

MINUTES
of the
ORGANIZATIONAL MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE,
THE DISABILITIES CONCERNS SUBCOMMITTEE AND
THE BEHAVIORAL HEALTH SUBCOMMITTEE

May 24, 2018
State Capitol, Room 307
Santa Fe

The organizational meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative Deborah A. Armstrong, chair, at approximately 9:20 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Rebecca Dow
Sen. Bill B. O'Neill
Rep. Elizabeth "Liz" Thomson

Absent

Rep. Gail Armstrong
Sen. Mark Moores
Sen. Cliff R. Pirtle

Advisory Members

Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Sen. Linda M. Lopez
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Nancy Rodriguez
Rep. Nick L. Salazar
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman
Rep. Christine Trujillo

Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Rodolpho "Rudy" S. Martinez
Sen. Mary Kay Papen
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio

BEHAVIORAL HEALTH SUBCOMMITTEE

Present

Sen. Bill B. O'Neill, Chair
Rep. Christine Trujillo, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Rebecca Dow
Sen. Howie C. Morales
Rep. Elizabeth "Liz" Thomson

Absent

Rep. Doreen Y. Gallegos

Advisory Members

Rep. Deborah A. Armstrong
Sen. Gerald Ortiz y Pino

Sen. Mary Kay Papen

DISABILITIES CONCERNS SUBCOMMITTEE**Present**

Sen. Nancy Rodriguez, Chair
Rep. Joanne J. Ferrary, Vice Chair
Sen. Linda M. Lopez
Rep. Elizabeth "Liz" Thomson

Absent

Rep. Gail Armstrong

Advisory Members

Rep. Deborah A. Armstrong
Rep. Miguel P. Garcia
Sen. Elizabeth "Liz" Stefanics

Rep. Angelica Rubio

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, May 24

Committee members and staff introduced themselves. A quorum was present.

Legislative Update from the 2018 Regular Session

Mr. Hely presented from a handout titled "2018 Health and Human Services Legislation Update". Mr. Hely updated the committee on legislation endorsed by the LHHS that passed during the 2018 regular session:

- Senate Bill 1, Nurse Licensure Compact;
- Senate Bill 19, Uniform Guardianship and Other Arrangements; and
- Senate Joint Memorial 8, Study Statewide 911 Oversight Board.

Mr. Hely included other health legislation in his presentation. For reference, the handout is in the meeting file.

RubyAnn Esquibel, principal analyst, Legislative Finance Committee (LFC); Eric Chenier, senior fiscal analyst, LFC; and Kelly Klundt, senior fiscal analyst, LFC, presented budget updates for health and human services agencies and programs. They passed out four handouts, with the titles "Review and Update of 2018 Appropriations" (appropriations review); "Performance Report Card, Human Services Department, Second Quarter, Fiscal Year 2018"; "Performance Report Card, Behavioral Health Services Division, Second Quarter, Fiscal Year 2018"; and "Early Childhood Program Enrollment and Estimated Funding Need".

Ms. Klundt told the committee that \$25 million had been appropriated to align rural child care rates with urban child care rates and to provide early pre-kindergarten (pre-K) funding to cover the admission of three-year-old children into that program.

Ms. Esquibel went over Temporary Assistance for Needy Families Program (TANF) funding through the HSD. She stated that cash assistance rates have been restored in fiscal year (FY) 2019 to FY 2011 levels with a 7.5% increase in TANF allocations supplementing an FY 2016 allocation increase.

Relating to the state's Medicaid program, Ms. Esquibel informed the LHHS that the Medicaid "expansion population" — made up of adults with incomes under 138% of the federal poverty level who are eligible regardless of parenting or disability status — is currently receiving federal reimbursement, or "FMAP", at 93% of the state's share, with that FMAP decreasing in 2020 and thereafter to 90% of the state's share. She stated that there had been a slowing in Medicaid enrollment in the months leading up to October 2017, which thereafter began again to slowly rise. Program costs, however, have risen. Ms. Esquibel attributes this to an increase in the acuity of conditions that Medicaid recipients are presenting.

Presenting from the first five slides of the appropriations review, Mr. Chenier gave an overview of the General Fund outlook and health and human services appropriations. He noted that the FY 2017 reserve balance ended at 8.3% of recurring appropriations. This was due to solvency efforts and a rebound in oil production and associated activity. This rebound has led to FY 2018 revenue through February of \$187.6 million above estimates. The budget for FY 2019 spends 4.3% more from the General Fund than FY 2018. Reserves are projected to be around 10%. These reserves are meant to cushion against economic volatility and to maintain bond ratings.

