MINUTES
of the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

October 26, 2016
Room 307, State Capitol
Santa Fe

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC), a joint meeting with the Legislative Health and Human Services Committee (LHHS), was called to order by Representative John L. Zimmerman, co-chair, TSROC, and Senator Gerald Ortiz y Pino, chair, LHHS, on October 26, 2016 at 8:45 a.m.

Present
Sen. Cisco McSorley, Co-Chair
Rep. John L. Zimmerman, Co-Chair
Rep. Gail Chasey
Sen. John Arthur Smith

Absent
Rep. Monica Youngblood

Advisory Members
Sen. Linda M. Lopez

Sen. Mary Kay Papen
Rep. Patricio Ruiloba
Rep. Don L. Tripp
Rep. Jim R. Trujillo

Staff
Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michael Hely, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Diego Jimenez, Research Assistant, LCS

Guest
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

<u>Wednesday, October 26</u>

Welcome and Introductions
Representative Zimmerman welcomed everyone to the joint meeting of the LHHS and TSROC and asked members and staff to introduce themselves.

Tobacco Settlement Revenue Expenditures in New Mexico and in Other States

Ari Biernoff, assistant attorney general, provided a brief overview of the Master Settlement Agreement (MSA) signed in 1998 by New Mexico and 46 other states to resolve litigation with five major U.S. tobacco companies over the costs to states resulting from the use of tobacco products. The tobacco companies are referred to in the MSA as "participating manufacturers", or PMs. Pursuant to the MSA, annual payments to the states by the PMs are made in April of each year. The calculation of the annual amount payable to each state, which is made by an independent auditor, has several elements but is generally based on each state's share of national cigarette sales; the New Mexico market is around 0.6% of the national market.

At the time the MSA was executed, the PMs were the largest tobacco companies in the country. There are smaller tobacco companies that did not participate in the settlement, and these companies are referred to as "nonparticipating manufacturers", or NPMs. Upon signing the MSA, the PMs raised concerns that, because of the payments they had to make to the settling states, the NPMs would gain an unfair advantage in sales. This unfair advantage, the PMs argued, would lead to an increased market share for the NPMs and therefore a loss of market share to the PMs as an unintended result of the settlement. To address this concern, the MSA provided that the PMs' annual payments to the states could be reduced if it could be shown that the PMs had lost market share to the NPMs as a result of the settlement. These reductions are called "NPM adjustments". States could avoid the NPM adjustment by passing and "diligently" enforcing escrow statutes that would require NPMs operating in the state to either join the MSA and comply with its terms or to establish an escrow account and make regular payments into that account to make up the difference between the NPMs' nonparticipation and the MSA payment burdens on PMs. While the principal is in escrow, NPMs collect the interest on the principal deposits and will recover 100% of the principal after 25 years.

The MSA allows the states and the PMs to challenge the calculations or determinations made by the independent auditor of the NPM adjustment. Most states' courts have decided that a dispute over a state's "diligent enforcement" is subject to arbitration. Challenges are initially resolved by arbitration, and the arbitration decisions may be appealed to state court, but the standard of review is very deferential to the arbitrators.

The PMs challenged New Mexico's diligent enforcement of the escrow statute for calendar year 2003. In 2013, an arbitration panel consisting of three retired judges decided that New Mexico had not diligently enforced the escrow requirements in 2003. As a result, the subsequent April payment was reduced significantly (around $21 million versus the prior year amount of around $39 million). The panel's decision also imposed additional liability on the state by including factors that reduced the payment beyond the formula established by the MSA. New Mexico immediately appealed the arbitrators' decision to the district court in Santa Fe, raising two issues: diligent enforcement; and the additional liability. The district court judge issued a decision in September 2016 that left intact the arbitrators' decision that the state had not diligently enforced the escrow requirements in 2003; the judge also vacated the arbitrators' imposition of additional liability because the court found that arbitrators had exceeded their authority by doing so. The court reversed the arbitrators' decision to apply extra penalties that

will result in an additional payment to New Mexico of approximately $9 million to $12 million. The Attorney General's Office (AGO) has asked the independent auditor to recalculate the penalty in the 2003 decision and is confident that the next April payment will be adjusted upward. The payment is due to be received in April 2017 at the same time as the regular annual payment; the total payment is expected to be approximately $48 million or more.

