

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

**October 9-12, 2018
State Capitol, Room 322
Santa Fe**

The sixth meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative Deborah A. Armstrong, chair, on Tuesday, October 9, 2018, at 9:15 a.m. in Room 322 of the State Capitol.

Present

Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Sen. Bill B. O'Neill
Sen. Cliff R. Pirtle (10/10, 10/11)
Rep. Elizabeth "Liz" Thomson

Absent

Rep. Gail Armstrong
Rep. Rebecca Dow
Sen. Mark Moores

Advisory Members

Rep. Joanne J. Ferrary
Sen. Gay G. Kernan (10/9)
Sen. Linda M. Lopez
Sen. Cisco McSorley
Sen. Howie C. Morales (10/11)
Sen. Mary Kay Papen
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman (10/9, 10/12)
Rep. Christine Trujillo (10/9, 10/10, 10/11)

Rep. Miguel P. Garcia
Rep. Tim D. Lewis
Rep. Rodolpho "Rudy" S. Martinez
Rep. Angelica Rubio
Rep. Nick L. Salazar
Rep. Gregg Schmedes
Sen. William P. Soules

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

Staff

Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Christopher Pommier, Bill Drafter, LCS
Karen Wells, Contract Staff, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, October 9

Call to Order/Introductions

Committee members and staff introduced themselves. The committee convened as a subcommittee.

Safe Harbor for Nurses Task Force Report

Thomas Dow, director of compliance, Board of Nursing (BN); Jason Bloomer, intensive care nurse, member, New Mexico Nurses Association (NMNA); Carolyn Green, member, New Mexico Organization of Nurse Leaders (NMONL); and Jeff Dye, president and chief executive officer (CEO), New Mexico Hospital Association, comprised a panel to speak on the task force report.

Mr. Dow provided an overview of Senate Joint Memorial 13 (2017), which called for a task force to study the development of a safe process to protect from retaliation nurses who feel they have been asked to engage in an activity beyond their capacity. Mr. Bloomer described the work of the task force and offered additional reasons for a safe harbor process to be established in New Mexico. He testified that the NMNA has anecdotal evidence that nurses are being placed in situations that they believe are unsafe and that no universal avenue exists for nurses to safely speak up and report such incidents. He stated that it is the belief of the task force that it is essential to establish a process to protect nurses and the patients to whom they provide care.

Mr. Dye commented that the task force worked in a very collaborative manner and reached consensus easily. He noted that no recommended legislation has been developed. The task force supports the concept of safe harbor. He encouraged the creation of avenues to collect best-practice data and said that retaliation against nurses who engage in safe harbor protection should be prohibited. He urged the committee to find solutions that are practical and implementable.

Ms. Green described the membership and purpose of the NMONL, which supports the establishment of a safe harbor process. She commented that improved patient care will be the result of such an effort.

Committee members had questions and made comments in the following areas:

- whether there was any opposition to the establishment of a safe harbor process: no;
- that safe harbor provides the opportunity for nurses to have a peer review process when conflicts exist between bedside nurses and administrators;
- that it is necessary to ensure protection of patients, nurses and managers: situations will need to be addressed on a case-by-case basis;
- recognition of the importance of mentors for new nurses to ensure continued learning after being hired;
- whether the Nursing Practice Act (NPA) needs to be amended to ensure that invoking safe harbor is not viewed as a minor infraction: this should be reviewed in the context of what does or does not need to be reported to the BN;

- a recommendation that the task force work in advance to develop proposed legislation that brings all points of view together;
- that establishing a safe harbor in small hospitals is very challenging and still needs to be worked out;
- that the safe harbor initiative appears to be working well in Texas; however, the process is unduly burdensome;
- clarification regarding necessary legal protections in the peer review process;
- whether safe harbor provisions would apply in nursing homes or any facility in which the setting itself is unsafe: there is potential for the principles to be applicable in many settings;
- whether there is potential for legislating a "just culture" environment: the NMNA will provide information to the committee about this; and
- whether the task force will work toward proposed legislation: the report indicates areas of consensus that could be included in a bill; however the biggest challenge is protection of the peer review process.

Committee members expressed a desire for a bill to be drafted to address the issue of safe harbor for nurses.

Enhanced Nurse Licensure Compact Update

Sasha Poole, Ph.D., R.N., executive director, BN; Mr. Dow; William Duran, director of operations, BN; and Gloria Doherty, president, NMNA, were invited to address the committee. Dr. Poole highlighted the issues that have emerged in the implementation of the enhanced Nurse Licensure Compact. She clarified that the compact does not apply to advanced practice nurses (APNs). She noted that nurses who are covered to practice in the state by virtue of the compact include those without multistate licenses in New Mexico and those who do not reside in New Mexico.

Ms. Doherty identified numerous proposed changes to the NPA that are supported by the NMNA. The NMNA contends that the recommended changes are required as a result of the enhanced compact and include transparency by the BN, updates to the rules regarding certified registered nurse anesthetists (CRNAs) and alignment of the statute and rules regarding conscious sedation. The NMNA asserts that a strong NPA not only protects patients and nurses but serves to attract nurses to New Mexico.

Committee members asked questions and made comments as follows:

- clarification that APNs are not included in the compact;
- whether states with comparable or higher education requirements than those in New Mexico could be exempt from the proposed continuing education credits: the BN believes it would be difficult to capture this information;
- whether there is an exemption in the current NPA to allow temporary licenses in certain circumstances: yes, for up to 60 days;
- clarification regarding a recent executive order concerning members of the military who may provide medical services when stationed in New Mexico: the BN has sent

- the order to the attorney general for clarification; there are some differences between military versus NPA requirements;
- clarification regarding nurses who work for the federal government in some capacity who are not required to register with the BN;
 - clarification regarding the need to consolidate and provide to the BN collected workforce data;
 - whether the BN has a position regarding the recommendations of the NMNA: the BN has not yet had the time to thoroughly review the recommendations;
 - clarification regarding changes that would occur with implementation of the proposed recommendations regarding CRNAs and conscious sedation: the proposed changes clarify and align the rules with the statute; and
 - clarification regarding whether other states differ in continuing nursing education requirements: so far, only Louisiana is considering requiring nurses from other states to have continuing education credits that are the same as in that state. The BN notes this would increase costs to the BN as changes to the database would be required to accommodate this.

