NEW MEXICO LEGISLATURE

LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

2017 INTERIM FINAL REPORT

Legislative Council Service
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INTERIM SUMMARY

Legislative Health and Human Services Committee

2017 Interim Summary

The 2017 interim was busy and meaningful for the Legislative Health and Human Services Committee (LHHS) and its two subcommittees, the Disabilities Concerns Subcommittee (DCS) and the Behavioral Health Subcommittee (BHS). The LHHS and its subcommittees met for 25 days altogether, hearing 224 speakers and 79 presentations related to health and human services matters. The LHHS and its subcommittees met in Santa Fe, Roswell, Truth or Consequences, Las Cruces and Albuquerque and at the Standing Rock Chapter House on the Navajo Nation.

Health Care: The LHHS had a major focus on the complex issues of health care, including issues of access to needed services, education, recruitment and retention of health care providers, health insurance coverage, rural health planning and challenges presented due to perpetual funding and regulatory issues as well as the uncertainty of the federal landscape. Behavioral health issues were addressed in both the LHHS and the BHS.

Access to Health Care: Updates were provided to the committee by the University of New Mexico (UNM) Health Sciences Center on a variety of issues, including the controversy regarding prior authorization of medically necessary services. Members of the committee engaged in a task force initiated through the National Conference of State Legislatures to address rural health needs testified regarding the work they are doing and their plan to develop an updated rural health plan for New Mexico. The New Mexico Primary Care Association offered testimony on rural primary care clinics and their role in ensuring a safety net to vulnerable populations statewide.

Access to health care coverage for special populations was addressed in several specific areas, including access to contraceptive coverage, particularly long-acting, reversible contraception, poison and drug information and many aspects of end-of-life care, including palliative care, hospice care and proposals for increased choices in end-of-life decision making. The Office on African American Affairs presented its findings from a pilot project on African American infant mortality and challenges to maternal health needs, suggesting the need for new models of care for this demographic.

The LHHS and the Courts, Corrections and Justice Committee (CCJ) held a joint meeting at which a detailed report was provided by the Corrections Department on access to health care services and medical personnel for inmates in correctional facilities.

During a joint meeting with the Indian Affairs Committee, committee members heard about public health, community health and workforce development initiatives that are under way at the Center for Native American Health at UNM.

The LHHS heard testimony from a panel of emergency dispatch or "E-911" directors regarding the inability of communities to reliably provide access to 911 services due to

inadequate funding for these emergency services as well as out-of-date technology. A proposal was presented to establish an E-911 oversight board to consider these and other issues and solutions.

Finally, in the area of access to health care, the committee heard an extensive report on access to medical cannabis, with particular focus on the importance of testing cannabis plants to ensure safety of the end product. Proposed program changes under consideration by the medical cannabis program in the Department of Health (DOH) were also discussed.

Health Care Coverage: The Office of Superintendent of Insurance (OSI) provided testimony on two separate occasions, covering the topics of network advocacy, surprise billings and avenues for consumer assistance and the process for the OSI's handling of consumer complaints. The committee was updated on the stability of the health insurance marketplace, including findings from research conducted by the Robert Wood Johnson Foundation Center for Health Policy at UNM. The New Mexico Health Insurance Exchange provided an update of the upcoming open enrollment period and a progress report on the success of the exchange for current enrollees. The current status of the New Mexico Medical Insurance Pool was presented with detailed information on the people being served, as well as the potential for expansion of the pool, should federal health reform call for it. The LHHS heard a report from the Legislative Finance Committee (LFC) that addressed utilization trends of the Interagency Benefits Advisory Committee and offered opportunities to improve coverage.

Medicaid: The committee heard extensive testimony regarding proposed changes to the Medicaid program as a result of the process to renew the Centennial Care waiver. Changes to managed care organization requirements for care coordination, integration of behavioral health services, payment reform and program administration were presented. Significant concerns expressed in public comment and by committee members centered on the proposed imposition of premiums and copayments, the elimination of transitional Medicaid and the recommendation to end retroactive coverage. A representative of the All Pueblo Council of Governors identified tribal sovereignty and other issues pertinent to Native Americans in Medicaid reform.

Representatives of the Navajo Nation offered a proposal for a tribally managed approach to managed care. Potential mechanisms to enhance revenues through provider fees or tax mechanisms were described. A pilot project undertaken by Molina Healthcare in conjunction with the Bernalillo County Metropolitan Detention Center to ensure smooth transition to Medicaid following incarceration was presented.

Workforce: The committee heard testimony at several meetings regarding the availability of health care providers in New Mexico. Presentations from both UNM and the Burrell College of Osteopathic Medicine (BCOM) described the importance and costs of residency programs to train physicians. UNM and BCOM, as well as other presenters, identified the importance of efforts to educate New Mexico residents to become physicians and the importance of efforts to

recruit and retain them permanently in the state. The importance of loan assistance programs was highlighted.

A report regarding the unique needs and challenges of maintaining a direct-care workforce for individuals with long-term care needs was presented. A presentation of the 2017 New Mexico Health Care Workforce Report identified gains and losses in the supply of physicians and mid-level practitioners in New Mexico.

Nursing: A significant and urgent issue was presented to the committee regarding the need to adopt an enhanced nursing compact in order to continue the granting of reciprocity to out-of-state nurses, thereby allowing them to practice in New Mexico. A panel of presenters testified to the critical nature of adopting the compact and described the negative impact of neglecting to do so. Committee members acknowledged that swift legislative action will be required to avoid harm and disruption to health care training and delivery in the state.

Human Services: A major focus for the LHHS in 2017 concerned children and families, with a particular focus on adverse childhood events (ACEs). The impact of ACEs on child development and over the trajectory of a child's life was presented, along with a full report from the Children, Youth and Families Department (CYFD) regarding early childhood services to mitigate that effect. The CYFD also provided testimony regarding child protective services. New Mexico Voices for Children presented the annual Annie E. Casey Foundation KIDS COUNT report. The serious issues and challenges faced by grandparents raising grandchildren and other kinship relationships were discussed. Juvenile justice issues were explored in depth in the joint meeting with the CCJ, including an update on an initiative to improve the outcomes for youth statewide. Domestic violence and its impact on children and families were presented in the context of the outcomes achieved in the batterers intervention program. A look at strangulation as a particularly serious and often unidentified form of domestic violence were presented, as were opportunities to improve collaboration between state agencies providing early childhood services. The J. Paul Taylor Early Childhood Task Force presented its annual report and recommendations for child well-being.

Status Reports: As part of its government oversight responsibilities, the LHHS received status reports from the Human Services Department (HSD), DOH, CYFD, Corrections Department and New Mexico State Veterans' Home. The committee heard detailed testimony regarding the HSD's level of compliance with a court order related to barriers to enrollment into the federal Supplemental Nutrition Assistance Program. A detailed report was received from the New Mexico Adult Guardianship Study Commission that addressed problems and deficiencies in the current system of assigning guardians to adults. Among other recommendations, the commission endorsed revisions to the current guardianship law offered by the Uniform Law Commission that are expected to standardize and improve the process.

Behavioral Health Services: Behavioral health was a significant focus of both the LHHS and the BHS. The BHS continued the focus on childhood behavioral health issues with an

informative report from the LFC. Both the LHHS and the BHS heard updates from the Behavioral Health Services Division of the HSD and heard first hand accounts of city and county efforts to develop and implement successful approaches to local behavioral health problems. The opioid crisis was fully explored in a daylong summit on the topic in which in-depth reports and testimony were provided on all aspects of recognition, treatment and best practices regarding opioids. Roundtable discussions with legislators identified recommendations for state policy responses to this crisis.

Disability Concerns: The DCS heard updates on the Medicaid developmental disabilities waiver and the Mi Via self-directed waiver. Other topics the DCS explored in depth included brain injury, autism and employment and wage-related issues for individuals with disabilities.

LHHS Endorsements: The following summarizes the actions and legislative endorsements supported by the LHHS.

- ***The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act*** **(.208901.3)** was presented by Jack Burton from the Uniform Law Commission. He asserted that the bill is entirely uniform, updating provisions for guardianship, conservatorship and protective arrangements. The CCJ has also endorsed this bill.
- ***Nursing compact*** **(.208934.2)** enacts the enhanced Nurse Licensure Compact and makes conforming changes to the Nursing Practice Act.
- ***Kidney transplant counseling*** **(.208724.1)** would establish certain requirements for renal dialysis facilities for counseling about kidney transplants and other alternatives to dialysis.
- ***Statewide 911 board*** **(.208787.1)** is a memorial that asks the secretary of finance and administration to study a proposal that a single, statewide 911 program oversight board be created and charged with the administration of 911 programs statewide.
- ***Recoupment limit*** **(.208770.1)** would establish a limitation on recoupment or retroactive denial of health care provider claims.
- ***Physician loan for service*** **(.208837.1)** establishes additional professional loan repayment funding through licensure fees to assist both allopathic and osteopathic primary care physicians working in designated health professional shortage areas.
- ***Funding for developmental disability waiver supports*** **(.208904.1)** would appropriate $25 million to the DOH to fund supports and services under the Medicaid developmental disabilities waiver. It was clarified that the appropriation as presented specifically prohibits using the funds to take people off the waiting list. The committee endorsed this bill with changes to allow for use of the appropriation to reduce the waiting list as well as provide supports and services to current clients.
- ***Child care assistance for kinship caregivers*** **(.208907.2)** would establish access to child care assistance and respite care for kinship caregivers without consideration of income or resources.
- ***Appropriation to fund law enforcement-assisted diversion (LEAD)*** **(.208919.2)** appropriates $450,000 to fund ongoing LEAD programming in Santa Fe County and establish new LEAD programs in Bernalillo and Dona Ana counties.
- ***Health councils*** **(.208963.1)** makes an appropriation of $700,000 to the DOH to fund tribal and county health councils' efforts to identify and address local communities' health needs.

WORK PLAN AND MEETING SCHEDULE

2017 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE,
BEHAVIORAL HEALTH SUBCOMMITTEE
and
DISABILITIES CONCERNS SUBCOMMITTEE

Members

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

Advisory Members

Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. Linda M. Lopez
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Mary Kay Papen
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Nick L. Salazar
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman
Rep. Christine Trujillo

Behavioral Health Subcommittee

Members

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

Advisory Members

Rep. Deborah A. Armstrong
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen

Disabilities Concerns Subcommittee

Members

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

Advisory Members

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

Legislative Health and Human Services Committee (LHHS) and Subcommittees

The LHHS is a permanent joint committee of the legislature created pursuant to Section 2-13-1 NMSA 1978 and is responsible for studying the programs, agencies, policies and needs relating to health and human services, in addition to programs and services for children, families and the aging population. The Disabilities Concerns Subcommittee (DCS) is a permanent subcommittee of the LHHS, created pursuant to Section 2-13-3.1 NMSA 1978, and the Behavioral Health Subcommittee (BHS) was established by the New Mexico Legislative Council on June 5, 2017.

Work Plan

The topics that the LHHS proposes to cover during the 2017 interim are as follows.

Health and Human Services Agencies

The LHHS proposes to continue its review of the work of the state's health and human services agencies: the Department of Health; the Human Services Department (HSD); the Children, Youth and Families Department (CYFD); the Aging and Long-Term Services Department; the Corrections Department; and other agencies, boards and commissions with health and human services functions.

Medicaid

The LHHS proposes to continue its review of the many services and programs covered under the state's Medicaid program and the status of coverage expanded under the federal Patient Protection and Affordable Care Act. The LHHS proposes to review the possibility of federal changes to Medicaid matching funds, Medicaid provider reimbursement changes, provider networks and other matters relating to recipients' access to services.

The HSD is proposing a new Centennial Care Medicaid managed care waiver for approval by the federal Centers for Medicare and Medicaid Services. The LHHS proposes to review the proposal and the public's input.

The LHHS proposes to continue to review Medicaid's role in a number of programs, such as home visiting, long-term services, supportive housing and other health coverage and health care delivery innovations.

Aging

The LHHS proposes to continue to examine matters relating to the state's long-term care facilities and home- and community-based long-term services. This review includes nutrition, transportation and other programs that are experiencing cuts.

Children and Families

The LHHS proposes to review the policies and programs of the CYFD, including child protective services, lay and foster caregiver supports, juvenile justice, child care assistance and supports for families. The LHHS proposes to focus on the effect of, and interventions to address, domestic violence statewide. The LHHS proposes to receive testimony from other local and national agencies, programs and organizations whose work entails researching the needs of and serving families and children and to review reports.

Health Coverage

The LHHS proposes to receive updates relating to the state's private health coverage market, including the effects of proposed state rules and changes to federal law. The LHHS proposes to continue to review the availability and cost of health insurance benefits, network adequacy, carrier practices and consumer rights.

The LHHS proposes to examine the administration of state agency health coverage programs, including the Interagency Benefits Advisory Committee's joint purchasing on behalf of state employees and retirees. The committee intends to review proposals to further consolidate some purchasing and expand coverage.

Human Services

The LHHS proposes to review programs and services relating to nutrition, housing, financial assistance, employment programs and the administration of human services programs statewide. This review includes updates on the *Deborah Hatten Gonzales* case relating to the HSD's administration of the Supplemental Nutrition Assistance Program.

Health Care Workforce

The LHHS proposes to continue its review of the state's health care workforce, including receiving testimony from the state's Health Care Work Force Work Group and reviewing "pipeline" programs that seek to expand the number of new health care workers.

In light of recent legislation, the LHHS proposes to review proposals to expand some health professionals' scopes of practice and to merge some health professional licensure and oversight boards.

Indian Health and Human Services

The LHHS proposes to hold a joint meeting with the Indian Affairs Committee to review matters of common interest, including long-term care, health disparities and sexual assault and domestic violence prevention.

Behavioral Health

The LHHS and the BHS propose to review the state's capacity to meet the demand for behavioral health services statewide through private, Medicaid and non-Medicaid state agency behavioral health coverage and programs for adults and children.

The LHHS and the BHS propose to focus considerably on the ongoing substance use disorder crisis statewide and the incidence and available treatment options for other major behavioral health conditions.

Disabilities Concerns

The DCS proposes to continue its review of issues relating to public and private disability rights, supports, services and employment. In addition, the subcommittee proposes to review recent proposals to change laws relating to the protection of residents and their property.

Legislative Health and Human Services Committee,
Disabilities Concerns Subcommittee and
Behavioral Health Subcommittee
2017 Approved Meeting Schedule

Legislative Health and Human Services Committee

Date	Location
June 16	State Capitol, Room 311, Santa Fe
July 17-18	Roswell
September 6-7	Truth or Consequences/ Las Cruces
September 20-22	Albuquerque
October 4	Standing Rock Chapter (Joint meeting with the Indian Affairs Committee)
October 16-17	State Capitol, Room 322, Santa Fe
October 18	State Capitol, Room 322, Santa Fe (Joint meeting with the Courts, Corrections and Justice Committee)
October 25	State Capitol, Room 321, Santa Fe
November 1-3	State Capitol, Room 317, Santa Fe
November 16-17	State Capitol, Room 307, Santa Fe

Disabilities Concerns Subcommittee

Date	Location
August 3	Albuquerque
September 29	Albuquerque
October 11	Albuquerque (Southwest Conference on Disability)

Behavioral Health Subcommittee

Date	Location
June 16	State Capitol, Room 311, Santa Fe
August 25	Albuquerque
September 8	Las Cruces
October 24	State Capitol, Room 321, Santa Fe

LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE AGENDAS AND MINUTES

Revised: June 14, 2017

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

June 16, 2017
State Capitol, Room 311

Friday, June 16

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee (LHHS)
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (1) **Health and Human Services Budgetary Update**
—Ruby Ann Esquibel, Senior Analyst, Legislative Finance Committee (LFC)
—Eric Chenier, Senior Analyst, LFC
—Kelly Klundt, Senior Analyst, LFC

10:30 a.m. (2) **Public Comment: Input on Proposed Work Plan**

11:00 a.m. (3) **2017 Legislative Review; Review of Work Plan and Meeting Schedule**
—Michael Hely, Staff Attorney, Legislative Council Service

12:00 noon **Lunch**

1:00 p.m. (4) **Behavioral Health Services Update**
—Wayne Lindstrom, Ph.D., Director, Behavioral Health Services Division, Human Services Department (HSD)
—Debra Altschul, Ph.D., University of New Mexico Health Sciences Center
—Jamie Michael, Director, Dona Ana County Health and Human Services Department
—Maggie McCowan, L.I.S.W., M.B.A., Executive Director, New Mexico Behavioral Health Providers Association

3:00 p.m. (5) **Update on Medicaid**
—Brent Earnest, Secretary, HSD
—Nancy Smith-Leslie, Director, Medical Assistance Division, HSD

4:30 p.m. **Adjourn**

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

June 16, 2017
State Capitol, Room 311
Santa Fe

The organizational meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on June 16, 2017 by Representative Deborah A. Armstrong, chair, at 9:10 a.m. in Room 311 of the State Capitol in Santa Fe.

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

Advisory Members

Rep. Joanne J. Ferrary	Sen. Gay G. Kernan
Rep. Miguel P. Garcia	Rep. Tim D. Lewis
Sen. Linda M. Lopez	Sen. Howie C. Morales
Rep. Rodolpho "Rudy" S. Martinez	Rep. Angelica Rubio
Sen. Cisco McSorley	Rep. Nick L. Salazar
Sen. Mary Kay Papen	Rep. Christine Trujillo
Sen. Nancy Rodriguez	
Rep. Patricia Roybal Caballero	
Sen. William P. Soules	
Sen. Elizabeth "Liz" Stefanics	
Sen. Bill Tallman	

BEHAVIORAL HEALTH SUBCOMMITTEE

Present	**Absent**
Sen. Bill B. O'Neill, Chair	Sen. Howie C. Morales
Rep. Christine Trujillo, Vice Chair	
Rep. Sharon Clahchischilliage	
Rep. Rebecca Dow	
Rep. Doreen Y. Gallegos	

Advisory Members
Rep. Deborah A. Armstrong
Sen. Mary Kay Papen
Sen. Gerald Ortiz y Pino

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)
Rebecca Griego, Records Officer, LCS
Shawna Casebier, Staff Attorney, LCS

Friday, June 16

The chair convened the committee at 9:10 a.m. The committee members and staff introduced themselves. A quorum was present.

Health and Human Services Budgetary Update

Ruby Ann Esquibel, senior analyst, Legislative Finance Committee (LFC), Jon Courtney, program evaluator manager, LFC, and Eric Chenier, senior analyst, LFC, presented budget updates for health and human services agencies and programs. They passed out three handouts, with the titles "Review and Update of 2017 Appropriations" (review); "Performance Report Card" (report card); and "2016 Accountability Report: Medicaid" (Medicaid report).

Human Services Department (HSD)

Ms. Esquibel informed the committee that the HSD and the Children, Youth and Families Department (CYFD) were working in cooperation to expand the availability of home visiting services statewide.

Ms. Esquibel spoke of improvements in administration at the HSD's Income Support Division (ISD). She noted a great deal of volatility in the HSD's budget projections for fiscal year (FY) 2018. The previous January projections indicated a $6.1 million shortfall in general

fund dollars, she stated, but she noted that the budget has gained $5 million in the period between January and June of this year.

Overall, the Medicaid budget projection for FY 2018 showed a shortfall of $31.9 million of federal and state funds, based on assumptions. Variables include:

- funds that the HSD may recoup from the federal Indian Health Service if the federal government approves the recoupment;
- the implementation of copayments in accordance with a state Medicaid plan amendment for some Medicaid participants; and
- assumptions about the amount of state taxes collected in FY 2018.

With respect to the Temporary Assistance for Needy Families (TANF) cash assistance, work participation and medical assistance programs, Ms. Esquibel stated that in FY 2018, appropriations for cash assistance and support services will decrease by $2.3 million from FY 2017 appropriations.

Ms. Esquibel discussed an expected $16.8 million settlement that the federal government approved relating to disproportionate-share hospital payments. Further savings, she explained, were derived from provider rate cuts made in FY 2017 and from some savings in the cost of treatments for hepatitis C and higher prescription drug rebates.

Great increases in Medicaid enrollment boosted costs considerably, according to Ms. Esquibel. In June 2017, the enrollment was projected to include 929,030 individuals in all categories — the newly eligible non-disabled "childless adult" or "expansion" category, as well as adults with disabilities, children and families. The main categories experiencing growth have been the Medicaid expansion and family planning. Ms. Esquibel said that economists at the HSD believe that as outreach and education about enrollment grow, there could be some migration between the New Mexico Health Insurance Exchange (NMHIX) and the state's Medicaid program. Changes allowing more retroactive eligibility in the Medicaid program may be responsible for some of the increased enrollment.

Ms. Esquibel explained that the Medicaid federal match has dropped in FY 2017 to 95% for the expansion population, and beginning in 2020, it will drop to 90%. With the "woodwork effect", the HSD is seeing a lot more enrollment in the non-expansion population as well. The federal match for the non-expansion population is at approximately 70%.

Ms. Esquibel directed the committee to review the report card provisions relating to the HSD, which noted that the General Appropriation Act of 2017 has some performance measures. There are also performance measures that state agencies, in collaboration with the LFC, could create. The state's 20 largest agencies get report cards, Ms. Esquibel explained.

Under the rubric of "take-away messages for the HSD", Ms. Esquibel discussed:

- areas in Medicaid that need much improvement, including early childhood health indicators. Assessments are apparently moving from quarterly or biannual assessments to annual assessments. This is a trend that should reverse, according to Ms. Esquibel;
- lead testing: New Mexico is among the worst states for testing residents' exposure to lead poisoning. The rate in New Mexico is only at about 5%, whereas nationwide the rate is 49%. The presence of lead indicates that some areas of New Mexico have worse rates of lead exposure than Flint, Michigan, which is infamous for extraordinarily high rates of lead in its drinking water; and
- behavioral health: the data lag in this category, according to Ms. Esquibel, so the most recent data are from the third quarter of FY 2017, on page 5 of the report card. This shows a great increase in the number of people receiving services. Questions remain about the quality of services and the timeliness of the services being provided.

Department of Health (DOH)

Mr. Chenier directed the committee to slide 9 of the LFC's PowerPoint handout. It indicates a flat budget for the DOH between FY 2016 and FY 2017.

Referring to the review, Mr. Chenier discussed a $1.2 million appropriation for disengagement from the *Jackson* lawsuit, which is the lawsuit that led to the statewide closure of institutions for individuals living with developmental disabilities (DD). However, the DOH would experience savings in state general funds because *Jackson* engagement will be performed by the DOH's Division of Health Improvement and because the increase in federal matching funds decreases state General Fund contributions by $1.1 million.

Mr. Chenier reminded the committee of the *Waldrop* lawsuit against the DOH, which relates to the DD Medicaid supports and services waiver (DD waiver) program using the supports intensity scale (SIS) tool for eligibility determinations and level-of-care assignments.

The DOH has requested a $375,000 supplemental appropriation to support DOH facilities. A shortfall of $800,000 had been projected, which the DOH previously indicated it could make up through other means, Mr. Chenier explained. LFC staff would be meeting with DOH officials concerning the matter. DOH facilities have experienced savings of $2.3 million for job vacancies that remain unfilled. Mr. Chenier stated that the DOH has incurred $1 million in direct care contract staff increases, in contravention of the DOH's attempts to reduce the number of expensive contract staff members.

Mr. Chenier discussed the effect of the passage in the 2017 regular session of Senate Bill 204 (Laws 2017, Chapter 84), which effected the transfer of $4.7 million relating to the New Mexico State Veterans' Home (veterans' home) from the DOH to the Veterans' Services Department. The LFC evaluation of veterans' home services shows many poor indicators.

Moreover, Mr. Chenier stated, the federal "Nursing Home Compare" website shows that the veterans' home scores much more poorly than other states' long-term care facilities.

Public health programs saw an increase of income due to the implementation of the Vaccine Purchasing Act, according to Mr. Chenier.

Mr. Chenier indicated that if the DOH's Developmental Disabilities Supports Division does not spend all appropriated money in FY 2017, it will be able to use those funds in FY 2018.

