

**MINUTES
of the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 3, 2012
University of New Mexico Cancer Center
Albuquerque**

The second meeting of the Tobacco Settlement Revenue Oversight Committee for the 2012 interim was called to order by Representative Gail Chasey, co-chair, on Friday, August 3, at 9:15 a.m. at the University of New Mexico (UNM) Cancer Center (CC) in Albuquerque, New Mexico.

Present

Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Danice Picraux
Sen. John C. Ryan

Absent

Sen. Mary Jane M. Garcia, Co-Chair
Rep. Jim W. Hall

Advisory Members

Sen. Linda M. Lopez

Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Mary Kay Papen

Staff

Roxanne Knight, Legislative Council Service (LCS)
Shawn Mathis, LCS
Sean Sullivan, LCS
Theresa Rogers, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Friday, August 3

Committee Business

Representative Chasey welcomed the members to the meeting and explained that Senator Garcia had a personal conflict and was unable to attend today.

Welcoming Remarks

Richard S. Larson, M.D., Ph.D., vice chancellor for research, senior associate dean for research, UNM Health Sciences Center (HSC), introduced Dr. Robert G. Frank, the new president of UNM.

Dr. Frank began his remarks by acquainting the committee with his extensive education and experience in public health, which includes establishing colleges of public health at both Kent State University and the University of Florida, where he held university leadership positions. Dr. Frank recognized the hard work of the legislators in public health areas. Dr. Frank grew up and attended high school in New Mexico. He has three degrees from UNM, including a doctorate in clinical psychology. Dr. Frank observed that, with its broad program of academics and state-of-the-art cancer treatment center, UNM has diverse opportunities to serve the state and nation. However, since it is competing for research dollars with universities in larger population centers, the university needs support from the legislature to continue and expand its record of achievement, particularly in the area of research.

Dr. Frank explained how funding from the Master Settlement Agreement (MSA) helps the university. According to Dr. Frank, the challenge in New Mexico is to create an economy that provides jobs for UNM graduates. Each year, between 3,000 and 4,000 UNM graduates cannot find jobs in their fields, and so they leave the state. In addition, each year, 2,000 high school students leave the state for college because they are not aware of the value or quality of a UNM education. The role of the university in creating economic opportunities for New Mexico's young people is critical.

To that end, UNM is sponsoring an economic development summit on growing the regional economy on Friday, September 21, 2012. Dr. Frank will be joined by guests who include Governor Susana Martinez; Victor Hwang, author of "The Rainforest: The Secret to Building the Next Silicon Valley"; and Ed Poppell, innovator and former vice president of business affairs and economic development at the University of Florida, who will speak on building entrepreneurial communities. Dr. Frank invited committee members and staff to attend the conference.

Dr. Frank informed the committee that for the first few months of his tenure as UNM's president, he has been engaged in a "listening campaign" as the first step in a strategic planning exercise for UNM 2020.

UNM 2020 is a planning exercise that maps 10-year benchmark goals for UNM. By early spring, UNM will have a very clear strategy across the breadth of the university that encourages broad planning efforts, collaboration and catalytic movement. Students, faculty, staff and the surrounding neighborhoods are all being consulted.

A committee member asked what Dr. Frank perceived as the biggest challenge facing UNM. He responded that frequent changes in leadership make it difficult to set common goals across the university. UNM is 126 years old and has had 21 presidents.

A committee member asked about Dr. Frank's public health background and his plans for establishing a school of public health at UNM. According to Dr. Frank, UNM's public health program is fragmented. To be accredited, there must be a separate school of public health, with at least 25 faculty members and courses in at least five lines. In his opinion, New Mexico could greatly benefit from a school of public health, but there are significant challenges surrounding its creation. The legislature has asked UNM and New Mexico State University (NMSU) to collaborate on a proposal for a school of public health. Schools of public health in other states have proven to have tremendous value, but it is critical to define their goals and vision.

Committee members stated their support for the field of public health. *A member requested that the issue of establishing a school of public health be placed on the agenda of the Legislative Health and Human Services Committee.

UNM HSC Performance Report; Pediatric Oncology; Poison and Drug Information Center; Specialty Education in Pediatrics and Trauma; I&G Allocation

Dr. Larson stated that the UNM HSC fills a critical need resulting from the gap in comprehensive programs throughout the state.

The UNM HSC is critically engaged in improving jobs in health care and addressing the health care work force shortage in New Mexico. The UNM HSC has a strong research mission designed to deliver timely quality care to rural communities.