Public Comment

Deborah Walker, Ph.D., executive director, NMNA, highlighted that across the country, the fast passage and enactment of the enhanced Nurse Licensure Compact has limited the ability to identify potential problems. New Mexico is a leader in capturing data regarding the number of nurses in the state. The recommendation that New Mexico own the data captured by the BN is intended to address this. Dr. Walker also clarified the difference between safe harbor and peer review. The focus on the safe harbor provision in which the NMNA is most interested is to protect nurses who, either through inadequate experience or through challenges such as fatigue, feel they are not able to carry out the care assignment they have been given.

Ms. Doherty read part of a policy from the Division of Nursing of University of New Mexico (UNM) Hospital on "Just Culture".

Tisha Brick identified herself as a mother and caregiver for a child with a mental health diagnosis. She made comments about shortfalls in the Lynn and Erin Compassionate Use Act that have made it very difficult to keep her son enrolled in public school. Neither the law nor the regulations are clear in allowing access to medical marijuana in schools, according to Ms. Brick.

Nurse Staffing Levels

Representative Trujillo and Senator Lopez were joined by Sharon Argenbright, district vice president, Local 1199, National Union of Hospital and Health Care Employees; Cleo Fowler, B.A., R.N.; and Diane Spencer, R.N., Patient Safe Staffing Network, to discuss nurse staffing levels.

Representative Trujillo and Senator Lopez both spoke in favor of legislation to require certain minimum levels of health facility staffing and called for action by the LHHS. They have already committed to sponsor this legislation in the 2019 legislative session.

Ms. Spencer described the environment in which she works, which she asserts is seriously understaffed, resulting in poor patient outcomes and high turnover rates among nursing staff. Many bedside nurses are leaving to become nurse practitioners.

Ms. Fowler, a nurse who has worked in many settings, advocated for safe staffing to protect the public in New Mexico. She referenced research that correlates safe levels of staffing with better outcomes for patients. Medical errors are the third leading cause of death in the nation she said. Several elements of a previously introduced patient safe staffing bill have been modified in this current version, including the exclusion of critical access hospitals from the provisions of the bill. A summary of the provisions was described. The cost of passing such legislation has been demonstrated to be no more costly than most measures employed by hospitals to contain costs. The purpose of the bill is to ensure positive patient outcomes. Ms. Spencer oriented the committee to the materials provided to the committee members.

Committee members had questions and made comments as follows:

- how this proposal fits with the safe harbor proposal presented earlier: Representative Trujillo feels that they fit together well, with very little overlap;
- the proponents of this safe staffing bill are open to consolidating the two concepts;
- hospitals are open to discussions to build consensus;
- establishment of committees to determine staffing levels is part of safe staffing, but is not part of safe harbor concerns;
- Texas passed a safe staffing bill that is very similar to what is being proposed in New Mexico;
- critical access, rural hospitals and nursing homes in New Mexico are exempt from the requirements of this proposal;
- whether liability or malpractice concerns are reduced where safe staffing bills have been passed: this is not known;
- development of a more comprehensive comparison between safe staffing and safe harbor provisions: in both concepts, nurses are given a voice;
- proponents should work together to consolidate safe harbor and safe staffing into a bill for consideration for endorsement;
- that regulatory requirements regarding minimum staffing ratios be specified in the bill;
- the number of critical access hospitals in New Mexico, and why they are proposed to be exempted; and
- why is this bill needed if regulations already require safe staffing levels: it is needed to ensure enforcement and to standardize best practices.

New Mexico Nursing Education Consortium (NMNEC)

Jenny Landen, Ph.D., M.S.N., A.P.R.N., F.N.P.-B.C., dean, Santa Fe Community College, was joined by Diane Evans-Prior, D.N.P., M.S., program director, Nursing, Central New Mexico Community College, and Judy Liesveld, Ph.D., P.P.C.N.P.-B.C., C.N.E., education team chair, UNM College of Nursing, to present to the committee.

Dr. Liesveld presented an overview and historical background on the NMNEC. She drew the attention of the committee to a publication regarding the future of nursing that led the NMNEC to a goal of increasing bachelor level nursing education in New Mexico. The NMNEC has developed a model to build multiple pathways to accomplish this goal through collaboration with all state-funded nursing programs, Dr. Liesveld said.

Dr. Landen highlighted the statewide partnerships among community colleges to provide nurses an avenue to achieve a bachelor of science in nursing (BSN). Since 2013, there has been a 96% growth in the number of schools offering programs that prepare BSN-educated nurses. This year, an anticipated 424 new BSN graduates are expected. Positive results of this work are more highly educated entry-level nurses and keeping nurses in their home communities.

Dr. Evans-Prior provided a demographic description of the nurses benefiting from this model of education. Additional financing is needed to sustain this higher quality of education, statistical evaluation of curricula, a coordinated system evaluation, faculty development training and more. She estimated that the additional financial need is \$300,000 to continue this important work. Many of these needs are being funded through partner schools; however, 3.5 full-time employees are needed for the NMNEC itself.

Questions and comments from committee members addressed the following issues:

- whether state funding has been provided previously and where the requested money would come from: funding would go to UNM;
- whether the model helps participating schools in any way; it provides and promotes a pathway for other educational endeavors at participating schools;
- whether alternative entities to receive funding could be identified; advocates are open to this; however, they trust UNM to administer funding for the NMNEC in accordance with the NMNEC's goals;
- most previous funding has originated from grants; it may be time for the state to fund the NMNEC directly;
- the NMNEC is advertising, talking about, publishing information on and broadly promoting the program both nationally and statewide;
- whether a BSN is a prerequisite for advanced practice nursing: yes;
- whether a bachelor's degree in another field serves as a pathway to a BSN: it would serve to meet many, but probably not all, prerequisites for a BSN; and
- veterans who were medics or paramedics or had related degrees are recognized for that training and experience.

