mortality rates. Dr. McAneny informed the senator that data are collected among the states to determine how various populations should be treated. She noted health disparities among the states and said that New Mexico has a concentration of gallbladder cancer. Dr. McAneny said the New Mexico Tumor Registry provides data on the average rate of cancer for Native Americans versus other races and ethnic groups. Senator Feldman suggested having a meeting focused on patients living near New Mexico's borders who are seeking health care in the border states.

Committee members asked what is being done to remedy drug shortages. Dr. McAneny said that President Obama attempted to require the federal Food and Drug Administration to provide advance notification on a drug shortage, but the unintended reaction would be the stockpiling those drugs. She said that one solution would be to have the pharmaceutical

companies provide notification of when they plan to switch away from manufacturing certain drugs. She said a concern lies with the idea of importing drugs from other countries because the drugs may have been labeled incorrectly.

When asked what steps the state can take, Dr. McAneny suggested moving fourth tier drugs without a generic substitute to the third tier.

### **Prescription Drug Donation (SB 37, 2011 Regular Session)**

Bill Harvey, R.Ph., executive director, Board of Pharmacy, stated that Senate Bill 37 (2011), sponsored by Senator Feldman, allows health care professionals who know their patients to safely reuse pharmaceuticals. He said that the Board of Pharmacy has drafted policies and procedures for this practice, such as requiring recipient and donor forms. He said that there is no fee for doctors who wish to practice this policy. He added that controlled substances and some drugs are not eligible for reuse.

Dr. McAneny brought an oral therapy for cancer that cost \$2,000 and that was returned to her by a patient who did not open the bottle. She emphasized that the legislation allows this unopened medicine to be given to another patient free of charge. She said Dr. Harvey has done an amazing job of writing a series of easy, step-by-step applications that allows doctors to institute this policy. She thanked the committee and the Board of Pharmacy for this legislation.

The members of the committee expressed concern about doctors' liability for reuse of pharmaceuticals and inquired about litigation. Dr. McAneny said doctors share that concern, and she said that her attorney has conducted thorough research concerning this issue and concluded that no such lawsuit exists. She said a concern exists that the original keeper of the drugs would not properly store the drugs, resulting in side effects for the person who takes the drugs. She clarified that the doctors who participate in this program will be trained to ensure that this will not happen. In addition, she explained that the patient who receives the medication will sign a release. A request was made for Mr. Hely to analyze the legislation to ensure that doctors are protected.

Senator Feldman said this legislation is fraught with difficulties and that it is a landmark that required good will. She thanked everyone for working on the bill. She asked about the dissemination of information. Dr. McAneny said she has been charged to provide information for the New Mexico Medical Society's newsletter, and it is on the Board of Pharmacy web site. Dr. Harvey added that a press release is being developed and said the board is in instant communication with all pharmacists in the state. Senator Feldman asked that the press release be sent to the committee.

### **Medical Malpractice: An Analysis of HB 267 (Regular Session, 2011)**

Mr. Hely introduced Teresa "Tessa" Ryan, a student at the UNM School of Law who served during the summer of 2011 as an LCS law intern, and the topic of House Bill 267 (sponsored by Representative Jim R. Trujillo), which was passed in the 2011 regular session and

then vetoed by the governor. Mr. Hely pointed out that the governor's House Executive Message 22 regarding HB 267 was included in the committee materials.

Ms. Ryan provided the committee with information about the New Mexico system of medical malpractice insurance. She stated that her presentation would address: 1) the debate regarding this issue; 2) challenges involved in predicting and identifying the effects of the increased cap; and 3) how she approached finding these effects and findings. She provided a handout setting forth:

(1) the types of damages in medical malpractice suits, including economic damages and non-economic damages (slide 3 of the handout);

(2) New Mexico's two-tiered system of physician insurance (slide 4 of the handout, which includes:

(a) a primary layer of coverage with a cap of \$20,000 on all but punitive damages; and

(b) a secondary layer of coverage for the remainder of all non-economic damages up to the \$600,000 cap and all remaining damages;

(3) background on HB 267 (slides 5 through 7 of the handout), including:

(a) a \$600,000 cap established in 1992 and put into effect in 1995; and

(b) that doctors and trial attorneys negotiated amendments to the Medical Malpractice Act to raise the damage cap from \$600,000 to \$1 million beginning in 2012;

(4) reasons for the governor's veto (slide 8 of the handout):

(a) the legislation could reduce the number of doctors in the state;

(b) the legislation could lead to frivolous lawsuits;

(c) the legislation could increase insurance rates; and

(d) cap increases could deter doctors from practicing;

(5) her research on the effects of malpractice caps in New Mexico and challenges in finding answers (slides 8 through 10 of the handout):

(a) New Mexico has a two-tiered system where most states have a one-tiered system; and

(b) biased research is dominant; and

(6) her findings and conclusion (slides 14 through 19):

(a) the proposed cap increase will result in the average physician paying 3% more in annual premiums;

(b) premium increases would stem from the Patient's Compensation Fund surcharge;

(c) the cap increase would raise the average cost of premiums;

(d) a relationship exists between caps and physician supply;

(e) tort reform is associated with a modest increase in physician supply;

(f) no strong relationship exists between caps and the frequency of malpractice lawsuit filing;

(g) there is evidence suggesting that caps reduce defensive medicine;

(h) evidence links a modest decrease in defensive medicine with states imposing initial caps;

(i) imposing caps reduces the average size of malpractice awards; and  
(j) statutorily limited award sizes disproportionately burden the most severely injured patients.

Randy Marshall of the New Mexico Medical Society agreed with the study and the findings. He reminded the committee that the New Mexico Medical Society had worked on the bill with the New Mexico Trial Lawyers Association (NMTLA) and that they reached a consensus.

Discussion ensued between committee members and Mr. Marshall concerning the 3% raise in physicians' annual premiums and additional costs on premiums in the primary layer. Mr. Marshall explained that the primary carrier bills for the coverage and forwards the surcharge to the ID. Committee members said that it makes sense, but it creates an uneven playing field because many physicians are leaving private practice and moving to hospitals. Mr. Marshall said hospitals could qualify, but most have chosen not to. Ms. Ryan stated that the governor is in favor of a clarification to cover corporations. A request was made for Ms. Ryan to research caps placed on attorney fees.

Concern was expressed about the proposed cap increase, and a suggestion was made to see how the courts rule on the caps.

Committee members asked if the governor was asked for input. Mr. Marshall said he and the ID have requested a meeting with the governor about the legislation and litigation process.

Members of the committee inquired whether or not midwives and long-term care nursing facilities are included in the legislation. Mr. Marshall said they are not, and some committee members stated that these concerns should be addressed by the committee in the form of a memorial to the special committee requesting it to add these two groups. Committee members expressed concern that nurse-midwives and nursing facilities should not be left out of this plan and said that this issue requires all groups to be at the table.

D.J. "Don" Letherer, former superintendent of insurance, informed the committee that he worked on the first Medical Malpractice Act, and he said there are issues not being addressed. He said that the term "medical professional" needs to be changed in the legislation. He suggested taking the language from Indiana's statutes.

Former New Mexico Senator H. Dianne Snyder, executive director of the Albuquerque Medical Association, said she represents the largest group of physicians in Albuquerque. She said that current physicians are retiring and that, in the discussions regarding medical malpractice, the input from upcoming physicians is lacking.

Charlie Marquez, lobbyist for the New Mexico Health Care Association, expressed his gratitude for the idea of changing the term "medical professional" to include long-term care facilities.

**Adolescent Opioid Addiction (SM 56, 2011 Regular Session)**

Linda Roebuck Homer, chief executive officer, Interagency Behavioral Health Purchasing Collaborative, noted the direness of opioid addiction among adolescents in the state.