Mr. Chenier stated that there has been a 21% increase in the Medicaid Developmental Disabilities Supports and Services Waiver (DD waiver) program administered jointly by the Human Services Department (HSD) and the Department of Health (DOH). The DOH attributed \$2 million to provide for more allocations into the program.

Questions and comments were raised regarding the following matters:

- whether the appropriation to Medicaid in the General Appropriation Act of 2018 includes funds for the DD waiver. Mr. Chenier explained that \$104 million was included in the DOH budget for transfer to the HSD to operate the DD waiver;
- on the adequacy of funding for early childhood programs, Ms. Klundt stated that funding has increased, but adequacy depends on the goals set: in FY 2019, 70% of four-year-old children will have access to an education program such as Head Start, the Family Infant Toddler Program (FIT) or pre-K, though three-year-old children and services for infants received much less money for services;
- a request was made for a reconciliation between the early childhood services funding received versus that required to meet the need. Ms. Klundt pointed to her handout, on page 7, in which she indicated that the bottom three rows demonstrate the estimated need;
- in response to a question as to whether some early childhood funding goes to the HSD, Ms. Klundt discussed the home visiting program pilot project that is funded through the state Medicaid program, for which the Children, Youth and Families Department (CYFD) will provide technical assistance and help select home visiting providers. The program is expected to serve 500 families in three counties;
- a discussion of what one member expects will be a \$1 billion surplus in the next budget cycle and a suggestion that the state "seize the moment" to fund early childhood programs adequately. Ms. Esquibel stated that oil and gas revenues have been more robust than projected, though this source of revenue is volatile;
- a discussion of TANF funding, which is funded through federal block grants, and the DD waiver, for which it was acknowledged that the state receives greater funding with greater enrollment and that expenditures benefit service providers in addition to the households served. The ability of the DD waiver service system to expand to meet demand was discussed;
- LFC staff mentioned that the LFC program evaluators are performing a DD waiver program evaluation, the results of which will be presented before the LFC in July 2018;
- the balance of the Tobacco Settlement Permanent Fund (TSPF). LFC staff explained that one-half of the roughly \$30,000 to \$40,000 received each year in tobacco settlement funding goes to the TSPF;
- a member requested to know the balance of the TSPF in 2008 and 2009. LFC staff stated that they did not know this figure but would follow up with this information;
- there was a suggestion that the college affordability funds be fully funded so that individuals who cannot go to college because of family income can receive assistance;
- a member requested information relating to the CYFD's rate of vacancies. Ms. Klundt said that there is a turnover rate of approximately 20% per quarter in the CYFD's Protective Services Division (PSD). This number was down from the previous figure of 30% per quarter, according to Ms. Klundt;
- committee members expressed concern that Medicaid rolls are decreasing due to roadblocks in the application process;

- in response to a question about the DOH using funds to fund more DD waiver slots, Mr. Chenier stated that the DOH is moving some surplus funds from other programs to the DOH's Developmental Disabilities Supports Division (DDSD) to address a shortfall there;
- in response to a question regarding increases in Medicaid administrative expenditures, Ms. Esquibel stated that an increase in funding was allocated to Medicaid in response to an increase in information technology maintenance and operating costs;
- in response to a question about rising Medicaid long-term care costs, Mr. Chenier stated that there has been a 21% increase in DD waiver costs and a 67% increase in Mi Via Self-Directed Waiver program costs. The *Waldrop* case relating to the Supports Intensity Scale acuity assessment tool has been replaced by a new outside review team that conducts acuity assessments. The LFC is undertaking a program evaluation to examine DD waiver cost drivers;
- regarding early childhood services and increased access to DD waiver services, a member observed that "if we don't build it they won't come". The member stated that 24 years ago, the "same story" was being told about long waiting lists for DD waiver allocations;
- a question was raised as to why it cost \$500,000 to move the dental clinic for the developmentally disabled to the DOH. Mr. Chenier stated that the goal was to get the DOH's Los Lunas Community Program from non-operational to fully operational, with a statewide reach;
- in response to whether the LFC is undertaking a program evaluation of the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps, operated by the Income Support Division of the HSD, Ms. Esquibel said that she was not aware of any evaluation;
- a member proposed that a state emergency food fund be created;
- Ms. Esquibel stated that the legislature did fund the SNAP state supplement for FY 2019;
- in response to a discussion of the number of cases to which the PSD is unable to respond due to a lack of personnel, Ms. Klundt stated that \$2.6 million has been allocated to the CYFD to reduce PSD caseloads and that New Mexico's PSD caseloads are close to the national standard;
- during a discussion of the identification of families for home visiting services, Ms. Klundt stated that neonatal intensive care units refer families both to FIT services and to home visiting in order to provide "wraparound services" early in a child's life so that later interventions may be avoided;
- a request that the LHHS review the rate of investigation for child abuse and neglect calls;
- a member discussed the need for child care assistance to be made available to kinship caregivers;
- in response to a question as to how many hours a month are provided on average to families receiving home visiting services, Ms. Klundt stated that the average is 52 hours a month;