Public Comment

Mary Wesalesky, a sufferer of chronic migraines and other serious pain issues, testified that when her pain becomes uncontrollable, she ends up in the emergency department. She added that depression and anxiety are side effects of her chronic pain. Her sleep is routinely impaired. Most physicians are reluctant to prescribe medication or treat patients with chronic pain. There are very few pain specialists in New Mexico. Requirements to be in compliance with the Lynn and Erin Compassionate Use Act are expensive and burdensome. She implored

the committee to help her identify ways to get her pain control needs met. She suggested introducing legislation to establish a chronic pain patient bill of rights. She is available to help draft such a bill.

Recess

The meeting recessed for the day at 4:23 p.m.

Wednesday, October 10

Reconvene

The meeting was reconvened at 9:20 a.m. by Representative Deborah A. Armstrong. The committee members and staff introduced themselves.

Psychological Compact

Dan Matthews, Ph.D., New Mexico Psychological Association, and Ken Gilman, Ph.D., New Mexico State Board of Psychological Examiners, were invited to address the committee. Dr. Matthews described a proposed interstate psychology compact, the Psychology Interjurisdictional Compact (PsyPACT), and the need for such a compact in New Mexico. The PsyPACT, a cooperative agreement enacted into law by participating states, would provide a regulatory framework for psychologists to provide telepsychology services across state lines. He offered some previous personal experiences and described barriers and benefits of telepsychology. The service would be of special benefit in rural areas.

Dr. Gilman identified several states that have already embraced the PsyPACT, including several states contiguous to New Mexico. The New Mexico State Board of Psychological Examiners is fully in favor of New Mexico joining the compact. The process for joining was described, beginning with passage of state legislation followed by participation in developing specific regulations for the use of telepsychology with participating states. The PsyPACT becomes operational when seven states enact it into law. It allows each state to retain its own unique standards of practice.

Committee members asked questions and made comments as follows:

- clarification of the number of states already engaged in the PsyPACT and those considering it: seven states have already passed enabling legislation, and six more states are considering it;
- widespread use of telepsychology could have a negative effect on practitioners in rural communities and could have other unanticipated consequences;
- the compact ensures regulations across state lines;
- whether there is federal law or regulation that limits referrals or advertising: this would need to be researched;
- whether a psychologist would be allowed to prescribe medication across state lines: only if that state has a provision for prescriptive authority of psychologists;
- whether data regarding the prescriptions written in another state could be captured in New Mexico: this is not yet known;

- whether the proposed bill could be changed to conform with New Mexico style: no. Eric Chenier, a Legislative Finance Committee (LFC) analyst, stated that in the nursing compact, only additions to the language were permitted; the body of the compact language was unchanged;
- whether adoption of the PsyPACT would permit Medicaid contractors to use out-of-state psychologists to meet their network adequacy requirements;
- this approach would enhance access to services in rural areas;
- whether there will be an issue in billing across state lines: yes;
- whether there is any current reciprocity for psychologists across state lines: it varies;
- clarification regarding the cost of participating in the PsyPACT and whether it will be borne by the state or individuals; and
- the need for a careful and comprehensive review of regulations, especially regarding the intersection of state and compact regulations.

The proposed legislation will be sent electronically to the committee.

Public Comment

Robert Kegel, developmental disabilities (DD) advocate, provided an overview of his work over the last five years. He was critical of the process to evaluate the DD waiver, leading to a false premise that New Mexico's waiver is the most expensive in the country. The rationale to cap the number of people on the DD waiver is insupportable, according to Mr. Kegel, because it is based on an inaccurate premise. He noted that a current study only looks at the traditional DD waiver but not at the Mi Via waiver. He described many complications, difficulties and inconsistencies over the years that have led to insufficient funding and insufficient support for people living with DD. He would like the committee to endorse legislation to ensure New Mexico compliance with federal law, including reporting to and by the Developmental Disabilities Planning Council (DDPC). He also opposes keeping the Office of Guardianship with the DDPC.

Committee members thanked Mr. Kegel for his long-standing dedication to these issues. Senator McSorley said he would like to see bills representing Mr. Kegel's suggestions. Members acknowledged that no clear alternative exists for where to move the Office of Guardianship. Adequate funding is absolutely necessary, as is identifying an agency with no conflict of interest to carry out the responsibilities of the office. Mr. Chenier reminded the committee that at the end of last year, the DDPC had a \$3.1 million fund balance and is projected to revert more than \$400,000 this year. Committee members generally agreed that the current system is failing and changes are needed.

Alberta Wilkinson, an individual living with a developmental disability, testified that she works at a coffee truck part time for \$8.95 per hour. She likes her job. Her caregiver, Sydney Garcia, added that the wage is only sufficient to provide for personal items and not clothing or other necessities. They both advocated for payment of at least minimum wage to all individuals, regardless of disability status.

Amira Rashid, chair, DDPC, testified that the council has been given the job of developing a subminimum wage task force and to develop recommendations. The task force will gather statewide information and input and hopes to find common ground among diverse parties. The council does not anticipate having a recommendation prior to the 2019 legislative session.

Training and Technical Assistance for People Living with Disabilities

Tracy Agiovlasis, program manager, New Mexico Technology Assistance Program (NMTAP), offered testimony. The program, which is part of the Governor's Commission on Disability, routinely gives technical support and assistance to a variety of entities. The NMTAP is funded with federal grant dollars and advises individuals with a wide variety of disabilities on assistive devices. A major focus of the program's work is to demonstrate how these devices work and how to use them. Affected individuals can borrow a device for free for 30 days to see how it works in their daily environments. The NMTAP also re-purposes used devices. The program collaborates with other government agencies. It has the ability to provide loans, such as loans for self-employed individuals with disabilities. The NMTAP holds more than 40 events per year to educate the public about its services. Ms. Agiovlasis estimated that the NMTAP helps 2,400 people each year with assistive devices. The program is partnering with New Mexico State University on a newly awarded federal grant to provide technology and assistive devices to farmers.