Harrison Kinney, Ph.D., director, Behavioral Health Services Division, Human Services Department, and Pilo Gleno, director, cultural diversity, OptumHealth, New Mexico, said that fatal overdoses are a health care crisis in New Mexico. A handout was provided to explain the following:

- (1) SM 56 (page 3 of the handout) requests the Interagency Behavioral Health Purchasing Collaborative to develop a comprehensive statewide plan for treatment of opioid addiction among adolescents, including steps for implementation of the plan;
- (2) the opioid problem and the target population (pages 3 and 4 of the handout):
  - (a) New Mexico has the highest rate of fatal unintentional drug overdoses in the country;
  - (b) New Mexico youths use drugs at an average age of 12, which is younger than any other state in the country; and
  - (c) ages 14 through 24 are the target populations;
- (3) the guiding principles of recovery (pages 4 and 5 of the handout), which include that they:
  - (a) are culturally competent;
  - (b) are trauma-informed;
  - (c) are recovery-oriented;
  - (d) include a clinical home and system of care;
  - (e) include a peer recovery community; and
  - (f) are the best value;
- (4) the current system of care (pages 5 and 6 of the handout):
  - (a) urban and suburban treatment centers are inadequate due to lack of funding;
  - (b) there are limited adolescent treatment centers; and
  - (c) dedicated stakeholders are working to improve the system;
- (5) the comprehensive statewide plan for treatment of opioid addiction recovery (pages 5 through 8 of the handout), including:
  - (a) a centralized statewide information and referral center;
  - (b) a recovery-oriented system of care;
  - (c) linkage to recovery communities;
  - (d) linkage to natural support;
  - (e) funding/data management;
  - (f) work force development/training;
  - (g) prevention-health care promotions;
  - (h) that a recovery system of care intersections with other systems; and

- (i) continuous quality improvement;
- (6) short- and long-term steps to implement the plan (pages 9 through 13), including:
  - (a) a centralized information and referral center;
  - (b) enhanced components of the system of care;
  - (c) work force development/training; and
  - (d) a recovery-oriented system of care; and
- (7) the executive summary (pages 13 and 14 of the handout):
  - (a) opioid addiction has increased significantly the last several years;
  - (b) opioid addiction is a complex disorder that quickly controls most areas of a youth's life and is resistant to treatment;
  - (c) the treatment system is siloed, and funding is fragmented;
  - (d) addictions are chronic and prone to relapse and require an array of treatment methods;
  - (e) services should be anchored in a person-centered approach that focuses on the strength and resiliency of individuals;
  - (f) the recovery-oriented system will take political will; and
  - (g) immediate steps can be taken to greatly improve the system.

Members of the committee took note of past politicians who viewed drug abuse as a public health crisis, as opposed to a criminal activity, and it was stated that youth addiction is due to lack of education on the issue, which is the fault of the state. Public service announcements providing the slang terms for heroin were suggested.

Committee members inquired about the technicalities of reimbursements. Ms. Roebuck Homer noted that there is a pilot program to bring Salud Family Health Centers and behavior health providers together to discuss treatment options.

Committee members discussed work force development and training and suggested collaborating with UNM's Department of Psychiatry and the public schools to teach students and public school teachers how to recognize the symptoms of substance abuse prior to addiction.

Senator Feldman asked how the committee can help. Ms. Roebuck Homer said the committee's voice is needed. She said potential Medicaid packages are being examined and that she needs more time to develop particular requests.

### **Prescription Drug Abuse**

Boyd Kleefisch, M.B.A., F.A.C.H.E., chief operating officer, New Mexico Medical Review Association (NMMRA), said the common themes in health care delivery are silos and fragmentation. He provided a handout explaining the following:

- (1) the New Mexico Prescription Improvement Coalition (NMPIC) (page 1 of the handout), which:
  - (a) was established and is facilitated by the NMMRA; and

(b) is a multi-stakeholder coalition focused on medication delivery in New Mexico; and

- (2) prescription drug safety activities (pages 2, 3, 5 and 6 of the handout), which include:
- (a) NMPIC clinical guidelines;
  - (b) an e-prescribing project; and
  - (c) a medication therapy management study.

Galina Priloutsckaya, Ph.D., M.B.A., C.H.C.A., director of analytic services and drug safety, NMMRA, said she has been researching prevention and drug-free work force efforts in Las Cruces.