The original intent of the MSA was to support clinical care and research in tobacco-related illness as well as to support biomedical research and health-related clinical activities. Besides causing cancer, tobacco use has other health effects, including weakening the immune system, increasing the risk of diabetes and heart disease and damaging neurological health. The UNM HSC is currently trying to deploy the most efficient ways to address these health concerns.

Dr. Larson described how appropriations to the UNM HSC from the MSA originally increased, peaked and then declined. A portion of this funding also goes to the UNM HSC's partner, Lovelace Respiratory Research Institute (LRRI). The UNM HSC is also trying to attain additional funding for programs that have been cut.

Dr. Larson also described how the UNM HSC plans to continue to seek funding for the Speaker Ben Lujan Lung Cancer Research Project, which passed last legislative session but was not funded. The UNM HSC will request the \$1 million as supplemental instruction and general (I&G) funding.

There are three core projects funded by the MSA in which the UNM HSC invests: the Poison and Drug Information Center, biomedical research and pediatric oncology. To deliver quality care, the UNM HSC needs to be able to hire faculty to deliver care and conduct research. I&G supplemental funding requests are periodically necessary to cover these needs.

The UNM HSC has had to streamline and modify programs to preserve them, including

consolidating where possible and increasing staff workloads. Three programs have lost their funding entirely.

The Poison and Drug Information Center experienced a financial crisis, but data show that immediate care through the center results in cost savings since patients do not have to come to the hospital and can be effectively treated at home. The pediatric oncology program also benefits from the MSA. As the principal pediatric oncology center for New Mexico, 96% of children with cancer in New Mexico are treated at the UNM HSC. UNM's biomedical research programs have taken a 35% budget cut. UNM receives no state funding for this research, and it seeks all of its funding from out of state.

Originally, in the fiscal year 2013 budget, the committee recommended a lump-sum allocation to the UNM HSC, but the Legislative Finance Committee (LFC) recommended that the sum be distributed by line item.

About \$300,000 to \$400,000 is leveraged from the MSA in pilot funding. This is a common business model at the UNM HSC. This pilot money allows the university to develop data from which to request larger amounts of money from other entities. The process for faculty to apply for pilot funding is very competitive, and only 35% of the applications are accepted. However, large returns are gained from the pilot funding model; for example, a project funded at \$50,000 to create a handheld device that can determine whether an infection is viral or bacterial eventually generated \$10 million in external funding.

In the last year, the American Association of Medical Colleges hired an outside consultant to evaluate the economic impact of research enterprises in each state. The direct economic impact of the UNM HSC is \$148 million. This impact allows the UNM HSC to fund 990 jobs, which has an indirect economic impact of approximately \$236.8 million. This indirect impact results in 2,568 jobs for New Mexico. The leverage from the pilot program creates 55 jobs in the local economy.

The UNM HSC has very robust evaluation plans for MSA funds; the UNM HSC has been audited on numerous occasions and always received exemplary remarks.

The Speaker Ben Lujan Lung Cancer Research Project bill originally appropriated \$1 million for lung cancer research at the UNM HSC. However, it was not funded because all available MSA funds had already been appropriated. The governor decided that she would not cut other programs funded by the MSA to fund this project, a position that the UNM HSC supports. The UNM HSC believes that the funding for this appropriation should come from I&G.

Finally, cuts in funding used for clinical activities and research have affected outpatient care and resulted in job cuts. The UNM HSC would like restoration of funds for core programs. Future funding from the MSA may be at risk due to pending litigation.

In response to a committee member's question regarding practice-based research networks, Dr. Larson said it is important for the UNM HSC to use these networks because they elicit community priorities, research disease in communities and disseminate and provide information on the latest health care advances. The UNM HSC is trying to directly link its research mission to health care outcomes and is searching for the best ways in which to fund these metrics.

Dr. Larson responded to a committee member's concerns that the state is not properly funding the basic needs of the UNM HSC by stating that a great effort is made to best present the mission, research and accomplishments of the UNM HSC to all funding entities. A committee member asked about the metrics used to evaluate a budget request by the LFC. Greg Geisler, senior fiscal analyst, LFC, responded that the LFC makes recommendations on budgets, not appropriations. Appropriating money from the MSA before it becomes available is a risky practice, especially in light of pending litigation.

*A member requested that the LFC look at the value-added and cost avoidance metrics in every budget request.

