

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

**November 26-27, 2012**  
**Room 322, State Capitol**  
**Santa Fe**

The sixth meeting of the Legislative Health and Human Services Committee was called to order by Senator Dede Feldman, chair, at 9:20 a.m. on Monday, November 26, 2012.

**Present**

Sen. Dede Feldman, Chair  
Rep. Danice Picraux, Vice Chair (11/27)  
Rep. Nora Espinoza  
Sen. Gay G. Kernan  
Rep. Dennis J. Kintigh  
Sen. Linda M. Lopez  
Sen. Gerald Ortiz y Pino

**Absent**

Rep. Antonio Lujan

**Advisory Members**

Sen. Rod Adair (11/26)  
Sen. Sue Wilson Beffort  
Rep. Eleanor Chavez (11/26)  
Rep. Miguel P. Garcia  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill  
Sen. Sander Rue  
Sen. Bernadette M. Sanchez  
Rep. Mimi Stewart

Rep. Ray Begaye  
Sen. Stephen H. Fischmann  
Rep. James Roger Madalena  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. James E. Smith

(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

**Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written testimony are in the meeting file.

## **Monday, November 26**

### **Welcome and Introductions**

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

### **Reinsurance and Risk Adjustment**

Deborah Armstrong, executive director of the New Mexico Insurance Pool, explained several concepts applicable to key insurance reforms under way under the Patient Protection and Affordable Care Act (PPACA). They are reinsurance, risk adjustment and risk corridor, which are explained in her handout, posted on the legislature's web site. These approaches are necessary to provide the health insurance industry with a "soft landing" following the PPACA mandate of guaranteed issue of coverage (meaning that everyone must be insured regardless of pre-existing conditions or health status) and through the transition to nearly universal health care coverage through health insurance exchanges.

With regard to reinsurance, Ms. Armstrong's recommendation is that New Mexico operate its own reinsurance program to allow for flexibility in setting the contribution rate, parameters and payment methodology. As for risk adjustment, she advised that there is no advantage to New Mexico conducting risk adjustment modeling because the federal government will be doing it and the calculations are essentially the same.

Upon questioning from the committee, the following topic was among those discussed:

*The fate of the New Mexico high-risk pool.* John Franchini, superintendent of insurance, told the committee that once the health insurance exchange is in operation, those in the state's high-risk pool would be able to obtain insurance through the exchange. He explained that when the high-risk pool becomes obsolete, so will the corresponding premium tax credits that have been given to the state's health insurers. Without these tax credits, the amount of insurance premium tax that the state collects will increase by \$70 million annually.

### **Aligning Forces for Quality**

Pat Montoya, project director for the Albuquerque Coalition for Healthcare Quality (ACHQ), gave a presentation on the Robert Wood Johnson Foundation's aligning forces for quality (AFQ) innovation initiative, which focuses on improving the quality of care, improving health care efficiencies and addressing health care costs. According to Ms. Montoya, there are 16 AFQ communities across the country. She explained that the ACHQ is seen as a neutral convenor to bring competitors together to share best practices. Ms. Montoya's handout is posted on the legislature's web site.

Upon questioning, committee members discussed the following:

*Payment reforms to bend the health care cost curve.* Two committee members were critical of new payment reforms such as bundled payments (payment for episodes of care) and not paying for hospital readmissions within 30 days of discharge. One member does not believe that bundled payments result in fair compensation to physicians. Another commented that as long as physicians are under pressure to discharge patients from the hospital, they should not be penalized for readmissions. **\*A committee member requested a presentation on bundled payments next interim.**

### **Improving Quality Across Transitions of Care**

Sheila Coneen, project director for care transitions, HealthInsight New Mexico, introduced her organization as a Centers for Medicare and Medicaid Services contractor from 2011 through 2014. Her current project is focused on preventing avoidable readmissions by improving transitions of care. She recited disturbing statistics. One in five Medicare beneficiaries (2.6 million seniors) is rehospitalized within 30 days of discharge, at an annual cost to Medicare of over \$20 billion. This amount represents nearly 20% of Medicare's annual budget. Beginning in October 2012, hospital payments are being reduced based on the percentage of preventable Medicare readmissions for certain conditions. Ms. Coneen's handout is posted on the legislature's web site.

