

UNAPPROVED MINUTES
of the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

November 6, 2008
Room 311, State Capitol
Santa Fe

Present

Rep. Gail Chasey, Co-Chair
Sen. Mary Jane M. Garcia, Co-Chair
Rep. Danice Picraux
Sen. John C. Ryan

Absent

Sen. Howie C. Morales
Rep. Gloria C. Vaughn

Advisory Members

Rep. Ray Begaye
Sen. Joseph J. Carraro
Sen. Dede Feldman
Sen. Linda M. Lopez

Sen. Rod Adair
Sen. John T.L. Grubestic
Sen. James G. Taylor
Rep. Teresa A. Zanetti

Staff

Roxanne Knight, Legislative Council Service (LCS)
Michael Hely, LCS
Larry Matlock, LCS

Thursday, November 6

Call to Order and Approval of August 2008 Minutes

At 9:25 a.m., Representative Chasey called the meeting to order as a subcommittee until a quorum was obtained. When a quorum was reached, Senator Garcia moved to adopt the minutes from the committee's August meeting. The motion passed with no objection.

Tobacco Settlement Permanent and Program Funds — Estimates and Balances

Norton Francis, principal economist for the Legislative Finance Committee, gave a very brief presentation. His two handouts are in the meeting file. He explained that there are three components to the payments:

1. the base payment, established by the litigation;
2. the inflation adjustment factor; and
3. the volume adjustment factor.

Mr. Francis noted that the inflation and volume adjustments tend to cancel each other out.

Payments from the Tobacco Master Settlement Agreement (MSA) are made to New Mexico each April. The payment is deposited into the Tobacco Settlement Permanent Fund,

from which half of the payment is distributed to the Tobacco Settlement Program Fund, which can be appropriated by the legislature for health-related expenditures. Starting in FY 2006, the participating manufacturers began withholding payments because of the loss of market share to non-participating manufacturers (NPMs). The states are required under the MSA to enact legislation and provide diligent enforcement of the laws governing the sale of tobacco products so that the participating manufacturers do not lose market share to NPMs. The amount withheld was lower in FY 2008, but that amount could very easily increase.

Although New Mexico has enacted the model statutes and has been enforcing them, there is a risk that if a national arbitration panel finds that the enforcement has been insufficient because of illegal sales and questionable practices, possibly involving tribal tobacco, the state could see the withholding amount increase so much that the entire payment might be withheld.

This possibility seems unlikely if the case were tried in New Mexico, but now that the decision will likely be made by a national arbitration panel, despite the efforts of Attorney General Gary King, an extra year will be required to pay off the withholding. New Mexico will probably have to litigate before a three-member arbitration panel each year, which would involve extreme risk.

Mr. Norton explained the risk inherent in a system where appropriations are made before the payment comes in. The system is risky because it could put the budget into deficit if the actual payment is lower than projected and appropriated.

Ms. Knight explained that the Department of Finance and Administration would still have the power to modify the allocations downward to prevent a deficit. There was considerable discussion about a previous fiscal year, in which tobacco settlement money was swept into the general fund to cover a deficit in the Medicaid program.

The amount of additional funding projected for the next fiscal year is \$1.465 million above the FY 2009 projected revenues. A projected balance of \$700,000 remains from the previous fiscal year.

University of New Mexico (UNM) Health Sciences Center (HSC) Performance Report

Dr. Paul Roth, executive vice president for health sciences and dean of the UNM School of Medicine, was joined at the presenters' table by Dr. Richard S. Larson, professor of pathology and vice president for HSC translational research.

Dr. Roth provided a general overview from a handout, which is in the meeting file. He explained that in 1994, UNM consolidated all of its health programs and facilities into a single, separate unit, the UNM Health Sciences Center. The HSC contains three colleges, those of medicine, nursing and pharmacy, and includes the main UNM hospital and four others. He announced that he had just returned from a visit to San Antonio, where the UNM medical school received the Spancer Foreman award for the HSC's 430 programs in more than 100 towns and villages throughout the state, which is unheard of nationally. The handout contains a map

showing the locations of the programs.