Mr. Biernoff explained that the role of the AGO in this case is to protect the payments due to New Mexico from the PMs. That money is initially deposited into the Tobacco Settlement Permanent Fund (TSPF). The AGO does not formally have a role in determining how the settlement money is to be expended. However, Mr. Biernoff commented that the animating goal of the tobacco lawsuit and the MSA is to compensate states for higher health care costs due to misleading claims by tobacco companies regarding the health effects of smoking. To that end, New Mexico law provides that tobacco settlement money be used for health and education programs.

A member asked which companies are not part of the MSA. Mr. Biernoff replied that they are companies that emerged after the MSA was entered into, and most of them are not household names. The only one based in New Mexico is Sandia Tobacco Manufacturers, Inc.; it is currently in bankruptcy. It is one of a dozen companies that emerged and had sales in New Mexico after the MSA was entered into. A member asked if American Spirit cigarettes is one of those companies' products. Mr. Biernoff replied that American Spirit is a product of Santa Fe Natural Tobacco Company, which used to be based in Santa Fe but is now based in North Carolina and is now part of R.J. Reynolds, one of the largest cigarette manufacturers.

A member asked if New Mexico was indeed lax in enforcing the escrow provision. Mr. Biernoff explained that many of the companies in violation of the escrow provisions were "fly-by-night" companies based overseas, and their home countries often did not recognize U.S. jurisdiction. As a result, enforcing the escrow requirement was problematic. Escrow enforcement has improved considerably today as most NPMs are based in the U.S. and are generally compliant with their escrow obligations.

A member asked if it is believed that New Mexico is complying today, and Mr. Biernoff replied that New Mexico now has a better record of effective enforcement of the escrow provisions. Nonetheless, he expects the PMs to challenge the NPM adjustments every year because their potential for savings is worth the litigation expense for them.

A member asked how long the MSA payments are due to New Mexico, and Mr. Biernoff replied that the payments are in perpetuity.

A member asked if the MSA includes e-cigarettes, and Mr. Biernoff replied that it does not and that it also does not include cigars and most other tobacco products (except for RYO, roll-your-own tobacco, which is included). A member commented that the MSA provisions that reduced or eliminated marketing of cigarettes, especially to youth, were the most beneficial

initiatives in the agreement, but they only apply to domestic sales. The MSA did not change the activities of tobacco companies in foreign countries.

Concerning the revenue distribution, a member asked if it was correct that 50% of the revenues received were distributed to health and education programs and 50% of revenues were deposited into the TSPF; Mr. Biernoff responded in the affirmative. Regarding the 2016 special legislative session, a member asked if the funds swept for solvency were from the TSPF and not program funds, and Mr. Biernoff responded in the affirmative.

A member commented that the purpose of the creation of the TSPF was to provide a "wealth fund" that would distribute earnings in a manner that the distributions would continue in perpetuity.

A member discussed the fiscal status of the TSPF and its role as part of the state operating reserve. A member commented that the pressure to use MSA payments to shore up the state operating reserve will have a negative impact on the University of New Mexico (UNM) Health Sciences Center, which is a major recipient of tobacco funds.

In response to a member's question, Mr. Biernoff said that the precipitating event of the 2003 dispute between New Mexico and the tobacco companies concerned an estimated escrow shortfall of approximately $100,000, and this resulted in a loss of millions of dollars as a result of the 2003 NPM adjustment.

A member asked if the AGO had considered how the new arbitration proposals and possible bills in the U.S. Senate might affect challenges to payments. Mr. Biernoff said that the AGO is aware of the proposals in the U.S. Senate but that the MSA has its own arbitration provision that is unlikely to be affected by legislative changes. In 2003, New Mexico argued that the decision of the 2003 panel should have been heard in court. The MSA provides that the distribution calculation and disputes about the calculation must go to arbitration. New Mexico argued that the state's dispute was not over the computation or issues related to the calculation; rather, it was over what constitutes diligence in enforcement of the escrow requirements of the NPMs. New Mexico and most other states did not prevail in that argument, although Montana did.