Mr. Chenier directed the committee to review the LFC report card indicators for the DOH, including severe increases in pertussis among infants.

CYFD

Dr. Courtney directed the committee to page 12 of the review, which indicates a 1.7% increase from FY 2016 to FY 2017. The CYFD's budget has increased, while other department budgets have not. Dr. Courtney indicated that the CYFD's Juvenile Justice Division will receive a transfer of youth mentoring funds. The Protective Services Division is increasing salaries and, thus, is seeing improvement in turnover rates.

With respect to early childhood services, Dr. Courtney directed the committee to the review, beginning at page 13, showing:

- increases in early childhood home visiting;
- flat funding for child care assistance and the Family Infant Toddler (FIT) program;
- a slight increase in pre-kindergarten (Pre-K) funding for extended full-day Pre-K; and
- uncertainty for the K-3 Plus summer nutrition program. Dr. Courtney stated that June slots decreased from the previous year's slots, resulting in districts being able to fund fewer slots.

Early childhood is very important for child development, Dr. Courtney stated. The LFC continues to research evidence-based early childhood programming, he said, seeking a high return on investment. New Mexico's poverty rate is high enough that Medicaid pays for 80% of births. New Mexico's rates of adverse childhood events (ACEs) are higher than other states, with at least three-fourths of New Mexico children at risk of experiencing at least one ACE. Approximately 80% of New Mexico children attend schools where the poverty rate is high. Over half of New Mexico's third graders are not performing at grade level. Three-fourths of New Mexico students tested were not proficient in math or reading.

Referring to the report card on page 11, Dr. Courtney indicated that the CYFD's Protective Services Division is serving 2,600 children, an increase from the usual average of about 2,000 children. This increase shows that maltreatment has risen in the past five years. Per one thousand children, 17.5 are victimized in the state, which is twice the national average, according to Dr. Courtney. Drawing the committee's attention to the statistics on page 12 of the

report card, Dr. Courtney indicated that 88.3% of New Mexico children for whom there was a prior substantiation of maltreatment had no substantiated recurrence of maltreatment. This statistic is much worse than the national average, which indicates that 95% of children for whom there has been a prior substantiation of maltreatment have not had any recurrence of maltreatment.

The turnover rate in the CYFD's Protective Services Division has dropped substantially, with an 18.3% turnover rate for the third quarter of FY 2017, versus a turnover rate closer to 30% in FY 2016 and FY 2015.

Dr. Courtney stated that the early childhood services of the CYFD are performing "relatively well". Most measures are good or acceptable. A "red" indicator, he explained, does not necessarily indicate failure but may reflect the fact that a system is experiencing additional stress.

The Juvenile Justice Division performs relatively well, according to Dr. Courtney, and does well at keeping children safe and out of the juvenile justice system. On page 13 of the report card, Dr. Courtney pointed out "red" indicators that show rates of violence in the juvenile justice system.

Questions and Comments

Members of the LHHS raised a number of issues, including:

- the cost each year to the state in defending the *Jackson* and *Waldrop* lawsuits, which relate to the provision of DD supports and services by the DOH. Mr. Chenier estimated these costs to be approximately $5 million. He explained that the *Waldrop* case has led the DOH to move away from using the SIS evaluation system and said that the DOH pays the University of New Mexico (UNM) for conducting evaluations;
- whether the Medicaid program is being underfunded by $32 million. Ms. Esquibel indicated that there is substantial volatility in Medicaid funding, so that number fluctuates;
- a reduction in autism services and the closure of Camp Rising Sun for children on the autism spectrum. Mr. Chenier stated that the LFC is researching this and would follow up with more information;
- the ISD's administration of the Supplemental Nutrition Assistance Program (SNAP), which Ms. Esquibel stated was improving despite the report card's warnings that reflect the lag time before staff could be trained and address the lag with timely processing. She thinks that SNAP administration should be "good" by late summer;
- behavioral health service usage trends, which indicate an increase, though the reason is unknown. Dr. Courtney indicated that the LFC is seeking to further investigate the HSD's reporting on access to behavioral health services;

- whether anyone has done a cost analysis of the behavioral health services crisis arising from the HSD's credible allegations of fraud against behavioral health provider agencies; and
- an inquiry as to why the governor vetoed funding to address teen unintentional pregnancy rates.

Members discussed the following:

- concerns with the continued high number of individuals awaiting allocation to DD supports and services;
- that the DOH does not seem to increase staffing in response to increased appropriations to address the DD "waiting list" or central registry;
- the DOH's reversion of funds that the legislature appropriated to the DOH to allocate DD supports and services, which has not resulted in an increase in allocations;
- LFC appropriations relative to the allocation of "slots" on the DD waiver;
- concerns regarding the increase in child maltreatment with statistics showing that New Mexico is faring more poorly than in 2012;
- a desire to make inquires about autism and DD services at the DOH when the DOH presents to the committee;
- a request that the LFC look into administrative changes in the HSD's Child Support Enforcement Division;
- concerns that DD waiver participants are being disenrolled because of slow Medicaid processing. Ms. Esquibel stated that Sean Pearson, deputy secretary, HSD, is currently investigating this;
- concerns about accurate reporting of maltreatment of children in foster care and on the need for behavioral health services;
- the rate of domestic violence statewide, regarding which the LFC recently released a report that is proposed to come before the LHHS;
- the Arizona governor's declaration of a state of emergency because of opioid addiction, while New Mexico ranks worse for the incidence of opioid- and alcohol-related deaths;
- on the subject of Medicaid expenditures, Dr. Courtney's observation that page four of the Medicaid report indicates that Centennial Care expenditures have increased quite a bit, while utilization has slightly decreased;
- a desire that the committee review the TANF program and Medicaid case management services;
- concerns about early intervention programs and cuts to neonatal services;
- concerns about UNM not contracting with any Medicaid managed care organizations (MCOs), despite UNM being a state entity and Medicaid being a state program;
- the FIT program's flat budget;
- Yucca Lodge's move from Fort Bayard to the New Mexico Rehabilitation Center in Roswell and reports of patient displacement;
- child care assistance and quality standards;

- a request for a presentation from the attorney at Disability Rights New Mexico on ending the state's engagement with the *Jackson* lawsuit;
- concerns about the closure of public health facilities in Albuquerque's South Valley;
- concerns about the governor's veto of legislation to create a diabetes committee and the closing of public health clinics; and
- a desire to see how much the DOH spends on hepatitis C and HIV treatment and whether hepatitis C treatment is being rationed.

The chair announced that the speaker of the house added Representative Elizabeth "Liz" Thomson as a voting member of the Behavioral Health Subcommittee.

Public Comment

Robert Kegel told the committee that during the fall of 2016, the Disabilities Concerns Subcommittee requested that he do an investigation into public input on DD waiver changes. He stated that he has also prepared a report on creating an autism waiver, though no progress has been made. He stated that the current administration has missed receiving $75 million in federal funding.

With respect to the Medicaid program, Mr. Kegel stated that $650,000 was cut from programs instead of using a provider fee to increase funds by as much as $35 million.

Regarding the DOH's *Jackson* lawsuit, Mr. Kegel stated that attorney Peter Cubra intervened to stop application of the SIS for evaluations. The state has spent "billions on the SIS", he said.

Mr. Kegel finished his comments by stating that the public comment process relating to the HSD's renewal of the Centennial Care Medicaid waiver is "not going well at all". He noted that the HSD is proposing the imposition of copayments on Medicaid recipients' use of services.

Tracy Perry, a direct therapy services worker from Las Cruces, requested that the committee add to the work plan a discussion on the fact that DD waiver participants are being disenrolled because the ISD is not sending out renewal paperwork in a timely manner. This is affecting participants as well as provider agencies.

Connie Molecke spoke of the climate for autism services and introduced other families of individuals with autism. She lamented the closing of Camp Rising Sun and other cuts and discussed the camp's value to individuals with autism and their families.

Nat Dean, Karen Cushner and Annika Cushner discussed service and emotional support animals. In 2013, amendments to the Service Animal Act made New Mexico's law mirror the federal Americans with Disabilities Act of 1990 (ADA). They spoke of the many issues that arise from the appearance of "imposter" service animals that do not meet the requirements of

state law or the ADA. If an imposter damages a working animal, the handler has to replace or retrain that dog. If a dog develops fear, it cannot work.

Annika Cushner said that disabled individuals may be forced to use a wheelchair when service animals are unavailable and that many spaces, including the committee's meeting room, are inaccessible to individuals in wheelchairs.

Karen Cushner stated that she has been a dog handler for 10 years and works with federal officials in education and enforcement issues relating to service animals. She moved to New Mexico in 2009, and there has been a continual intrusion with imposter dogs. She said that it is hard to go to a grocery store or other public places that allow pets. Service dogs are trained to ignore everything, and this means that non-service dogs might attack them. The Service Animal Act requires more education on helping individuals and businesses know what a real, versus imposter, service dog is. The Albuquerque Police Department did not even know a service animal law exists, she said. The department is unwilling to enforce the law because other things take priority.

Ms. Dean noted that her contact information is on the ADA national network.

Linda Sechovec, executive director, New Mexico Health Care Association (NMHCA), provided the committee with handouts. She explained that the NMHCA is a provider organization that delivers long-term care services in nursing facilities, retirement communities and facilities for individuals with DD. She announced that the NMHCA is working closely with DD community providers to integrate operations and offices. The NMHCA will be advocating for three provider groups and is "locked in a spiral" of new regulations and workforce issues, driving costs beyond the NMHCA's providers' ability to absorb them. She noted that DD facilities have not received rate increases since 2014 and that this is a re-basing year.

Ms. Sechovec discussed the NMHCA's efforts to pass legislation to establish a provider fee to increase the state's federal matching dollars. She stated that she is upset that the federal government appears to be moving toward block grants as a system for funding Medicaid. She says that New Mexico would be seriously adversely affected by changes to federal policy. She reminded the committee that New Mexico has one of the highest populations of individuals over 85 years of age. She said that New Mexico used to lead the nation in performance standards. Now it is below on performance measures.

Ms. Sechovec asked the committee to address the potential of a provider fee and said that a provider fee would be a "win-win" situation for the state.

Dr. Dale Alverson told the committee that 65% of all hospital beds in the state are using the NMHIX, but full participation is needed to get all data and full interoperability. If New Mexico participates in the NMHIX, the federal Centers for Medicare and Medicaid Services (CMS) will provide New Mexico with $3.9 million to grow the state's health insurance exchange.

Dr. Alverson identified some programs that he said were "good news" for the state, including UNM's Access to Critical Cerebral Emergency Support Services, or the ACCESS project, whose telestroke program can get patients treated within 4.5 hours of a stroke and thus prevent or significantly decrease brain damage. It has increased from 2% to 18% the number of people eligible for clot-preventing drugs.

Gay Finlayson discussed the work being done pursuant to Senate Memorial 79, passed in the 2017 regular session, regarding adults with autism. She said that the work group met in the preceding week and that data are needed to assess the impact that autism is having on the state.

David Roddy, executive director, New Mexico Primary Care Association, told the committee that the DOH has cut by $1.5 million payments to federally qualified health centers (FQHCs). FQHCs in the state have received contracts for July 2017 that are $5 million below 2016 figures. FQHCs have lost much since 2015, according to Mr. Roddy. He told the committee that for every provider lost to a FQHC, 1,000 individuals lose access to care.

Recent proposed changes to the state's tax code would make New Mexico the first state in the nation to take $14 million from clinics' operating budgets. Such cuts would have a serious impact on access to care in the state.

According to Mr. Roddy, New Mexico still has the best primary care safety net program in the country. One-sixth of New Mexicans access health care services in primary care clinics, he said. The quality of these services is excellent, keeping many patients' chronic conditions, such as diabetes and hypertension, in check. He urged the committee to pay special attention to preserving the primary care safety net.

Patsy Romero, chief executive officer, Easter Seals El Mirador, provided the committee with handouts. In January 2017, 12 behavioral health provider agencies went into mediation with the HSD, she said. Only four of the provider agencies have completed a fair hearing, allowing them in that process to review the HSD's audit findings. She gave a procedural update regarding the provider agencies that have won appeals and those that are awaiting decisions or hearings. She stated that the HSD wanted provider agencies to pay the HSD for services rendered during that suspension in exchange for getting rid of extrapolated findings, according to Ms. Romero. She said that the provider agencies' error rates were "so low" that the HSD agreed to settle and not extrapolate.

Jim Jackson, executive director, Disability Rights New Mexico, told the committee that the *Jackson* lawsuit does not mean that money expended is going to lawyers. It is going to recipients of services and the community, he said. The DOH has promised that it would provide the committee with information about the DD waiver central registry, or waiting list. He asked the LHHS to pay attention to federal developments in Medicaid, the federal budget and health care reform.

Shane Knoll, who identified herself as a provider of autism spectrum disorder services, told the committee that certain insurance companies are not paying claims. She said that Medicaid MCOs are better than private insurance in making timely reimbursement. She stated that she is experiencing trouble, especially with one insurer.

Paige Duhamel, Esq., health care policy manager, Office of Superintendent of Insurance (OSI), told the committee that the OSI is seeking to get on the LHHS's work plan this interim. She stated that the OSI currently has an informal comment process under way relating to its network adequacy rules and wants the LHHS to review the proposed rules. She also suggested that committee members complete an OSI survey about their constituents' health coverage costs and access to care.

The committee recessed for lunch at 12:45 p.m. The chair reconvened the committee at 2:00 p.m.

Behavioral Health Services Update

Dr. Wayne Lindstrom, director, Behavioral Health Services Division (BHSD), HSD, introduced Dr. Deborah Altschul of UNM's Center for Behavioral Health Research and Jamie Michael, director, Dona Ana County Health and Human Services Department.

Dr. Altschul told the committee that previously one in five adults received a behavioral health diagnosis nationwide. The statistics show that, now, one-fourth of Americans have a behavioral health diagnosis.

She informed the committee that the suicide rate is very high in New Mexico. She provided statistics on New Mexico's Medicaid population, among whom:

- 65% of recipients with a mental health diagnosis are between 18 and 65 years of age;
- 57% are female;
- 34% are Native American;
- 29% are 17 years of age or younger; and
- 61.5% receive outpatient treatment.

Of behavioral health services, 23.7% are delivered on an inpatient, skilled-nursing basis. Ancillary care means that the care is recovery-oriented. She stated that access to care has improved considerably since the expansion of Medicaid.

Dr. Lindstrom told the committee that the HSD just completed a Results First report in cooperation with the CYFD and the LFC. He stated that statistics on substance use disorders (SUDs) may be misleading because there is a focus on primary diagnoses. SUDs may disappear in statistics as primary diagnoses because they are usually the secondary or tertiary diagnosis. He stated that SUDs in New Mexico occur at higher rates than in other states.

Dr. Lindstrom reviewed the Interagency Behavioral Health Purchasing Collaborative's strategic plan. Referring to page one of the plan, Dr. Lindstrom stated that New Mexico's behavioral health services delivery system cannot meet demand because it is already overstressed by complex regulations, inflexible financial incentives such as fee for service and an inadequate workforce.

An inadequate behavioral health workforce is the greatest challenge for the state, Dr. Lindstrom said. He indicated that social work is not going to provide an adequate return on investment for young people and said that he could not urge legislators enough to make good policy to encourage more individuals to enter the behavioral health workforce. Dr. Lindstrom reviewed features of the strategic plan with the committee.

Dr. Lindstrom stated that the HSD is well into the Medicaid Centennial Care waiver's implementation and is working on "Centennial Care 2.0". He said that there is a desire to provide intensive wraparound behavioral health services and referred to the Results First "Children's Behavioral Health" report, which indicates that residential treatment has no effect, at best.

He said that the PAX Good Behavior Game (PAX) model has been implemented in four different school districts. It has produced a 60% reduction in destructive behaviors. The collaborative is taking some opioid state-targeted money to use PAX in Native American schools. He stressed the need to sustain PAX in schools and said that the United States surgeon general has found a $60.00-to-$1.00 return on investment for schools.

Dr. Lindstrom told the committee that the collaborative is emphasizing treatment first and the removal of procedural barriers to timely access to behavioral health services over completion of bureaucratic paperwork.

Dr. Lindstrom discussed many other innovations and new emphases identified in the strategic plan, including a suicide prevention grant that focuses on the high suicide rate among Native Americans.

Ms. Michael provided the committee with a one-page handout relating to behavioral health services in Dona Ana County. She discussed a program for jail diversion designed to reduce the number of people with behavioral health diagnoses who are in jails by sharing information among jurisdictions, law enforcement, the judiciary and behavioral health services.

Ms. Michael spoke of the Assertive Community Treatment (ACT) team's successes in intervening in emergency behavioral health situations. She gave the example of a chronically homeless and repeatedly hospitalized young man who has been stabilized on medication and gets disability benefits. He now has a home and is no longer homeless.

She discussed a continuum of policies and services that are assisting individuals with behavioral health diagnoses with increased wraparound care that identifies and treats mental illness and SUDs.

Maggie McCowen, executive director, Behavioral Health Providers Association of New Mexico (NMBHPA) discussed the state's behavioral health services system and providers' roles in that system. She stated that the NMBHPA is seeking to improve care and access to care statewide while identifying challenges to the system, including bureaucratic barriers.

Ms. McCowen emphasized the importance of keeping young people at home and not sending them out of state for residential treatment. She said that there is now a coordinated case review team for young people in out-of-state residential treatment that is attempting to bring them home. The team does a monthly review of these cases with the CYFD, MCOs and others to develop highly individualized service plans.

She stated that she is not sure that behavioral health statistics "tell us what we need to know". She said that despite ongoing efforts since 1997 to reform behavioral health care in the state, there is still a great lack of access to community behavioral health services. However, the NMBHPA does not believe a gap analysis is indicated.

Ms. McCowen stated that there is a need for legislation to protect behavioral health providers against allegations of fraud.

Questions and Comments

The committee asked questions regarding:

- whether the collaborative has analyzed Centennial Care 2.0's role in increasing access to behavioral health services and the gaps in access that exist statewide. Dr. Lindstrom stated that resources are not adequate to meet needs and that provider rates cannot be cut further;
- whether any state agency is taking advantage of federal funding to distribute naloxone for opioid overdose prevention statewide. Dr. Lindstrom informed the committee that the BHSD does not have the capacity to apply and manage the funds. He said he believes that rural areas would see some naloxone made available in August 2017;
- whether 911 call centers' equipment is at the end of its life. Dr. Lindstrom stated that he had not had any communication regarding that issue. He stated that the BHSD has worked on agreements with dispatchers and that it is willing to get referrals from them to the statewide crisis and action line;
- network adequacy for Medicaid. Dr. Lindstrom stated that the MCOs determine network adequacy and that the HSD intervenes when it is concerned about adequacy;
- the transferred Yucca Lodge facility; the committee was directed to ask the DOH;
- program changes expected under Centennial Care 2.0, including care coordination and further expansion of behavioral health homes;

- the status of licensed alcohol- and drug-abuse counselors (LADACs); Dr. Lindstrom stated that he would have to follow up with the committee, and Ms. Michael stated that she has seen a case of an LADAC who was able to bill Medicaid MCOs;
- Medicaid behavioral health provider rates and reductions in those rates;
- the capacity for telehealth and telemedicine to expand access to behavioral health services in rural areas;
- the crisis triage center in Dona Ana County. Ms. Michael stated that there is some discussion about creating a safe division and reentry center on the site. The county is requesting a letter of interest from providers that are interested in offering the needed services, and it is looking at licensing regulations, scope of work and funding sources;
- prior authorization for residential treatment facilities; Ms. McCowen said this is required and that there are many challenges to getting young people the treatment they need;
- co-morbidities with behavioral health conditions and the increased role of primary care in treating both chronic health conditions and chronic behavioral health conditions;
- suicide rates among lesbian, gay, bisexual and transgender (LGBT) youth. Dr. Lindstrom stated that the BHSD has a designated program manager who focuses on special populations. He offered to provide a report or present before the committee on LGBT youth suicide;
- emergency department information exchanges, which Dr. Lindstrom said are supported by MCOs; and
- care for young people who have private insurance but inadequate access to behavioral health services.

Presentation of Work Plan and Meeting Schedule

Mr. Hely presented a summary of the proposed work plan and meeting schedule for the 2017 interim. He began his presentation by discussing the proposed meeting schedule. Mr. Hely said that for the September 6 meeting, it was proposed that the committee meet in Truth or Consequences and that on September 7, the Burrell College of Osteopathic Medicine has offered to host the committee in Las Cruces. As to the meeting in Roswell, Mr. Hely stated that the DOH has given preliminary approval to visit the rehabilitation facility that houses Yucca Lodge. For the October 18 meeting, he stated that he is waiting on confirmation for a joint meeting on juvenile justice issues with the Courts, Corrections and Justice Committee and that if the committees are interested in touring any facilities, they will need approval from the CYFD in addition to approval from the New Mexico Legislative Council to travel outside of Santa Fe after September 30.

The members discussed the proposed meeting schedule. Concerns were raised about committee member conflicts that would prevent attendance at the proposed meeting of the Behavioral Health Subcommittee on October 11. Mr. Hely agreed to check the appropriateness of the proposed date.

A member proposed that the committee hold a joint meeting with the Indian Affairs Committee to address health care, behavioral health and long-term care relating to Native Americans. The members discussed potential dates to hold the joint meeting, and Mr. Hely said he would make the request to the Indian Affairs Committee and change the meeting schedule accordingly. As to the September 6 meeting in Truth or Consequences, a member noted that the committee would be able to hear presentations on all early childhood programs.

Next, Mr. Hely reviewed with the committee the proposed work plan, noting that it was drafted in general terms to leave opportunities for the committee to address specific topics of concern. The committee then discussed additions to the work plan.

A member requested that the topic of long-term care be added to the committee's review of health concerns specific to Native American communities. Another member suggested that the committee receive a presentation on the Law Enforcement Assisted Diversion program and what the outcomes have been. The member informed the committee that the program is an alternative to jail for juveniles and for adults with a history of low-level crimes and that the program has experienced great results. Although bills have been passed twice regarding the program, appropriations are needed.

A member suggested that employment issues be addressed by the Disabilities Concerns Subcommittee. A member told the committee that some of the member's constituents had raised concerns about patient rights relating to health care coverage. The member suggested a review of the existing statutes to see where improvements could be made.

A member recommended that the committee receive presentations from Dr. Sanjeev Arora on Project ECHO and Dr. Paul Roth, chancellor, UNM Health Sciences Center, on the successes and lessons learned in urgent care. The member additionally urged the committee to look at health care workforce shortages and mechanisms, such as tax breaks or other incentives, to bring medical professionals to underserved areas.

A member noted that the committee had a long list of very detailed ideas for presentations and that the committee will attempt to address as many of the topics as possible, depending on the location and topic of the day.

Mr. Hely then brought the committee's attention to a status report on the 2017 regular session bills endorsed by the LHHS, but due to time constraints, the committee did not review or discuss the contents of the report.

On a motion made by Senator Ortiz y Pino, seconded by Representative Dow, and without opposition, the committee voted to approve the work plan and meeting schedule as presented and modified.

Medicaid Update

Secretary of Human Services Brent Earnest and Medical Assistance Division Director Nancy Smith-Leslie introduced the committee to the HSD's proposal that some Medicaid recipients make copayments for Medicaid services to save $3 million. There have been copayments in the Children's Health Insurance Program and Working Disabled Medicaid program for a long time. This proposal, he explained, adds copayments for those with incomes above 100% of the federal poverty level.

Secretary Earnest discussed the Medicaid program's budgetary shortfall of $38 million, which could be reduced to $20 million if the United States Congress takes action. He informed the committee that the HSD would likely seek a supplemental appropriation request for FY 2018 and emphasized the agency's efforts, including provider rate cuts, to meet the budget demands without changing eligibility or dropping benefits. Secretary Earnest stated that there was a 1.3% growth in Medicaid spending between the years 2015 and 2016.