Dr. Roth presented the programs on which UNM has spent \$1.9 million of tobacco settlement money during the past year. Details and dollar amounts are in the handout. The programs are:

- area health education centers;
- Los Pasos;
- the New Mexico Poison and Drug Information Center;
- the pediatric oncology program;
- Center for Telemedicine;
- specialty education in pediatrics; and
- specialty education in trauma.

Dr. Larson presented the results of UNM's search for matching dollars. He reported that because of leveraging, UNM brings in 23 outside dollars for each state dollar invested in research to prevent and treat tobacco-related diseases. The program is charged with conducting cutting-edge research and formulating the results into effective clinical care programs, and disseminating the information nationally and internationally, which helps UNM recruit and hire the intellectual capital needed to continue its work. The program provides pilot or start-up funds to researchers.

Three years ago, the medical research program was reorganized away from the traditional academic approach of biochemistry and cellular biology toward a disease approach, which focuses on genomics, bioinformatics, epidemiology and environmental health, laboratory science and clinical research and trials to advance identification of disease and treatment options. The current commitment is to study the 12 types of cancers associated with tobacco use.

He mentioned that a drug is being studied that is in the third phase of approval by the U.S. Food and Drug Administration (FDA) and that will help with smoking cessation. One side effect of the drug seems to be weight loss, which might be useful since most smokers who quit tend to gain weight.

Breast and Cervical Cancer Program

Julie Weinberg, deputy director of the Medicaid Assistance Division (MAD) of the Human Services Department, and Virginia Alcon, staff manager for MAD, gave the committee two handouts, which are in the meeting file.

Ms. Weinberg outlined the program, which is administered by Medicaid. For women to qualify, they must be uninsured or have medical insurance that does not cover breast or cervical cancer already identified as a pre-existing condition. A Department of Health (DOH) provider screens the applicant to ensure that she is a United States citizen whose income is under 250 percent of the federal poverty level.

Applicants are certified for a 12-month period, after which they must recertify. If they are over the age of 65, Medicare covers the cost of treatment instead of Medicaid. Costs have been going up as the program has grown, which is good because more patients are being reached. In 2008, there were more than 400 recipients enrolled, with paid claims costing \$8.76 million compared to \$1.8 million in 2001, when 158 women were served.

Lovelace Respiratory Research Institute (LRRI) Performance Report

Dr. Robert Rubin, president and chief executive officer of the LRRI, and Yohannes Tesfaigzi, senior scientist for the LRRI, explained that the point of the program is to develop a clinical trial cohort for smokers in New Mexico. After eight years, the company remains the only not-for-profit entity dedicated to the eradication of respiratory disease. Dr. Tesfaigzi estimates that half of the disease treated by the LRRI is smoking-related.

More than 450,000 New Mexicans are past and present tobacco product users.

The original purpose of the Tobacco Settlement Program Fund was to develop diagnostics and treatments for lung diseases such as emphysema, lung cancer and asthma and to create technology-related jobs at the same time. More than 300 jobs have been created in the program's history.

The program will continue its work on genotyping by expanding the cohort to include more males. Members of the cohort are completely genotyped, a process that costs \$100,000 each. The cohort is composed of 3,000 people; 75 percent of them are women. The genotyping will allow the LRRI to identify the genetic markers predisposing a person to the development of lung cancer.

Now that these individuals have been identified in the cohort, Dr. Rubin would like to offer them smoking cessation programs, which is one of the reasons for an increased funding request for FY 2010.

Dr. Tesfaigz reported that the high number of Hispanic people in the cohort, approximately 19 percent, makes it unique nationally. Through the LRRI's research, it has been determined that Hispanic smokers are less susceptible to developing emphysema compared to non-Hispanic whites. Another interesting result of the research is that the inhalation of wood smoke by a person who smokes tobacco increases the risk of developing a smoking-related disease by 70 percent. Nutrition is also a factor because smokers who take vitamins A and E and eat a lot of vegetables have a lower risk of having the biomarkers for developing lung cancer. Those smokers who do not have antioxidants in their food have an 80 percent increased risk for developing lung cancer.

Dr. Rubin stressed the fact that collaboration with other organizations is essential because of the extremely high cost of genotyping. "We can't afford competition, so all of our work is public." The program shares its information with Harvard, Johns Hopkins and the Denver Jewish Hospital.