Committee members had questions and asked questions in the following areas:

- how people are referred to the organization: people with any kind of disability, anywhere in the state, may be referred, or they may self-refer;
- outreach efforts include "hands-on" events and partnering with schools and universities;
- whether cell-phone technology is part of the NMTAP: yes;
- the source of grant funding: all is federal funding;
- ways in which the NMTAP stays on top of changing technologies; and
- the amount of federal funding the NMTAP receives and whether it is sufficient: funding is through a formula grant amounting to approximately \$440,000; currently, there is no waiting list; however, Ms. Angiovlasis stated, the NMTAP does not have enough money for new technologies.

Senator Ortiz y Pino asked for an appropriation bill for consideration for committee endorsement to provide additional funding for the NMTAP program. No committee action was taken pursuant to this request.

Subminimum Wage for People Living with Disabilities

A panel including Timothy Gardner, legal director, Disability Rights New Mexico (DRNM); Pamela Stafford, public policy director, The Arc of New Mexico; Mike Kivitz, president and CEO, Adelante Development Center, Inc.; Reyes Gonzales, field operations director, Vocational Rehabilitation Division (VRD), Public Education Department (PED); and

Ellen Carpenter, supported employment coordinator, VRD, PED, were invited to present the various perspectives on the issue of subminimum wages for people living with disabilities.

Mr. Gardner testified that the majority of people receiving subminimum wages are individuals with disabilities who are recipients of services from a provider agency. DRNM contends that this practice benefits the agencies much more than the employed individuals and that the agencies receive funding from more than one source, far exceeding minimum wage. He further noted that the federal government is slated to do away with the sheltered workshop environment in which these subminimum wages are paid.

Ms. Stafford reminded the committee of the work The Arc of New Mexico does in addition to advocacy. The Arc of New Mexico was responsible for bringing Ms. Wilkinson forward to provide public input to help put a face on this issue. The Arc of New Mexico supports the concept of real pay for real work and has recommended changes in sheltered employment and general measures to make the system fair. She noted that there are very few subminimum wage employers outside of the service providers who take advantage of these federal provisions. She said that Alaska, Maryland and New Hampshire have already ended subminimum wages within their states, and Ms. Stafford suggested that New Mexico should do the same.

Mr. Gonzales distributed a fact sheet on the federal Workforce Innovation and Opportunity Act and the limitations on payment of subminimum wages under Section 14c of the federal Fair Labor Standards Act of 1938, and he reviewed their provisions. Ms. Carpenter provided statistics regarding the number of individuals receiving subminimum wages in 2017. In that year, a total of 288 individuals statewide received subminimum wages.

Mr. Kivitz asserted that all the panel members share the same values and desire what is best for this population. Adelante is the largest supported employment agency in the state and considers themselves a "ticket-to-work" program. Adelante's highest value is to place people with disabilities in competitive jobs with good pay, according to Mr. Kivitz. He shared graphs that reflect work placement experiences over time of individuals with intellectual or developmental disabilities (IDD), including supported employment. He contended that sheltered workshops are not healthy environments. Adelante prefers social enterprises, which provide real employment with real-time wages. He described the extent of the federal regulations with which Adelante has to comply. Audits are frequent, and fines for noncompliance are steep.

Committee members had questions and comments as follows:

- whether individuals covered under state contracts with Adelante earn the minimum wage: the majority earn the minimum wage or more;
- whether there are any floors below which an employer cannot pay; and
- clarification regarding oversight of implementation of the federal laws: the state has no requirement for oversight.

There being a quorum present, Representative Thomson made a motion that the LHHS write a letter to the Workforce Solutions Department to ask about the extent of its oversight of Section 14c of the federal Fair Labor Standards Act of 1938, including who provides the oversight and other factors that are considered in the oversight responsibilities. The motion passed without objection.

Committee members had additional questions and comments as follows:

- what happens when workers are paid less than minimum wage: Adelante does not make a profit on this situation;
- many families report that their children working for subminimum wages are benefiting from a sense of self-respect, and their families are not concerned about their salaries;
- those who represent individuals with IDD in finding employment at a comparative wage are performing a very difficult job;
- the first priority of agencies in this business is to support the choice of the individual with IDD and assist the person in finding a job that the person chooses and for which the person is qualified;
- the difference between supported employment, in which an advertised position is sought for a person with a disability, and customized employment, in which an agency works with an employer to create a job that matches the skills of an individual with IDD;
- whether there is anticipated state legislation on this topic: there is a task force that has been convened to look into this issue, including the interface between the DD waiver and supported employment and whether legislation is needed;
- an assertion that if Section 14c is eliminated, many people with IDD will lose their jobs;
- the potential loss of other benefits should 14c be eliminated: the VRD has benefits advisors to help people with this; this is a very small population;
- the core issue is to ensure that public policy does not enable anyone to make a profit off the backs of people with a disability;
- whether it is possible to still assess the employment status of the individuals served by providers no longer participating in Section 14c;
- identifying the nature of state contracts and whether they are sufficient to pay minimum wages to clients with IDD; and
- assessing what it would take to raise to the minimum wage of all the salaries of those currently receiving subminimum wages.

Recess

The committee recessed for the day at 4:32 p.m.

Thursday, October 11

Reconvene

The meeting was reconvened at 9:20 a.m. by Representative Deborah A. Armstrong. The committee members and staff introduced themselves.

School-Based Health Care Update

Nancy Rodriguez, executive director, New Mexico Alliance for School-Based Health Care (NMASBHC), came forward to address the committee. Ms. Rodriguez, who distinguished her identity from that of committee member Senator Nancy Rodriguez, began by reviewing the mission of the NMASBHC and its model of health care delivery, which integrates behavioral health and primary care in every site. As of 2017, there are 48 school-based health centers (SBHCs) that receive funding from the Department of Health (DOH). Currently, 65 percent of all SBHCs are sponsored by federally qualified health centers (FQHCs). The main goal of SBHCs is prevention, though they handle a wide variety of health needs. Statistics were provided regarding their service array. Significant issues faced by youth visiting SBHCs include behavioral health, poverty, poor family support, food insecurity and a lack of basic essentials. Outstanding opportunities and challenges going forward were highlighted.