Approval of June 14, 2012 Minutes

A motion was made to approve the minutes, and the motion passed with no objection.

UNM Cancer Research Initiatives

Dr. Cheryl L. Willman, M.D., director and chief executive officer, UNM CC, explained that the UNM CC was founded by the legislature in 1981 as a component of the school of medicine. The UNM CC is the state's first research and public service project. The UNM CC is the state's primary cancer center and was designated as a National Cancer Institute (NCI) center in 2003, helping to secure greater funding. The UNM CC will reapply to maintain this designation in 2014. In addition, the NCI designation is shared with the LRRI, Sandia National Laboratories and Los Alamos National Laboratory. The UNM CC mission is the same today as in the past: to ensure that all New Mexicans can access and benefit from cancer research.

The UNM CC is one of the nation's 126 medical schools that has an NCI cancer center and a clinical and translational science center. Total federal funding for the UNM CC reaches nearly \$60 million in total revenue, an increase from the \$8.3 million received in 2000. Funding has also come from cigarette tax allotments that occurred in 1981 and 2003.

The collaborative relationships between the UNM CC and other groups such as Los Alamos National Laboratory and Sandia National Laboratories have made the UNM CC a model for other programs nationwide.

The goals of the UNM CC are to build institutional and regional scientific centers of competency and consortium partnerships and to reduce the burden of cancer on New Mexicans. The tumor registry, community partnerships and the New Mexico Cancer Genome Project are the result of this strategy. Collaborating with the LRRI, the UNM CC has been successful in

developing new approaches to lung cancer, such as finding new mutations in lung cancer through sequencing. The UNM CC and the UNM Statewide Cancer Care Network are helping to improve access to quality care through collaboration. The New Mexico Cancer Care Alliance increases the accessibility and participation of all New Mexicans in cancer clinical investigations and trials, which are facilitated by the UNM Statewide Collaborative Clinical Trials Network.

The UNM CC's goals for 2015 include successfully renewing the NCI designation and increasing federal funding, gaining designation as an NCI comprehensive care center, completing a clinical treatment facility, strengthening collaborations and continuing to develop cutting-edge science.

Responding to a committee member's question regarding federal funding for treating the uninsured, Dr. Willman responded that the UNM HSC receives no federal funding for treating uninsured patients.

Dr. Willman explained that politics are a large factor in applying for and achieving NCI comprehensive designation; contacting the state's congressional delegation will be an important step in receiving the designation.

Tour of UNM Cancer Center

Committee and staff members were given a tour of the UNM CC by Dr. Willman.

NMSU — Cancer Research Initiatives

Dr. Mary O'Connell, Ph.D., NMSU, stated that NMSU does not receive MSA money, but there are activities in Las Cruces addressing cancer research and prevention. NMSU fosters strong collaborations with the Institutional Development Award (IDeA) Network and the Fred Hutchinson Cancer Research Center. The Hutchinson Center, which is centered out of the Yakima Valley in Washington State, is an agricultural hotspot. This allows for an interesting comparison between its work and the work of NMSU, especially in researching health disparities.

NMSU operates cancer health fairs targeted at New Mexicans who cannot get to their doctors. Many neighborhoods in the southern portions of the state do not have any running water; infrastructure that is taken for granted elsewhere is not always available for many people in New Mexico.

A community health educator was hired through supplemental grant funds from the National Institutes of Health. The program is double-booked all over the state.

A committee member commented that public health curricula in schools should be strengthened, as early education may positively affect the residents' futures.

A committee member asked whether there is funding available through the federal

Patient Protection and Affordable Care Act for free preventive cancer screening for those over 65 years of age. Dr. O'Connell stated that there are no co-payments for screening programs.

Tobacco Marketing to Youth — The MSA and Other Related Provisions

Rebecca Parish, assistant attorney general, Office of the Attorney General (OAG), and Kimberle Lowe, Taxation and Revenue Department (TRD), addressed the committee on the restrictions surrounding youth and tobacco marketing. The federal Family Smoking Prevention and Tobacco Control Act, passed on June 22, 2009, regulates the manufacture, marketing and sale of tobacco products. This law applies to tribal lands.

The OAG requires certain steps to be taken in order to be licensed to manufacture tobacco in the state: a sample of the package, carton or pouch designs; a copy of the State Fire Marshal's certification of fire safety; proof of permission from the federal Treasury, Alcohol and Tobacco Tax and Trade Bureau to manufacture tobacco products within the state; approval from the Federal Trade Commission; and an annual certification of compliance from the federal Department of Health and Human Services.