Ms. Smith-Leslie discussed the Centennial Care 2.0 waiver application, regarding which the HSD has scheduled a public hearing on July 14, 2017. The HSD will send the draft waiver to the CMS on September 1, 2017. The final waiver will be completed between November 2017 and December 2018 and implemented as of January 1, 2019. Ms. Smith-Leslie guided the committee through a handout that detailed the areas of focus for Centennial Care 2.0. This includes changes to care coordination, including increasing coordination at the provider level and not the MCO level, and seeking to improve its reach to those highest in need; behavioral health integration with physical health; changes to long-term services; implementation of payment reforms to include value-based payments; changes in member engagement and recipient responsibilities; and administrative simplifications. Among these changes could be implementation of monthly premiums from $20.00 to $40.00, depending on income. Transitional Medicaid coverage would be eliminated.

Questions and comments from the committee included the following topics:

- the HSD's plans if the federal government implements block grant funding for Medicaid in lieu of federal matching funds. Secretary Earnest said that the HSD has not made any plans for this. He believes it would be a "double whammy" for Medicaid;
- the type of input the HSD has sought from the public on the Centennial Care waiver renewal. Ms. Smith-Leslie stated that the HSD has sought feedback starting in October 2016;
- lessons learned on the implementation of Centennial Care. Ms. Smith-Leslie stated that there have been many lessons learned, including working with providers; a Native American advisory committee; developing of relationships with providers and MCOs; care coordination; and electronic visit verification for providers;
- workforce development, about which Ms. Smith-Leslie stated that the HSD has been working with FQHCs to increase the workforce and use of telehealth;

- provider networks, regarding which Ms. Smith-Leslie stated that MCOs are required to report on which providers are in networks. The HSD has also called providers to find out whether they are accepting new patients. She stated that the results of that survey are available and show better results than expected;
- HSD improvement in SNAP and Medicaid application processing, including individuals who have been dropped off Medicaid rolls. Secretary Earnest said that he would be happy to get to the bottom of the matter;
- sole-source contracting by MCOs for durable medical equipment suppliers. Secretary Earnest stated that he sees a "significant role" for the HSD to ensure adequacy;
- reducing the cost of hepatitis C treatment;
- the provider fees that legislation from the 2017 regular session would have imposed on hospitals to increase Medicaid matching funds. Secretary Earnest stated that the funds would have only raised reimbursement for hospitals and not for any other Medicaid services. Committee members and members of the audience disputed this assertion;
- fee-for-service enrollment. Secretary Earnest stated that Native American recipients and family planning enrollees are enrolled in fee-for-service plans. He emphasized that benefits under the family planning category are very limited;
- behavioral health provider Valle del Sol was going to leave the state. Secretary Earnest stated that Valle del Sol has renegotiated reimbursement with MCOs and is now viable;
- regarding fee agreements and the HSD's role, Secretary Earnest explained that MCOs set reimbursement rates for providers, but the HSD establishes a floor. The HSD does not know what providers are paid on an individual basis;
- whether HSD would support legislation affording due process for providers accused of fraud. Secretary Earnest stated that the HSD did not support previous legislation, will "continue to be very clear about the opportunities in the rules to ensure procedural certainty" and is considering whether to make changes to procedural rules;
- the possibility of the HSD making contractual agreements to remediate any potential fraud allegations;
- a request that the HSD address billing challenges faced by a DD provider in Las Cruces, which Secretary Earnest agreed to do;
- copayments for emergency department visits that are not emergencies. Ms. Smith-Leslie stated that the HSD is working within federal parameters to establish the $8.00 copayment;
- that Medicaid for foster youth continue to age 26;
- exemptions to Medicaid copayments, including for diabetes care, preventive services and pregnancy services;
- accountability under the self-directed Mi Via waiver;
- the lack of MCO contracts for UNM;
- MCO payments to providers, including payment delays. Ms. Smith-Leslie said that the HSD is exercising a significant amount of oversight and monitoring of claims

payments. The HSD is also implementing information technology system changes to assist oversight and data analytics potential; and

- a request that the Medicaid program provide a chart that compares Medicaid reimbursement with Medicare and other states' Medicaid reimbursement.

Adjournment

There being no further business before the committee, the chair adjourned the meeting at approximately 5:50 p.m.

Revised: July 5, 2017

TENTATIVE AGENDA
for the
SECOND MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

July 17-18, 2017
Bassett Auditorium
Roswell Museum and Art Center
100 West Eleventh Street
Roswell, New Mexico

Monday, July 17

9:00 a.m.		**Welcome and Introductions** —Representative Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee (LHHS) —Senator Gerald Ortiz y Pino, Vice Chair, LHHS
9:10 a.m.	(1)	**Welcome to Roswell: Health Update** —The Honorable Dennis J. Kintigh, Mayor, City of Roswell
10:00 a.m.	(2)	**New Mexico Medical Insurance Pool Status Update** —Representative Deborah A. Armstrong, President, Delta Consulting
11:00 a.m.	(3)	**Public Comment**
11:30 a.m.		**Lunch**
1:00 p.m.	(4)	**New Mexico Health Insurance Exchange (NMHIX) Update** —Cheryl Gardner, Chief Executive Officer, NMHIX
2:30 p.m.	(5)	**Office of Superintendent of Insurance (OSI) Health Insurance Regulatory Update: Proposed Network Adequacy Rules; Surprise Billing; and Consumer Assistance Programs** —Paige Duhamel, Esq., Health Care Policy Manager, OSI —Harvey Licht, Consultant, Rural Health Care, Varela Consulting Group —Jane Wishner, Senior Research Associate, Health Policy Center, the Urban Institute
5:00 p.m.		**Recess**

Tuesday, July 18

9:00 a.m.		**Welcome and Introductions** —Representative Deborah A. Armstrong, Chair, LHHS —Senator Gerald Ortiz y Pino, Vice Chair, LHHS
9:10 a.m.	(6)	**Rural Health Care Plan** —Senator Gerald Ortiz y Pino, Vice Chair, LHHS —Senator Cliff R. Pirtle —Representative Joanne J. Ferrary —Representative Elizabeth "Liz" Thomson —Jerry N. Harrison, Ph.D., Executive Director, New Mexico Health Resources, Inc.
10:00 a.m.	(7)	**School-Based Health Centers Update** —Nancy Rodriguez, Executive Director, New Mexico Alliance for School-Based Health Care
11:30 a.m.		**Working Lunch**
	(8)	**Department of Health (DOH) Facilities Update** —Gabrielle Sanchez-Sandoval, Esq., Deputy Director, DOH
1:00 p.m.		**Travel to New Mexico Rehabilitation Center, 72 Gail Harris St., Roswell, NM 88203**
1:30 p.m.	(9)	**Tour of New Mexico Rehabilitation Center** —Jose Gurrola, Hospital Administrator, New Mexico Rehabilitation Center, DOH
3:30 p.m.		**Adjourn**

MINUTES
of the
SECOND MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

July 17-18, 2017
Roswell Museum and Art Center
100 West Eleventh Street
Roswell

The second meeting for the 2017 interim of the Legislative Health and Human Services Committee was called to order on July 17, 2017 by Representative Deborah A. Armstrong, chair, at 9:16 a.m. in Bassett Auditorium of the Roswell Museum and Art Center.

Present
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong
Rep. Rebecca Dow
Sen. Mark Moores
Sen. Howie C. Morales (7/17)
Sen. Bill B. O'Neill
Rep. Elizabeth "Liz" Thomson

Absent
Sen. Cliff R. Pirtle

Advisory Members
Rep. Joanne J. Ferrary
Sen. Gay G. Kernan (7/17)
Rep. Tim D. Lewis
Sen. Linda M. Lopez (7/17)
Sen. Cisco McSorley (7/17)
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics
Rep. Christine Trujillo
Rep. Miguel P. Garcia
Rep. Rodolpho "Rudy" S. Martinez
Sen. Mary Kay Papen
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar
Sen. Bill Tallman

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff
Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Karen Wells, Contract Staff, LCS

Monday, July 17

Representative Deborah A. Armstrong offered welcoming remarks. Members introduced themselves.

Welcome to Roswell: Health Update

Dennis J. Kintigh, mayor of Roswell, welcomed the committee members to the city. He highlighted the health care needs and available health care resources in the city, beginning with a great need for additional providers. He has established a committee to address this serious issue. Roswell, as a rural community, is especially challenged in recruiting providers. He called upon the University of New Mexico (UNM) Health Sciences Center (HSC) and the legislature to focus on expanding rural residencies.

Committee members had questions and comments, including the following:

- whether steps have already been taken to increase residencies in rural New Mexico; funding is limited for this purpose;
- a statement of commitment to work with UNM HSC to explore opportunities;
- a request to inform the committee at some point about the challenges and requirements in establishing residencies;
- whether telemedicine is being utilized in Roswell and how; and
- the importance of providing and funding trauma and emergency response statewide.

Approval of Minutes

There being a quorum, Representative Deborah A. Armstrong requested action to approve the minutes of the organizational meeting, as distributed. A motion to approve was moved, seconded and approved without objection. She identified some changes to the work plan and informed the members that Senator Pirtle has been added as a voting member.

New Mexico Medical Insurance Pool (NMMIP) Status Update

The chair began by recognizing the late Patty Jennings as the founder of the high-risk pool in New Mexico, with Roswell as its original home. She provided a brief history of the beginnings of the pool, which is now in its thirtieth year of operation. The pool has two primary purposes: to provide insurance to individuals who are otherwise uninsurable and to help stabilize the health insurance market in the state. The NMMIP is now the largest high-risk pool in the country. Representative Deborah A. Armstrong reviewed information and data about the NMMIP with the committee, including organizational structure, funding mechanisms, the growth of the pool over its history, demographics regarding enrollees, eligibility requirements and premium rates. Unique aspects of the NMMIP include a low-income premium program and a carrier assessment based in part on Medicaid business. An important NMMIP program is a Medicare carve-out program for individuals who qualify for Medicare but who are under the age of 65 and are thereby ineligible for Medicare supplement plans. The NMMIP is the only option for coverage for many of these individuals. The NMMIP has conducted a deliberately slow

transition of participants out of the pool and into the health insurance exchange, pursuant to the federal Patient Protection and Affordable Care Act (PPACA) implementation, to minimize disruption to the market. A separate handout provided many statistics, giving members a more detailed view of the benefits and services provided by the pool, as well as trends in eligibility, utilization and costs.

Questions and comments from the committee addressed the following issues:

- the number of states still involved in risk pools and why New Mexico retained its pool; states (including New Mexico) that cover the under-65 Medicare population tended to retain their pools;
- identification of populations not eligible for coverage under the PPACA and who are enrolled in the pool, in addition to the under-65 population who are Medicare eligible; participants include undocumented workers and some high-risk children; the Department of Health (DOH) subsidized some premiums, but most enrollees pay premiums, co-pays and deductibles;
- clarification regarding covered services;
- clarification regarding the impact and mechanism of premium tax credits; there is no General Fund impact of the pool; the cost to the state is in lost revenue due to premium tax credits;
- the estimated percentage of residents who need pool services but are not benefiting; probably a small percentage, as most hospitals can and do steer eligible folks to the pool;
- whether analysis has been conducted of the impact of current national health care reform proposals on pool enrollees and others who might need pool services in the future; most proposals anticipate using high-risk pools going forward but are underfunded; additionally, any reductions to Medicaid eligibility would result in increases in need for (unfunded) access to the NMMIP;
- an acknowledgment that, initially, many members of the pool were not high risk but were uninsurable; most of them were able to be served by the health insurance exchange; those who remain in the pool are very high risk;
- clarification of the distribution and percentages of total costs per enrollee and administrative costs;
- a request for a breakdown of contractor costs for administration of the NMMIP and whether there is redundancy in funding; each contractor has different and essential responsibilities; and
- clarification regarding the method and safeguards by which premium tax credits are determined.

Public Comment

Lisa Rossignol, UNM Center for Development and Disability, stated that the center is working with the Human Services Department (HSD) to improve Medicaid waiver revisions for children with special health care needs and to make sure the developmental disabilities waiver in

New Mexico is adequately serving them. There is a special need for enhancements to respite services. Potential carve-outs for special populations have to recognize a need for workforce development. Current waiver renewal drafts and concept papers have not been shared with advocates.

Lee Sipes attested to a concern about the inadequacy of the Medicaid waiver renewal, especially with regard to physical therapy, and the fear that this service will be eliminated in the future. This would be an incredible hardship for her husband.

Jamie Thornton advocated for continued coverage for children under Medicaid. She personally benefited from Medicaid when she was a child.

Former Senator Tim Jennings thanked the members for coming to Roswell. He encouraged the committee to communicate with New Mexico's congressional delegation regarding the needs of high-risk populations, the expected cost of their care and the need to adequately fund this in national health care reform efforts. He raised concerns regarding the costs of airlifting patients out of rural New Mexico to neighboring states when needs cannot be met locally. He stated that there is a great need to recruit physicians and other providers to rural areas of the state. He spoke to the need to rebuild behavioral health services and rehabilitation services statewide.

Joan Sanford, New Mexico Religious Coalition for Reproductive Choice, spoke to the potential damage that the proposed changes to the state Medicaid waiver will cause.

Marty Everett, administrator, La Casa Behavioral Health, described the struggle his organization is facing due to a 27% increase in insurance premiums for the business. Employees are unable to bear the burden of this level of increase.

After a lunch break, the chair asked members to reintroduce themselves.

New Mexico Health Insurance Exchange (NMHIX) Update

David Shaw, NMHIX Board of Directors, and chief executive officer, Nor-Lea Hospital District, Lovington, New Mexico, introduced Cheryl Gardner, chief executive officer, NMHIX, who gave a brief description of her experience working with exchanges since 2007. She provided an update on the status of the NMHIX and identified several different models of exchanges around the country. New Mexico adopted the Small Business Health Options Program (SHOP) Marketplace and uses the federal government exchange for individuals. This year, New Mexico will host an abbreviated open enrollment period, from November 1 through December 15. She described the process for managing the open enrollment process, which will involve a "warm handoff" to a broker for those who seek to utilize the exchange for insurance coverage. Ms. Gardner described campaign objectives and outreach goals and said the approach will be more personal and targeted than in the past.

Ms. Gardner addressed ways in which the NMHIX is trying to prepare for whatever form health care reform ultimately takes at the federal level. If enrollment in the NMHIX goes down, it will not signify a reduction in efforts to enroll people; the exchange is an administrative mechanism that helps people get enrolled. Ms. Gardner stated that she anticipates the NMHIX will still exist for the foreseeable future. Though she does not think that the current version of health care reform will pass the U.S. Congress, Ms. Gardner indicated that she does anticipate a stronger role for states in the management of health insurance coverage. Section 1332 of the PPACA allows states to opt out of the PPACA with certain limitations and conditions. Ms. Gardner is beginning to see more states pursuing Section 1332 waivers.

Committee members had questions and made comments regarding the following:

- possible changes the board is considering to respond to future uncertainty; the board plans to conduct statewide surveys and data collection to be clearer about coverage preferences and needs;
- the need to be more active with navigators in the community versus relying on the enrollment centers; work is being done to present a budget to the board that will permit this more aggressive outreach approach;
- the potential impact of anticipated increases in federal exchange fees to utilize external technologies for fiscal year 2018; work is being done to explore the feasibility of New Mexico operating its own exchange for coverage of individuals and for assuming all costs of operating the NMHIX, including technology;
- a description of how fees are assessed to insurers; fees are based on market share;
- clarification regarding educational efforts that are planned for NMHIX board members; the NMHIX is willing to share materials and handouts with the committee; additionally, invitations to meetings will be distributed;
- whether there are opportunities to mirror onsite Medicaid enrollment to enroll people in the NMHIX; some elements of that approach, including greater use of financial counseling at hospitals, are possible and are being explored;
- the impact of the exchange on hospital revenue cycles; use of the exchange has reduced uncompensated care in hospitals and has provided dignity to patients seeking care;
- the key impact of proposed health care reform approaches on New Mexico hospitals; no proposal so far restores the voluntary cuts hospitals agreed to in order to reduce the number of people uninsured under the PPACA; if those cuts remain, all hospitals in New Mexico will be severely impacted by revenue losses;
- why the enrollment window is shorter this year; it was a federal decision; the NMHIX had no input into that decision;
- whether there has been discussion regarding the impact of the potential elimination of the Medicaid expansion population; this has not happened yet, but the Office of Superintendent of Insurance (OSI) may be looking at it;
- a request for more specifics regarding the targeted population and the surveys that are planned; this is under development now; the NMHIX is seeking to identify reasons

people are still uninsured and to identify opportunities for efficiencies in the future; and

- whether there is any consideration for increasing the SHOP Marketplace employee limit beyond 50; yes, including the option of using a Section 1332 waiver to do so.

OSI Health Insurance Regulatory Update: Proposed Network Adequacy Rules; Surprise Billing; and Consumer Assistance Programs

Paige Duhamel, health care policy manager, OSI, testified about the process for handling consumer complaints, grievance procedures, standard versus expedited initial determinations, adverse determinations and appeals. Utilization review measures and processes were presented. Ms. Duhamel discussed the purpose of the OSI's Managed Health Care Bureau and provided a written summary of grievance procedures.

Jane Wishner, senior research associate, Health Policy Center, the Urban Institute, provided information about the Urban Institute and the Health Policy Center of the institute, of which she is a part. She highlighted research initiatives accomplished by the Urban Institute. Her presentation focused on what it takes to have an adequate provider network in a health plan, beginning with a brief history of how and why the government became involved in this area. Different types of regulatory approaches, including qualitative standards, quantitative standards and a mix of both, were described. Some states have different standards for monitoring and enforcing network adequacy regulations, but efforts are limited by available resources. Ms. Wishner touched on what network adequacy means with regard to Medicaid versus the private insurance market. She identified some emerging trends in network adequacy regulation and offered personal observations and ongoing challenges in attempting to ensure network adequacy. She recognized challenges that arise from consumers' lack of understanding about network adequacy and what their insurance policies do or do not cover. A lack of consumer awareness can lead to surprise billing, Ms. Duhamel explained. States around the country are trying to identify appropriate remedies for surprise billing.

Efforts are under way to better align private insurance, Medicare and Medicaid network adequacy standards nationwide and in some individual states. More work is needed in states to standardize the wide variety of regulatory approaches to network adequacy. More consumer education is essential, according to Ms. Duhamel. Work to fully understand the number of available providers statewide is critical. Regional planning efforts to assess needs and promote better integration of health care centers will help address these serious challenges.

Harvey Licht, consultant, rural health care, Varela Consulting Group, is currently engaged in working on network adequacy in New Mexico. Availability, affordability and acceptability are the three legs of the stool that make up network adequacy. The concept of network adequacy really began with the emergence of managed care organizations and requirements for them to ensure statewide access to their services. Over the years, however, many changes in health care delivery and workforce shortages have influenced understanding about what adequate access actually means. Regulation is important, but other approaches are needed. Four essential

elements are: standard setting; monitoring and performance assessment; compliance and enforcement; and network development. It is in this last element that legislation is vital.

Ms. Duhamel identified that consumer concerns about the inability to get needed care are a big issue in New Mexico. Another adequacy issue for the OSI is the ability or inability to ensure adequate coverage for everyone in the state, when insurance companies may not be able to meet the need in very rural locations. Different standards are often necessary based on the rural or frontier nature of the counties. In many of these communities, providers are being counted multiple times by different carriers to indicate compliance with requirements to demonstrate statewide access. Many states are moving to more standardized reporting. The OSI, on a yearly basis, requires carriers to report details on how they achieve statewide coverage. It actively engages with carriers when inadequacies are identified. The OSI recognizes that the issue is very complex and that carriers do not always have the ability to control information they receive from providers. Proposed regulatory changes are in the comment period at present and will hopefully be finalized by October.

Ms. Duhamel addressed surprise billing issues and the work that is under way to better educate consumers about the issue. The OSI is also considering options for addressing this issue. It is convening a surprise billing forum in September to start the discussion on how to obtain reimbursement for necessary services that are provided out of network but that consumers thought were provided in network. She briefly addressed air ambulance claims and the OSI's efforts to allow regulation of prices.

Members had questions and comments as follows:

- whether the OSI has any authority over network adequacy in Medicaid; no, it does not; the federal government does set standards but gives states flexibility in establishing regulatory oversight of Medicaid managed care plans; California is one model of how this can be done;
- clarification regarding "any willing provider" laws; such laws may give too much ability for providers to demand high reimbursement rates and limit a carrier's ability to negotiate;
- an observation that there are mechanisms to require carriers to give bonus payments to providers in provider shortage areas;
- identification of the opportunity to make Medicaid available to anyone who wants to buy into it;
- recognition that adequacy of durable medical equipment (DME) availability is also important and should be addressed; Medicaid should not have the ability to choose one DME provider, thereby shutting all other DME providers out of the market;
- recognition of the complexity and importance of credentialing requirements by carriers and hospitals for providers;

- differences in carrier approaches to, and compliance with, complaint and grievance procedures; the OSI is planning more education to the public and providers about this; consideration of health literacy is crucial in this effort;
- acknowledgment that early recognition of the role of providers in the complaint and grievance process is important;
- consideration of the potential role of carriers in recruitment and retention of health care providers; and
- issues about who pays what in premiums to ensure that all people have access to an adequate network of providers and carriers; there are inequities in what constitutes a "fair share" of payment.

A brief discussion followed about opportunities to combine and standardize regulation of network adequacy between Medicaid and private insurance.

Recess

The chair recessed the meeting at approximately 5:12 p.m.

Tuesday, July 18

Representative Deborah A. Armstrong reconvened the meeting at 9:11 a.m. Committee members introduced themselves.

Rural Health Care Plan

Senator Ortiz y Pino, Representative Ferrary, Representative Thomson and Jerry N. Harrison, Ph.D., executive director, New Mexico Health Resources (NMHR), were invited to address the committee about a model for rural health care delivery.

Senator Ortiz y Pino described a meeting hosted by the National Conference of State Legislatures, to which several western states were invited, to discuss rural health care challenges and issues. Over the course of the meeting, the New Mexico delegation developed a draft plan for rural health care delivery. The panel intends to further develop the model and get feedback on ideas. Dr. Harrison recognized New Mexico for its leadership in addressing rural health care issues over the years and identified several vital programs. The Rural Primary Health Care Act (RPHCA), a centerpiece for recruitment of providers to rural parts of the state, has had a steady decline in funding. Funding for the Western Interstate Commission for Higher Education program has also declined, limiting the ability of New Mexico students to study at out-of-state institutions for New Mexico tuition rates. New Mexico loan repayment and scholarship programs are similarly shrinking. Without renewed commitment to these programs, efforts at rural health care delivery will continue to be challenged.

Representative Ferrary described some additional ideas identified by the delegation, including ideas to attract more local students to medical school and to develop expanded educational and training opportunities in rural locations. Expansion of primary care training for

primary care physicians, OB/GYNs, pediatricians and others is critical. Exploration of opportunities to match federal and state funding was also discussed.

Representative Thomson noted that the state does not have an overall plan that includes all stakeholders, robust data and recommendations for action. The delegation recognizes the need to identify what it already has, and from that information, create a plan for development of necessary programs for a new rural health plan. The delegation hopes to have a draft by October 15, 2017, with action plans and recommendations. Recommendations may be made to the legislature, state and federal agencies and to other entities, including providers and institutions.

Senator Ortiz y Pino noted that Timothy Lopez, director, Office of Primary and Rural Health, DOH, has been appointed to work with the task force. Mr. Licht has also been invited to join the group as a consultant. Incentives for medical practice in rural health will inevitably include various approaches to tax reform. Graduate medical education will largely focus on residency programs, as was previously mentioned by Mayor Kintigh. It is challenging to expand these programs, as they involve the use of Medicare and Medicaid dollars, which may limit the opportunity to pursue efforts to expand these vital programs. Dr. Harrison explained that there are caps on the amount of Medicaid dollars that can be used for this purpose. Additional waivers may be required in order to expand this educational goal. If the expansion were approved, it would result in a reduction of dollars available to be used for direct services, complicating efforts to utilize Medicaid as an avenue for funding residencies. Without access to Medicaid and Medicare dollars, it is very expensive to expand residency programs. A recent legislative proposal to expand residencies at UNM failed. Dr. Harrison stated that he believes that UNM has funded residencies from existing funds.