Dr. Rubin asked the committee members to consider a \$500,000 funding increase to help support increasing the size of the cohort.

BioModa Update on Its Research

Dr. Dan Lopez, president of New Mexico Tech (NM-Tech), and John Garcia, secretary of the Veterans' Service Department (VSD), were joined by John Cousins, president of BioModa, for this presentation. Dr. Srinivas Mukkamala, senior research scientist for NM-Tech, and David Manzano, director of governmental affairs for NM-Tech, were also present, as well as Alan Martinez of the VSD.

BioModa has patented an assay process that can quickly evaluate sputum for evidence of lung cancer. Dr. Lopez and Secretary Garcia propose requiring sputum samples from every veteran returning from overseas deployment to monitor them for exposure to possible carcinogens, including tobacco and depleted uranium.

BioModa's patented assay process allows for a diagnosis of cancer to take place very quickly compared to conventional methods.

Dr. Lopez stressed the importance of how easy it will be for the public to see the benefits from the proposed program, which is unlike other more complex research efforts. Dr. Lopez explained that NM-Tech would be modeling the data derived from studying the samples.

Mr. Cousins said that the United States Army has \$20 million allocated for lung cancer research. He hopes that his company's process can be a model program for the entire country. Its initial main objective is to screen veterans, a high-risk group. Lung cancer, because of the dynamics of its growth, spreads quickly, with a survival rate of only 15 percent. If the cancer is detected in stage one, the survivability rates increase to over 60 percent.

A pilot study has been designed and submitted to the FDA. Revisions were made, and now the pilot study is almost ready for patient safety review, after which patients will be screened. The search for world-class principal investigators in multiple disciplines has begun. For a cost of \$75 per patient per year, screening can be provided. By screening 250 to 500 patients, Mr. Cousins estimates that between one percent and five percent of the cohort will be diagnosed with cancer. Of the total, five or 10 will have the disease and can begin immediate treatment.

Dr. Mukkamala highlighted the speed of the tests, with results in 32 hours versus the genetics, DNA and other methods for diagnosing lung disease. The pilot study will begin with New Mexico and, hopefully, expand nationally and globally, with one million people screened by 2010. If it works for veterans, it can be expanded to workers in nuclear and other high-risk fields.

NM Tech is taking the information generated by BioModa and computerizing it. The noninvasive potentials for this technology are vast.

Mr. Cousins expects the study to cost \$9 million over a seven-year period, or \$1.3 million per year.

Representative Begaye moved that the committee endorse a letter in support of BioModa. Senator Carraro suggested that the letter be very short, with a maximum of two pages, and that it be sent to the governor and the congressional delegation. Secretary Garcia added that the letter should go the United States Department of Veterans Affairs. Representative Chasey added that Dr. Lopez should draft the letter.

Indian Affairs Department (IAD) Tobacco Use Prevention and Control (TUPAC) Program Update

Alvin Warren, Secretary of Indian Affairs, was accompanied by several members of his staff, including Mark Holyan, policy analyst, and Lillian Brooks, administrative services director. His handout is in the meeting file.

In FY 2008, \$500,000 was appropriated to the IAD for the TUPAC program. The money was used to promote cessation and prevention of commercial tobacco abuse in Native American communities with a special emphasis on youth, as well as to promote cultural awareness of the traditional and ceremonial use of tobacco as a means to strengthen cultural identity and resistance to commercial tobacco abuse.

He identified the four primary goals of the TUPAC program:

- to prevent tobacco-use initiation among youth;
- to promote quitting;
- to eliminate exposure to second-hand smoke; and
- to identify and eliminate tobacco-related health disparities among the population groups.

Comprehensive tobacco control programs must have a system of surveillance and evaluation that can monitor and document intervention outcomes in the target populations to inform program and policy direction and ensure accountability to those with fiscal oversight. Statewide surveillance monitors the achievement of the four primary goals of TUPAC, and IAD's contracts with TUPAC programs require and specify performance measures for reaching the goals.

Secretary Warren noted that approximately \$51,000 of the allocation reverted to the general fund. The Jicarilla Apache Tribe did not spend any of the \$15,000 it was allocated because it could not enter into a contract in time. The Pueblo of Jemez could not qualify because it did not utilize performance standards. Representative Begaye expressed concern about the reversions.