Dr. Harvey said that the NMMRA is a close ally in e-prescribing efforts and that the board does not have money to upgrade the program on its own. He said the e-prescribing program is used nationwide and helps identify prescription trends and aids a community in deciding where to funnel its resources. He informed the committee that the board is collaborating with neighboring states to share data, track prescription abuse and elicit activity.

Committee members urged the Board of Pharmacy to contact the Department of Public Safety because this is a public safety issue. Information on age, ethnicity, drug-overdose suicides and the accidental death rate was requested. Dr. Priloutsckaya mentioned several drug abuse methods used by adolescents, including dumping prescription drugs into a bowl and taking a handful of them. Dr. Kleefisch stated that 20 drug-related deaths have occurred in New Mexico over the last 12 months, which is second to automobile deaths over the same amount of time.

### **Public Comment**

Dr. Harris Silver, epidemiologist, told the committee that he was appearing for Dr. Bill Weiss, R.W.J. Regarding that a drug policy task force, Dr. Silver stated that the cost of substance abuse is enormous and that the treatment benefit cost ratio is 12:1, whereas the prevention cost benefit ratio is 28:1. He said there are problems on the ground, and it has been studied long enough. Dr. Silver stated that addiction is a complex chronic brain disease that disables people from making appropriate decisions. He stated that prevention and treatment programs have been severely underfunded, and they lost \$3 million this past year. He pointed out that there are no detoxification centers for adolescents in the state. He explained that most people with substance abuse issues have other disorders and that essential residential treatment should be covered by insurance.

Paco Parrietos, citizen, said he has heard a lot of discussion about prescription drug abuse and the doctors who may or may not be over-prescribing prescription drugs. He said that this is not always the case because one can order the same drugs from a Mexican web site and have them delivered. He said it is that simple, and the doctors are not necessarily to blame.

Larry Lowe, citizen, discussed the use of medical cannabis as a treatment option for addictions to pharmaceutical drugs. He encouraged the education of physicians on this option.

Pete Kassetas, deputy chief of police, New Mexico State Police, Department of Public Safety, stated that law enforcement cannot arrest its way out of this issue. He said it is easier for youths to steal their parents' prescriptions than it is for them to purchase beer. He explained that state police officers are on a joint drug unit with the Drug Enforcement Administration office in Albuquerque to attempt to tackle this issue.

#### **Friday, November 4**

The committee reconvened at 9:35 a.m.

#### **Workforce Solutions Department: Update on Programs and Priorities**

Celina Bussey, secretary of workforce solutions, offered the committee an update of the department's progress. She provided a handout setting forth:

- (1) the September 2011 New Mexico unemployment rate (page 2 of the handout):
  - (a) unemployment is at 6.6% with a labor force of 930,725 people; and
  - (b) 41,000 people are certifying for unemployment insurance (UI);
- (2) the maximum UI benefits and federal extensions (pages 3 and 4 of the handout):
  - (a) in New Mexico, a claimant can be eligible for a maximum of 86 weeks of UI;
  - (b) regular UI is 26 weeks, paid from the trust fund; and
  - (c) federally funded extensions include 13 weeks and an additional three-tier system;
- (3) a chart illustrating the increase in UI claims from 2008 to 2011 (pages 5 through 7 of the handout);
- (4) UI program priorities (page 8 of the handout), including:
  - (a) UI modernization projects;
  - (b) UI integrity; and
  - (c) reemployment;
- (5) the UI modernization project (page 9 of the handout), including:
  - (a) a combined UI and tax benefits program;
  - (b) benefits to business through an automated self-service system;
  - (c) benefits to claimants through a user-friendly online model with personal mailboxes; and
  - (d) that it is funded with federal American Recovery and Reinvestment Act of 2009 (ARRA) and federal Department of Labor (DOL) funds;
- (6) UI integrity and initiatives (pages 10 through 16 of the handout), including:
  - (a) intensifying efforts to prevent, detect, reduce and collect overpayments;
  - (b) the responsibility of the Work Force Solutions Department (WSD), employers and UI claimants;
  - (c) a departmental cross-functional integrity task force;
  - (d) a UI integrity institute;
  - (e) additional staff;
  - (f) a public awareness campaign;
  - (g) separation issues;