Questions and comments by committee members covered the following:

- clarification regarding the recruitment and funding of nine residents at UNM; the first year was funded with state General Fund dollars; UNM funded the remaining two years;
- whether recruitment needs are known and whether efforts are funded for behavioral health; the RPHCA does not provide for or fund recruitment for behavioral health needs; NMHR has funded this need out of its own funds for individuals but not for institutions;
- whether the delegation has included the need for adequate networks in its thinking and planning; it has not specifically done so;
- recognition that preserving the presence of local, independent pharmacies must be included in efforts to address rural health care needs;
- recognition that retention of rural providers is much more difficult than recruitment;
- clarification for realistic expectations regarding the implementation of a rural health plan; hopefully there will be some additional funding available; the DOH and Medicaid will be part of the planning;

- recognition that identification and expansion of incentives will be foundational in addressing rural health care needs;
- recognition that the historical development of mental health care services in New Mexico could serve as a model for rural health care delivery development;
- a suggestion to look at telehealth as part of the solution;
- a call to incorporate real-life experiences and suggestions from rural areas in plan development;
- recognition of the importance of ensuring communication, collaboration and partnerships between and among rural communities;
- encouragement to modernize recruitment and retention methods with greater use of social media; and
- a recommendation that the plan look beyond recruitment and retention of physicians to workforce diversity, immigration, network adequacy, the role of carriers, infrastructure, public health, alternative delivery models and other issues.

Eileen Goode, chief executive officer, New Mexico Primary Care Association (NMPCA), was invited to briefly address the committee about the NMPCA's involvement in, and knowledge of, rural health care needs. She expressed appreciation for the efforts under way and reviewed the utilization trends in federally qualified health centers (FQHCs), highlighting the locations of clinics and practitioners in rural New Mexico. NMPCA members employ 1,172 clinicians statewide. Ms. Goode offered to work with the delegation in the development of the plan.

Valerie Puccini, licensed independent clinical social worker, suggested ways to improve access to behavioral health services in New Mexico. She identified some opportunities for structural changes that could be made, including at FQHCs. A niche market exists with independent practitioners, such as herself, who could improve access, but that would require modest regulatory changes. Independent social workers would like to be involved in the process.

Mayor Kintigh was invited to make additional observations. He strongly recommended direct representation of stakeholders from rural communities.

School-Based Health Centers (SBHCs) Update

Nancy Rodriguez, executive director, New Mexico Alliance for School-Based Health Care, introduced herself to the committee, mentioning the similarity between her name and committee member Senator Nancy Rodriguez. Ms. Rodriguez provided information about the alliance and ways she believes child health outcomes can be improved in New Mexico. The model for school-based health care involves integrated primary and behavioral health care at all sites in New Mexico. All SBHCs bill for services through Medicaid and private insurance, as well as receiving some DOH funding support. Financial stability for the centers is fragile. Some services, such as behavioral health and reproductive services, are confidential and cannot be billed. SBHCs provide primary care for students and often are the only primary care provider in that community. Health literacy is a focus of SBHCs and is foundational in helping young people not only to manage their own health care needs as they grow, but often inspiring students

to go into medical professions. SBHCs help families who otherwise might not have the ability to get their children to medical care and help address provider shortages in rural communities. Some SBHCs are also available to families and staff of schools. Use of telehealth in SBHCs is growing. Ms. Rodriguez reviewed the history of the development of school-based health care in New Mexico, including the growth of the number of clinics over time. She described the effects of varying levels of funding on school-based health, providing specific results of funding on care. There are now 70 SBHCs across New Mexico.

Ms. Rodriguez identified opportunities and challenges for SBHCs in the areas of substance abuse screening and services, teen pregnancy and reproductive health services. Funding stability and growth would greatly improve not only the availability of health care services to youth, but also health outcomes, especially in rural areas.

Tillie Crawford, La Casa Family Health Care, provided personal testimony on her six-year experience with an SBHC in Roswell.

Questions and comments from committee members addressed the following:

- steps a school or school board must take to establish and sustain an SBHC in its community;
- clarification regarding the interface between SBHCs and the Public Education Department;
- the importance of sufficient funding to augment availability of these critical services;
- whether there are waiting lists to establish new SBHCs; there is no official waiting list; however, DOH contracts are generally only made available about once every 18 months;
- clarification regarding reimbursement for sports physicals; reimbursement can only occur if the physical occurs concurrently with a well-child check;
- circumstances under which Medicaid can be billed; there are inconsistencies;
- issues regarding confidentiality in circumstances of rape; all SBHCs are mandatory reporters in those circumstances; and
- whether prenatal care is provided at SBHCs; it varies depending on the community and who sponsors the center.

Public Comment

Don Bateman made comments on behalf of AARP. He noted that SBHCs and rural health care clinics are also of help to grandparents raising grandchildren.

DOH Facilities Update

Gabrielle Sanchez-Sandoval, Esq., deputy director, DOH, was joined by George Morgan, director, Facilities Management Division, General Services Department, and Roberta Vigil, fiscal officer, DOH. Ms. Sanchez-Sandoval provided an overview and update on DOH facilities and community programs in New Mexico, including the locations of the specific state-run facilities,

the services offered and the populations served at each. She noted that the facilities provide safety net services to persons who otherwise might not or would not have access to care. All facilities are created by New Mexico statutes. She offered site-specific information on the New Mexico State Veterans' Home, the New Mexico Behavioral Health Institute at Las Vegas, Turquoise Lodge, Fort Bayard Medical Center, Sequoyah Adolescent Treatment Center, the Los Lunas Community Program and the New Mexico Rehabilitation Center. Future initiatives include assessments related to staff injuries; cost containment and alignment of service provision with legal requirements, financial capacity and community need; exploring efficiencies with "bundled" purchases and endeavors, such as electronic health records, pharmacy coverage and billing; and nursing and staff recruitment.

Questions and comments from committee members were as follows:

- questions regarding the impact of the closure of Yucca Lodge; there were no patients there at the time of the transfer;
- questions regarding the use of unlicensed providers of nursing services in certain circumstances; this is a practice that is supervised by the Board of Nursing and has been going on for some time;
- whether state facilities help to serve individuals with addictions or mental illness who are experiencing a violent outbreak; Turquoise Lodge can admit some of these individuals; admission now occurs within three days;
- a statement of the importance of state facilities' readiness to provide addiction services when the addicted person is ready to receive them and not be hampered by staff shortages;
- clarification regarding the closure of Yucca Lodge and what happened to the patients at the time; it was not full, but there were patients there; many patients chose to remain in the community rather than transfer to another facility;
- questions regarding the New Mexico Rehabilitation Center in Roswell; it provides medical as well as social rehabilitation;
- questions regarding how many veterans are receiving services at the New Mexico Rehabilitation Center; none at the moment; capital outlay funds as well as some revisions to the model and other transitions are needed; ultimately, the facility will offer a full range of addiction services;
- clarification of whether adolescents may be treated in addition to adults at Turquoise Lodge; that is not part of the plan;
- clarification regarding the number of people currently being served at Turquoise Lodge; the average daily census is 14 of 15 detox beds are full and 13 of 16 rehabilitation beds are full;
- clarification of facilities for individuals with developmental disabilities; there is one state-run facility, but there are numerous other facilities with which the state contracts; the state facility is intended to serve developmentally disabled individuals who are sex offenders and are court ordered for placement;

- a request for an update on building renovations at Meadows, the long-term care facility at the New Mexico Behavioral Health Institute at Las Vegas; renovations are under way; an appropriation has been received and the project is out for bids;
- questions regarding the clientele at Meadows; there are some clients who are indigent but not eligible for Medicaid and some who have behavioral health issues;
- a request for future testimony about the long-term effectiveness of treatment for adolescent sex offenders;
- whether the DOH would be open to the idea of establishing a facility for aging, incarcerated individuals, if funding were to be available; the DOH would be open to the conversation;
- a question of whether DOH facilities are receiving discounts under Section 340B of the federal Public Health Service Act that are administered by the federal Health Resources and Services Administration; no, but they will investigate;
- encouragement for the DOH to partner with the Corrections Department to enhance efficiencies, especially regarding drug prices;
- encouragement to expand services to adolescents; the need in New Mexico is enormous;
- a question regarding the time line for transition of the veterans' home from the DOH to the Veterans' Services Department; operationally, it is already complete; the formal agreement is for one year to handle all details;
- encouragement for the DOH to not exit prematurely, as the DOH has medical expertise, while the Veterans' Services Department has none; and
- whether the DOH is working with the HSD on interoperability of information technology systems; yes, they are working closely together.

Tour of New Mexico Rehabilitation Center

Committee members visited the New Mexico Rehabilitation Center, where they received information about the services provided there.

Adjournment

Following the tour, the meeting was adjourned at 3:30 p.m.

Revised: August 31, 2017

TENTATIVE AGENDA
for the
THIRD MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 6, 2017
New Mexico State Veterans' Home
Staff Development Building
992 South Broadway
Truth or Consequences

September 7, 2017
Burrell College of Osteopathic Medicine
Room 152
3501 Arrowhead Drive
Las Cruces

Wednesday, September 6: New Mexico State Veterans' Home, Truth or Consequences

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair
—Senator Gerald Ortiz y Pino, Vice Chair

9:10 a.m. (1) **Status Report: New Mexico State Veterans' Home**
—Colleen Rundell, Administrator, New Mexico State Veterans' Home, Veterans' Services Department

10:30 a.m. (2) **Tour of AppleTree Educational Center (AEC)**
—Representative Rebecca Dow, Founder and Chief Executive Officer (CEO), AEC

11:30 a.m. (3) **Public Comment**

12:00 noon **Lunch**

1:00 p.m. (4) **The Impact of Adverse Childhood Events on Child Development and Life Trajectory**
—Alejandra Rebolledo Rea, Acting Division Director, Early Childhood Services, Children, Youth and Families Department (ECS CYFD)
—Representative Elizabeth "Liz" Thomson, Early Learning Fellow, National Conference of State Legislatures

2:00 p.m. (5) **Early Childhood Services**
—Alejandra Rebolledo Rea, Acting Division Director, ECS CYFD
—Erica Stubbs, Chair, Early Learning Advisory Council
—Baji Rankin, Ed.D., Executive Director, New Mexico Association for the Education of Young Children
—Representative Rebecca Dow, Founder and CEO, AEC
—Andy Gomm, Program Manager, Family, Infant, Toddler Program, Department of Health

3:30 p.m. (6) **New Mexico E911 Directors Affiliate: Current Issues**
—Ken R. Martinez, Director, Santa Fe Regional Emergency Communications Center; Chair, E911 Directors Affiliate, New Mexico Association of Counties (NMAC)
—Dave Ripley, Director, San Juan County Communications Authority; Vice Chair, E911 Directors Affiliate, NMAC
—Michelle Howard, 911 Director, Sierra County Regional Dispatch Authority

4:30 p.m. **Recess**

Thursday, September 7: Burrell College of Osteopathic Medicine (BCOM), Las Cruces

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair
—Senator Gerald Ortiz y Pino, Vice Chair

9:10 a.m. (7) **Welcome to BCOM and New Mexico State University (NMSU)**
—George Mychaskiw, Dean, BCOM
—Garrey Carruthers, Ph.D., President, NMSU

10:00 a.m. (8) **Residency Programs in Rural New Mexico**
—Oliver Hayes, D.O., Senior Associate Dean for Clinical Education, BCOM
—Lisa Waugh, Program Principal, Health Program, National Conference of State Legislatures (telepresence)
—Betty Chang, M.D., Associate Dean for Graduate Medical Education, University of New Mexico Health Sciences Center (telepresence)
—Mike Nelson, Deputy Secretary, Human Services Department

12:00 noon (9) **Public Comment**

12:30 p.m. **Lunch and Tour of BCOM**

1:30 p.m. (10) **New Mexico Hospital Association (NMHA) Update**
—Jim Heckert, CEO, Gerald Champion Regional Medical Center, Alamogordo; Chair, Board of Directors, NMHA
—John Harris, CEO, Memorial Medical Center, Las Cruces
—Denton Park, CEO, MountainView Regional Medical Center, Las Cruces
—Kelly Duke, CEO, Mimbres Memorial Hospital, Deming
—Troy Clark, Vice President, Regional Delivery System Operations, Presbyterian Healthcare Services
—Christina Campos, CEO, Guadalupe County Hospital, Santa Rosa; Member, American Hospital Association Board of Trustees

3:30 p.m. (11) **Physician Recruitment and Retention**
—Phillip Rivera, President, Physician Services, Memorial Medical Center

5:00 p.m. **Adjourn**

MINUTES
of the
THIRD MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 6, 2017
New Mexico State Veterans' Home
Staff Development Building
992 South Broadway
Truth or Consequences

September 7, 2017
Burrell College of Osteopathic Medicine
Room 152
3501 Arrowhead Drive
Las Cruces

The third meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on September 6, 2017 by Representative Deborah A. Armstrong, chair, at 9:21 a.m. in the Staff Development Building of the New Mexico State Veterans' Home.

Present
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong (9/7)
Rep. Rebecca Dow (9/6)
Sen. Bill B. O'Neill
Rep. Elizabeth "Liz" Thomson

Absent
Sen. Mark Moores
Sen. Cliff R. Pirtle

Advisory Members
Rep. Joanne J. Ferrary
Rep. Rodolpho "Rudy" S. Martinez (9/7)
Sen. Cisco McSorley (9/7)
Sen. Howie C. Morales
Sen. Mary Kay Papen (9/7)
Sen. Nancy Rodriguez (9/6)
Sen. Bill Tallman
Rep. Christine Trujillo
Rep. Miguel P. Garcia
Rep. Tim D. Lewis
Sen. Linda M. Lopez
Sen. Gay G. Kernan
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Nick L. Salazar
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics

Guest Legislator
Rep. Javier Martínez

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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.

Wednesday, September 6 — New Mexico State Veterans' Home (NMSVH), Truth or Consequences

Committee members and staff introduced themselves. Representative Dow spoke briefly about the economic and tourism advantages of Truth or Consequences. She highlighted the importance of Elephant Butte Reservoir to the state park system and to state tourism.

Status Report: NMSVH
Dr. Colleen Rundell, administrator, NMSVH, Veterans' Services Department (VSD), provided historical background information about the NMSVH. The facility includes 135 skilled nursing beds and is currently nearly full. Short-term stays are also possible. A memory care unit has a waiting list. Dr. Rundell described eligibility provisions for veterans.

On July 1, 2017, the governance of the NMSVH was transferred from the Department of Health (DOH) to the VSD, as required by Senate Bill 204, which passed in the 2017 regular legislative session and was signed by the governor. Dr. Rundell reviewed the status of the transfer, identifying some unexpected challenges, mostly related to human resource consolidation. A new facility, the Annex, is a 59-bed home with 39 memory care beds, a hot springs mineral pool, a movie theater and other amenities. The facility is divided into units, each of which has an individual kitchen. Most required state and local surveys have been completed, and the anticipated grand opening is November 1, 2017. Demographics were provided regarding the veterans served by the NMSVH, who range in age from 57 to 101 years of age. The facility is self-supporting. Customer satisfaction surveys place the NMSVH as "best in class" when compared to veterans' homes around the nation.

Potential risks to veterans are related to the medical nature of the services provided and the nature of licensure. For example, federal Health Insurance Portability and Accountability Act of 1996 protections must be observed; no smoking is permitted; and community donations of needed items are limited due to safety concerns. Careful attention is given to locked doors. Dr. Rundell reviewed the array of employment opportunities and benefits.

Committee members had questions and comments as follows:

- a request for information regarding the conditions most commonly encountered; chronic health conditions, such as diabetes and heart disease, as well as some psychiatric disorders;
- clarification regarding the demographic breakdown of residents; a small percentage are Hispanic, Native American and African American;
- clarification of the nature of memory care in the memory unit; residents must have a diagnosis of dementia;
- clarification regarding human resource needs; they are well staffed, and the only losses were the result of the consolidation;
- information regarding the number of people on the waiting list for memory care and whether the Annex will meet the state need; there are seven on the waiting list; Dr. Rundell believes the need for memory care far exceeds the capacity of the Annex;
- an observation that the closure of Yucca Lodge at Fort Bayard Medical Center impairs the state's ability to meet the needs of veterans; Alan Martinez, deputy secretary, VSD, noted that since Yucca Lodge has only one wing dedicated to veterans, it remains under the governance of the DOH;
- clarification regarding the percentage of residents who are in memory care; of 134 residents, 20 are in memory care;
- identification of the sources of funding; the U.S. Department of Veterans Affairs (VA), Medicaid and private funding;
- recognition that facilities for veterans are needed in other parts of New Mexico;
- whether veterans from out of state are eligible to become residents at the NMSVH; yes, since the NMSVH accepts federal funding;
- whether Medicare funds any part of care at the NMSVH; the NMSVH is certified to receive Medicare funding; however, Medicare funding is rare;
- whether transitional, community-based programs are available for those with short-term stays; there are active discharge plans required; the NMSVH does not provide post-discharge programs but must ensure that discharges are safe;
- details regarding the level of support from the DOH during the transitional period; the DOH has been very helpful and generous;
- whether the NMSVH has the ability to deal with alcohol and/or drug withdrawal; it is rare but available; and
- whether the NMSVH is staffed to adequately provide therapy services; yes, with professional services being largely contractual.

Deputy Secretary Martinez commented that the VSD is currently not adequately funded to expand services and facilities in other parts of the state; however, the department expects to make a legislative request in the next few years. He noted that additional capital outlay funding will probably be required to fully outfit the units within the Annex. A committee member wondered whether there is potential for tribal funding for this purpose. Dr. Rundell noted that, at this time,

federal law precludes this option. Deputy Secretary Martinez further noted that it is not possible since the state does not own the tribal lands.

Tour of AppleTree Educational Center (ATEC)

The committee members were transported to ATEC. A brief video presentation provided an overview of the many programs offered by the center, which has grown far beyond early childhood programs to encompass a school (through grade 12), home visiting, a teen center, a community art center and housing for interns, volunteers and AmeriCorps students who provide staff support for the many programs. Visits were made to several of the sites. Committee members expressed appreciation and awe at the breadth and scope of the programs offered through ATEC. Many thanks were offered to Representative Dow for the tour.

Public Comment

Hans Townsend, former president of the Sierra County Chamber of Commerce, expressed concern regarding funding cuts for drug testing within the Protective Services Division of the Children, Youth and Families Department (CYFD). Access to treatment programs relies on testing; the long-term effectiveness of programs suffers when there is no ongoing testing to ensure accountability. Committee members commented that these cuts were not mandated by the legislature and may have been internally directed.

Approval of Minutes

A motion was made, seconded and unanimously adopted to approve the minutes of July 17-18, 2017.

The Impact of Adverse Childhood Experiences (ACEs) on Child Development and Life Trajectory

Alejandra Rebolledo Rea, acting division director, Early Childhood Services, CYFD, and Representative Thomson, early learning fellow, National Conference of State Legislatures (NCSL), were invited to address the committee.

Representative Thomson identified elements and events that lead to ACEs and a scoring mechanism to rank and identify children at risk of or experiencing ACEs. These children are at high risk of numerous negative outcomes in life, including seven out of 10 causes of death. She identified statistics tied to ACEs scores, with higher scores being more predictive of negative outcomes without interventions. Severe ACEs can affect genetic material and be passed down through generations. Young children stressed by ACEs experience lifelong impacts.

Ms. Rebolledo Rea emphasized the importance of conditioning during early years of life to avoid the increased odds of later difficulties. She identified specific outcomes of ACEs and identified the importance of resilience in dealing with ACEs, noting that resiliency is a trait that can be fostered and can restore health and hope. The CYFD operates within a hierarchy of approaches that support early learning, including workforce development, prevention, promotion, high-level interventions and clinical treatments. Ms. Rebolledo Rea emphasized the importance

of continuous quality improvement, including training and ongoing support of early childhood care providers. She will send an electronic version of a training poster regarding ACEs to be posted on the website. She highlighted several programs and partnerships of the CYFD to help mitigate the negative impact of ACEs.

Committee members had questions and comments in the following areas:

- recognition of the high level of ACEs scores among incarcerated adults and the suggestion that funding for interventions early in life would reduce crime and prison later in life;
- the importance of better planning and quicker implementation of services in underserved areas of the state;
- whether there are, or can be anticipated, responses for immigrant children in fear of their futures; providers are beginning to address these issues; the CYFD appreciates the need to work with providers and families, where possible, to develop a safety plan for these children;
- whether there are enough trained people to support the home visiting program; program applications are solicited whenever federal funds are available;
- the importance of investing in early childhood services and aligning proposals arising from interim committees, including the Legislative Education Study Committee, Legislative Finance Committee and LHHS;
- clarification regarding outstanding requests for proposals (RFPs); one is for home visiting funding and another is for training for early childhood program providers;
- whether RFPs can be issued more frequently than every five years; yes, if there is additional money; and
- whether health care providers are, or should be, trained in what to look for to identify ACEs.

Early Childhood Services

A panel was assembled, including Erica Stubbs, chair, Early Learning Advisory Council (ELAC); Baji Rankin, Ed.D., executive director, New Mexico Association for the Education of Young Children (NMAEYC); Representative Dow; Andy Gomm, program manager, Family, Infant, Toddler (FIT) Program, DOH; and Ms. Rebolledo Rea.

Mr. Gomm provided a brief overview of the FIT Program, including the number of children served, eligibility criteria and the availability of providers. In 2016, the FIT Program served 14,647 children who were identified as victims of abuse, neglect or exploitation and who were appropriately referred by the CYFD. Due to massive growth in the program, funding is scarce to meet the known needs. A reimbursement rate study is currently being conducted using federal grant funds. The FIT Program has recently been recognized for its annual performance plan as well as for its state systematic improvement plan, according to Mr. Gomm. The FIT Program has been using federal Race to the Top funding to develop quality measures that are based on national best practice norms and to improve outcomes for at-risk children.

Ms. Stubbs described the mission and purpose of the ELAC and identified the representation of members of the committee. Three of the priorities of the ELAC are: (1) high-quality workforce; (2) access to services for all children who need them; and (3) increased school readiness. Additionally, the ELAC is policy oriented to ensure that funding is appropriately targeted and that alignments are in place to have as much consistency in needed services as possible. She anticipates having a report ready for the committee in November. The ELAC is due to sunset next year unless legislation is passed to extend its tenure. Related legislation that was passed during the 2017 regular session was not signed by the governor.

Ms. Rankin addressed issues regarding the early childhood workforce. The mission of the NMAEYC is to promote both quality and education, which it pursues through a variety of programs and partnerships. She provided data regarding children from low-income families in New Mexico and how subsidies for these children declined in the last two years. According to a CYFD Key Quarterly Performance Measures Report, only 7.8% are served in high-quality care. One factor producing this result is high turnover in the workforce. Wages are very low for early childhood education workers, resulting in high turnover. Two programs exist to address this disparity. T.E.A.C.H. is a scholarship program, and INCENTIVE$ provides financial incentives for educators. A tax credit for the workforce is an option that does not now exist but that might be considered.

A committee member commented on the importance of child care. She provided statistics regarding the percentage of working mothers and the high level of poverty in the state. Child care is both hard to find and expensive. The funding for child care is 80% federal funding, plus contributions by the families and other private sources. She advocated for higher levels of funding for high-quality child care. Head Start programs, which are 100% federally funded, should be supported so that state dollars can go further for child care.