A member asked how the Sandia Tobacco Manufacturers, Inc., bankruptcy impacts New Mexico's MSA payments. Mr. Biernoff replied that the bankruptcy does not directly affect New Mexico's MSA payments because Sandia is an NPM. However, the AGO has entered the bankruptcy proceeding to protect New Mexico's interests. A member asked how much money Sandia owes the state, and Mr. Biernoff replied that it was an amount in the thousands, not hundreds of thousands, of dollars.

A member asked what the expected payment is for New Mexico next year. Mr. Biernoff replied that it is estimated to be $38 million to $39 million for the regular annual payment, plus $9 million to $12 million for funds previously withheld since 2003 and ordered released to New

Mexico as a result of the district court's ruling. A member asked if the tobacco companies will appeal the district court's decision, and Mr. Biernoff replied that he expects they will.

Winnable Battles: Tobacco Use Prevention and Control (TUPAC) Program and Other DOH Programs Funded from Tobacco Settlement Revenues

Benjamin Jacquez, TUPAC program manager, Department of Health (DOH), worked through his handout at Item (2), TUPAC Presentation 10.26.16. He highlighted Slide 19, which shows a 62% decline in youth smoking from 2003 to 2015; Slide 22, which shows a 19% decline in adult smoking from 2011 to 2015; and Slide 27, which shows a 42% decline in youth secondhand smoke exposure. Referring to Slide 28, Mr. Jacquez illustrated how TUPAC works with tribes around the state. Slide 32 shows that future health cost savings from the TUPAC program are estimated to be $1.3 billion. Mr. Jacquez also provided other handouts that are posted on the website and included in the meeting file but that, in the interest of time, he did not address in the meeting.

A member asked what the target age is of the high school initiatives, and Mr. Jacquez replied that it is directed at all age groups. A member asked what was the effect of raising the legal age of smoking, and Mr. Jacquez replied that it reduces the prevalence of smoking. A member asked if anyone has looked at making e-cigarette use restricted to adults and asked if the TUPAC program would support that. Mr. Jacquez replied that the TUPAC program cannot recommend the use of e-cigarette products since it is not known what is in them. A member asked if the DOH recommended to the governor to raise cigarette taxes. Mr. Jacquez replied no; however, it is recognized by the federal Centers for Disease Control and Prevention (CDC) as a best practice for reducing the incidence of smoking. Raising cigarette taxes is not a policy recommendation of the DOH. A member asked if the CDC has a recommendation on the price point for cigarette prices, and Mr. Jacquez responded that it does not. A member commented that smokeless tobacco also has an effect on health. Mr. Jacquez responded that the DOH is also focusing on smokeless tobacco and promoting tobacco-free rodeos.

Daniel Burke, chief, Infectious Disease Bureau, DOH, explained his handout to the committees. Regarding Item (2), NMDOH Harm Reduction 10.26.16, Mr. Burke described the DOH's HIV, sexually transmitted disease and hepatitis program activities that are funded with tobacco settlement funds. Mr. Burke reported that New Mexico has the highest incidence of liver disease deaths in the United States, at 400 cases per 100,000. Most of these deaths are attributable to hepatitis C infection, he explained. New Mexico also has the largest needle exchange program in the United States, which aims to reduce transmission of infectious diseases through the avoidance of needle-sharing. Mr. Burke emphasized that funding from the tobacco settlement revenues is essential to the Harm Reduction Program and Hepatitis Program because neither program has any federal funding for contractual services.

Beth Pinkerton, manager, Breast and Cervical Cancer Early Detection Program (BCC), DOH, addressed the items in her handout. Item (2), NMDOH BCC Presentation 10.26.16, described the BCC. The program was established in 1991 and uses a statewide network of contract providers. Approximately 81,000 women in New Mexico are eligible for free BCC

screening. In fiscal year (FY) 2016, the program received $128,600 and screened 876 women, but the program's fund is sufficient to serve only 15% to 20% of the eligible population. Ms. Pinkerton reported that 100% of tobacco settlement revenue funds appropriated for the BCC are used for direct client services and contribute to making the required funding match for a federal grant.