- (h) employment services registration;
- (i) follow-up calls to claimants for failure to register completely;
- (j) a work search verification pilot project; and
- (k) a 10-week pilot program with 50 staff members;
- (7) reemployment initiatives (pages 17 and 18 of the handout), including:
  - (a) the creation of five business liaison representative positions;
  - (b) training staff on business service goals;
  - (c) being a partner for the 2011 New Mexico Employment Summit; and
  - (d) working with individual communities;
- (8) the existence of an integrity grant of about \$2.5 million (page 19 of the handout);
- (9) information about the UI call center (page 20 of the handout);
- (10) a chart depicting the UI peak season (page 21 of the handout);
- (11) the anticipated time lines for the UI projects (page 22 of the handout):
  - (a) call center calls wait times are reduced to four minutes from one hour and six minutes;
  - (b) claims adjudicators issue decisions within four to six weeks; and
  - (c) UI benefits appeals are dealt with in 65.12 days; and
- (12) information regarding the New Mexico Workforce Assessment and Recommendation Partnership grant (pages 23-24 of the handout).

Members of the committee commended Secretary Bussey for accomplishing a great deal in a short amount of time. Responding to an inquiry, Secretary Bussey said the modernization project drastically improves the claims process. She said each employer will have an inbox, and the necessary forms can be found there. She said communication between the WSD and an employer will be much clearer and will be expedited. Secretary Bussey also said that the content in the complex forms is being rewritten in layperson's terms that can be understood. She said this should ease the pain felt by the employer while dealing with a claim.

The committee members inquired about the reasons for the overpayment of UI. Secretary Bussey said the failure of a claimant to complete the registration process causes the case to be flagged as an overpayment with the DOL when, in fact, it is not. She said that this is the number one cause of overpayments in New Mexico, and the WSD is working to educate the claimants on how to complete the process.

Committee members requested UI exhaustion numbers. Secretary Bussey said these numbers are gathered on a weekly basis with a few hundred individuals doing this every week.

Secretary Bussey explained the drop in the unemployment rate, stating that most economists discern a gap between those who consider themselves unemployed and those who are receiving UI but are considered to be out of the work force. If those people decide to resume their job search, the unemployment rate will go back up, she explained.

Responding to several inquiries, Secretary Bussey said bridges are being built between the various areas of the department to ensure that claimants have completed the registration

process. First, she said, the local unemployment offices will verify that a claimant who wants to use the resources in that office has completed the registration. Second, she explained, the customer service representatives at the call center will be able to see this information online. Secretary Bussey explained that the required job searches a claimant must conduct every week will be regulated through the online system.

In response to a question, Secretary Bussey explained that the intent of the governor's initiatives is to redirect the use of UI benefits to a training program for claimants, conducted by an employer, that allows a claimant to receive on-site training with a chance of being hired, as is done in Georgia. She said that Georgia has set up separate accounts outside of the trust fund for payment of benefits, and it diverts funds so that a claimant can still receive UI benefits from employers from accident liability. She emphasized that these programs are very complicated. Secretary Bussey said New Mexico's Unemployment Compensation Fund has solvency issues, which is a challenge in implementing this program.

Members of the committee inquired about the WSD's budget and the ARRA funds it received. Secretary Bussey said that the WSD is 95% federally funded. She said that she will provide the federal appropriations from previous years to the committee. She said that state funding for fiscal year 2011 was \$7 million, and it was \$3 million for fiscal year 2012, despite a request for a flat budget.

Committee members asked who funds the UI for contractors. Secretary Bussey stated that UI is very complex, and from the contractual standpoint, she must assume that there is not an employer-employee relationship. She said she will provide the distinguishing language for seasonal workers, temporary workers and contractors.

Committee members inquired about a relocation employment program. Secretary Bussey said that New Mexico has not been creative with relocation efforts and that small programs exist that pertain only to those workers who have lost their jobs due to foreign export. She said the state must get past barriers like this.

Responding to an inquiry, Secretary Bussey said that the work force has shrunk over time, and the exact reason has yet to be determined. She said she will provide the numbers to the committee.