A brief history of the development of SBHCs from 1978, when the first SBHC was opened, to present day was given. Ms. Rodriguez identified funding as the biggest opportunity and challenge. State funding was dramatically reduced in 2012, and it has not been fully restored. She noted that New Mexico is missing out on receiving the Medicaid federal match by underfunding SBHCs. State funding is still critically needed. The NMASBHC is requesting an additional \$3.5 million for school-based health centers to bring them back to pre-recession funding levels and to provide for an increase in the number of SBHCs in New Mexico schools.

Committee members had questions and comments in the following areas:

- the circumstances under which families of students are served by SBHCs;
- a request for data regarding the percentage of elementary school students who are experiencing behavioral health issues;
- the amount of funding that individual schools absorb out of their budgets and the impact on the array of services they are able to provide;
- that it is very difficult for charter schools to have SBHCs;
- ways in which SBHCs and Native American tribes coordinate to serve youth;
- previous cuts in funding have resulted in several counties that do not have SBHCs;
- the potential role of hospitals in providing a home for SBHCs; it is more common for FQHCs to be the partner provider;
- the funding history and the funding request for fiscal year 2019;
- that a funding request does not include additional funding for Medicaid, but the federal match can be predicted based on historical experience;
- schools bill Medicaid directly for SBHC services;
- whether the total request, if funded, would go to the DOH;
- whether it is reasonable to expand SBHCs to community schools: yes;

- that the Legislative Education Study Committee has not made a request to hear from the NMASBHC;
- an offer to share a study regarding the return on investment related to SBHCs;
- whether telepsychology could be integrated into SBHC services;
- billing and reimbursement issues are challenging, especially those related to confidentiality issues;
- the incidence of unintended teen pregnancy: it has gone down; SBHCs are working to provide reproductive health care services; however, not all SBHCs permit provision of these services;
- whether the DOH has requested an increase for SBHCs in its budget: it has not;
- the intersection of health and learning;
- whether SBHCs are having conversations with students, especially lesbian, gay, bisexual, transgender and queer students, regarding safety: there is a required question in the DOH risk and resiliency assessment that SBHCs are using;
- that there is increased evidence of anxiety around the danger of guns and sexual assault in schools; and
- the importance of even one year of additional funding in the life of a child.

New Mexico Health System Task Force: Senate Memorial (SM) 44 (2018)

Ron Hale, co-chair, New Mexico Alliance of Health Councils (NMAHC) was joined by A. Terrie Rodriguez, executive director, NMAHC, and Jessica M. Jara, co-chair, NMAHC.

Ms. Jara highlighted the purpose of SM 44 to identify steps to strengthen the structure and effectiveness of county and tribal health councils. In place since 1991, health councils have a strong history of addressing local priorities, such as diabetes, behavioral health and environmental health.

Mr. Hale described the work of the task force and identified lessons learned, highlighting areas of focus. Examples of health council accomplishments were described. A pie chart reflected how more than \$3.4 million in funds were leveraged by health councils in priority areas, including nutrition, teen pregnancy, substance abuse, interpersonal violence and more. From 2000 to 2003, health councils brought an additional \$27 million to communities in New Mexico.

Ms. Rodriguez offered recommendations that arose from the work done through SM 44. Structural changes, beginning with updating the federal Maternal Child Health Program, are needed to reflect the most effective relationships between tribes and counties. Ways to improve effectiveness and ensure long-term sustainability of health councils were identified. The NMAHC will make a legislative request to restore state funding of the health council system, beginning with a \$1 million request in 2019 and followed by additional funding requests over the next three years. Ms. Rodriguez introduced individuals in the audience representing health councils.

Committee members made comments and asked questions in the following areas:

- whether the task force was representative and inclusive of all interested parties: there are many structures and groups in each county representing competing issues;
- that the task force would have liked more participation from tribal communities in its work;
- the potential to get more funding from the tobacco settlement funds in light of the problems that arise from alcohol and tobacco use;
- encouragement to focus more on integrating existing services rather than using funding for buildings, especially for SBHC programs;
- the challenges of imposing local behavioral health council duties without additional funding;
- local behavioral health collaboratives coordinate and work with the local health councils; and
- county and tribal health councils are an essential part of a public health system and should be adequately funded.

Public Comment

Anthony Yepa, Pueblo of Cochiti, asserted that local tribal councils have the responsibility to inform their communities about resources such as Medicaid and Medicare and to help people enroll in these programs. The funding they receive allows them to talk about their local issues with other tribes. Tribal voices are more important than those of national organizations because they lead to grass roots efforts.

Kim Gabaldon has worked collaboratively with the local health council in Los Alamos to reach out to people in the community, to meet local needs and to satisfy regulatory requirements.

Mary Kay Pera is a retired nurse from the Medical Assistance Division of the Human Services Department, where she became a fierce advocate of SBHCs. She stressed the critical importance of SBHCs and encouraged committee members to visit a local SBHC.

Nat Dean, disability advocate, stated that she has been appointed to a federal committee on health equity and minority health issues. Last year, the committee lost its funding. She spoke strongly in support of the local health councils and the vital work they accomplish.

Patsy Nelson, SBHC advocate, thanked the committee for taking the time to learn about SBHCs and considering their funding requests.

Davida Simon spoke about a traumatic experience she had at a hospital that resulted in posttraumatic stress disorder.

James Ross from the Governor's Office identified various options for patient complaints regarding hospital care.

Josef Martinez testified about an experience his wife had that resulted in a very precarious outcome. He believes there should be more regulatory oversight of hospitals.

Reporting by the Early Cerebral Palsy Risk Detection and Intervention Task Force

A panel composed of John Phillips, M.D., division chief, Pediatric Neurology, UNM Health Sciences Center; Marybeth Barkocy, P.T., D.P.T., board-certified clinical specialist in pediatric physical therapy and assistant professor, Division of Physical Therapy, UNM School of Medicine; Karen Lucero, P.T., M.S., P.C.S., director, Inspirations Early Intervention, Inc.; and Sandra Heimerl, P.T., M.S., director, New Mexico Leadership Education in Neurodevelopmental and Related Disabilities Program, UNM Center for Development and Disability, was invited to present on early cerebral palsy risk detection and intervention.