- Ms. Klundt stated that there is no consensus as to the amount that could be spent for early childhood services in response to a question of whether \$40 million would meet demand. Ms. Klundt offered to make a presentation on the results of a study by a group of foundations on the early childhood system;
- there was a question as to how many early childhood educators there are in New Mexico and how many Teacher Education and Compensation Helps (TEACH) scholars there are. Ms. Klundt said that the precise number of educators is unknown and estimated that there are "a few hundred" TEACH scholarship recipients, for which \$1 million to \$2 million has been appropriated;
- Mr. Chenier told the committee that \$2 million was appropriated to allocate DD waiver services to 80 individuals in FY 2019;
- in a discussion of the *Jackson* lawsuit against the DOH, relating to the DD waiver, Mr. Chenier stated that the courts are putting a lot of oversight into the process of disengagement from the previous regime;
- in response to a question as to whether the DOH would receive an increase in FY 2019 in smoking cessation program money from the TSPF, Ms. Esquibel stated that there would not be an increase; and
- in a discussion about the DDSD's acuity assessments, there were questions about what review of these assessments is being performed. A member observed that such assessments are an art pursuant to which capacity is demonstrated, not simply reported in an interview. People underreport any need for assistance in interview settings, according to the member.

Public Comment

The committee heard public comment from the following individuals.

Evelyn Blanchard stated her intention to bring before the LHHS a proposal to establish a Native American social work institute at New Mexico Highlands University (NMHU). She stated that NMHU President Sam Minner supports this proposal. She requested that the LHHS add this matter to its work plan. Representative Deborah Armstrong stated that it would be added to the list if feasible.

David Roddy of the New Mexico Primary Care Association requested input on health professional loan repayment programs. He stated that it is time for the state to invest in New Mexico Health Resources, the "number one" recruitment tool for health professionals in the state. It has recruited 60 clinicians in recent years, according to Mr. Roddy. Mr. Roddy also stated that primary care clinic tax reform is needed because as much as \$25 million is at stake for clinics.

Colin Baillio of Health Action New Mexico (HANM) stated that HANM is working on the Medicaid buy-in initiative. The Individual Health Insurance Market Stability Task Force has met twice with insurance carriers and providers to address concerns such as the reintroduction of underwriting in the private market. Further, with the federal individual mandate being removed,

there has been a decrease in health care coverage enrollment nationwide. Mr. Baillio stressed the need, at the state level, to replace federal-level health reforms with state-level reforms.

Barbara K. Webber of HANM stated that the state is not focusing enough on the aging of the population, as there is an aging "tsunami" predicted. Also, oral health care is critical. Fifty percent of New Mexico residents have advanced gum disease, she said. The dental therapy bill will be reintroduced this year. Arizona passed dental therapy licensure legislation in April 2018; dental therapy is now licensed in seven states; and 12 other states are considering this legislation.

In closing, Ms. Webber urged the committee to consider the need for oversight of assisted living facilities.

Dale Tinker of the New Mexico Pharmacists Association requested an opportunity to present on the subject of community pharmacies located in the state. These pharmacies, he said, are experiencing many challenges that affect patient access to pharmacy services. He stated that some of these challenges include inadequate reimbursement for the drugs that these pharmacies dispense and "gag clauses" that prevent pharmacies from suggesting to patients that lower-cost drugs are available. He requested that the presentation on these issues be scheduled for the September 2018 meeting.

Ruth Hoffman of Lutheran Advocacy Ministry requested that the committee hear a "public benefits 101" presentation akin to the "Health and Health Coverage 101" presentation to be heard at today's LHHS meeting.

Pamela Stafford of the Arc of New Mexico introduced herself to the committee. She addressed the waiting list for DD waiver supports and services allocation. She stated that many individuals wait 11 to 13 years for allocation. She stated that the DOH does not have any intention of replacing individuals who leave these services through attrition. When it added 80 slots, this number covered only attrition. The waiting list numbers, she stated, never decrease.