Upon questioning, committee members discussed the following:

*New Mexico's ranking for hospital readmissions is in the top 10%.* Committee members were surprised to learn that New Mexico has a relatively low rate of preventable hospital readmissions. Ms. Coneen explained that areas with high rates of readmissions tend to be urban and have a lot of hospitals. Since there are few hospitals in New Mexico and greater distances between hospitals, services are not as readily available. Responding to a question, she described the typical readmitted patient as an older person with a chronic illness who is taking multiple prescriptions with limited family support.

### **All Payer Claims Database**

Ross Winkleman, a health care consultant and actuary with Wakely Consulting Group, explained that an all payer claims database (APCD) houses claims data collected from all health insurance companies operating in a state. Typically, data collected would include identifying and demographic information for each insured person, laboratory test results, diagnosis codes, procedure codes, dates of service, costs, cost sharing and other information about each claim submitted for payment to the insurer. Mr. Winkleman explained that information contained in an APCD provides the raw data that are essential to measure quality and effectiveness of care, benchmark cost and quality improvement initiatives, to support payment reform and to perform risk adjustment. Mr. Winkleman reminded the committee that "you can't improve what you can't measure".

Mr. Winkleman told the committee that there are two ways to create an APCD: voluntarily or through legislation. Currently, New Mexico does not have an APCD and no planning for an APCD is under way. The estimated cost to maintain an APCD is between

\$750,000 to \$1.5 million per year. (See handout.)

During questioning, committee members discussed the following:

*Legislation to create an APCD.* **\*Several members support legislation to create an APCD.**

*Including behavioral health claims in the APCD.* Several members believe it is important to capture behavioral health claims data in the APCD as a way to monitor the performance of Medicaid managed care organizations in providing behavioral health services.

*Privacy concerns.* Members were concerned about protecting the privacy of patients. Mr. Winkleman assured them that the data in an APCD are encrypted and maintained to comply with state and federal privacy laws by entities that do this as a routine aspect of their business.

*Where would an APCD be housed?* Maggie Gunther, LCF Research, explained that the New Mexico Health Information Collaborative would be the logical organization to be in charge of the the APCD, particularly in light of the synergy between the APCD and the existing health information exchange, which already contains patient records for over one million New Mexicans.

### **Prescription Drug Abuse and Dependence: Report on Medical Professional Associations' Collaborative Solutions**

Ralph McClish, executive director of the New Mexico Osteopathic Medical Association, announced that his organization will be promulgating regulations that mirror those of the New Mexico Medical Board that are directed at physicians who prescribe pain medications that can be abused. Mr. McClish told the committee that his association supports legislation such as Utah House Bill 137 on pain medication management and education, which identifies physicians who appear to be over-prescribing pain medication and requires them to appear before a non-punitive peer review panel. The association also favors requiring a patient who is supposed to be on pain medication to undergo urinalysis to confirm that the patient is taking, and not diverting, pain medication.

Mr. McClish candidly admitted that last year he was opposed to measures requiring physicians to participate in continuing medical education on pain management because he was "ignorant" of the magnitude of the problem with prescription drug abuse. He stated that this legislative session, his association will not be opposing any legislation to address the prescription drug overdose and abuse problem.

### **Report from Senate Memorial 45 Harm Reduction Task Force**

A panel, including Dr. Bill Weise and Dr. Harris Silver, reported on the current status of "harm reduction" measures in New Mexico. These measures include needle exchange programs and the use of Narcan to prevent opiate overdose. Panelists also discussed the use of suboxone

and methadone to counter heroin addiction. Recommendations included:

- ensuring that residential treatment is a benefit under health insurance policies offered in the state, including those offered on the state's proposed health insurance exchange;
- making sure that substance abuse treatment is covered under the state's Medicaid plan;
- requiring that suboxone treatment be available in the state's prisons;
- lowering the age to participate in needle exchange programs;
- appropriating funds to the Department of Health for Narcan harm reduction; and
- creating an agency devoted to drug addiction and substance use disorders to develop a long-term strategy that integrates public and private resources.