Ms. Heimerl provided information about the work of a task force that met to identify best practices in the early detection and treatment of cerebral palsy. Dr. Phillips informed the committee about the nature of the movement disorder known as cerebral palsy. It is a common disability that occurs in one of every 300 births. New Mexico has an estimated 200 to 400 children between the ages of zero and three with cerebral palsy. He asserted that there is solid neuroscience to support a contention that early diagnosis and intervention is shown to improve brain development.

Dr. Barkocy emphasized that brain connections in children are developed as a result of experience and activity. An internationally approved clinical practice guideline has been developed, and the task force is advocating for adoption of this guideline in New Mexico. The task force is requesting funding to train physicians and other practitioners to implement the guideline.

Ms. Lucero emphasized the importance of early detection of cerebral palsy and the opportunity New Mexico now has to implement the guideline. It is very important that children get referred to treatment within the first year of life for maximum effect. Given the right support and equipment, these children can lead active lives. She introduced Vail Woodward, a parent of a child with cerebral palsy.

Ms. Woodward introduced her daughter, Matea, and gave her personal story of having a child with cerebral palsy. The stages of childhood development that she saw in her older daughter were not being seen in Matea. A diagnosis of cerebral palsy was delayed until Matea was 13 months old. Ms. Woodward recognized the disease before any professional diagnosed it. Although the recommendations of the task force will not help her daughter, Ms. Woodward stated that she hopes it will help other children sooner in their lives.

Ms. Heimerl stressed that most neurologists and physical and occupational therapists in New Mexico do not have the training or skills to recognize early signs of cerebral palsy, and they miss the opportunity to begin treatment early. The goal of the task force is to increase the capacity of New Mexico clinicians in this area and to implement the new clinical guideline. The task force would like to see a memorial introduced for further study of this issue and to devise a plan for children at risk for, or diagnosed with, cerebral palsy.

Committee members asked questions and made comments in the following areas:

- the importance of increasing general and professional awareness of the incidence of cerebral palsy and the importance of early diagnosis and treatment;
- whether there are studies on the cost savings of this approach: the task force will try to identify this and share the findings with the committee;
- whether early and periodic screening, diagnostic and treatment (EPSDT) is sufficient for a possible diagnosis of cerebral palsy: EPSDT is conducted only on approximately 38% of children, and it is not reliable in identifying cerebral palsy;
- more rigorous and routine EPSDT for all children on Medicaid would have huge benefits;
- whether training is occurring in medical school now to improve the likelihood of early diagnosis: yes;
- telemedicine and videos could help early diagnoses in rural areas;
- clarification regarding initial and ongoing training needs and populations;
- whether the level of funding needed to begin this process is known: yes, a detailed budget has been developed;
- integrating training about early signals of cerebral palsy into home-visiting programs could lead to earlier diagnoses; and
- legislators would like to know of other states moving in this direction.

Grandparents Raising Grandchildren: House Memorial (HM) 94

Liz McGrath, Esq., co-chair, Grandparents Raising Grandchildren Task Force, and Brad Hill, who is a grandparent, were invited to address the committee. Mr. Hill began with a brief background of his professional life working with state government. He told a personal story of assuming care of his grandchildren. Much differing and inaccurate information was provided from the Children, Youth and Families Department (CYFD) about his new role. His case was transferred at least three times, and promised help was not forthcoming. Although he was able to maneuver through the system, it was difficult and challenging. He became a member of the task force called for in HM 94 by virtue of his role as a grandparent and his employment with the Office of the Attorney General, which was named in the memorial. He advocates for development of a resource guide that the CYFD could distribute to grandparents in this situation.

Ms. McGrath reported on the findings and recommendations of the Grandparents Raising Grandchildren Task Force. It is requesting \$200,000 for grants to communities to develop local approaches to serve this population. The task force hopes to work with the new administration to improve communication and interaction between the CYFD and grandparents. On the issue of subsidized child care, the task force recommends changes to the New Mexico Administrative Code to make this possible, regardless of income. Steps to ease the process of grandparents' attempts to enroll their children in schools are recommended to be inserted into statute. The task force recommends increasing the appropriation to the Aging and Long-Term Services Department (ALTSD) to \$10,000 to fund legal services for grandparents raising grandchildren. Finally, the task force made several recommendations for improving the response of the CYFD, including for supported diversion of children placed with kin.

Mr. Hill spoke to the issue of grandparents losing housing benefits due to having grandchildren move in with them. Efforts are being undertaken to lobby the U.S. Department of

Housing and Urban Development to ease these barriers. The J. Paul Taylor Early Childhood Task Force is working to ensure that when grandparents take grandchildren into their homes, they are not threatened with eviction from public housing.

Ms. McGrath acknowledged numerous members of the audience who are grandparents raising grandchildren.

Committee members had questions and made comments in the following areas:

- that the term "grandparents" is inclusive of "kinships";
- that the focus seems to have shifted toward ways to ensure that services are given to grandparents versus how the problem is defined;
- that CYFD social workers have caseloads that are unmanageable;
- Annamarie Luna, program director, Protective Services, CYFD, explained the requirements and procedures for placing children in the custody of the CYFD versus those not in custody;
- whether foster care diversion is part of the federal Family First Prevention Services Act of 2016: yes, the state received a grant to address this;
- that all the departments involved could collaboratively create a grandparents information sheet; this is one of the recommendations of the task force;
- that housing vouchers are terrific, but they do not guarantee a house; and
- that systemic and institutional change is needed to centralize the identified solutions.

Public Comment

Josephine Chavez has been raising her grandson since he was three years old. Her husband is now sick, and his income pays for his care in an institution. She does not have enough money now to care for her grandson.

Deborah Lucas, an Albuquerque social worker, has been helping Ms. Chavez to find affordable housing. Committee members suggested that she contact the senior citizens law office at the ALTSD.