Ms. Stafford stated that the Mia Via Self-Directed Waiver is needed because families hire family members and other individuals for support in a climate where other providers are not available.

Tasia Young of the New Mexico Association of Counties (NMAC) stated that the NMAC's Health Care Policy Committee has approved legislation for the 2019 regular session of the legislature that would ask the legislature to adequately fund emergency medical services statewide through a \$5 million line item in the DOH budget. She stated that the NMAC anticipates that the request will become a legislative priority for the NMAC and that the NMAC expects to bring such a request to the LHHS and the LFC in the fall. Ms. Young stated that a number of counties have increased their gross receipts taxes in the past five years in order to pay for services such as emergency medical services and mental health issues arising in county jails.

Lindsey Sledge stated that she has a four-year-old daughter who has a severe form of epilepsy called Dravet syndrome. Her daughter uses medical marijuana, but the Albuquerque Public School District bans administration of medical marijuana at its schools, which, Ms. Sledge stated, is a violation of federal law. She stated that in Torrance County, a child was expelled from school for use of medical marijuana. She requested that the Lynn and Erin Compassionate Use Act be amended to provide liability protection for entities that allow use of medical marijuana on their premises.

Health and Health Coverage 101

Mr. Hely made a presentation entitled "Health and Health Coverage 101", providing a handout with information related to the state's major health care and health coverage agencies, programs and entities.

Mr. Hely provided information not in the handout about what he characterized as the large role played by the University of New Mexico (UNM) in the state's health care system. The UNM Health Sciences Center (HSC) operates the only allopathic medical school in the state. The UNM HSC trains physical and occupational therapists, with speech and language therapists trained by UNM's School of Education. UNM HSC trains nurses and has a residency program for dentistry. He added that the state has no dental school. The UNM Health System operates UNM hospitals and clinics, including the only designated level-one trauma center in the state.

There was a discussion of the many lawsuits filed against the current contractor providing health care services to individuals in the Corrections Department's custody, Centurion Correctional Healthcare of New Mexico LLC (Centurion) and its parent company, Centene Corporation. Centene, Mr. Hely observed, is also the parent company of Falling Colors, the Interagency Behavioral Health Purchasing Collaborative's statewide entity, and Western Sky Community Care, the Medicaid managed care organization (MCO) that is scheduled to begin operating in the state with the implementation of Centennial Care 2.0 on January 1, 2019. Legislators expressed concerns about the connections between these companies. Ms. Esquibel stated that the Medicaid MCO procurement process is currently the subject of lawsuits filed by Molina and United Healthcare after the HSD denied review of the protests.

David Abbey, director, LFC, told the committee that there are four Medicaid MCOs now operating in the state, and that, after January 1, 2019, there would be three MCOs. He stated that there are exciting things about Centennial Care 2.0. He also mentioned that there have been great strides made by the City of Gallup, Medicaid MCOs and the Interagency Behavioral Health Purchasing Collaborative in keeping clients safer. Gallup has made a lot of progress in dealing with alcohol abuse, he said. Ms. Esquibel stated that there has been expanded funding for behavioral health services recently.

Mr. Hely offered a correction to his previous statement that Centene Corporation is the parent to Falling Colors, the Interagency Behavioral Health Purchasing Collaborative's statewide

entity. In fact, Falling Colors is a locally owned operation. Western Sky Community Care and Centurion are, in fact, subsidiaries of Centene Corporation.

Ms. Esquibel and Mr. Chenier presented LFC "report cards" on the HSD's and DOH's performance.

Questions and Comments

- An LFC program evaluation showed that the Interagency Benefits Advisory Committee would benefit by the pooling of risk and common purchasing.
- There was extensive discussion of the powers that the LFC may employ to oversee executive agencies' performance. Ms. Esquibel and Mr. Chenier explained that the performance measures are decided with the executive during budget negotiations. The LFC then places performance measures in House Bill 2, the state budget. They explained that some performance is measured through tools such as patient satisfaction surveys. They stated that, often, information is repeatedly requested of executive agencies, to little avail. Committee members emphasized the need for accountability and transparency in executive agencies.

Public Comment

Carol Miller stated that a small community center in Penasco is looking at a substance abuse program called Communities That Care. She hopes that the state will review such programs. They empower young people to be more involved in decision making in the community. Colorado has adopted Communities That Care statewide and allocated \$9 million to this program. Ms. Miller stated that she would like to ask the LHHS to invite people normally not invited to meetings in rural places.