Questions and comments from committee members were in the following areas:

- whether star levels of quality in child care centers are standardized; yes, and they are widely publicized; the higher the level, the higher the reimbursement;
- whether the star ratings are an accurate reflection of the quality of care being provided; not necessarily; some programs elect to stay at a lower level to avoid additional regulations, to be less limited in reimbursement and to best represent the needs of their communities;
- clarification regarding the differences between the work of the J. Paul Taylor Early Childhood Task Force and the ELAC; the J. Paul Taylor Early Childhood Task Force is focused on a medical model of treating childhood behavioral health issues;
- clarification regarding the model for reimbursement for child care facilities; it amounts to approximately $540 per child per month;
- clarification regarding the percentage of children receiving subsidies for child care;
- whether there is a preference for home-based or center-based child care; it may depend on preference or availability;

- questions regarding funding and expenditures for the NMAEYC;
- requirements for recipients to receive scholarships and incentives; and
- concern regarding over-reliance on federal funding, due to long-term unreliability of such funds, and a pitch to support legislation to dedicating 1% of the permanent fund for early childhood services.

New Mexico E911 Directors Affiliate: Current Issues

Ken R. Martinez, director, Santa Fe Regional Emergency Communications Center, and chair, E911 Directors Affiliate, New Mexico Association of Counties; Dave Ripley, vice chair, E911 Directors Affiliate, and director, San Juan County Communications Authority; and Michelle Howard, 911 director, Sierra County Regional Dispatch Authority, addressed the committee.

Mr. Martinez provided an overview of the 911 program. He stressed the importance of the surcharge funding for 911 services; however, the funding is still inadequate. He proposed a solution that is successful in other states to establish a statewide 911 oversight board to administer and manage 911 programs around the state. Such funding would also support Next Generation 911 (NG911) technology that will be essential to effectively operate a 911 system in New Mexico. New Mexico is one of only five states that does not have a plan for NG911, which essentially eliminates eligibility to apply for funding for this purpose. It is hoped that a fully developed proposal will be ready for introduction during the next 60-day legislative session. Many states are well ahead of New Mexico; it is crucial that the state align with NG911 efforts for the most optimal system to be in place.

Mr. Ripley noted that the Department of Finance and Administration is currently a barrier in moving forward in planning. There seems to be little appreciation of the necessity for developing a plan, even in the face of ineligibility for federal funding due to lack of a plan. For example, development of texting capability for 911 calls is critical for speech- and hearing-impaired individuals; however, New Mexico does not have this technology. Improvements are being made in disparate parts of the state without research or studies about the efficacy of those improvements. Professionals in the 911 system are often not involved in decision making. The establishment of a statewide board would ensure consistency and availability across the state and the best decisions regarding use of available funds.

Ms. Howard highlighted how delays in approving funding for 911 upgrades have negatively affected Sierra County.

Committee members had questions and concerns as follows:

- clarification regarding what the LHHS can do to help; awareness of the emergent nature of the problem and readiness to advocate for legislation when it is introduced;
- recognition of the need for backups in meeting statewide needs when local systems cannot handle the load;

- questions regarding the sponsorship and reasons for the failure of the surcharge bill introduced in the 2017 regular session;
- recognition that during a typical holiday weekend, the population of Sierra County can grow from 11,000 to 140,000;
- whether the federal government has established a deadline for implementation of NG911; it hopes to have it in place by 2020;
- clarification regarding failures or downtime in a 911 center; it is very rare; it is catastrophic when it happens;
- whether capital outlay funds can be used for phone system improvements; it might be possible for inclusion in the statewide capital outlay bill; a model might be the capital outlay funding for senior centers;
- recognition of the importance of a statewide planning board to ensure that priority needs are addressed; and
- whether there are known data regarding the nature of 911 calls.

A motion was made by Representative Thomson and seconded by Senator Ortiz y Pino to request that Mr. Hely draft a house joint memorial to study the recommendation for a statewide 911 board and to identify funding opportunities and what it would take to move to an NG911 system. The motion carried unanimously.

Public Comment

Julia Sullivan, director, Sierra Health Care, asked for committee support for additional funding for nonprofit long-term care facilities and services. Difficulties arise in providing personal care services due to very low wages for personal care providers. Finally, food programs for seniors are underfunded, resulting in many people not being fed. Payment for meals is drastically less in Sierra County than in metropolitan areas.

Ramona Jameson self-identified as a long-term drug addict. She asserted that marijuana is a gateway drug that led her to depression and consideration of suicide. She is very passionate about this issue.

Dallas Lipscomb, a physician assistant, said that for a small community, there is a very high percentage of very sick people in Truth or Consequences. Too few health care professionals are employed in the county to serve a high number of underserved and poor individuals. Patients are often discharged from health facilities without a home or a car. More medical and mental health care providers are needed to serve these critical needs.

Toby Boone, Elephant Butte Fire Department, thanked the committee for hearing testimony regarding 911. He also spoke as the owner of a physical therapy business. He stated his belief that taxes have been lowered in neighboring states while New Mexico's have not decreased. Health care professionals are incentivized to leave the state to live where taxes are lower. He encouraged the committee to look for ways to lower taxes for health care professionals.

Virginia Lee, jail administrator, Sierra County Detention Center, praised the new Narcan (naloxone) administration program in the county. There is a huge overdose problem in Sierra County that this program will benefit, she said. Mental health issues, however, are not well addressed, especially pre-detention, crisis services. Ms. Lee stated that services such as these could reduce the incidence of incarceration. Jails are overwhelmed with people with serious mental health conditions, while people arrested without these issues end up with much shorter stays. A committee member stated that managed care organizations (MCOs) are denying services for mental health conditions and are claiming that they have an adequate network to meet current needs.

Recess

The chair recessed the meeting for the day at approximately 5:50 p.m.

<u>Thursday, September 7</u> — Burrell College of Osteopathic Medicine (BCOM), Las Cruces

The meeting was reconvened by the chair at 9:03 a.m. Members introduced themselves.

Welcome to BCOM and New Mexico State University (NMSU)

John Hummer, president, BCOM, provided welcoming remarks. He gave a brief history of the creation of BCOM, which is a public-private partnership with NMSU. He thanked Garrey Carruthers, Ph.D., president, NMSU, for his support and role in development of this partnership. Dr. Hummer invited Dr. Carruthers to make comments.

Dr. Carruthers expressed his excitement upon the creation of BCOM, noting that also on campus is a high school program designed to guide students into the field of medicine. He briefly updated the committee on the status of NMSU enrollment, which currently has the largest freshman class in the history of the university. He highlighted a program known as the Aggie Pathway, which is a partnership with the local community college to promote readiness to become a student at the university. Last year, NMSU had the highest graduation rate since 2001. Dr. Carruthers thanked the legislature for its support.

George Mychaskiw, dean and chief academic officer, BCOM, also welcomed the committee. He highlighted the goals as well as the early successes of BCOM. Applications have been very healthy, increasing substantially in the second year of operations, despite a declining trend for admissions to medical schools in the nation. The enrollment is quite diverse, with a high percentage of Hispanics and Native Americans.

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

- clarification regarding the extent of community college partnerships in the Aggie Pathway program;
- a request for information regarding new developments at NMSU; the campus will have a hotel that will employ mostly NMSU students; Aggie Uptown will provide

medical office space; in the future, a golf course will be co-located with a continuing care community;
- clarification regarding the extent of student collaboration with NMSU;
- how BCOM is funding residencies; some Medicare residencies are being funded in hospitals that have never had a resident before; some Medicaid residencies have been funded for psychiatry but have never been utilized before; BCOM is working hard in this area, including seeking private funding opportunities; and
- ways in which BCOM is working to keep graduating medical students in New Mexico; it is working with United States Senator Tom Udall to facilitate a program that will partner with the VA hospital.

Residency Programs in Rural New Mexico

Oliver Hayes, D.O., senior associate dean for clinical education, BCOM, Mike Nelson, deputy secretary, Human Services Department (HSD), and Betty Chang, M.D., associate dean for graduate medical education, University of New Mexico (UNM) Health Sciences Center, were joined through telepresence by Lisa Waugh, program principal, Health Program, NCSL, and were invited to address the committee.

Dr. Hayes provided background information on graduate medical education (GME), as well as what it takes to develop new programs. GME is formal, sponsored training that follows graduation but precedes the independent practice of medicine. This is commonly known as residency. Residencies vary in length from three to five years, depending on the nature of the specialty. There are 10,000 residency and fellowship programs in the United States, training 130,000 residents in 750 sponsoring institutions. Funding for residencies is an estimated $16 billion, most of which comes from Medicare. Other funding sources include Medicaid, the VA, teaching health centers, children's hospitals and the United States Department of Defense. Development of residency programs at the state level is driven by financing and policy goals. State policymakers have become interested in GME largely due to recognition of the need to grow a medical workforce in the state. State policies must include strategic, economic, performance and operational elements to be successful.

Ms. Waugh provided a comparative overview of how some states are handling GME. Medicaid is the second-largest funder of GME; however, there is great variation across the states in how this is done. Additionally, there is great variation in how the funds are distributed from state to state. Ms. Waugh gave detailed information regarding the mechanism by which the Four Corners states handle GME through Medicaid. States are beginning to refine their Medicaid GME programs to accommodate managed care models of reimbursement.

Dr. Chang provided her viewpoint on what works and what does not work in GME in New Mexico. Current state workforce reports reflect that New Mexico remains extremely challenged in its lack of medical workforce. GME has traditionally been viewed as a valuable vehicle to promote workforce development. Data reflect that in-state residencies increase the potential for doctors to remain in the state. The pipeline from medical school to residency to

employment shows that of 400 graduates of UNM School of Medicine, around 30 go on to in-state residencies. Dr. Chang identified numerous reasons medical students and residents locate in New Mexico. Aligning a residency with those reasons tends to result in more positive outcomes. Integration into a community is a very important element, as is the support of local physicians to work with residents. Challenges for residencies include accreditation requirements, the cost of residency and support of leadership.

Deputy Secretary Nelson reviewed Medicaid spending on indirect medical education (IME) and GME from 2013 to the present, showing an increasing commitment of Medicaid dollars, totaling $107,583,909 in 2017, divided among six institutions. In March 2016, the federal Centers for Medicare and Medicaid Services approved the Medicaid state plan for an alternative payment methodology for primary care residencies. Certain federally qualified health centers (FQHCs) that train primary care residents are eligible for this alternative methodology. Centennial Care 2.0 will seek additional flexibility for this program. The HSD appreciates the importance of GME for workforce development.

Committee members had questions and comments in the following areas:

- clarification of barriers to fully implementing primary care residencies in FQHCs; discussions are under way; reimbursement is limited and start-up costs may be a problem; facilities must be prepared to make a commitment for the full length of the residency;
- why IME is not utilized more; it requires a platform of 125 residents for a sponsoring institution to qualify;
- whether BCOM currently has any residencies; BCOM's model is to work with sponsoring institutions to have residents, which would then become the teaching hospital in that community;
- whether state funding for residencies at UNM is continuing; funding was discontinued after two years, which put the full burden of the residencies on UNM; once a resident is in a program, the institution has a commitment for funding for the full length of the residency;
- clarification regarding the year that the Texas Legislature established a permanent fund for residency programs; Mr. Hely stated that Texas passed the permanent fund law in 2015; a member expressed an interest in considering endorsement of such a concept for New Mexico;
- clarification regarding quality initiatives in GME; at UNM, comparative data are being gathered regarding outcomes; also, residents are being trained in how to identify metrics and monitor results;
- observation of the paucity of psychiatrists in New Mexico;
- observation that reported data on workforce shortages in New Mexico may actually be worse than represented;
- clarification regarding the actual number of residencies; just over 600;

- clarification regarding the per resident funding support when Medicare and Medicaid are combined; GME and IME dollars do not only pay for individual costs of residents, they also pay for elements of patient care and other infrastructure costs of having residents;
- whether residents can bill for services; no;
- the time it takes to accomplish all requirements to be a sponsoring institution or clinic; meeting the requirements can take two to three years; there is no Medicare or Medicaid funding to offset start-up costs;
- clarification between osteopathic medicine and allopathic medicine; the osteopathic profession has evolved into a greater focus on primary care and rural practice;
- clarification from Ms. Waugh that New Mexico is one of several states working with the NCSL on rural health care issues;
- clarification regarding the ratio of supervising physicians to residents; it varies based on the nature of the residency;
- clarification regarding how much supervising staff is required to meet requirements to be a sponsoring institution; it is not straightforward; however, it is roughly four full-time physicians to 12 residents per year; accrediting entities set the requirements;
- recognition that it is difficult for FQHCs to meet the requirements; they would have to partner with a larger, tertiary institution; and
- a recommendation that New Mexico should make a bigger commitment to training primary care physicians and do everything possible through Medicaid to focus on family practice and primary medicine.

Charlie Alfero, New Mexico Public Health Institute, spoke to the complexity of FQHC participation in GME; he suggested that appropriate criteria for Centennial Care 2.0 be those sites that are eligible to participate in GME and able to participate in the necessary training.

Public Comment

Jamie Michael, director, Dona Ana County Health and Human Services Department, highlighted the residency program at Memorial Medical Center that provides outreach to community-based care. She noted that the county has allocated $275,000 to support a manager and to fund start-up costs at La Clinica de Familia to develop an FQHC-based residency program.

Jason Trujillo, Positive Outcomes in Socorro, identified the nature of personal care services models. He described problems with electronic visit verification (EVV). This system is challenging in areas of the state that lack broadband coverage. Alternative mechanisms for complying with EVV have resulted in increased administrative costs and time for billing for services. United Healthcare (UHC) has notified Positive Outcomes of a substantial recoupment that must be repaid. Positive Outcomes contends that UHC of New Mexico has established this recoupment in error and is seeking to recoup claims that UHC has consolidated, versus recoupment for manually billed claims. Mr. Trujillo recommends that payment for personal care services models should be revisited and simplified. Further, Positive Outcomes believes that on-

site review of claims is called for before recoupment occurs. Deputy Secretary Nelson noted that a meeting has been scheduled to examine this issue with the affected parties.

Tour of BCOM

Committee members and others were provided a tour of the educational facilities of BCOM.

New Mexico Hospital Association (NMHA) Update

Jeff Dye, president and chief executive officer (CEO), NMHA, introduced a panel of hospital CEOs and others, including Jim Heckert, Gerald Champion Regional Medical Center; John Harris, Memorial Medical Center, Las Cruces; Denten Park, MountainView Regional Medical Center, Las Cruces; Kelly Duke, Mimbres Memorial Hospital, Deming; Troy Clark, vice president, regional delivery system operations, Presbyterian Healthcare Services; and Christina Campos, administrator, Guadalupe County Hospital, Santa Rosa.

A video highlighting Guadalupe County Hospital demonstrated the nature of hospital care in very rural hospitals in New Mexico. Mr. Dye reviewed key characteristics of hospitals throughout the state. The economic impact of hospitals in the state is an estimated $7.3 billion. Hospitals in the state provided 166,222 hospitalizations, delivered 25,730 babies and provided $248 million in uncompensated care. Of 45 member hospitals, 13 are designated trauma facilities and 300,000 volunteer hours were provided. Statistics and outcome metrics in patient safety and quality were identified.

Mr. Heckert briefly described Gerald Champion Regional Medical Center in Alamogordo. It is the largest employer in Otero County. He addressed the importance of revenue predictability and stability and described significant barriers to access to behavioral health services, noting that a lack of intermediate levels of care results in overuse of emergency departments and inpatient settings. Mr. Heckert contends that there is a behavioral health workforce crisis.

Mr. Harris described features of Memorial Medical Center, noting the economic impact in Dona Ana County. He noted that Memorial is in the process of transitioning from a hospital to an integrated system of care in Las Cruces. He emphasized the critical importance of a high-level commitment to quality, such as harm reduction initiatives. Innovative approaches to improving quality were described. Finally, Mr. Harris underscored the importance of managed care oversight and uniformity with regard to payment, credentialing and other efforts to enhance efficiency and effectiveness.

Phillip Rivera, president, physician services, Memorial Medical Center, spoke to the challenges of inadequate physician supply in all specialties, an aging labor force, Medicaid expansion and reimbursement, lack of enforcement of regulation and fair market value reimbursement. Together, these issues will lead to a further shrinking of the supply of physicians, economic stagnation and an inadequate health system, he said.

Mr. Park presented on the economic value of MountainView Regional Medical Center in Dona Ana County. The issues he raised included the high cost of hospital professional liability. The Medical Malpractice Act allows some hospitals, along with physicians, to be included in liability protections; 15 hospitals in New Mexico have accessed this protection. He stressed the importance of maintaining this access.

Mr. Duke highlighted the economic value of Mimbres Memorial Hospital and Nursing Home in Deming. Issues of concern to him include workforce issues and the need to not only sustain but expand professional loan repayment programs so that rural hospitals may benefit from them. He also argued in favor of a requirement that Medicaid pay at least 100% of the cost of providing care in order to minimize cost shifting to commercial plans and other nonmatched, governmental programs such as the Interagency Benefits Advisory Committee. He described growth initiatives for the hospital and the nursing home to improve programming and better serve the patients of Luna County.

Mr. Clark noted that Presbyterian Healthcare Services' regional hospitals have an economic impact in five counties. The amount of economic activity generated by each of those hospitals was identified. He stressed the importance of community-based care coordination, especially in rural areas. He noted that hospitals in frontier areas are particularly vulnerable and may need a different payment and delivery model to survive.

Ms. Campos also noted the economic impact of Guadalupe County Hospital in Santa Rosa. The hospital is the smallest in New Mexico with only 12 beds, but if it were to close, there would be no hospital services within 188 square miles. Thanks to Medicaid expansion, the uninsured population in Santa Rosa was reduced from 18% to 3%. She spoke of the work of the American Hospital Association to ensure access to care in vulnerable communities. A task force identified 12 priorities to help very small, rural hospitals survive. These hospitals need stable and predictable revenues and protection of trauma funding to maintain access to these services.

Committee members asked questions and made comments on the following topics:

- a request for an update on the efforts to create a safety net care pool program; Mr. Dye noted that the fund is benefiting 29 hospitals in New Mexico; a pool to collect money for quality improvement efforts is growing; the NMHA is concerned that the waiver renewal proposals may harm the effectiveness of this program;
- concern regarding oversight of Medicaid MCOs; special concern was expressed regarding delays in provider credentialing;
- concern regarding guardianship inefficiencies resulting in an inability of hospitals to safely discharge some patients;
- whether appointment of a special master would be helpful in the above-mentioned problem; yes; there needs to be a different solution that still protects the patient; the NMHA submitted comments to the New Mexico Adult Guardianship Study Commission;

- recognition that changes to the gross receipts tax obligation for some hospitals together with opportunities to obtain federal matching dollars would go far to mitigate the negative effect of budget cuts; early discussions are under way to refine the bill introduced in the last legislative session to make it more acceptable to the governor; the approach would, in the NMHA's view, provide needed stability and predictability of funding;
- an assertion that oversight and enforcement of credentialing regulations is needed, particularly at the MCO level;
- a question of what agency should be in charge of this enforcement; what would be the most helpful would be to have consistency between Medicaid and the Office of Superintendent of Insurance;
- the importance of New Mexico's participation in an enhanced compact to continue to allow nurses to travel from out of state and practice short term in the state; it is an important way to get coverage when needed, given the shortage of nurses;
- at what point in the reimbursement cycle Medicaid MCOs receive their money; they are paid monthly on a per member, per month payment from the HSD; they pay claims from that pool of money;
- an observation that when Centennial Care began to require MCOs to provide care coordination, the MCOs hired 2,500 nurses out of the workforce into care coordination jobs, thereby exacerbating the nursing shortage in hospitals;
- recognition of the cumbersome nature of certain pre-authorization requirements for veterans to receive services outside of the VA hospital;
- whether hospital access to the Medical Malpractice Act has threatened the solvency of the fund; hospitals have contributed enough money to essentially fund their own claims and have greatly reduced the threat of insolvency;
- input from Deputy Secretary Nelson that the HSD is providing oversight of the MCOs, which would like the opportunity to present their input on this issue;
- whether hospitals have the same requirements as physicians to be reviewed by the medical legal panel; the answer provided was "yes";
- whether there is any expectation that MCOs participate in helping with recruitment and retention of providers; not specifically;
- whether Hospital Services Corporation is still involved in credentialing; yes, in credentialing verification for hospitals; health plans, however, conduct their own credentialing, a process that must be repeated multiple times, by multiple bodies and plans; the NMHA is working to accomplish "delegated" credentialing so that health plans would accept credentialing done by the hospitals; and
- an observation that psychologists are also looking at a licensing compact.

Public Comment

Dona Ana County Commissioner Billy G. Garrett reiterated that Dona Ana County is very concerned about the problems with recruitment and retention of physicians. He expressed appreciation to the committee for covering this issue. He urged accountability and compliance with existing laws and regulations before taking action to reform a system.

Kamran Kamali, M.D., identified himself as the only board-certified general surgeon south of Albuquerque. He believes that New Mexico has become very unfriendly to physicians, exacerbating the problem of physician recruitment and retention. Dr. Kamali strongly suggested action by the committee to begin to address this problem.

Adjournment

There being no further business, the meeting was adjourned at 4:45 p.m.

Revised: September 18, 2017

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 20-22, 2017
Science and Technology Center Rotunda
University of New Mexico
801 University Boulevard SE
Albuquerque

Wednesday, September 20

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee (LHHS)
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (1) **Welcome and Updates from the University of New Mexico (UNM) Health Sciences Center (HSC)**
—Paul Roth, M.D., Chancellor for Health Sciences, UNM HSC

10:30 a.m. (2) **Results First**
—Charles Sallee, Deputy Director, Legislative Finance Committee
—Kristen Pendergrass, Principal Associate, Pew-MacArthur Results First Initiative (PMRFI)
—Benjamin Fulton, Senior Associate, PMRFI

11:30 a.m. **Lunch**

12:30 p.m. (3) **Centennial Care 2.0 Concerns**
—Abuko Estrada, Staff Attorney, New Mexico Center on Law and Poverty
—David Machledt, Ph.D., Senior Policy Analyst, National Health Law Program

1:30 p.m. (4) **Medicaid Revenue Enhancement**
—Linda Sechovec, Executive Director, New Mexico Health Care Association
—Jeff Dye, President and Chief Executive Officer, New Mexico Hospital Association

2:30 p.m. (5) **Centennial Care 2.0 Update**
—Brent Earnest, Secretary, Human Services Department

4:30 p.m. (6) **Public Comment**

5:00 p.m. **Recess**

Thursday, September 21

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, LHHS
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (7) **Access to Contraceptive Coverage; Report of the Long-Acting Reversible Contraception Task Force**
—Erin Armstrong, Staff Attorney, American Civil Liberties Union
—Denicia Cadena, Policy and Cultural Strategy Director, Young Women United

11:00 a.m. (8) **Poison and Drug Information Task Force**
—Susan Smolinske, Pharm.D., Director, New Mexico Poison and Drug Information Center

12:30 p.m. **Lunch**

1:30 p.m. (9) **Duty to Report Abuse and Neglect**
—Shalon Nienow, M.D., Medical Director, Para Los Ninos, UNM HSC
—Leslie Strickler, M.D., Associate Professor, Department of Pediatrics, and Medical Director, Child Abuse Response Team, UNM HSC

3:00 p.m. (10) **Sexual Assault Prevention and Sexual Assault Examination Kit Update**
—Karen Herman, Director, Sexual Assault Services, New Mexico Coalition of Sexual Assault Programs (NMCSAP)
—Alexandria Taylor, Executive Director, Valencia Shelter Services, Valencia County
—Connie Monahan, Statewide Coordinator, Sexual Assault Nurse Examiner (SANE) Programs, NMCSAP
—Sarita Nair, J.D., M.C.R.P., Chief Government Accountability Officer and General Counsel, Office of the State Auditor
—Nasha Torrez, Dean of Students, UNM
—Claire Harwell, J.D., Legal Director, NMCSAP

4:30 p.m. (11) **Public Comment**

5:00 p.m. **Recess**

Friday, September 22

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, LHHS
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:15 a.m. (12) **Palliative Care and End-of-Life Decisions**
—Barak Wolff, M.P.H., Public Health Advocate
—Nancy Guinn, M.D., Hospice and Palliative Care Specialist and Medical Director, Presbyterian Healthcare at Home, Presbyterian Healthcare Services
—Joie Glenn, Government Relations, New Mexico Association for Home and Hospice Care Services
—Robert L. Schwartz, Esq., Emeritus Professor of Law, UNM School of Law

11:00 a.m. (13) **Public Comment**

11:30 a.m. **Adjourn**

MINUTES
of the
FOURTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 20-22, 2017
Science and Technology Center Rotunda
University of New Mexico
801 University Boulevard SE
Albuquerque

The fourth meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on September 20, 2017 by Representative Deborah A. Armstrong, chair, at 9:24 a.m. in the rotunda of the Science and Technology Center at the University of New Mexico (UNM). A quorum was present.