Healthy New Mexico Task Force — Update

David Vigil, bureau chief for the Chronic Disease Prevention and Control Program, DOH, gave the committee a single-page handout with the task force's operational plan and time

line on one side and language from 2008 Senate Bill 129, as amended (Chapter 86), on the other. Mr. Vigil had been invited to present the update, although the program is not monitored by the Tobacco Settlement Revenue Oversight Committee.

New Mexico First was hired as the contractor to hold meetings in two locations, Albuquerque and Las Cruces. The Risk Management Division of the General Services Department has been participating. Per the requirements of Chapter 86, the New Mexico Health Policy Coalition and other partners, including the New Mexico Healthcare Takes On Diabetes, have also been participating. A general background document is being prepared for any organization expressing interest.

Participants will be invited to the town hall meetings to be held in April 2009. A comprehensive town hall report will be published in June 2009 and presented to the Legislative Health and Human Services Committee in July.

Cardiovascular Disease Prevention Program — Funding Request

Julia Valdez, director of government affairs for the American Heart Association, gave the committee three handouts. One of them lists the major causes of death in the state and another shows a funding request of \$200,000. The money is to be spent for public and professional education on the prevention and control of heart disease and stroke to be used by communities and organizations to provide interventions to reduce the risks and delay the onset of cardiovascular disease.

Ms. Valdez noted that 50 percent of people having a heart attack do not call 911. Seventy-five percent of calls made to 911 to report a heart attack are made by a friend or family member. Representative Begaye mentioned that he had heard of other departments with similar programs. Ms. Valdez explained that this program would coordinate their activities.

Jennifer Whitman answered a question from Senator Carraro, saying that long-term disability resulting from strokes represents the highest percentage of the cost. Although systems are in place to identify and treat strokes quickly, nothing can be done if the stroke victims do not call 911 or seek immediate treatment.

Breast and Cervical Cancer Early Detection Program — FUNDING Request

Nathan Bush, government relations director for the American Cancer Society, gave the committee a two-page handout requesting an appropriation of \$9,365,000 for the TUPAC program. An additional \$635,000 is requested for tobacco control programs serving tribal populations throughout the state.

Mr. Bush requested an additional \$200,000 for the DOH's Breast and Cervical Cancer Early Detection Program. Mr. Bush spoke of one difficulty in the administration of the DOH's screening program: if a woman is screened and found to have cancer and it is later discovered that no federal money paid for the screening, then she is not eligible. For this reason, administrators have been very creative in finding ways to get at least one dollar of federal money

to pay for these particular screens. A more permanent solution would be to include language stating, "Women are considered screened and able to qualify if their treatment services are provided by CDC Title 15 funds."

Representative Chasey suggested getting a financial impact report ready.

Senator Feldman moved that the committee send a letter to the Medicaid administrator, asking him to include the suggested language in Medicaid regulations and to advise the committee if a statutory change is necessary if that is not feasible. Her motion passed with no objections. Subsequently, it was decided by the committee that this matter should be addressed by the interim Legislative Health and Human Services Committee in December.

Public Comment

The chair asked if any member of the public wanted to address the committee. None came forth.

Review and Adoption of Legislation

Dave Thomson, chief of staff for Attorney General King, presented the attorney general's legislative requests for tobacco enforcement. Three areas need to be addressed, including 10 changes to Chapter 6 of the NMSA 1978, taxing "little cigars" the same as cigarettes and new laws and regulations for internet sales of tobacco.

The changes to Chapter 6 NMSA 1978 would include new reporting requirements that could be used to track down NPMs, most of which are foreign. Another change would allow the attorney general the authority to go after an importer. "If I can get someone in New York or California that imports this product and make them liable for the cost to the state, that's success," he noted.

An enforcement provision would allow the attorney general to remove a participating manufacturer from the directory after due process, which would make that manufacturer's products contraband in the state. Civil penalties for inaccurate reports would encourage manufacturers to report honestly.

The bill, with a file number of 202.174440.2SA, was adopted by the committee without opposition. Representative Chasey indicated that she would introduce the bill for the committee.