[See the Final Report, Senate Memorial 18, New Mexico Drug Policy Task Force (fall 2011) and two interim reports of the Senate Memorial 45 Study Group on harm reduction related to opioid use and dependency (2012) and "Findings and Recommendations of the Senate Memorial 18 NM Drug Policy Task Force", all posted on the legislature's web site.]

### **Improving Outcomes for Pregnant Women and Infants Through Medicaid**

Pamela Galbraith, program evaluator for the Legislative Finance Committee (LFC), presented her evaluation of Medicaid outcomes for pregnant women and very young children. Her data, conclusions and recommendations are set forth in a comprehensive report that is posted on the legislature's web site.

During questioning, committee members discussed the following:

*Medicaid does not pay for home visiting programs.* While Medicaid pays for 71% of all births, it does not currently pay for home visiting programs that are vital to improve the long-term prospects of New Mexico's most vulnerable families. The LFC is recommending legislation to ensure that the state's Medicaid plan includes evidence-based home visitation.

### **Public Comment**

Dr. Dale Alverson requested Senator Ortiz y Pino to carry legislation requiring reimbursement for telehealth services by third-party payers.

Roman Maes informed the committee that Representative Espinoza and Senator Cisneros would be co-sponsoring a bill to expand the practice of anesthesiologists beyond the University of New Mexico Health Sciences Center system.

### **Proposed Legislation for the 2013 Regular Session**

The committee discussed, voted on and endorsed appropriations bills. The list of endorsed legislation is posted on the legislature's web site.

**Tuesday, November 27**

## **Update on Medicaid and the PPACA**

Greg Geisler, senior analyst, LFC, gave a presentation that included projections on the cost or benefit to the state should it participate in the Medicaid expansion under the PPACA. Accounting for both revenues and expenditures from 2014 through 2020, total savings to the state are projected at \$443.6 million. Mr. Geisler's full report is posted on the legislature's web site.

## **Medicaid Expansion**

Dr. Lee Reynis, director of the University of New Mexico's Bureau of Business and Economic Research (BBER), presented her projections of the impact of the proposed Medicaid expansion on the state's economy. For fiscal years 2014 through 2020, she estimates that the state will gain between \$477.7 and \$523.4 million. In her opinion, participation in the Medicaid expansion is "a good deal" for New Mexico. A copy of her presentation is posted on the legislature's web site.

Upon questioning, committee members discussed the following:

*The cost of administering the Medicaid expansion.* Dr. Reynis conceded that her projections do not take into account any administrative costs associated with the proposed Medicaid expansion. Mr. Geisler estimated that the state would need an additional \$2 million for administrative expenses related to the expansion. Brent Earnest, deputy secretary, Human Services Department (HSD), told the committee that the HSD would need \$2.8 million to pay for enrollment of the newly eligible under an expansion of Medicaid. A member pointed out that if the state coverage insurance program is obviated by the expansion, it would free up \$19 million that could be applied to administrative expenses associated with the expansion.

*Skepticism about the claimed benefit to New Mexico of the Medicaid expansion.* A member requested the BBER to study "the other side of the equation", including: the impact on gross receipts tax, the potential for full-time employees to be moved to part-time by employers that cannot afford employer-sponsored health insurance benefits, penalties assessed on small employers that will affect the amount of corporate income tax collected by the state and any other taxes that are included in "Obamacare".

## **Basic Health Plan Report**

Kelsey McLowan-Heilman, staff attorney for the New Mexico Center on Law and Poverty, explained the PPACA's basic health program (BHP). This is a health insurance option given to states for low-income individuals who are not eligible for Medicaid and who have incomes up to 200% of the federal poverty level. Ms. McLowan-Heilman revealed that federal subsidies to purchase health insurance through health insurance exchanges will not help approximately 63,500 New Mexicans who are still too poor to afford the premiums or cost sharing associated with health insurance plans offered through a health insurance exchange.