Present
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong
Rep. Rebecca Dow (9/20)
Sen. Mark Moores
Sen. Bill B. O'Neill
Rep. Elizabeth "Liz" Thomson

Absent
Sen. Cliff R. Pirtle

Advisory Members
Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Sen. Linda M. Lopez
Rep. Rodolpho "Rudy" S. Martinez (9/20, 9/21)
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Nancy Rodriguez (9/22)
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio (9/22)
Sen. William P. Soules (9/21, 9/22)
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman (9/22)
Rep. Christine Trujillo (9/20, 9/21)

Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. Mary Kay Papen
Rep. Nick L. Salazar

Guest Legislator
Rep. Bill McCamley (9/22)

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

Staff
Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Karen Wells, Contract Staff, LCS
Michelle Jaschke, Researcher, LCS

Guests
The guest list is in the meeting file

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

Wednesday, September 20

The chair convened the committee at 9:24 a.m. The committee members and staff introduced themselves.

Welcome and Updates from the UNM Health Sciences Center (HSC)

Paul Roth, M.D., chancellor for health sciences, UNM HSC, provided an update on the UNM HSC to the committee. He noted that the mission statement of the UNM HSC is centered health and health equity. He highlighted a proposal for a new medical facility. The project will be rolled out in phases, Dr. Roth said, with a total cost of $684,029,388 and an anticipated final completion date of 2025 through 2027. The benefits to New Mexicans will include access to a higher level of care with improved clinical outcomes. The construction phases will result in a positive economic impact for the state, providing up to 2,000 construction jobs, Dr. Roth noted.

Dr. Roth described many accomplishments of the UNM HSC, including increased research, a new partnership with Lovelace Health System and a healthy neighborhoods initiative. He identified key staff changes and the active search processes under way to convert interim positions to permanent ones. Improvements are under way for the Domenici Center for Health Sciences Education that will substantially improve adult learning opportunities. He highlighted recent large research grants and some clinical successes.

Dr. Roth concluded his presentation by describing several legislative proposals that UNM HSC will be bringing to the legislature in 2018. Areas identified include changes that improve the reporting of suspected child abuse; enhance the exchange of information among mental health providers; implement several recommendations of the J. Paul Taylor Early Childhood Task Force; and improve screenings for adverse childhood events in the Medicaid Centennial Care waiver program (Centennial Care). He recognized that the probability of increased funding creates a challenge.

Questions and comments from committee members covered the following topics:

- whether the UNM Board of Regents supports the project to build a new medical facility; the board is fully supportive;
- the extent to which care is provided for patients without insurance or Medicaid coverage; elective procedures require patient payment of 50% of the cost of the procedure in advance;
- whether county indigent funding could be used for procedures that are not clearly elective but that may be medically necessary; Bernalillo County does not have an indigent fund; mill levy funding supports the general operations of the hospital;
- clarification regarding the process by which decisions about medical necessity are made; the decisions are made by physicians, and patients may request a waiver if denied; the process uses the same criteria as required by Medicaid;
- why so many key leaders have decided to leave the UNM HSC at this time; according to exit interviews, there is not one single reason, but there is a perception of a lack of support for, and even hostility toward, higher education in New Mexico, as well as a perception of an unstable economy;
- clarification regarding community outreach impact; the map in the handout shows the estimated number of people served in specific areas of the state; Representative Gail Armstrong requested specific information about services provided in Omega; Dr. Roth said that he would provide the information;
- whether the UNM HSC serves Navajos on the Navajo Nation; Dr. Roth said that he is not sure;
- a request to see the new guidelines for prior authorization for medical necessity once they are established; Dr. Roth offered to provide the guidelines to the committee;
- clarification regarding how a procedure recommended by a surgeon could subsequently be denied; it is possible that a review of the prior authorization guidelines would result in overriding in a surgeon's recommendation;
- what the estimated loss of $3 billion to $5 billion under the congressional Republican Party proposal to repeal and replace the Patient Protection and Affordable Care Act (ACA) would mean to the UNM HSC; dramatic reductions in the federal match for Medicaid would result;
- clarification regarding funding sources for the UNM Comprehensive Cancer Center; Dr. Roth said that he will provide the information;
- clarification of sources for funding of capital projects; the mill levy cannot be used for this purpose; general obligation bonds are sometimes used;
- whether grant funds can be leveraged to obtain additional federal funds; no;
- whether UNM uses the method of "surprise balance billing" for care not covered by insurance; payment plans can be established that a patient can afford; the most vulnerable people's accounts are not sent to a collection agency;
- a request for information regarding communities in New Mexico where UNM is the only provider of services;
- a request for the number of new businesses that now exist as a result of UNM research projects, especially genomic research;

- recognition that any loss of funds due to health care reform will negatively impact the ability of UNM to train health care professionals; Dr. Roth noted that UNM already has to seek additional funds to cover the costs of education and research; any additional loss of Medicaid funds would have a significant impact;
- clarification regarding the annual costs to support medical residents; costs vary based on the specialty; primary care residents receive the same salary as all residents in their first year; Dr. Roth will provide the exact scale of salaries for residents;
- how UNM determines when to issue or respond to requests for proposals (RFPs), especially in rural areas; the determination is based on an evaluation of needs or capacity to respond; Dr. Roth will provide additional information;
- whether the existing UNM Hospital will remain operational once the new facility is built; outpatient services and programs located elsewhere in Albuquerque will occupy the current hospital when the new facility is complete;
- whether the new facility will expand the number of beds currently available; yes, by about 60 beds;
- concern regarding the number of patients who cannot be served at UNM and how this situation can be mitigated; partnerships with other entities can be pursued, and UNM is actively pursuing those partnerships; and
- concern that UNM is not in network with all Medicaid managed care organizations (MCOs).

Results First

Charles Sallee, deputy director, Legislative Finance Committee (LFC), Kristen Pendergrass, principal associate, Pew-MacArthur Results First Initiative (PMRFI), and Benjamin Fulton, senior associate, PMRFI, were invited to address the committee. Also, Mara Weinstein, senior associate, PMRFI, was introduced as a person available to provide technical assistance.

Mr. Sallee described a process of legislating for results that the LFC has been developing in partnership with the PMRFI. He discussed the elements of an evidence-based policy and budget framework. Performance measures identify priority areas, help to highlight the need for additional oversight and help to develop meaningful budgets. This approach grants agencies greater flexibility in spending within the performance measures the agencies have identified. The experience of the Children, Youth and Families Department (CYFD) was highlighted as an example of how results-based accountability supports effectiveness in service delivery and demonstrates that dollars to support programs are being spent wisely. Reliance on evidence-based approaches has allowed the LFC to partner better with the executive branch of government.

Mr. Fulton described the PMRFI's efforts to bring evidence into the budget process through program inventory and benefit-cost analysis and through using results to drive priorities. The PMRFI is working with several states, including New Mexico, to implement this approach, with great success. The PMRFI has created a Results First clearinghouse database that allows comparisons of programs with strong literature on effectiveness of approaches. A model for

benefit-cost analysis allows evaluation of programs. The PMRFI is working in 26 states and 10 counties to implement this approach. The organization has been working with New Mexico long enough to see very successful results, Mr. Fulton said.

Ms. Pendergrass identified health as a new policy area for the PMRFI. She identified what the PMRFI is and is not involved in. The focus of the program is to identify the most effective areas in which to work. The PMRFI is working with the LFC, the Human Services Department (HSD) and the Department of Health (DOH) to inventory program areas and assign responsibility to each partner. The group anticipates findings and preliminary results in the spring of 2018. The chosen areas of focus are diabetes prevention, obesity reduction, patient-centered medical homes, smoking cessation and prevention, substance abuse disorders, behavioral health integration, planned pregnancies and birth outcomes.

Committee members gave comments and offered questions in the following areas:

- an observation that New Mexico has experience in using performance data to flag problems and identify possible approaches to serve as guides in the area of health policy;
- how inconsistencies in implementation at the program level are identified; the LFC starts with the state and evaluates the high-level performers;
- clarification regarding why a program might rank higher or lower on program effectiveness but not rank well on benefit-cost analysis; based on how predictions emerge from the clearinghouse database, local choices are made in how much can be spent for what degree of results;
- clarification regarding the appropriate role of the LHHS; the LHHS has a major interest in improving the health of New Mexicans; the results reported by the LFC should help to inform policy recommendations for the future; conversely, the policy findings and priorities of the LHHS will help the LFC in setting budget priorities;
- recognition of opportunities for legislative committees, the LFC and state agencies to align initiatives;
- whether the PMRFI has been negatively affected by partisan political bias, especially relating to tobacco cessation programs; the PMRFI is focused on evidence-based research; political influence is beyond the scope of its project;
- ways in which this information could be more widely shared; it is available on the LFC website using drop-down menus;
- enthusiasm that the PMRFI and the State of New Mexico are expanding into the realm of health;
- a recommendation that it would be helpful to include national benchmarks on report cards that show New Mexico's goals; and
- a recommendation that fiscal impact reports should strive to reflect evidence-based results and benefit-cost analysis when possible.

Centennial Care 2.0 Concerns

David Machledt, Ph.D., senior policy analyst, National Health Law Program, provided an overview of the National Health Law Program with specific focus on Medicaid 1115 demonstration waivers (1115 waivers). He said that the purpose of 1115 waivers is to target low-income populations. He noted that, in recent years, four types of waivers have emerged: managed care waivers, delivery system reform waivers, uncompensated care pool waivers and expansion waivers. He noted that the proposed new 1115 waiver application under the state's Medicaid program, known as "Centennial Care 2.0", is a combination of all four types of waivers. Ongoing monitoring and evaluation are required with a waiver; however, efforts have fallen short in this area. In order to be approved, the 1115 waiver must demonstrate that the waiver is an experiment that is likely to promote the objectives of Medicaid.

Mr. Machledt highlighted key issues in the Centennial Care 2.0 proposal. He contended that many elements of the proposal are consistent with the federal Medicaid Act and meet the standard of an experiment; however, other elements merely seem targeted to cuts in the program and do not meet the required standards. For example, premium and cost-sharing provisions are not an experiment — at least six other states already evaluate this. Mr. Machledt contended that the provisions do not promote the objectives of Medicaid and are outside the scope of waiver authority.

Abuko Estrada, staff attorney, New Mexico Center on Law and Poverty, addressed the cuts proposed in the Centennial Care 2.0 proposal. He began by identifying ways in which Medicaid is vital to New Mexico and its economy. While there are elements of the proposal that are good and support growth in valuable programs, the cuts, overall, are damaging. Mr. Estrada contends that these cuts are ultimately costly and represent hidden taxes for low-income families. Another troublesome element in the proposal is the recommendation to end retroactive coverage, which has the potential to throw families into financial debt. Additionally, uncompensated care costs will increase for health care providers, he said. The waiver proposal would cut health benefits for parents and caretakers in deep poverty, eliminate the early periodic screening, diagnostic and treatment program for children who are 19 to 20 years old and allow for drastic cuts in the future to transportation. Finally, it proposes an end to transitional Medicaid assistance to those individuals who are moving from deep poverty to independence. He expressed hope that the LHHS would make comments in support of the good elements of the proposal, while objecting to the cuts.

Questions from the committee were deferred at the request of the chair until after the presentation by the HSD secretary.

Medicaid Revenue Enhancement

Jeff Dye, president and chief executive officer, New Mexico Hospital Association, reviewed the New Mexico Hospital Association's proposal on taxation. He began by emphasizing that the proposal is not a provider tax. Key elements of the proposal are that all not-for-profit, governmental and investor-owned hospitals would pay the gross receipts tax, the

estimated proceeds of which have been estimated at $107 million. The New Mexico Hospital Association proposes to appropriate the revenue as follows: $26 million for Medicaid, through the County-Supported Medicaid Fund, and $81 million to the General Fund. Together, this could generate an additional $400 million, if used exclusively for Medicaid, Mr. Dye said. The bill was carefully developed with consultant input, including input from Cindy Mann, the former director of the Centers for Medicare and Medicaid Services.

Linda Sechovec, executive director, New Mexico Health Care Association, presented a different proposal, which the New Mexico Health Care Association is willing to name as a provider fee. Her presentation highlighted opportunities and barriers associated with intergovernmental transfer (IGT) programs and provider fee programs. The New Mexico Health Care Association prefers a provider fee approach. The association has carefully analyzed this approach and the impact that it could have in New Mexico. She noted that 44 other states have laws that allow providers to contribute to the state in order to draw down the federal match. The New Mexico Health Care Association proposal would generate an estimated $26 million, $5 million of which would go to the HSD for administrative costs to fund the program. Ms. Sechovec worries that the window to establish such a program may close in the future.

Ms. Sechovec presented a grim picture of nursing facilities in the state that are so underfunded that they can no longer ensure safe care.

Committee members had questions and concerns in the following areas:

- an observation that nursing homes have no ability to pay overtime wages due to limitations in the reimbursement formula;
- clarification regarding the difference between an IGT and a provider fee; IGTs are much more complex and burdensome, while provider fees could be implemented more easily, especially since so many other states have implemented them; and
- clarification that both the hospital proposal and the nursing home proposal, though different in implementation, provide for an ability to obtain federal matching funds.

Centennial Care 2.0 Update

Brent Earnest, secretary, HSD, introduced Nancy Smith-Leslie, director, Medical Assistance Division, HSD. Secretary Earnest reminded the committee that a concept paper had been distributed in May. He began by presenting the time line of the process to renew Centennial Care to what is now called Centennial Care 2.0. So far, he stated, the HSD has conducted a public comment period and engaged in tribal consultations. Secretary Earnest reviewed the guiding principles of Medicaid reform, which are to develop a comprehensive delivery system, emphasize payment reform, simplify program administration and encourage personal responsibility. He gave details on how each of these elements had been addressed in the implementation of the original Centennial Care.

Centennial Care 2.0 builds on the successes of the original waiver, focusing on the improved and refined elements of the original design. The six areas of focus in Centennial Care 2.0 are as follows: care coordination; behavioral health integration; long-term services and supports (LTSS); payment reform; member engagement and personal responsibility; and administrative simplification through refinements to benefits and eligibility. He went into detail about each of these areas of focus.

1. Care coordination goals include increasing coordination at the provider level, improving transitions of care, expanding programs that work with high-needs populations, introducing activities for incarcerated individuals just prior to release, piloting a Medicaid-funded home-visiting program and obtaining 100% funding for Native American services.

2. Behavioral health integration involves expanding health homes, supporting workforce development and developing supportive housing services.

3. Opportunities for LTSS will include start-up goods for transitions to self-directed care, increasing caregiver respite hours, ensuring long-term continuation of access to community benefits services by imposing limits on some self-directed services, automatically designating nursing facility levels of care for patients whose conditions are not expected to change and using Project ECHO to provide expert help for staff.

4. Payment reform measures involve an increase in the number of providers who engage in risk-based reimbursement and the greater use of value-based payment arrangements. Changes to safety net care pool components are intended to shift focus toward quality initiatives and away from uncompensated care.

5. Member engagement and personal responsibility elements include continuing the Centennial Care rewards program, allowing providers to charge small fees for three or more missed appointments and imposing premiums for populations whose income exceeds 100% of the federal poverty level. Secretary Earnest outlined the proposed premium structure. The waiver also proposes requiring copayments for certain populations. He also outlined the structure for copayments. Tracking requirements for cost sharing and expansion of opportunities for Native American participation in Medicaid are also included, Secretary Earnest said.

6. Proposals for administrative simplification will occur through refinements to benefits and eligibility. Coverage for most adults will be consolidated under one benefit plan. Provisions to buy into dental and vision services will be provided. Retroactive eligibility will be eliminated for most beneficiaries, as is transitional Medicaid coverage. Eligibility requirements will be modified in the family planning program. Authority is sought to waive limitations imposed on institutions for mental disease to cover mental and substance abuse services and to allow former foster care individuals to be covered up to age 26. The waiver proposes enhanced administrative funding for expanded availability of long-acting reversible contraceptives (LARC).

Public meetings are scheduled in Santa Fe, Las Vegas and Las Cruces, as is an additional tribal consultation, Secretary Earnest said.

Secretary Earnest gave a brief description of the fiscal year (FY) 2018 Medicaid budget, noting that this has not yet been presented to the LFC. The bottom line is a request for $81.5 million, which could be reduced to $35 million if Congress reauthorizes the Children's Health Insurance Program (CHIP). Watching enrollment trends is crucial, Secretary Earnest said. Federal action to repeal and replace the ACA could have a significant impact. Medicaid enrollment currently appears to be leveling out, Secretary Earnest said. Enrollment growth has led to an historic low in uninsured people in the state.

Members of the previous panel were invited to join the HSD panelists to answer questions. Committee members had questions and expressed concerns in the following areas:

- clarification regarding eliminating non-emergent transportation benefits; the proposal is limited to healthy adults;
- an observation that implementation of copayments and premiums are not shown to be effective; the HSD believes that the construct for this proposal is construed tightly enough to have the desired effect;
- whether the administrative cost to impose copayments outweighs the intended purpose;
- clarification regarding the status of nurse hotlines at the MCOs; every MCO is required to have a nurse advice line;
- whether the waiver changes will impair the ability of a person to obtain needed prescription drugs when over-the-counter drugs are available; no;
- clarification regarding the meaning of "risk-based" reimbursement;
- whether the proposal includes a discontinuation of coverage for mental health services after a certain age; no;
- a recommendation that additional public meetings be held in the evenings or on a weekend;
- whether a legal challenge could be entered to block the imposition of premiums; several states have already been approved to impose premiums;
- whether the projected income from premiums is identifiable and what would be done with the revenues; there are many details to be worked out; however, it is anticipated that the MCOs would have the responsibility to collect the premiums;
- whether MCOs would collect copayments; no, providers would have that responsibility;
- whether increases in reimbursement for nursing facilities are anticipated; proposals are being developed for value-based payments; provider fees can be pursued outside of the waiver application;
- whether the Programs of All-Inclusive Care for the Elderly, known as PACE, could be expanded and incorporated into the waiver program; it might be possible to discuss outside of the waiver;

- clarification regarding access to self-directed community benefits; anyone eligible can enroll; this program is separate from the developmental disability waiver and the Mi Via waiver;
- whether any people who have attended public meetings so far are Medicaid beneficiaries; it is very hard to identify, as that question is not asked;
- concern about individuals who might not be able to access Medicaid upon elimination of retroactive eligibility;
- whether, hypothetically, if the budget shortfall could be eliminated, it would alter the proposals for cuts; it is not just a matter of passing new taxes, but that additional revenue would need to be appropriated to Medicaid;
- concern that anticipated cost savings from the waiver are not reflected in the budget; any savings from changes in Medicaid due to the waiver will not be seen in time to affect the FY 2018 budget; a member requested a detailed justification for why the waiver cost savings are not reflected in the budget projection;
- clarification regarding the governor's position on current health reform proposals in Congress; discussions with the governor have been about the impact on New Mexico residents and the recognition that New Mexico has very little room to adapt to proposed changes;
- concern that proposals in the waiver do not respect the actual needs and situations of the typical Medicaid beneficiary;
- clarification on how public comment is used; stakeholder comments result in modifications and changes to the waiver proposal; comments are tracked, summarized and answered; summaries are available;
- ways in which the HSD works to provide respite workers who communicate in multiple languages; no funding is sought in the budget for this purpose;
- why comprehensive family planning coverage is being eliminated; it is not a comprehensive program at present, and the coverage is not being changed; the goal is to make clear and simple access to a currently confusing program;
- clarification about why transitional and retroactive coverage is being limited; the HSD believes that expansions in some other areas will mitigate the need for these features;
- recognition that Medicaid expansion has had a very positive impact on the state;
- clarification regarding the percentage of New Mexicans on Medicaid; roughly 40%;
- whether the governor will review the final draft; it will be discussed with her;
- whether Medicaid premiums were approved under waivers sought during President Barack Obama's administration; yes; some states had premium programs during that time;
- whether the waiver proposes a mechanism to exempt people from premiums if they are too poor to pay them; it is a detail that will have to be worked out;
- clarification about the term "value-based purchasing"; it is a payment structure that strives to improve outcomes;
- a request to receive the contact information for all of the MCO nurse hotlines;

- whether there is currently an external evaluation of Centennial Care; yes, it is part of the waiver requirements; also, annual reports on the program are posted on the HSD website;
- a recommendation that retroactive eligibility be phased out rather than eliminated all at once;
- whether there are studies of other states that have imposed copayments and the impact of imposing copayments; yes, some of these studies are posted on the website of the National Health Law Program;
- recognition that there are legal questions that govern waiver applications, but there are also policy questions that must be considered regarding what is good policy for this population;
- an observation that there is a movement in the private insurance market to eliminate copayments altogether; the proposal does suggest not charging copayments in certain circumstances;
- concern that copayments and premiums become an administrative burden on providers and MCOs;
- whether there is consideration to try to obtain a Medicaid match for home visiting; that is the hope;
- whether there is consideration to try to provide critical dental services; the services exist today and will be continued;
- whether new revenues will be sought for the safety net care pools; no, they are proposing a restructuring to focus on quality;
- whether mechanisms proposed by the New Mexico Hospital Association and the New Mexico Health Care Association will receive consideration; the HSD is concerned because a previous iteration of a nursing home bed tax was problematic; the hospital proposal should be considered within a larger tax framework; there are technical issues that would need to be sorted out;
- recognition that there are many complex details that must be worked out before the waiver is submitted; and
- an announcement that Governor Susana Martinez has publicly opposed the latest congressional health care proposal.

Public Comment

Mandy Pino, advocate, spoke on behalf of Progressive Democrats of America, Central New Mexico Chapter, and the beneficiaries who face despair if they lose access to Medicaid.

Bill Jordan, New Mexico Voices for Children, reminded the committee that the Medicaid expansion more than pays for itself through 2020, according to many studies. He announced that New Mexico Voices for Children is opposed to the Centennial Care 2.0 waiver proposal. Health care is the only sector in New Mexico that has grown in the last several years, he said.

Robert Kegel has reviewed the waiver and has tried to obtain input from affected individuals. The developmental disabilities (DD) waiver is deficient in many ways, Mr. Kegel

stated. However, Jim Copeland, director of the Developmental Disabilities Supports Division of the DOH, which co-administers the DD waiver in coordination with the HSD, said that the agencies are working to correct these deficiencies. The Centennial Care 2.0 waiver remains problematic, largely due to the capitated rate paid to MCOs to manage the program. This method of reimbursement incentivizes the MCOs to not provide care in order to increase profits. A letter from Ronda Gutierrez provides a heartbreaking story of how the system is failing. Data must be more transparent.

Michelle Melendez, director of EleValle in the South Valley of Albuquerque, commented on UNM Hospital's policy of requiring 50% payment up-front for services that are deemed not medically necessary. She stated that Dr. Roth had contended that affected patients had not contacted UNM Hospital to complain about the policy; however, Ms. Melendez has seen six complaints from affected individuals. She is convinced that many more are affected. She contends that the payment plan is unfair and arbitrary.

Liza Gomez, San Juan County, commented on the fact that counties contribute to health care through county indigent funds. San Juan County provides dental services for people who are on Medicaid or who are uninsured. She supports the care coordination provisions and initiatives in the Centennial Care 2.0 proposal that will serve those who are incarcerated. She believes that the changes should focus on increasing access to care and implementing health literacy, especially for high-risk populations.

Virginia Castille Dixon is an AARP volunteer. She conveyed AARP comments on Centennial Care 2.0, which will be sent to the HSD. AARP believes that Medicaid should be looking for ways to expand coverage and that cuts will be disastrous. The AARP, she said, is supportive of measures to increase respite for family caregivers.