Judith Gabriele, manager, Diabetes Prevention and Control Program (DPCP), DOH, working through her handout at Item (2), Final DPCP TSROC Committee Presentation 10.26.16, described the program. Ms. Gabriele noted that only one out of four adults in New Mexico with pre-diabetes knows it, and four out of five adults with diabetes know it. In 2012, the estimated cost for adults with diabetes and pre-diabetes was $2.1 billion. Ms. Gabriele noted the positive correlation between smoking and diabetes. The DPCP is funded with a combination of federal, state general and tobacco settlement funds; the tobacco settlement funds comprised 45% of the budget at $748,000 in FY 2016.

A member noted that the Harm Reduction Program and Hepatitis Program tobacco settlement revenue funding request for FY 2018 is $150,000 more than it received in FY 2017 and asked if this request will be coming to the LFC as part of the FY 2018 budget request. Cathy Rocke, deputy director, Public Health Division, DOH, replied that she would confer with Secretary-Designate of Health Lynn Gallagher and follow up with an answer for the committees.

A member asked if the DOH is working with the Corrections Department (NMCD) on treatment of hepatitis C. Mr. Burke replied that the DOH is working independently with the UNM School of Medicine's Extension for Community Healthcare Outcomes or "Project ECHO". Per his understanding, the NMCD is also working with Project ECHO. He commented that the numbers of inmates with hepatitis C and costs for treating them are staggeringly high.

A member asked if the recent tuberculosis (TB) cases in Santa Fe County are under control. Mr. Burke replied that TB is an old enemy to humankind and is the largest killer in the world. There are only 50 cases per year in New Mexico. He said that the DOH has a great TB program, but more nurses are needed. Currently, there are four active TB cases in the Santa Fe area, but there are no public health nurses in Santa Fe, so the department has assigned public health nurses from Espanola to care for the TB patients in Santa Fe. A member asked if the nursing positions have gone away, and Mr. Burke replied in the negative and said that it is partly a budget issue, but mostly it is a staffing availability issue. A member asked if higher pay could attract the skilled people needed. Ms. Rocke replied that the department advertises the position in Santa Fe and receives only one or two applications, and when the discussion turns to salary, the applicant often withdraws because the medical industry is very competitive and the salary the state is able to offer is not comparable to the private sector.

A member asked how the DOH provides data on infectious diseases, and Mr. Burke replied that the Indicator Based Information System for Public Health Data Resource, or "IBIS", is an online database available to the public on the DOH's website. The public can also call and information will be provided.

Regarding the data on Slide 5 of the BCC presentation, a member noted that the numbers have not changed much and asked why. Ms. Pinkerton replied that there is very low variability in the costs and the type of screening. A member asked, if the budget is increased, can more women be served, and the member commented that current research is showing false positives in mammogram screenings and inquired if the DOH is also experiencing this. Ms. Pinkerton replied that the department is following the false positive studies carefully. She replied that the DOH follows national guidelines and educates patients on the benefits of screening.

A member commented that the BCC screening programs need more funding. A member asked if many people are falling through the cracks on BCC screening, and Ms. Pinkerton replied that there is still a need for screening services. Areas in need of improvement are serving the underinsured and uninsured; persons who have high co-pays and deductibles often are not getting follow-up exams if there is something unusual detected in the initial exam.

A member asked whether gene testing is part of the BCC screening, and Ms. Pinkerton replied that it is not at this time.

A member asked if the DOH has any data that link tobacco use to breast and cervical cancer. Ms. Pinkerton replied that in 2014, the U.S. surgeon general issued a report confirming the link between tobacco use and breast and cervical cancer; the DOH can provide more information to the committees in the future. A member asked the panel to identify specific areas that do not have web access to implement the DPCP.

Regarding diabetes, a member asked whether a sugar consumption relationship to diabetes exists and whether the DPCP includes education on sugar consumption. Ms. Gabriele replied that the primary risk factor is obesity. She said that whether sugar causes diabetes is a complicated issue. She continued that weight, physical activity and caloric consumption are the three factors that are typically studied in determining a person's risk for having or getting diabetes. A member commented that program participation seems low and asked what the agency or legislature can do to increase participation. Ms. Gabriele replied that there are challenges in building up the program infrastructure statewide. The first delivery site in the country was in Chaves County, and the program may be dropped because of the difficulties in operating the program there. Ms. Gabriele expects that when the federal Medicare program begins to pay for diabetes programs in January 2018, participation is expected to go up significantly. She reported that Medicaid and Molina Healthcare of New Mexico already pay for participation in the program. Ms. Gabriele said that at the end of the fiscal year, the DOH will engage all of the stakeholders to work to increase participation in the program.