Members of the committee asked if ARRA grant funds have been used to increase customer service representation or to find technical solutions to some information technology problems. Secretary Bussey responded that it has. She informed the committee that she would provide more data, per the request of the committee, as well as the age and ethnicity of UI claimants.

### **Aging and Long-Term Services Department Oversight**

Retta Ward, secretary-designate, Aging and Long-Term Services Department (ALTSD), gave the committee an update of departmental activities. Her handout explained the following:

- (1) the mission of the ALTSD and a budget increase request (pages 3 and 4 of the handout);
- (2) the ALTSD's strategic priorities (page 5 of the handout), including:
  - (a) services in homes and communities;
  - (b) prevention of adult abuse, neglect and exploitation; and
  - (c) caregiver support;
- (3) the ALTSD organization (page 6 of the handout);
- (4) graphs depicting:
  - (a) the population growth of New Mexico from 2005 to 2015 and total population versus those aged 60 and over (page 7 of the handout);
  - (b) the Consumer and Elder Rights Division general fund (page 8 of the handout);
  - (c) the aging and disability resource center (pages 9 and 10 of the handout);
  - (d) information about the state's long-term care ombudsman (pages 11 and 12 of the handout);
  - (e) information about the Adult Protective Services Division general fund (page 13 of the handout);
  - (f) information about the Adult Protective Services Division (page 14 of the handout); and
  - (g) information about the Aging Network Services Division general fund (page 15 of the handout);
- (5) the Aging Network Services Division (pages 16 through 18 of the handout); and
- (6) a summary of the ALTSD's request (page 19 of the handout), including:
  - (a) the fiscal year 13 general fund request of \$42.9 million, which is a \$2.3 million increase; and
  - (b) that additional funding maintains the current levels of service.

Members of the committee inquired about the operation of nursing homes. Secretary Ward informed the committee that nursing homes are run by the Department of Health (DOH), although the ALTSD does report complaints. She said these reports are responded to immediately. She informed the committee that the ALTSD submits recommendations to the DOH concerning nursing home facilities and employees. Concern was expressed about the overmedication of the elderly. Sandra Everhart, state ombudsman, ALTSD, told the committee that these instances should be reported to the Adult Protective Services Division. She said the ALTSD has 30 statewide volunteers who are trained to identify circumstances like the one described.

Members of the committee discussed the Senior Olympics and complaints that it is a waste of state resources that could be redirected to care on the Navajo Nation. Secretary Ward said she shares the concern about needing greater collaboration with the Navajo Nation.

Senator Feldman noted the amount of work that the ALTSD does with few resources. She asked why emergency calls and complaints to the ALTSD are increasing. Secretary Ward

replied that worsening economic times result in more seniors living on the edge of, and in, poverty.

### **Public Comment**

Susan Loubet of the New Mexico Women's Agenda told the committee that she would like the WSD to develop women-specific reemployment programs.

Nat Dean, disability advocate, told the committee that she has lived with multiple disabilities for 27 years and that she was prescribed 27 medications at one point. She said that this causes a tolerance, which magnifies the complexity of the treatment and often causes addiction. She supports the availability of natural medicine, noting its benefits. She requested that the DOH better monitor the medical cannabis program and its clients and requested that patient renewals be done within a one-year window, due to the long waits for doctor appointments and the insurance paperwork. In response, members of the committee suggested writing the DOH a letter requesting a breakdown of cost savings with Medicaid for medications that cannabis patients are abandoning in favor of cannabis.

Lisa Schatz-Vance, executive director, Senior Citizens' Law Office, told the committee that she has a strong relationship with the ALTSD and that the department is requesting an increase in its operating budget. She said she supports this request because of the growing aging population in New Mexico. She said it is important for individuals to live independently and to age with dignity.

Jim Parker, executive director of the Governor's Commission on Disability, informed the committee that the commission has been successfully partnering with state entities in addressing senior disability issues, and he said the commission has redirected people to the resource center to provide assistance for construction-related activities.

### **Adjournment**

There being no further business before the committee, the fifth meeting of the LHHS for the 2011 interim adjourned at 1:10 p.m.