Colin Baillio, Health Action New Mexico, stated that his organization's main concern regards premiums and copayments and the elimination of transitional coverage. Copayments are especially burdensome for people with low incomes who have prescriptions that must be regularly filled. Shifting costs to individuals will result in higher overall costs and poorer outcomes.

Barbara Webber, executive director of Health Action New Mexico, stated that the Centennial Care 2.0 waiver proposal essentially eliminates dental coverage. Ignoring dental disease results in many complex health problems. Dental disease is the number one childhood infectious disease, and it is completely preventable, she said.

Lisa Johnson is a family therapist in private practice in Albuquerque with about 50% of her practice devoted to Medicaid families. She shared a story demonstrating the difficulty in obtaining mental health services in New Mexico.

Ellen Pinnes, The Disability Coalition, commented that the current proposal to repeal and replace the ACA will cost billions of dollars to New Mexico and should be opposed. She highlighted the recalculation of a new annual cap in the Centennial Care 2.0 proposal that could require a Medicaid beneficiary to pay a significant amount of money out of pocket. She also urged a closer look at the legal requirements for waiver applications.

Senator Ortiz y Pino suggested that the committee consider sending a letter to Dr. Roth regarding the cost-sharing requirements for surgery not considered medically necessary.

Recess

There being no further business, the committee recessed for the day at 7:50 p.m.

Thursday, September 21

Welcome and Introductions

Representative Deborah A. Armstrong reconvened the meeting at 9:00 a.m.

Access to Contraceptive Coverage: Report of the LARC Task Force

Erin Armstrong, staff attorney, American Civil Liberties Union, provided an overview of access to contraceptive coverage provided by the ACA, Medicaid and the federal Title X program, which provides coverage for uninsured or underinsured individuals. Ms. Armstrong outlined current gaps in federal requirements, noting that the ACA does not require contraceptive coverage for men, over-the-counter coverage, unless it is prescribed, or coverage for multiple months of contraceptive supplies. She further provided an analysis of legislative efforts in New Mexico to solidify some of the more vulnerable ACA rules, and she urged the committee to push the HSD to make contraceptive coverage and access to LARC explicit in the Centennial Care 2.0 waiver renewal plan.

Denicia Cadena, policy and cultural strategy director, Young Women United (YWU), presented information regarding the New Mexico LARC Workgroup convened by YWU. The workgroup's goals are to improve access to reproductive health care, specifically contraception, for women and all people in New Mexico and to leverage resources to effectively expand access to LARC in appropriate and impactful ways. Ms. Cadena gave an overview of the many organizations participating in the New Mexico LARC Workgroup, including both provider and advocate communities. Strategic priorities for the organization include policy development, advocacy, provider and staff education and training, cultural humility in outreach and education and comprehensive evaluation and shared fundraising strategies.

In response to committee members' questions, the panelists clarified the following issues:

- the wide range of costs described for intrauterine devices (IUDs) and implants relates to prior subsidies from a foundation for certain IUDs that lowered costs substantially;
- the average cost of the IUDs and implants now is around $600;

- the costs of IUDs and implants relate mainly to the cost of the devices, not to the cost of placement or implantation;
- placement and implantation of IUDs and implants both require trained clinicians;
- the federal Food and Drug Administration has approved the use of the various IUDs and implants for periods of three to 10 years; and
- the IUDs and implants are cost-effective in comparison to traditional contraceptives, given their useful life.

Ms. Cadena noted that a key element of LARC, that of immediate reversibility, is essential to reproductive freedom. Members discussed the following: the need to gather data to clarify the claim that LARC is cost-effective; the need for appropriate outreach to tribes and the Navajo Nation; and the provisions of the Centennial Care 2.0 plan with respect to LARC and male contraception. One member requested that the presenters provide an estimate to the committee regarding the cost to gather information on whether the use of LARC has an impact on the transmission of sexually transmitted infections.

A member requested that the letter drafted in response to the Centennial Care 2.0 presentation include a point regarding the importance of leaving access open for family planning throughout life, instead of the proposed cutoff point of age 50, noting that other issues of sexual health and men's capacity to reproduce well beyond age 50 bear on this issue.

Another member asked that the committee also address the issue of school-based health clinic and public health clinic closures. She noted that clinic goals can be politicized, but closures limit care, particularly preventive care.

A member remarked that unbundling LARC would be a good thing. Unbundling, she explained, is the policy of removing LARC from other health benefits and services for which a clinic receives a lump-sum payment. This allows a clinic to be reimbursed for the considerable costs associated with purchasing, storing and inserting LARC. The HSD and DOH have worked hard to come up with the Centennial Care 2.0 plan for unbundling LARC benefits from other benefits, according to this member.

Poison and Drug Information Task Force

Susan Smolinske, Pharm.D., director, New Mexico Poison and Drug Information Center (NMPDIC), stated that the mission of the NMPDIC is to improve the health of New Mexicans by reducing illnesses and deaths associated with poisoning and by encouraging proper use of medications. The NMPDIC operates a 24-hour emergency telephone service that provides assessment and treatment recommendations in cases of suspected poisonings, responds to drug information questions and helps emergency personnel during hazardous material incidents.

Ms. Smolinske reported that poisoning deaths are the number one cause of preventable deaths in New Mexico, having surpassed those caused by motor vehicle accidents. The total number of calls received by the NMPDIC grew steadily from 12,000 in 1977 to more than 30,000

in 2013. However, that number has decreased since 2013 to around 20,000, or 84% of total calls in FY 2017. The center's American Association of Poison Control Centers accreditation is at risk due to this drop in call volume, Ms. Smolinske said, and the NMPDIC has instituted measures to increase calls and capture more exposures since June 2017. A critical concern of the NMPDIC is the longevity of the Tobacco Settlement Permanent Fund, appropriations from which represent 27% of the center's budget.

Members discussed a range of options for funding the NMPDIC, including assessing user fees for hospitals and other providers and drawing funds from the CHIP. Ms. Smolinske reported that this is an allowable expense under the CHIP, and members agreed to include this recommendation in the letter regarding the Centennial Care 2.0 plan. Senator McSorley offered to sponsor or co-sponsor legislation to provide funding and support for the NMPDIC.

Duty to Report Abuse and Neglect

Shalon Nienow, M.D., medical director, Para Los Ninos, UNM HSC, and Leslie Strickler, M.D., associate professor, Department of Pediatrics, and medical director, Child Abuse Response Team, UNM HSC, addressed the committee regarding a proposed bill to provide civil immunity to health professionals and others who make good-faith reports of reasonably suspected child abuse or neglect perpetrated by someone who is not a parent, guardian or custodian. Current civil immunity language in the Children's Code applies only to reports where the parent, guardian or custodian is the suspected perpetrator. Reporting these cases often falls to medical professionals who continue to report despite the lack of immunity. Dr. Strickler asserted that providing immunity would protect and encourage providers and others to report suspected abuse. She noted that frequently the identity of a perpetrator is not initially clear.

Dr. Strickler reported that four million children in the United States are reported to child protective services agencies in the United States each year as potential victims of abuse or neglect. Many more children remain at risk for this kind of trauma. The Protective Services Division of the CYFD is reportedly not able to investigate every report in New Mexico due to a lack of resources. Significant risk factors for child abuse and neglect in New Mexico include high rates of poverty and substance abuse, Dr. Strickler said.

Dr. Nienow discussed barriers to treatment, chief among those a lack of providers and a significant lack of mental health resources for children exposed to trauma or abuse. This in turn represents a serious risk factor for poor adult health, mental health issues, risk of becoming an abuser, entry into the criminal justice system and generally becoming a non-functioning member of society. Dr. Nienow also noted that New Mexico continues to rank forty-ninth or fiftieth in the nation for virtually all measures of child well-being. She urged the committee members to take action, quoting Albert Einstein, who defined insanity as doing the same thing over and over again and expecting different results.

Committee members discussed barriers to reporting, and Dr. Nienow said that frequently teachers and school administrators are the individuals making reports. She noted that this

highlights a concern she has for younger children who are in homes where they suffer abuse or neglect but are essentially unseen by those who might report their trauma. One member expressed concern regarding non-reporting by police and others, and Dr. Strickler reported on some of the close connections under development to further a multidisciplinary approach and provide treatment and reporting options.

In response to members' questions, the panelists provided the following clarifications:

- in addition to four years of medical school and subsequent lengthy residencies, Dr. Nienow and Dr. Strickler spent an additional three years of training to become board-certified child abuse physicians;
- Dr. Nienow and Dr. Strickler are the only two board-certified child abuse physicians in New Mexico and two of only 350 in the country;
- one of these two doctors or one of two other providers, including a nurse practitioner and a CYFD staff member, are on call at all times to field child abuse trauma calls from throughout the state;
- few billable codes exist in the current system to cover the unique and critical services that Dr. Nienow and Dr. Strickler provide, although progress is being made in this regard;
- the void in high-level specialty care in New Mexico, particularly in rural areas, is driving a proposed plan to establish the UNM HSC as a regional high-level care center for child abuse trauma;
- it is important to promote collaboration in the investigatory process, as well as multidisciplinary approaches to treatment, so that this care center and the specialty care doctors can reach out to effectively meet needs throughout the state; and
- development of the care center is a long-term initiative and will require approximately $1 million annually to operate.

Committee members discussed possible funding sources for a regional center. One member asked if funds reverting from the CYFD are a possible source of funding. Other state funding sources were also mentioned, including the Land Grant Permanent Fund (LGPF). In reference to the mega-billion dollar "rainy day" LGPF, Dr. Nienow observed that, with respect to child abuse and neglect in New Mexico, "it's raining cats and dogs".

Sexual Assault Prevention and Sexual Assault Examination Kit Update

Representatives from the New Mexico Coalition of Sexual Assault Programs presented an overview of the organization's progress in preventing sexual assault in New Mexico and provided a plan for the coming year. Panelists stated that the road forward should include developing new services for sexual assault survivors and additional services for Native American sexual assault survivors and mandating increased training for sexual assault service providers.

Natasha Torrez, J.D., dean of students, UNM, presented an update on sexual misconduct training for students at UNM. The panelists and members discussed the high incidence of sexual

assault on campus, a survey showing that many students do not feel safe at UNM and the need to continue the sexual misconduct training even if the federal mandate for the training is removed. Panelists and members also discussed a wide range of issues related to the processing of sexual assault kits, including the ongoing backlog in processing kits in Albuquerque.

Recess

The committee recessed at 4:57 p.m.

Friday, September 22

Welcome and Introductions

The meeting was reconvened by Representative Deborah A. Armstrong at 9:17 a.m. Committee members introduced themselves.

Palliative Care and End-of-Life Decisions

Barak Wolff, M.P.H., public health advocate, provided an overview of how end-of-life issues are evolving nationally and in New Mexico. He noted that the right to self-determination is a basic underpinning of the health care system. The Uniform Health-Care Decisions Act, which became law in 1995, gives New Mexicans the right to decide when and where to start and stop care. Although there are no right answers, advance care planning is key to ensuring that individuals' rights are respected at the end of life. Mr. Wolff introduced Nancy Guinn, M.D., hospice and palliative care specialist and medical director, Presbyterian Healthcare Services, Joie Glenn, government relations, New Mexico Association for Home and Hospice Care Services, and Robert L. Schwartz, Esq., emeritus professor of law, UNM School of Law.

Dr. Guinn's remarks focused on the value of palliative care services. Palliative care is designed to provide relief from the serious symptoms of illness, regardless of diagnosis. To be most successful, it should be provided in conjunction with medical treatment. The primary focus of a palliative care approach is to preserve quality of life, Dr. Guinn said. She shared a few stories of patients who received palliative care services, and how the services benefited them. Palliative care promotes important conversations about the future and what patients want in their lives. Care can last for years, while other modes of treatment are pursued. Dr. Guinn identified barriers that keep palliative care from becoming mainstream care, including the lack of information and understanding, reluctance of physicians to offer palliative care, confusion about the difference between palliative care and hospice, and lack of reimbursement. Where programs exist, it usually indicates that a hospital or health system has decided to underwrite these services. She reminded the committee about Senate Bill 173 introduced in the 2017 session, which sought to address these barriers.

Ms. Glenn informed the committee about hospice and hospice providers. Ms. Glenn identified the number of hospices in New Mexico, the regulatory basis for hospices and the services provided by hospices. According to the Kaiser Family Foundation, an estimated 10,000 people received hospice care in New Mexico in 2016, with an average length of stay of 79 days.

She described the various types of hospice care, including in-home, inpatient and respite. She identified the reimbursement models and how the models have evolved over time. Very intensive services are reimbursed at a higher rate, Ms. Glenn said. Information about hospices is now available online at https://www.medicare.gov/hospicecompare. She emphasized the critical importance of family members and caregivers in hospice. Palliative care and home health care can serve as bridge programs until a patient is ready to accept the services that hospice provides. She noted that many people are admitted to hospice very late in the course of their illnesses, which can limit the benefits available to them from these services. Hospice can neither extend nor shorten life; however, fear, misunderstanding and rejection about end-of-life expectancy are barriers to fully realizing the benefits of hospice.

Mr. Schwartz noted that, among other professional work, he teaches in California, which has allowed him to learn about California's End of Life Option Act. He recognized the importance of the other three panelists for their contributions to end-of-life options in New Mexico. He spoke about aid in dying, an issue that the New Mexico Supreme Court requested the legislature to consider. He announced that a symposium is scheduled for Saturday, September 23, 2017, to consider constitutional and legal issues about aid in dying, as well as the role of state supreme courts on this topic. He noted that the debate about this issue includes a wide variety of opinions based on religion, values and personal experiences. He contends that aid in dying is different from assisted suicide and euthanasia. Euthanasia is not legal and not permitted in this country, he said. Assisted suicide implies the need to find an end for a desperate situation, and, generally, it does not include supportive family involvement. Aid in dying is an approach that promotes a decision that is made together with loved ones and one's physician to support compassion and choices for self-determination.

Questions and comments from committee members covered the following issues:

- potential issues that should be considered in New Mexico based on California's experience should include that:
    - California's law is modeled after Oregon's model;
    - the primary problem is that people who desire access to aid in dying are not able to gain access to it;
    - barriers appear to be mostly the result of risk-management issues; and
    - the single biggest barrier is a 15-day waiting period before one can get access to aid in dying; this is too long of a time frame, and many people die before the waiting period elapses;
- whether aid-in-dying initiates an ethical and moral slippery slope; no, rigorous requirements exist in states with aid in dying laws to prevent this;
- an observation that aid-in-dying laws require people to prove that they have decisional capacity and that they have the ability to self-administer medication;
- emphasis that aid in dying is voluntary for both patients and providers;

- whether the prescribed medication is one that can be used for other conditions; no, it would be obvious to a pharmacist that the prescription as written was only for the purpose of aid in dying;
- concern regarding allowing institutions to opt out based on a religious or ethical basis;
- whether palliative care is available in rural areas; Presbyterian Healthcare Services is working to expand the service in rural communities, and it now offers these services in Espanola;
- whether there is an end-of-life deadline in palliative care, as there is in hospice; no, the reason hospice has a six-month deadline is because that is the way Medicare created the benefit;
- what the age is for aid in dying; generally, it is 18 years of age; additionally, a diagnosis of a terminal illness is required;
- how long it takes for a person to die after ingesting the prescribed medication; it varies, but generally it takes about 30 minutes for a person to fall asleep and into a coma;
- notice that there is a movie on this topic called *How to Die in Oregon*;
- whether Narcan can be used to reverse the medication; no, the medication is a barbiturate, not an opioid;
- what states now permit aid in dying; Oregon, Washington, Montana, Colorado, California, Vermont and the District of Columbia; some states have allowed it through a ballot measure and some through statute;
- whether it is known if people travel to a state to be able to obtain access to aid in dying; it is known anecdotally;
- a request to identify positive parts of the laws from other states for New Mexico to incorporate into its law regarding:
    - decisional capacity and steps to ensure that no coercion can occur;
    - a provision to require serious interviews between a physician and a patient to ensure sound decision making;
    - a two-day waiting period before the prescription can be filled;
    - a requirement for two practitioners to include an advanced practice practitioner in addition to a physician; and
    - giving as much authority as possible to the physician and patient acting together in coming to a decision;
- whether and how hospice and palliative care could be incorporated in aid in dying; palliative care allows participation based on practitioner individual choices; hospices can support a patient's choice; this is being clarified in law;
- whether a law should permit a hospice to decline to support aid in dying; experience in Oregon shows that well over 90% of the time, patients pursuing aid in dying are already enrolled in hospice;
- an observation that in Colorado, the situation of a hospital system that has prohibited its physicians from participating in aid in dying is soon to be litigated;
- an observation that end-of-life circumstances are not always straightforward;
- a call for more public education regarding all of these issues;

- clarification regarding the percentage of people who fill prescriptions and who carry through and take the prescription; around 60% to 65% of those with prescriptions use them; this does not include those who begin the aid-in-dying process but die prior to being able to obtain the prescription;
- whether there have been follow-up surveys in states that have aid-in-dying laws; yes, generally, support for aid in dying is increasing over time;
- whether physician assistants and nurse practitioners in New Mexico have adequate prescriptive authority to engage in aid in dying; yes;
- clarification about suicide as a crime; in New Mexico, suicide is not a crime, but assisted suicide is a crime; this would need to be addressed in an aid-in-dying bill;
- clarification about the drugs that are used for aid in dying; a consistent element is that the patient must be capable of self-administration of the drug;
- whether minorities have less access to aid in dying where laws exist; data support this; however, the reasons are not fully understood;
- the importance of respecting religious and cultural influences in decision making; and
- a repeated observation that the issue of aid in dying is not, and should not be, a political issue.

Public Comment

Adrienne Dare told a story about her mother's experience of aid in dying in Oregon. She observed her mother practicing her ability to drink and swallow, and practicing the words she wished to say to her family when the time came.

Maya Distasio told a story about her grandfather and his journey to death. She described the physical pain as well as the pain of the loss of his independence and the knowledge that he would die before seeing loved ones again. His actual death process was very painful, leading him to choose violent suicide. He left behind a note explaining his personal decision to end his life due to the intolerable nature of his condition. Ms. Distasio's view is that what one does with one's own body and fate should be allowed. Legal aid in dying would have been a much more respectful option for him.

Elaine Brightwater expressed thanks for all of the work done during the previous legislative session on this issue, including allowing nurse practitioners to participate in aid-in-dying actions.

Sandra Adondakis, American Cancer Society, spoke to the importance of increasing access to palliative care in New Mexico. She is part of an American Cancer Society initiative to work on this issue. She supports an ongoing advisory council on palliative care and the establishment of an educational clearinghouse.

Nat Dean described her reasons for desiring the ability to make a personal choice for aid in dying. She told the story of her father and his struggle with terminal cancer and his ultimate suffocation. She believes a person who has decided it is time to die should not have to suffocate.

Lisa Rossignol, a member of the disability community who has a daughter with disabilities, expressed appreciation to the LHHS for its decision to send a letter to Dr. Roth regarding the 50% cost-sharing issue. She also urged the committee to look carefully at MCOs that take actions that create a difficult environment and limit access to care. She is opposed to the imposition of copayments in Medicaid. She is opposed to aid in dying and supports palliative care and hospice care instead.

Revathi A-Davidson expressed the reluctance of most people to talk about end-of-life wishes. She described the goals of a conversation project and its value for society. She noted that a website contains many resources, including a starter kit, to promote use of conversations.

Janice Wilson is very much in favor of aid in dying. She contends that there are questions raised by people with whom she discusses this topic, such as, "What do I do if I have a debilitating, but not terminal, disease?" and "What happens to my advance directives if I develop dementia?". These questions should be addressed in legislation to establish access to aid in dying.

Elizabeth Whitefield, a retired district court judge, had to retire because she has terminal breast cancer. She implored the committee members to do whatever it takes to pass aid-in-dying legislation.

Libby Hopkins, a hospice and palliative care nurse, shared a story about a patient that led her to support aid-in-dying legislation.

Sharon Schaefer described the loss of her sister and her belief that at the very end of life, many people share the strong emotion to "get this over with".

Nancy Abel shared the story of her brother-in-law who was diagnosed with a very aggressive cancer. He lived in Oregon at the time and took advantage of Oregon's Death with Dignity Act. She and her husband were able to be present at his death and observe the grace with which he died. His peaceful death took only 20 minutes, and he was surrounded by family.

The chair thanked all of the audience members and all of those who provided public testimony. She thanked the committee members and said she is committed to continuing to try to get aid-in-dying legislation passed.

Adjournment

There being no further business, the fourth meeting of the LHHS for the 2017 interim was adjourned at 12:40 p.m.

Revised: October 2, 2017

TENTATIVE AGENDA
for the
FIFTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 4, 2017
Standing Rock Chapter House, Indian Service Route 7021, Crownpoint, NM 87313
Standing Rock

Wednesday, October 4 — Joint Meeting with the Indian Affairs Committee

10:00 a.m. **Call to Order**
—Representative Elizabeth "Liz" Thomson, Member, Legislative Health and Human Services Committee
—Senator John Pinto, Co-Chair, Indian Affairs Committee

10:15 a.m. (1) **Welcome and Status Update**
—Johnny Johnson, President, Standing Rock Chapter, Navajo Nation

11:15 a.m. (2) **Native American Public Health, Workforce and Community Health**
—Nathania Tsosie, M.C.R.P., Associate Director, Center for Native American Health, University of New Mexico Health Sciences Center (UNM HSC)
—Norman Cooeyate, Cultural Engagement Liaison, UNM HSC

12:30 p.m. **Lunch (provided)**

1:30 p.m. (3) **Tribally Managed Medicaid Managed Care**
—Mark Freeland, Executive Staff Assistant, Navajo Nation Office of the President and Vice President
—Yvonne Kee-Billison, Executive Staff Assistant, Navajo Nation Office of the President and Vice President
—Juan Massey, Executive Staff Assistant, Navajo Nation Office of the President and Vice President
—Travis Renville, Medicare and Medicaid Managed Care Consultant

2:30 p.m. (4) **Comments on Centennial Care 2.0**
—Erik Lujan, All Pueblo Council of Governors

3:30 p.m. (5) **Public Comment**

4:00 p.m. **Adjourn**

MINUTES
of the
FIFTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 4, 2017
Standing Rock Chapter House
Indian Service Route 7021, Crownpoint, NM 87313
Standing Rock

The fifth meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on October 4, 2017 at 10:15 a.m. by Senator John Pinto, co-chair, Indian Affairs Committee, and the LHHS chair for the day, Representative Elizabeth "Liz" Thomson. The LHHS met jointly with the Indian Affairs Committee at the Standing Rock Chapter House in Standing Rock.

Present
Rep. Elizabeth "Liz" Thomson

Absent
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong
Rep. Rebecca Dow
Sen. Mark Moores
Sen. Bill B. O'Neill
Sen. Cliff R. Pirtle

Advisory Members
Rep. Miguel P. Garcia
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman
Rep. Christine Trujillo
Rep. Joanne J. Ferrary
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. Linda M. Lopez
Rep. Rodolpho "Rudy" S. Martinez
Sen. Mary Kay Papen
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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.

Wednesday, October 4

Senator Pinto convened the committees at 10:15 a.m. Clinton Jim, community member and rancher, was invited to offer an invocation. Mr. Jim offered a prayer in the Diné language. The committee members and staff introduced themselves. Representative Thomson identified herself as the appointed chair for the LHHS this day, then turned the chairmanship over to Representative D. Wonda Johnson, whose home chapter is Standing Rock, to conduct the business of the joint meeting.

Welcome and Status Update

Johnny Johnson, president, Standing Rock Chapter, Navajo Nation, greeted the members of both committees and welcomed them to Standing Rock. He provided some personal information about his role in Standing Rock and introduced some key members of his staff. He acknowledged members of the community who were present in the audience and offered a brief history of the establishment of the Standing Rock Chapter and house. President Johnson recognized the legislators and thanked them for their past support, noting that they would be presented with funding requests in the 2018 legislative session. He highlighted some future projects, including the placement of water lines and increased housing. He expressed thanks to Representative Johnson for facilitating the meeting at Standing Rock and recognized Senator Pinto and Senator Benny Shendo, Jr.