Darlene Archuleta told her story of temporarily caring for her grandchildren without adequate financial help. She stressed that it is very hard to raise grandchildren. Her son was drug-addicted but is now clean and sober and has his children back with him.

Dolores Sly stated that she took in her grandchildren when her daughter became addicted to heroin. The amount of money she had from public assistance was not enough to raise her grandchildren. She would like to see a subsidy for people in this situation.

Beth Pacheco is raising four grandchildren. She never got guardianship because she did not know how to do that. Later, she took in two granddaughters and adopted them. The CYFD has helped her. She is grateful for anything the legislature is able to do for people in situations like hers.

Lupe Salazar of Barrios Unidos in Chimayo noted that grandparents have always provided supplemental care. In her case, she has now taken over the whole responsibility. In Rio Arriba County, there is a huge percentage of grandparents and great-grandparents raising grandchildren and great-grandchildren. She became a fierce advocate for her grandchildren under adverse circumstances. She noted that this situation will not change until the high incidence of opioid addiction is resolved.

Vera Vigil spoke to the difficulty of obtaining medical care for her granddaughter, in part due to the fact that she must certify her eligibility for Medicaid every six months.

Delfinia Romero spoke as a member of the task force and thanked all the grandparents who attended the meeting and were brave enough to tell their stories.

Senator Stefanics suggested that the committee propose an immediate food voucher for people in need.

Recess

The meeting recessed at 5:01 p.m.

Friday, October 12

Reconvene

The meeting was reconvened by Representative Deborah A. Armstrong at 9:35 a.m. Members and staff introduced themselves.

Proposal to License the Practice of Naturopathy

Senator Ortiz y Pino made introductory comments. He turned the presentation over to Juliette Sweet, N.D., M.S.Ayu., president, New Mexico Association of Naturopathic Physicians (NMANP); Lily-Marie Blecher, N.D., D.O.M., treasurer, NMANP; and Traci Hobson, J.D., L.L.M., director of state relations, American Association of Naturopathic Physicians.

Dr. Sweet reminded the committee of the education and training of naturopathic physicians. A bill is being drafted to establish licensure for the profession. The main goal is to establish regulations and accountability for these physicians. The panelists will be giving a presentation to the LFC on October 27. The NMANP is hopeful that the bill draft will be complete in time for the LHHS to review it and consider endorsement. She provided an overview of the work in which it has been engaged to build support for the concept. The New Mexico Medical Board has agreed to facilitate licensure by establishing a subcommittee so that the cost of establishing a separate board is eliminated. Dr. Sweet noted that naturopathic physicians have a focus on prevention. She is hopeful that licensure will provide an avenue for insurance coverage for naturopathic physicians.

Dr. Blecher described her work to develop an integrative clinic in Taos. She works in partnership with a licensed physician to meet a full array of needs for patients. They have received a \$50,000 grant from the town of Taos to serve uninsured individuals.

Ms. Hobson, who is an attorney, reviewed the current status of licensure and regulation for naturopaths nationwide. A number of states are intending to introduce legislation in 2019 to establish licensure.

Senator Ortiz y Pino provided personal input and support for this concept. He highlighted the influence of his deceased sister, who was committed to the practice of integrated medicine in Taos.

Committee members had questions and made comments in the following areas:

- clarification regarding naturopathic medicine in New Mexico: naturopaths are in several counties and communities;
- current limitations on the practice of naturopathy: naturopaths have a restricted ability to bill for services;
- ways in which reimbursement could evolve for naturopaths in the future: licensure sets the stage for reimbursement under insurance over time; the panelists would appreciate any support toward obtaining Medicaid coverage;
- the importance of a naturopathic approach as a complement to traditional medicine;
- a school of naturopathic medicine in New Mexico could serve as an economic engine for the state;
- avenues that are being pursued to achieve Medicaid reimbursement for naturopathic physicians in New Mexico;
- that there are numerous known naturopathic physicians currently practicing out of state who desire to return to New Mexico to practice here;
- many residents of New Mexico are more trusting of naturopathic remedies and treatments;
- the importance of gaining support from other medical boards and groups prior to the legislative session;
- appreciation for the position of the New Mexico Medical Board to collaborate on, rather than oppose, licensure for naturopathic physicians in New Mexico; and
- the difference between naturopathic physicians and naprapaths: naprapaths are not physicians; they focus on physical rather than internal medicine.

Public Comment

Celeste Griego, a naturopathic physician, read two letters into the record in support of licensure for naturopathic physicians in New Mexico. One letter related a personal story of a physician diagnosed with cancer who was greatly helped by treatment with integrative medicine.

Janet Gabriel read a letter in support of licensure for naturopathic medicine in New Mexico. She emphasized the importance of access to and insurance coverage for these alternative approaches to medicine.

Changes to the Scope of Practice of Chiropractic Physicians

Steve Perlstein, D.C., A.P.C., New Mexico Chiropractic Association (NMCA) Political Action Committee, was joined by JC Moore, D.C., A.P.C., treasurer, NMCA, and Rod Justice, D.C., executive director, Alliance of New Mexico Chiropractors.

Dr. Perlstein gave a brief history of progress following passage of legislation in 2008 that provided limited prescriptive authority to chiropractors. This authority was granted conditioned upon completion of a set amount of training. In 2012, the requirement for training sunsetted in favor of establishing a graduate degree in a chiropractic clinical practice specialty, which turned out to be impractical for many reasons. This year, his organization is hoping for LHHS support for an initiative to restore the option for a 100-hour training program in lieu of an advanced degree. Additionally, the NMCA is proposing amendments to simplify and clarify existing language regarding Chiropractic Board approval for any drug not listed previously and removal of some misleading language. Finally, the NMCA proposes eliminating the words "by injection". This does not change the prescriptive authority of chiropractors but merely clarifies current practice.

Dr. Moore presented a request for LHHS support to include chiropractors in Centennial Care. He asserted that the NMCA is merely seeking reimbursement for chiropractic services in areas that are already covered under Centennial Care. Research exists to demonstrate that chiropractic services would save the Medicaid program significant money. A fact sheet was distributed to support his requests.