If New Mexico implements a BHP as provided by the PPACA, the state receives 95% of the value of tax credits and subsidies that would have gone to these lower-income individuals to

purchase coverage on an exchange. The state would place these funds in a trust, and insurance companies would competitively bid to offer standard health plans through the BHP. BHP enrollees would choose among plans, and the state would pay insurers for the coverage provided. Any excess funds in the trust would be used to reduce costs or improve benefits for BHP enrollees. Nevertheless, BHP enrollees would still pay a portion of premiums and out-of-pocket costs. Ms. McLowan-Heilman recommends that New Mexico obtain a state-specific actuarial analysis to provide an accurate estimate of the costs of both health insurance exchange and BHP plans. Her detailed report and related handouts are posted on the legislature's web site.

Upon questioning, committee members discussed the following:

*The impact of the BHP on other health reform strategies.* One member commented that the BHP had been rejected by California because it would reduce the population using the state's health insurance exchange. Ms. McLowan-Heilman added that unions are concerned that the BHP would weaken the PPACA provision penalizing employers whose employees seek coverage on the health insurance exchange because employer-sponsored coverage is unaffordable. There is no comparable penalty provision if an employee seeks coverage through the BHP.

*Getting an actuarial analysis for policies offered through a New Mexico BHP.* Responding to a question, Ms. McLowan-Heilman indicated that a New Mexico-specific actuarial analysis would cost between \$50,000 and \$60,000. **\*A member requested the superintendent of insurance to perform an actuarial analysis for the New Mexico BHP.**

### **Medicaid Update; Health Insurance Exchange Advisory Group**

Julie Weinberg, director, Medical Assistance Division, HSD, gave an update on the state's waiver application. Her handout is posted on the legislature's web site. When asked whether the governor had decided to expand Medicaid, she responded that no decision has been made yet.

Milton Sanchez, director of the New Mexico Office of Health Care Reform, and Sidonie Squier, secretary, HSD, provided an update on health insurance exchange planning. They advised the committee that the estimated cost to implement a health insurance exchange ranges from \$35 million to \$77 million. A copy of their handout is posted on the legislature's web site.

During questioning, committee members discussed the following:

- the health insurance exchange will be housed in the New Mexico Health Insurance Alliance;
- since the essential health benefits offered on the exchange will have to contain the same coverage mandated by state law, the premiums may be higher than those of other states;
- telehealth is not included in the current benchmark plan and this will need to be addressed because all of the federally qualified health centers utilize telehealth;

- the number of transactions that will take place over the exchange is unknown at present; and
- several members are concerned that residential treatment be included in plans offered on the exchange.

The committee considered and endorsed a proposed New Mexico Health Insurance Alliance bill, despite protests from two members that the process to review the bill was too rushed. A copy of the bill is posted on the legislature's web site.

### **Public Comment**

Pam Roy, New Mexico Food and Agriculture Policy Council, advised the members of legislation sponsored by Senator Pete Campos requesting \$1.44 million to fund the purchase of New Mexico-grown produce for school meals. A copy of her briefing sheet is posted on the legislature's web site.

Joe Romero, New Mexico Waiver Provider's Association, alerted committee members to the use of the supports intensity scale (SIS) to make cuts to those receiving benefits under the state's developmental disability waiver. According to the association, the SIS is being used to dismantle family living (at home with relatives) in favor of supported living in group homes under private ownership. The association advised that in 2013, as many as 1,000 New Mexico families will lose their family living benefits. Mr. Romero's handouts are posted on the legislature's web site. Several other members of the public commented, echoing Mr. Romero's concern about the use of the SIS to eliminate assistance to families of the developmentally disabled in favor of institutionalization or care provided by private companies.

Susan Loubet requested that the Workforce Solutions Department study completed pursuant to House Memorial 30 on the percentage of women participating in job training and employment services be circulated to committee members and the public.

Nick Estes, New Mexico Voices for Children, reminded the committee that expanding Medicaid would save providers hundreds of millions of dollars in what would otherwise be uncompensated care.

Dick Mason, appearing for the Action Committee of the League of Women Voters, expressed his view that the board of the New Mexico Health Insurance Alliance not include representatives of insurance carriers and providers.

### **Proposed Legislation for the 2013 Regular Session**

The committee discussed, voted on and endorsed legislation for the 2013 regular session. A list of endorsed legislation is posted on the legislature's web site.

The minutes of the September committee meeting were approved as submitted.