A member commented that it is frustrating to committee members that the presenters cannot ask the committees for funding though they come before the committees with a funding need. Another member commented that the current hearing is about the use of appropriations from the tobacco settlement funds, not about the operating budget needs.

Centennial Care Tobacco Prevention and Cessation Services

Ms. Pfeffer, working through her handout at Item (3), reported that in FY 2016, Medicaid received $30,019,700 from the Tobacco Settlement Program Fund, and in FY 2017, $27,319,300 was appropriated for Medicaid from the Tobacco Settlement Program Fund. The funds are expended for breast and cervical cancer treatment and for other Medicaid programs, including smoking cessation programs. The smoking cessation services are provided under contracts with four managed care organizations (MCOs).

A member asked whether the Medicaid MCOs are incentivized to implement smoking cessation programs, given that they make more money if someone gets sick. Ms. Pfeffer said the MCOs have been cooperative in developing and providing prevention and cessation programs.

A member asked whether, if a patient was not enrolled in Medicaid at the time the patient received BCC screening and breast cancer was detected, would the patient be eligible for Medicaid and have cancer treatments paid for by Medicaid. Ms. Pfeffer replied that the treatments would be paid for under the breast and cervical cancer category only if the patient were screened by the DOH if that patient were otherwise eligible for Medicaid under more generous income eligibility guidelines. Otherwise, the patient may qualify under the normal Medicaid expansion or family Medicaid. If the patient's income were too high for Medicaid, the patient might be covered under a quality health plan through the exchange.

A member asked whether the Human Services Department (HSD) had smoking cessation screening requirements in the contracts between the HSD and the MCOs. Ms. Pfeffer replied that the HSD does not at this time, but these requirements are being considered in discussions with the providers. A member asked if there are data on the success of the smoking cessation programs, and Ms. Pfeffer replied that the performance tracking initiative with the MCOs will begin to provide data on effectiveness.

Tobacco Prevention, Cessation and Regulation Legislation

Representative Armstrong presented two draft bills for discussion and said that she was not seeking endorsement at this time. The first bill proposed raising the age limit to legally access tobacco products to 21. The second bill raises the cigarette tax by 10%.

In support of the proposal to raise the age limit for legal access to tobacco products, Representative Armstrong said that the use of flavored tobacco products is rising, particularly among young people. Some states have restricted the sales of flavored tobacco products, she explained. An across-the-board raise of the legal age to purchase tobacco products would address the sale of flavored as well as other tobacco products. She noted that 90% of adult smokers started smoking before age 19.

In response to questions by a member, Representative Armstrong said that one state, Hawaii, set the legal age for purchasing tobacco products at 21 in January 2016; Alabama,

Alaska, New Jersey and Utah set the age at 19; and the remaining states either have set the age at 18 or have no age limits.

Members discussed the penalties for underage smoking and enforcement.

In support of the proposal to raise the cigarette tax, Representative Armstrong said that 10% is the lowest cigarette tax raise that should be considered, but studies show that the higher the tax, the less the use, and she would prefer to see the tax increased 35% to 45%.

Members discussed the effects of increases in taxes on cigarettes on smoking reduction and cessation and possible uses for increased revenue from the cigarette tax.

Members generally expressed support for both measures.

New Mexico Allied Council on Tobacco (ACT) — Tobacco Prevention Coalition

Janna Vallo, commercial tobacco control and prevention coordinator, Albuquerque Area Southwest Tribal Epidemiology Center (AASTEC), introduced herself and Laurel McCloskey, executive director, Chronic Disease Prevention Council, and Lacey Daniell, New Mexico grassroots manager, American Cancer Society Cancer Action Network.