Dr. Justice described a malpractice lawsuit arising from improper use of injections of prescription drugs by a chiropractor. The use of prescriptive substances is an issue that divides the profession. Dr. Justice represents the group that opposes the granting of prescriptive authority for chiropractors. He believes that the current training is insufficient to ensure safe administration of prescription drugs to patients. He provided negative information on a university seeking to provide education and training to chiropractors in New Mexico. Although both sides of this issue can show surveys supporting their positions, he asserted that the number of chiropractors in support of having prescriptive authority is on the decline. He contends that any proposal supporting the use of pharmaceuticals in the chiropractic scope of practice would be a dangerous disservice to New Mexicans.

Committee members asked questions and made comments in the following areas:

- whether malpractice insurance is more expensive for chiropractors with prescriptive authority: no;
- whether oversight by the medical profession would change the minds of the chiropractors who oppose prescriptive authority: no;
- that the opponent is not speaking to the proposed changes to the law but to the concept of granting prescriptive authority to chiropractors: that is correct; he is opposed to the concept;
- that in one individual's 10 years of experience, there has not been any single successful malpractice lawsuit against prescribing chiropractors;

- that the two proposed measures brought to the committee are separate;
- that current law says Medicaid *may* cover chiropractic; the goal of the proposed bill is to change *may* to *shall*;
- that the proposed language change regarding prescriptive authority for chiropractors seems fairly simple;
- that the university that previously provided the 100-hour course would reinstate it should the legislation pass;
- that Medicaid changes could be accomplished by amending the Medicaid waiver; however, by changing the statute, the change could be accomplished more quickly and be less vulnerable to future changes;
- statements of support for the proposed changes to the Centennial Care Medicaid waiver;
- whether the alliance represented by Dr. Justice is seeking to remove the entire statutory provision regarding advanced practice for chiropractors: Dr. Justice would have to query the alliance to find out;
- preserving or resurrecting a training program could be beneficial both to New Mexico and to the profession;
- the Chiropractic Board has approved an expanded formulary, but it has not taken a position on the legislation yet; the Board of Pharmacy has approved it, and it has been presented to the New Mexico Medical Board; and
- the bill is not an expansion of the formulary; it merely seeks to simplify and clarify language.

Creation of a Dental Therapist Profession

Todd Hartsfield, D.D.S.; Barbara Posler, chair, Regulation and Practice Council, New Mexico Dental Hygienists' Association, and Jacob Vigil, M.S.W., research and policy analyst, New Mexico Voices for Children, were invited to address the committee.

Frederick Vigil, Governor of the Pueblo of Tesuque, provided personal testimony. He voiced his support for creating a dental therapist profession. His daughter is currently a dental assistant. He believes the proposal would bring needed services to Native Americans and would expand educational opportunities for young tribal members.

Jacob Vigil painted a hypothetical picture of an elementary school student suffering from dental pain, which interferes with her ability to learn. According to the DOH, nearly one in four children between first and sixth grades in New Mexico suffer from untreated dental disease. A coalition of more than 50 entities is in support of the creation of a dental therapist profession.

Dr. Hartsfield spoke to his experience of working with dental therapists during his long career. He briefly reviewed the history of the profession of dental therapy in New Zealand and North America, including Canada. Dental therapists are now practicing in 53 countries in the world. A dental therapist is part of a dental team with a supervising dentist and a dental hygienist. Every study done on the clinical work performed by dental therapists has shown excellence equal to dentists. No lawsuits have been filed. The practice has been very successful

in Alaska and Minnesota. His personal experience is that he got to practice at the top of his license, while the dental therapists provided basic but necessary services.

Ms. Posler asserted that it is time to ensure access to basic dental care to the most vulnerable people and communities in New Mexico. A bill will be introduced to amend the Dental Health Care Act to establish the dental therapist profession. She identified anticipated practice sites and the level of supervision by a dentist. Dental therapists would provide oral evaluations, remove decay and do fillings, and more. To be a dental therapist would require graduation from an accredited school and passing a clinical exam.

Committee members asked questions and made comments in the following areas:

- clarification regarding the current status of negotiations with the New Mexico Dental Association: there have been two meetings; there is no current commitment; however, this is the same bill that garnered the previous support of the New Mexico Dental Association;
- Tom Schripsema, D.D.S., chair, New Mexico Dental Association, commented that the association continues to support the work of the task force, but he has not seen the language proposed for 2019. He noted that the association opposed an amendment that was placed on the bill in 2017. Jennifer Thompson, D.D.S., echoed the comments of Dr. Schripsema. Mr. Hely summarized the amendments from 2017;
- the referenced amendment was not objectionable; a later amendment was objectionable, but there was insufficient time to work out differences;
- another meeting of dental hygienists and dentists is scheduled for November;
- all differences should be ironed out before the LHHS is asked to endorse the bill;
- the important thing this year is to get this program started at whatever level of compromise can be reached;
- there were many statements of encouragement and support to get the job done this year;
- there was very little disagreement among task force members on scope-of-practice issues;
- the practice of dental therapy must be included in Medicaid due to the likely population to be served; and
- dentists and dental hygienists should come to an agreement so that a bill can be passed in 2019.

Public Comment

Michael Bird, national consultant for the AARP's Native American Initiative, echoed the support for the dental therapist bill.

Loretta Gonzalez, representing the National Union of Hospital and Health Care Employees, Local 1199, read a letter of support for dental therapy.

Kathy Sanchez, Tewa Women United, urged the committee to support the dental therapy bill.

Holly Beaumont, Interfaith Worker Justice-New Mexico, distributed a map of the clinics in New Mexico that could provide dental therapy services.

Valerie Montoya supported the profession of dental therapy in New Mexico.

Joe Martinez, who is a member of a dental therapy coalition, urged committee members to look inward and make dental therapy happen. Community colleges in the state are ready to conduct the training. A national standard for training already exists.

Adjournment

There being no further business, the LHHS adjourned at 3:14 p.m.