Mr. Hely presented a bill with a file number of 202.174007.2 that would prohibit smoking in a motor vehicle in which a minor is present. Mr. Hely explained that the bill would amend the Dee Johnson Clean Indoor Air Act. Senator Garcia moved for adoption. The bill was approved without objection.

Funding Requests and Recommendations

A spreadsheet was distributed to the members. Representative Chasey explained that each year, the committee tries to increase the dollar amounts to meet Centers for Disease Control

recommendations. She said the amount appropriated this year would be \$22.45 million, or \$1.465 million higher than the appropriation for FY 2009.

The committee reviewed each appropriation for the current fiscal year and adopted new recommendations for FY 2010, including increases in the DOH's and the IAD's TUPAC programs and the breast and cervical cancer screening program. Funding was recommended for a new cardiovascular disease prevention program and for the early detection of lung cancer in veterans.

Senator Garcia moved for the committee to endorse the appropriation of \$730,000 for the VSD. There being no objection, the motion passed.

Senator Feldman thanked Senator Carraro for his service and thanked staff members for their hard work. The committee adjourned at 4:05 p.m.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)
FY 2009 AND 2010 RECOMMENDATIONS

(thousands of dollars; recurring unless noted)

AGENCY AND PROGRAM	2009 TSROC Recs	2009 TSROC Approps	2010 TSROC Recs	2010 Proposed Inc (DEC)
Department of Health				
Tobacco cessation and prevention programs	9,950.0	9,115.0	9,365.0	250.0
Diabetes prevention and control program	1,000.0	1,000.0	1,000.0	
HIV/AIDS services	470.0	470.0	470.0	
Breast & cervical cancer <i>screening</i> program	200.0	200.0	350.0	150.0
Cardiovascular disease prevention program - NEW			200.0	200.0
Total Department of Health	\$11,620.0	\$10,785.0	\$11,385.0	\$600.0
Human Services Department				
Breast & cervical cancer <i>treatment</i> program	1,500.0	1,500.0	1,500.0	
Medicaid expansion	1,380.0	2,800.0	2,800.0	
Total Human Services Department	\$2,880.0	\$4,300.0	\$4,300.0	\$0.0
University of New Mexico				
Innovations in preventing and treating tobacco-related diseases				
Genomics core facilities	162.5	162.5	162.5	
Epidemiology	374.8	374.8	374.8	
Enhanced tobacco-related research	180.0	180.0	180.0	
Clinical research and trials	329.1	329.1	329.1	
Biocomputing	453.6	453.6	453.6	
Subtotal UNM tobacco-related diseases	\$1,500.0	\$1,500.0	\$1,500.0	\$0.0
Other programs				
Area health education center	50.0	50.0	50.0	
Center for telehealth (formerly telemedicine)	150.0	150.0	150.0	
Los Pasos program	50.0	50.0	50.0	
Pediatric oncology	400.0	400.0	400.0	
Poison & information center	450.0	450.0	450.0	
Specialty education in pediatrics	400.0	400.0	400.0	
Specialty education in trauma	400.0	400.0	400.0	
Subtotal UNM other programs	\$1,900.0	\$1,900.0	\$1,900.0	\$0.0
Contract with Lovelace Respiratory Research Institute				
Lung and tobacco-related diseases	1,000.0	1,000.0	1,000.0	
Funding retained by UNM (Instruction & General)		1,000.0	1,000.0	
Subtotal UNM/LRRI/I & G	1,000.0	2,000.0	2,000.0	
Total University of New Mexico	\$4,400.0	\$5,400.0	\$5,400.0	\$0.0
Indian Affairs Department				
Tobacco cessation and prevention programs	700.0	500.0	635.0	135.0
Total Indian Affairs Department	\$700.0	\$500.0	\$635.0	\$135.0
Veterans' Services Department				
Early detection of lung cancer in veterans	1,300.0	0.0 ^(a)	730.0	730.0
Total Veterans' Services Department	\$1,300.0	\$0.0	\$730.0	\$730.0
GRAND TOTAL - Programs	\$20,900.0	\$20,985.0	\$22,450.0	\$1,465.0

Notes:

(a) General Fund approps. to VSD: FY08 \$350.0; FY08-09 \$1,300.0.