Enforcement against participating manufacturers is through a certification process. Nonparticipating manufacturers' products may be seized and considered contraband if the manufacturers are noncompliant. Penalties must be adequate to deter noncompliance. Distributors can also be audited. There are compacts with Indian nations, tribes and pueblos, which levy a \$.75 tax to increase competition. The state is considering creating retailer licenses to make it easier to track retail activity. A license is not needed to sell cigarettes, only a storefront.

A committee member noted that a bill requiring licensing of cigarette retailers failed in the past because a retail association lobbied against it, along with tobacco manufacturers and distributors. Federal law overrides state law; the MSA only applies to the parties to the MSA, while federal law applies to all manufacturers.

A committee member asked whether nonparticipating manufacturers are following regulations on advertising to juveniles. Ms. Lowe responded that most problems in this area come from nonparticipating manufacturers, not participating manufacturers. Under New Mexico's current law, all participating manufacturers are compliant.

A committee member asked whether the TRD levies tax on roll-your-own tobacco machines. Ms. Lowe responded that no tax is levied on the machine or on cigarettes manufactured with these machines.

Incidence of Cancer in New Mexico; Oncologists in New Mexico

Dr. Michael Landen, M.P.H., acting state epidemiologist, Department of Health, presented data on the rates of cancer in the United States versus New Mexico.

Notably, cancer rates are lower in Native American and Hispanic communities than in

other communities. The rate of cancer is calculated through the incidence of cancer per every 100,000 people. The data show that a multifaceted approach is needed in addressing cancer.

There are 3.58 oncologists for every 100,000 people in New Mexico, similar to the U.S. rate of 3.63.

A committee member asked Dr. Landen to provide data on colorectal cancer in Hispanic men to cover the data gaps between his and Dr. Willman's presentations.

The committee discussed how cancer statistics broken down by ethnicity and region could affect policymaking decisions.

LRRI Performance Report: Research Contract

Dr. Steven Belinsky, LRRI, introduced himself to the committee and explained that while genetic abnormalities play a role in cancer, age also plays a very significant role.

The joint lung cancer program between the LRRI and the UNM CC is an innovative mix of teamwork and science. It is important to integrate and bring teams together to provide the best possible care. A sobering fact of lung disease research is that despite tobacco cessation efforts, the number of smokers has not decreased because the United States population has increased.

Lung cancer is the number-one cancer killer in the western world. The LRRI and UNM CC have performed extensive research to design new treatments, diagnostics and potential cures for the disease. The LRRI provides tissues to the UNM CC for development of unique molecular markers of cancer that could improve treatments.

There are new avenues of research being explored by the LRRI and the UNM CC. These include testing novel therapies that awaken genes to kill tumor cells; using aerosols to deliver drugs directly to the lungs; the use of drugs used to treat other diseases that prove effective against lung tumor cells; and focusing on the neurological basis for tobacco addiction.

Promoting and Advertising to Youth; Related Federal Food and Drug Administration (FDA) Regulations and MSA Provisions; Other Tobacco Products and Taxing Tobacco Products

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, Inc. (ACSCAN), presented an overview of MSA restrictions, FDA regulations, tobacco products tax information and moving forward to combat tobacco-related illness and death information.

Ms. Adondakis stated that print advertisements, in-store advertising, internet tobacco advertisements, direct mail, event sponsorships under corporate names, televising events, vending machines and self-service displays are not subject to MSA overview, although some restrictions not covered by the MSA are covered by federal laws.

The MSA does not require manufacturers to provide more effective warning labels, obtain tobacco retail licensing, follow FDA regulations to establish comprehensive tobacco prevention and control programs, enforce minimum age laws or enforce proof-of-age requirements for purchase.

The ACSCAN supports legislation to restore funding to tobacco control programming, a return to saving 50% of MSA payments in the Tobacco Settlement Permanent Fund, enforcement of the Dee Johnson Clean Indoor Air Act and increased taxes on noncigarette tobacco products.

Staff Reports

The members of the committee and the staff discussed spreadsheets relating to the Centers for Disease Control and Prevention's recommended funding formulas, historical data surrounding tobacco prevention use and control funding and State Investment Council reports on tobacco fund performance.

Public Comment

There was no public comment at this meeting.

The committee adjourned at 4:15 p.m.