Ms. McCloskey, Ms. Daniell and Ms. Vallo, working through the handout at Item (5), related that the Chronic Disease Prevention Council was established in 1997 and partnered with the AASTEC and other community members, health organizations and business professionals to create the ACT, a coalition that advocates for proven tobacco use prevention strategies through statewide partnerships. Ms. Daniell highlighted that tobacco use costs $1.44 billion annually in New Mexico, which translates to a per-household state and federal tax burden from smoking-caused expenditures of $945 per year. The members of the ACT work together to support proven measures to reduce tobacco-related disease and death and associated costs, including regular, significant increases in the price of tobacco, smoke-free workplaces and public places and comprehensive tobacco prevention and cessation programs.

In response to a member's question, Ms. Daniell was very complimentary of the TUPAC program's efforts, calling the program the "experts" in youth tobacco use prevention and cessation.

A member asked what the ACT thinks of the proposed legislation to raise the cigarette tax. Ms. Daniell replied that the CDC recommends raising the price per pack by at least $1.00 in order to impact the incidence level of smoking, noting that tobacco companies often issue discount coupons to users to neutralize the costs of increased taxes.

Update on Tobacco Cessation Programs Funded Through the Indian Affairs Department (IAD)

Suzette Shije, deputy secretary, IAD, explained that in July 2008, the IAD received its first allocation from the tobacco settlement funds, allowing the establishment in early 2009 of a competitive grant system to fund tribal commercial tobacco prevention and cessation programs, with special emphasis on Native American youth, while recognizing the traditional ceremonial role of tobacco use. Deputy Secretary Shije noted other tribal efforts to encourage prevention and cessation of commercial tobacco use, particularly that the Navajo Housing Authority, the largest tribal housing authority with more than 10,000 units, is currently considering making all housing units smoke-free.

Deputy Secretary Shije introduced Allie Moore, project manager, IAD, who described the development of the grant program and summarized the various tribal tobacco prevention and cessation programs, referring to the handouts at Item (6). Ms. Moore reported that outcomes of the program funding and programs include: funding 10 programs in 10 pueblos, tribes and nations; creating six part-time jobs; generating $70,000 of in-kind contributions from grantees; reaching 43% of tribal communities; and engaging more than 8,275 Native American youth and adults. Ms. Moore added that the New Mexico Behavioral Risk Factor Surveillance System estimates a 20% decline in the smoking rate between 2011 and 2015. Between 2003 and 2015, the New Mexico Youth Risk and Resiliency Survey estimates that smoking among American Indian high school youth in New Mexico has declined 63%.

Deputy Secretary Shije testified that the Mescalero Apache Tribe is the first tribe in the country to submit to U.S. Food and Drug Administration compliance inspections for growing tobacco. She introduced Willymae Smith-McNeal, program coordinator, Mescalero Apache tribal tobacco cessation and prevention program. Ms. Smith-McNeal, referring to her handout at Item (6), explained the Mescalero recognition of traditional ceremonial uses of tobacco as distinct from commercial personal uses, and she described the parallel development of the commercial tobacco prevention and cessation program and introduction of growing tobacco for ceremonial purposes. She showed members a number of visual aids and games she uses in the tobacco prevention and cessation program; her handout includes a number of examples of student-made posters.

Approval of TSROC Minutes

The TSROC approved the minutes of its September 26, 2016 meeting with no amendments.

Public Comment

Cynthia Serna, former director of New Mexicans Concerned about Tobacco and current grassroots organizer of the American Cancer Society Cancer Action Network, noted that when funding for tobacco prevention and cessation programs is cut, tobacco use increases almost immediately. She urged the legislature to support continuation of funding for programs.

Nat Dean, traumatic brain injury survivor, provided the committees with a brochure from the Disability Advisory Group About Tobacco (DAGAT) New Mexico. Ms. Dean requested that funding for the DAGAT remain intact. She also addressed the importance of the legal availability of medical marijuana and stated that, as a medical cannabis patient for seven years, she has been able to reduce her number of medications from 27 to six.

Lisa Rossignol spoke as a health policy advocate for getting children with autism into Centennial Care coverage. She noted that Centennial Care has cut services, particularly respite care services, to families with children with special health care needs, and she urged legislators to reinstate and protect that funding.