Dr. Juliette Sweet of the New Mexico Association of Naturopathic Physicians told the committee that her organization is working with legislators to draft a bill for licensure in the state. She told the committee that naturopaths are trained as primary care providers, that they focus on prevention and work interactively with other practitioners and that 23 states already recognize naturopaths. New Mexico is the only state in the Four Corners region that does not. She requested the committee's guidance and education about qualifications and background. Finally, she requested that the issue of naturopathic licensure be added to the LHHS work plan.

Discussion of 2018 Interim LHHS Work Plan and Meeting Schedule

Mr. Hely presented the LHHS, Disabilities Concerns Subcommittee (DCS) and Behavioral Health Subcommittee proposed 2018 work plan and meeting schedule. The handout is in the meeting file.

A member requested that Dr. Katherine Courtney's book, *Anna, Age Eight* (2018) be added to the work plan. The member characterized the book as a source of data-driven child abuse and neglect prevention.

Another member concurred with respect to Dr. Courtney's book and added that the family-friendly tax credit should be added to the work plan.

Senator Rodriguez, chair, DCS, stated her support for the idea that the DCS meet as a committee of the whole LHHS this interim. This, she explained, will allow the issues that the DCS covers to be heard by more legislators. She stated that she wants the DCS and the LHHS to review the process by which the DOH determines acuity for assignment of levels of DD waiver supports and services.

Senator Rodriguez told the committee that she does not wish to have individual programs come before the committee this interim. She wants to cover "big picture" items in more detail.

A member told the LHHS that the LFC has agreed to study the possibility of establishing a new publicly funded inpatient mental health services facility in southern New Mexico and that the LHHS should hear reporting from LFC staff on that subject.

Members also made the following requests for additions to the work plan on the following topics:

- reporting pursuant to Senate Joint Memorial 13 (2017, Senator Stefanics) on safe harbor for nurses;
- recent cuts in senior services, the subject of Senate Memorial 76 (2018, Senator Sefanics), which did not pass;
- federal funding for opioid dependence, which was recently denied to New Mexico;
- a proposal to change Medicaid rules to allow spouses to be paid for personal care services provided to their spouses;
- aid in dying;
- pain management;
- senior meal sites, which should be part of the Hunger Council study being undertaken pursuant to House Memorial 90 (2018, Representatives Sarah Maestas Barnes, Deborah Armstrong, Ferrary and Dow);
- the provision of farm-to-table nutrition at child care centers;
- early childhood development;
- child care assistance for kinship caregivers;
- reporting pursuant to the autism spectrum disorder task force, House Memorial 51 (2017, Representative Thomson);
- testimony from health professionals on the importance of early detection of cerebral palsy, possibly in connection with a presentation on the possibility of creating a movement disorders center at UNM, which is already on the proposed work plan pursuant to Senate Memorial 4 (2018, Senator Ortiz y Pino) and House Memorial 8 (2018, Representative Deborah Armstrong);
- licensure of naturopathic physicians;

- reported underperformance of the HSD's Child Support Enforcement Division, including its practice of taking away noncompliant parents' driver's licenses. Is this practice authorized by law?;
- the patient safe staffing legislation that has been introduced during several sessions;
- a proposal to expand the rural health practitioner tax credit to pharmacists, social workers and counselors;
- highly qualified health professionals trained in overseas jurisdictions, who could be employed in community health work in the state;
- restoration of funding to school-based health centers and public health clinics throughout the state, where some have closed or reduced services;
- strengths-based assessments of young people who demonstrate strong resiliency in the face of challenges;
- a presentation by the Corrections Department on health care for individuals incarcerated in its custody and review of a proposal to use the UNM HSC or a local entity such as Presbyterian Healthcare Services to provide health care in the corrections system;
- a presentation by the New Mexico Dental Association; and
- a report on the direct care workforce.

The chair informed the committee that work is already under way pursuant to House Memorial 9 (2018, Representatives Deborah Armstrong and Nathan P. Small) and Senate Memorial 3 (2018, Senator Ortiz y Pino), which request the New Mexico Legislative Council to charge the LHHS with studying a "Medicaid buy-in" health coverage option, with the goal of expanding access to affordable coverage by offering state residents who are not eligible for Medicaid the choice of buying into a health care coverage plan administered by the state's Medicaid program. A national group is studying this at the national level, and currently there is engagement of stakeholders in the local study. A health care policy fellow at the New Mexico Center on Law and Poverty has offered to collect contact information for interested participants.

The chair stated that the LHHS will attempt to incorporate as much of the requested additions to the work plan as possible. All topics may not be heard this interim, she added.

Adjournment

There being no further business before the committee, the LHHS adjourned at 4:51 p.m.