Mary Beresford, DAGAT director, reported that disabled people have a very high rate of smoking, so access to cessation programs is vital to their overall health.

Long-Term Leveraging Medicaid Subcommittee (LTLMS) Recommendations

Angela Medrano, deputy director, Medical Assistance Division, HSD, introduced Carol Luna-Anderson, executive director, the Life Link, and chair, LTLMS, and Nick Estes, member, LTLMS, and member, board of directors, Health Action New Mexico (HANM).

Ms. Luna-Anderson, referring to her handout at Item (8), summarized the LTLMS' eight formal recommendations. Included among the recommendations is a recommendation that the state assess a provider fee or tax that would be used for enhancing Medicaid provider reimbursements through application of a larger federal medical assistance percentage (FMAP).

Mr. Estes told the committees that provider taxation is regulated by federal law and advised proceeding with expert help. With two exceptions (New Mexico and Alaska), every state and the District of Columbia use provider taxes. Alaska is considering provider fees as well. Under these states' laws, a certain "class" of health care providers that receive Medicaid reimbursement is charged a fee, and they generally recover the amount paid through enhanced Medicaid reimbursement. Yet "you cannot guarantee that they will be held harmless", Mr. Estes warned. He stated that the Legislative Finance Committee (LFC) is aware of this concept, as are other agencies in the state.

A member asked whether HANM's handout provides merely an example of the sort of provider fee that could be imposed. Mr. Estes answered that indeed it does, and that the fee would be charged on those services that would garner increased FMAP.

When asked what Secretary of Human Services Brent Earnest's and the governor's reactions were to the LTLMS' recommendations, Ms. Medrano told the committees that Secretary Earnest was reviewing the recommendations and that she did not know of a response from the governor.

A member discussed the role of the New Mexico Medical Insurance Pool, and how it protects the state's private insurance risk pool from incurring extensive losses that would result in greater premium increases for the private health insurance market.

A member asked the panel which of the LTLMS' recommendations were made by unanimous vote of the LTLMS members. Ms. Luna-Anderson answered that the provider tax recommendation was made unanimously. At the member's request, she went on to review other recommendations as follows.

- Recommendation number two on the LTLMS' recommendations listed in the handout was also unanimous, pursuant to which the HSD would work to leverage federal funds through waivers, intergovernmental transfers and Medicare pilot projects. Mr. Estes mentioned that Rio Arriba County Department of Health and Human Services Director Lauren Reichelt was eager to access more funds through such matching funds.
- Recommendation number four related to value-based purchasing by MCOs. Deputy Secretary Medrano said that the HSD is implementing new reimbursement methodologies. One federally qualified health center had a contract pursuant to which the center bears the risk for caring for specific populations. MCOs have been directed to use 16% of their capitated rates for value-based purchasing, according to Deputy Secretary Medrano.
- Recommendation number seven related to home visiting funded through the state's Medicaid program in order to enhance funding through the Medicaid FMAP. Deputy Secretary Medrano stated that the Children, Youth and Families Department model of home visiting is not a medical model, and hence, not likely eligible for Medicaid reimbursement. In response, a member stated that 81% of babies statewide are born to mothers enrolled in Medicaid. The member proposed that the HSD seek a waiver of the "medical services" requirement as home visiting services are for prevention of future medical and social costs.
- A member stated that the member wants recommendation number seven to be "seriously considered".
- A member inquired whether there are any Medicaid co-payments designed to change behaviors and promote more responsibility for health. Deputy Secretary Medrano stated that no formal recommendations came from the LTLMS in this regard. The General Appropriation Act of 2016, however, does require that some cost-sharing be imposed. The federal Centers for Medicare and Medicaid Services would have to approve such an arrangement. Some states have successfully imposed co-payments. Another member stated a belief that the administrative burden and cost of collecting the co-payments become a burden on providers. Also, it may result in Medicaid recipients avoiding care that could prove more costly in terms of their health and their burden to the Medicaid budget. Some insurers, the member noted, have removed co-payments where prevention will save on later costs. Another member noted a discussion of this in the latest LFC newsletter at page 1.

Adjournment

There being no further business before the committee, the fourth meeting of the TSROC for the 2016 interim adjourned at 4:41 p.m.