Senator Pinto introduced himself and his granddaughter, Shannon Pinto. Representative Johnson introduced her mother, Marie A. Johnson, and welcomed her. Representative Johnson continued to introduce key members of the community throughout the day.

Native American Public Health, Workforce and Community Health

Nathania Tsosie, M.C.R.P., associate director, Center for Native American Health, University of New Mexico (UNM) Health Sciences Center (HSC), and Norman Cooeyate, cultural engagement liaison, UNM HSC, were invited to address the committees. Ms. Tsosie thanked the members of the chapter in both English and Navajo. Mr. Cooeyate likewise expressed thanks, especially acknowledging Senator Pinto for his long service to the legislature.

Ms. Tsosie described the mission and vision of the Center for Native American Health and identified key staff members. She highlighted the model for American Indian (AI) student development that is employed at the center. The primary goals are to promote employment and to help prepare Native American communities to accept students back into the community following graduation. Mr. Cooeyate presented demographics regarding AI students currently enrolled at UNM. He noted that there is an increasing trend, particularly among AI women graduating with baccalaureate degrees, with graduation rates exceeding the general population. Ms. Tsosie offered a breakdown of the health care disciplines chosen by the 119 AI students enrolled in 2016-2017, noting that 19 are medical students in the pipeline to become doctors. This year, there are six students in the UNM Combined BA/MD Degree Program who are poised to enter medical school next year. One AI student will graduate this year with a pharmacy

degree. The nursing program is the largest program offered through the center and has 40 students pursuing bachelor's degrees and four students pursuing doctoral degrees in nursing.

Mr. Cooeyate described the importance of honoring all of the graduates. He described a special program in place at the undergraduate level that is designed to expose high school students to the potential for a career in medicine and to prepare them for success in college, both socially and academically. A multilevel system of support connects community members with an Indian support center, cultural connectedness, research and mentorships. Various community-based educational initiatives were described. Efforts are made to not only encourage educational pursuits but to help students retain their connections with their home communities and preserve the likelihood that they will return. Attention is paid to health disparities in communities.

Ms. Tsosie spoke about the center's focus on AIs in the areas of physical and behavioral health. Healthy Children, Strong Families is a community-based intervention aimed at improving the health of AI children aged two to five. A second study being conducted is exploring tribal solutions to address adverse childhood experiences (ACEs). This project is looking at the importance of a resilience-based approach to preventing ACEs in tribal communities.

Questions and comments from committee members addressed the following:

- the extent to which communities are prepared to incorporate graduating students back into their communities; some are better prepared than others, but the center is intentionally working with communities in a wide variety of ways;
- the importance of closely following AI students as they transition from very small communities to larger academic settings;
- the percentage of graduating students who serve Native American populations after graduation; about one in three graduating students goes back to the reservation;
- encouragement to expand the summer intern program; the program is part of a larger initiative at the Santa Fe Indian School and is not under the control of the center;
- encouragement to collaborate with community colleges and other UNM branches;
- clarification regarding the graduation rate; AI students face many challenges, such as financial stress and other family and community obligations, but the rate of graduation appears to be higher than the general public;
- whether there is any anticipated impact from the consideration of the federal Patient Protection and Affordable Care Act (PPACA) on the work and programs of the center; the impact would be more upon those Native Americans who now have access to health care services as a result of the PPACA; the center is not directly funded as a result of the PPACA;
- whether AI students who are participating in health care programs in public and charter schools are matriculating at UNM; those data are not tracked;
- whether there is any collaboration with the Burrell College of Osteopathic Medicine; not now, but there is interest;

- recognition of the importance of the UNM Combined BA/MD Degree Program in encouraging participation of minority populations in underserved areas;
- whether there is alignment between the number of graduates in health care programs and the needs of communities; specific data are not available in that area yet; however, tribes and pueblos report needs in all areas;
- clarification regarding a discontinued program at the Shiprock campus of Diné College; it was discontinued due to inadequate bandwidth to support online learning; efforts to upgrade the system were local;
- whether that online program could be instituted; the road map is there; however, a local contact is needed; and
- concern about unmet needs for health care access for Navajo people in Gallup.

Pastor Foerster, Bible Baptist Shepherd Church of Standing Rock, offered a prayer before lunch.

Tribally Managed Medicaid Managed Care

Representative Johnson turned the chairmanship over to Representative Thomson, appointed chair of the LHHS.

Mark Freeland, executive staff assistant, Navajo Nation Office of the President and Vice President, introduced Yvonne Kee-Billison, executive staff assistant, Navajo Nation Office of the President and Vice President, Juan Massey, executive staff assistant, Navajo Nation Office of the President and Vice President, and Travis Renville, Medicare and Medicaid managed care consultant. The panel presented the plan and efforts to establish a tribally managed Medicaid managed care organization (MCO).

Mr. Freeland began by identifying the two components of the project: policy and development. Work on the project began in May. He provided an overview of the characteristics of the Navajo Nation, which has 187,000 members, 47% of whom live in poverty. Chronic liver disease, diabetes, heart disease, cancer and injuries characterize the top five health issues of the Navajo Nation. The work on the project began with the invitation of the Human Services Department (HSD) to address health issues. In June, the HSD held a tribal consultation to obtain input on Centennial Care 2.0 that included broad representation from the Navajo Nation's health care system. In August, representatives met with Secretary of Human Services Brent Earnest regarding their intention to submit their own application for a Medicaid 1115 waiver to the federal Centers for Medicare and Medicaid Services (CMS).

Ms. Kee-Billison noted that in 2013, the Navajo Nation was authorized to engage in a study, resulting in a Medicaid task force to look at the feasibility of starting its own MCO. Steps to align and structure a system to better serve the health needs was then discussed with three states and the 638 tribes, and many important discussions are occurring regarding the varied health and aging needs among Navajos.

Mr. Massey described his professional background that led him to involvement in this project. Section 17 of the federal Indian Reorganization Act provided a framework for a business model for economic development within the Navajo Nation and is a vehicle that can be used to develop an Indian MCO. A formal charter has been created and signed off on by the president of the Navajo Nation. The charter is currently awaiting authorization by the CMS.

Mr. Renville is serving as a consultant to explore ways to make Medicaid programs work on the Navajo Nation. He has done research on Indian country managed care; previous efforts in other locations failed due to lack of reliable financing mechanisms, critical mass of members and adequate net worth. The 1115 waiver renewal concept paper encouraged a tribal partnership to manage Medicaid. The company is being structured to meet Office of Superintendent of Insurance and CMS requirements. The federal American Recovery and Reinvestment Act of 2009 provides language affirming the right of tribes to establish their own MCOs and limit membership to members of the tribes, which is the goal here in New Mexico. Meetings are continuing with the HSD and Medicaid representatives, with favorable support. A draft document is now going out for comment and will be considered at another tribal consultation.

Committee members had questions and comments covering the following areas:

- ways in which the MCO project potentially impacts other tribes in New Mexico; it will be Navajo specific, but at the request of the HSD, it would be open to other tribes and nations;
- clarification about the upcoming October 20 tribal consultation; it will cover the waiver renewal application that the HSD will be submitting to the CMS;
- clarification regarding the options for individual Native Americans to enroll; this Native American MCO will appear as an option for enrollment for all Native American members;
- ways in which Native Americans will be incentivized to join this MCO; through marketing and value-added benefits that are specifically targeted to Native Americans; additionally, the model will incorporate Navajo and other cultural competencies;
- whether traditional healing methods will be offered in addition to allopathic medicine; yes, that is the intent; one MCO hopes to implement specific metrics to demonstrate the effectiveness of these approaches;
- recognition of the serious challenges in creating a model that will serve the health needs of a very diverse population;
- whether the state will benefit from a model such as this and in what ways; the state and the tribes are working together to improve the health of all nations; communications and relationships are improved; additionally, great economic benefit is anticipated;
- a suggestion that the LHHS write a formal letter of support for the concept to the CMS; there was a request to consider this in November when the request for proposals (RFP) closes;

- recognition of the importance and efficacy of traditional Native American healing methods;
- a request to reconsider the proposal again at a future Indian Affairs Committee meeting when it is possible to be more open about the details of the project;
- clarification regarding when to expect notification from the HSD on approval of the concept; it is hoped that by February 18, 2018, a contract can be signed; the HSD must conduct a readiness review prior to final rollout in January 2019;
- the number or percentage of Native Americans who currently opt out of managed care; about 80,000 of 136,000 currently choose fee-for-service Medicaid;
- the number or percentage of Native Americans who qualify for Medicaid due to the expansion; it is not specifically known, but it is a lot;
- a request for the statistics regarding poverty and prevalent diseases to be provided; Mr. Freeland said that a copy of the response to the HSD's concept paper will be provided;
- how a Native American MCO will be able to serve populations in very rural areas on the reservations; this is a concern that is being addressed; partnerships with UNM and the use of telehealth will help;
- a concern that profits are often generated at the expense of care; and
- clarification regarding the competitive nature of the RFP process.

Comments on Centennial Care 2.0

Erik Lujan, All Pueblo Council of Governors, provided input on the proposed renewal of the Centennial Care waiver. The All Pueblo Council of Governors has positions on individual tribal sovereignty; eligibility; fee-for-service versus managed care; information and data; leveraging of existing resources and relationships; joint ventures, partnerships and contractual agreements; and building a health system and network.

Mr. Lujan noted that a large percentage of Native Americans, mostly in very rural areas, are on Medicaid. As was identified in the previous panel, a great number of enrollees currently choose fee-for-service. He identified the pros and cons of each option. Comments on each of the areas of concern were provided to the HSD during the comment period.

Mr. Lujan offered some feedback on the proposal for a Native American MCO by identifying potential hurdles and benefits of such an approach. He noted that one benefit could be the ability of the state to obtain a 100% federal match on some services provided to Native Americans outside of Indian Health Service (IHS) hospitals as more tribal members elect to enter a managed care environment.

Mr. Lujan concluded with the following key points: 1) tribes should have the individual right to undertake managed care within their own boundaries and on their own terms; 2) the fee-for-service program must be sustained until tribes can demonstrate expertise in managing care in a new framework; 3) change must be navigated and administered in a way that maintains sovereignty; 4) the pueblos will continue to support the PPACA, the federal Indian Healthcare

Improvement Act and Medicaid expansion; and 5) pueblos will continue to oppose the elimination of retroactive eligibility, dental services as a buy-in and transitional Medicaid.

Questions and comments were offered regarding clarification of the location of IHS hospitals; this is ever changing; many IHS hospitals no longer provide inpatient services.

Public Comment

Felda Yazzi, a lifelong resident of Standing Rock, expressed her great appreciation to Representative Johnson for bringing the committees to this community. She strongly advocated for continued support for early childhood programs.

President Johnson reiterated that he will be bringing capital outlay requests to the legislature for the 2019 fiscal year. He also spoke favorably about Head Start programs.

Adjournment

There being no further business, the meeting was adjourned at 3:35 p.m.

Revised: October 12, 2017

TENTATIVE AGENDA
for the
SIXTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 16-17, 2017
State Capitol, Room 322
Santa Fe

October 18, 2017
Joint Meeting with the Courts, Corrections and Justice Committee
John E. Brown Juvenile Justice Center
5100 Second St. NW
Albuquerque

Monday, October 16 — State Capitol, Room 322

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee (LHHS)
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (1) **Electronic Visit Verification for Medicaid Personal Care Services**
—Nancy Smith-Leslie, Director, Medical Assistance Division, Human Services Department (HSD)
—Angela Medrano, Deputy Director, Medical Assistance Division, HSD
—Meggin Lorino, Executive Director, New Mexico Association for Home and Hospice Care
—Quinn Glenzinski, Director, Network Options, Government Programs, Blue Cross and Blue Shield of New Mexico
—Jentry Hinton, M.B.A., Director, Long-Term Care Clinical Operations, Presbyterian Health Plan
—Chuck Milligan, Chief Executive Officer, UnitedHealthcare Community Plan of New Mexico
—Sherwin Price, Program Manager, Healthcare Services, Molina Healthcare of New Mexico
—Ron Patterson, President, Mobility Exchange

11:00 a.m. (2) **Public Comment**

11:30 a.m. **Lunch**

1:00 p.m. (3) **KIDS COUNT**
—Amber Wallin, M.P.A., Director, KIDS COUNT, New Mexico Voices for Children (NMVC)
—Bill Jordan, Senior Policy Advisor and Government Relations Officer, NMVC

3:00 p.m. (4) **Update on Child Protective Services**
—Monique Jacobson, Secretary, Children, Youth and Families Department
—Kelly Klundt, Senior Fiscal Analyst, Legislative Finance Committee (LFC)
—Jon Courtney, Ph.D., Program Evaluator, LFC

5:00 p.m. **Recess**

Tuesday, October 17 — State Capitol, Room 322

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, LHHS
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (5) **Grandparents Raising Grandchildren: Reporting Pursuant to Senate Memorial 92 and House Memorial 58 (2017 Regular Session)**
—Liz McGrath, Esq.

10:30 a.m. (6) **Rights of Preschoolers with Disabilities; Preschool Behavioral Support Project**
—Matthew Bernstein, Esq., Staff Attorney, Pegasus Legal Services for Children
—Claire E. Dudley Chavez, Executive Vice President for Policy and Stakeholder Engagement, United Way of Santa Fe County

12:00 noon (7) **Public Comment**

12:30 p.m. **Lunch**

2:00 p.m. (8) **African American Infant Mortality and Maternal Health Report**
—Sunshine Muse, Pilot Project Manager
—Rongal Nikora, Ph.D., Lead Research Consultant
—Yvette Kaufman-Bell, Executive Director, New Mexico Office on African American Affairs

3:30 p.m. (9) **Medical Cannabis: Applications, Testing, Proposed Program Changes**
—Kenny Vigil, Director, Medical Cannabis Program, Department of Health
—Jessica Gelay, Policy Manager, Drug Policy Alliance
—Kathleen O'Dea, J.D., M.S., Owner and Director, Scepter Laboratories
—Jason Barker, Organizer and Patient, LECUA Patients Coalition of New Mexico
—TBD, Steep Hill Labs

5:00 p.m. **Recess**

Wednesday, October 18 — John E. Brown Juvenile Justice Center, Albuquerque: Joint Meeting with the Courts, Corrections and Justice Committee (CCJ)

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, LHHS
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS
—Senator Richard C. Martinez, Co-Chair, CCJ
—Representative Gail Chasey, Co-Chair, CCJ

9:10 a.m. (10) **Tour — Bernalillo County Youth Services Center**

10:00 a.m. (11) **Welcome — Bernalillo County Youth Services Center — Juvenile Detention Alternative Initiative**
—Craig Sparks, Director, Bernalillo County Youth Services Center

10:45 a.m. (12) **Update on Improving Outcomes for Youth Statewide — Juvenile Justice Initiative in New Mexico**
—Nancy Arrigona, Research Manager, the Council of State Governments Justice Center (CSGJC)
—Nina Salomon, Project Manager, CSGJC

12:15 p.m. (13) **Working Lunch — Molina Healthcare and Bernalillo County Metropolitan Detention Center — Medicaid Pilot Project**
—Amir Wodajo, Director of Case Management and Behavioral Health, Molina Healthcare of New Mexico

1:30 p.m. (14) **Health Care and Medical Personnel in Corrections**
—TBD, Corrections Department

3:00 p.m. (15) **Breastfeeding and Incarceration**
—Sarah Gopman, M.D., Assistant Medical Director, Milagro Outpatient Clinic
—Lissa Knudsen, M.P.H., Board Chair, New Mexico Breastfeeding Task Force
—Candice Rae Padilla, B.P.C., I.B.C.L.C., Board Member, New Mexico Breastfeeding Task Force

4:15 p.m. (16) **Public Comment**

4:45 p.m. **Adjourn**

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

October 16-17, 2017
State Capitol, Room 322
Santa Fe

October 18, 2017
Joint Meeting with the Courts, Corrections and Justice Committee
John E. Brown Juvenile Justice Center
5100 Second St. NW
Albuquerque

The sixth meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on October 16, 2017 by Representative Deborah A. Armstrong, chair, at 9:16 a.m. in Room 322 of the State Capitol. A quorum was present.

Present
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong (10/18)
Rep. Rebecca Dow
Sen. Bill B. O'Neill
Rep. Elizabeth "Liz" Thomson

Absent
Sen. Mark Moores
Sen. Cliff R. Pirtle

Advisory Members
Rep. Miguel P. Garcia
Sen. Linda M. Lopez
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Mary Kay Papen (10/17, 10/18)
Sen. Nancy Rodriguez
Rep. Angelica Rubio (10/18)
Rep. Nick L. Salazar
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman (10/18)
Rep. Christine Trujillo (10/18)

Rep. Joanne J. Ferrary
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Patricia Roybal Caballero

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

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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.

Monday, October 16

Welcome and Introductions
Committee members and staff introduced themselves.

Electronic Visit Verification for Medicaid Personal Care Services
Nancy Smith-Leslie, director, Medical Assistance Division, Human Services Department (HSD), provided an overview of Electronic Visit Verification (EVV), beginning by describing what EVV is. She provided a time line of decision making for the implementation of EVV. The goal of EVV is to strengthen and monitor personal care services (PCS) and long-term services and supports in the Medicaid program. Ms. Smith-Leslie delineated the requirements for managed care organizations (MCOs) to implement EVV. Implementation has presented certain problems of compliance for both providers and MCOs, Ms. Smith-Leslie said. After numerous meetings with all stakeholders, three different options were identified that MCOs can use to meet EVV requirements.

Angela Medrano, deputy director, Medical Assistance Division, HSD, told the committee that caregivers can use a member's landline, their own cell phones or a tablet issued by the MCO to accomplish the required reporting. Stakeholders in EVV implementation include First Data, Mobility Exchange and AuthentiCare, which are commercial companies that must partner with both MCOs and providers to achieve full implementation of EVV. Ms. Medrano described new federal requirements that establish deadlines for implementation of EVV by January 1, 2019. Fortunately, New Mexico is ahead of schedule with implementation, Ms. Medrano said.

The perspective of MCOs was presented by Quinn Glenzinski, director, Network Options, Government Programs, Blue Cross and Blue Shield of New Mexico; Jentry Hinton, M.B.A., director, Long-Term Care Clinical Operations, Presbyterian Health Plan; Chuck Milligan, chief executive officer, UnitedHealthcare Community Plan of New Mexico; Sherwin Price, program manager, Healthcare Services, Molina Healthcare of New Mexico; and Ron Patterson, president, Mobility Exchange. Mr. Glenzinski emphasized that an unprecedented level of cooperation among MCOs occurred in implementing the EVV program. Pilot projects preceded full implementation, which enabled fine-tuning of the program to ensure the ability of providers and caregivers to meet HSD requirements. Provisions and technical support to address

lack of electronic connection issues were developed. Training was provided both on-site and at professional meetings, Mr. Glenzinski said.

Meggin Lorino, executive director, New Mexico Association for Home and Hospice Care (NMAHHC), identified ways in which the association facilitated conversations with the HSD, the MCOs and others to find ways to work toward implementation and resolve difficulties that had been experienced. She asserted that although EVV will never be perfect, she believes that the NMAHHC has the full support and commitment of the MCOs and the HSD.

Questions and comments from committee members addressed the following areas:

- whether additional expenses have been incurred during the implementation of the EVV program; extra personnel have been hired by providers; MCOs have incurred technical and capital expenses, primarily through the provision of electronic tablets to providers who need them;
- identification of ongoing needs; providers would appreciate additional training, especially regarding technical issues that arise;
- whether caregivers have enough flexibility to provide needed services under EVV; schedules for caregivers are specified in the care plan;
- clarification regarding federal expectations and audit requirements; a future audit is anticipated in 2019 on EVV implementation;
- clarification regarding the selection of contractors and whether it is working well; EVV vendors were selected by MCOs through a collaborative process; MCOs are mostly satisfied with the choices;
- clarification about how administrative costs are determined among MCOs, particularly with electronic tablet distribution; an agreement on how to accomplish this was reached during the initial collaborative process;
- whether early implementation has been worth the effort; yes; it has been valuable, given that New Mexico has an unusually high rate of use of PCS;
- clarification regarding how New Mexico is serving significantly more people without a concurrent increase in cost; fewer hours of care per week are needed;
- how issues of lack of cell phone coverage have been addressed; Verizon assisted with some system enhancements; procedures are in place that permit driving to a "hot spot" to obtain coverage;
- clarification regarding an "exception" process, whereby a provider may bypass EVV reporting requirements; exceptions may be submitted on paper under certain circumstances;
- clarification regarding recoupment of reimbursement for improper claim submission; grace periods were extended when problems surfaced; MCOs are auditing claims regularly and working with providers; additional training is being provided regarding appropriate documentation to support exceptions;
- a statement that the ultimate goal of EVV is to ensure that members get the hours of care to which they are entitled; EVV is a mechanism to demonstrate this; and

- whether a provider appeals process is available; yes.

Representative Thomson requested additional comments from Katy Unna, Independent Living Resource Center, to offer a provider's perspective. Ms. Unna noted that the center has incurred substantial additional administrative costs in implementing EVV, without much evidence that any benefit has been realized for members. She believes that EVV does not reduce fraudulent practices. There are numerous cumbersome details that are difficult to implement. Ms. Unna feels that the EVV program is not effective. She also asserted that reductions in hours for members have resulted in members not receiving adequate services.

Questions for Ms. Unna and Ms. Lorino covered the following areas:

- ways in which providers can have input into the process. The NMAHHC has offered multiple training sessions, and members have had ample opportunities;
- whether New Mexico would lose federal funds by not implementing EVV; yes; and
- an observation that there may be opportunities to improve implementation.

Questions and comments from all members of the panel continued as follows:

- clarification regarding legitimate reasons for leaving the "geo fence"; though there are legitimate reasons, MCOs are looking for evidence that caregivers are clocking in and out and that they are not leaving the geo fence area an inappropriate number of times;
- an observation that MCOs also have the ability to see in real time when caregivers leave the geo fence and where caregivers are, which allows MCOs to follow up to determine that members are receiving the services for which they are approved;
- an observation that EVV enables providers to identify which caregivers are the most reliable and accountable;
- whether other states have begun the implementation process and the extent to which New Mexico serves as a model for those states; New Mexico is a model in terms of the collaborative process by which MCOs have worked together; MCOs are working with the NMAHHC on ongoing training initiatives; and
- a recommendation that providers continue to be assertive in identifying and following up on EVV implementation issues.

Approval of Minutes

There being a quorum present, the chair requested a motion to approve the minutes of the fourth and fifth meetings of the LHHS for the 2017 interim. A motion was made and seconded and the minutes were unanimously approved. The chair noted that a letter to Paul Roth, M.D., chancellor for health sciences, University of New Mexico (UNM) Health Sciences Center, had been included in the packet. Committee members asked whether additional questions posed to Dr. Roth had been asked; the answer was yes; however, no reply has been received.

Public Comment

Ellen Pinnes, representing The Disability Coalition, contended that Ms. Unna's testimony is an indication that the HSD has not been diligent in obtaining input from all stakeholders. She also commented that it is permissible for members to receive services outside of their homes, which should be recognized and promoted. She commented that the reduction in the number of hours of service is often arbitrary and does not necessarily reflect a member's needs. Senator Ortiz y Pino noted that in the Centennial Care 2.0 waiver application, care coordination is being proposed to devolve to the providers, who have a better idea of need. He also commented that a public hearing on the waiver has now been scheduled in Albuquerque.

KIDS COUNT

Amber Wallin, M.P.A., director, KIDS COUNT, New Mexico Voices for Children (NMVC), noted that New Mexico's data shows a ranking of forty-ninth in the nation in child well-being. New Mexico's working families are facing major challenges due to a very high rate of poverty. She noted that the majority of children in New Mexico are living in poverty, with 13% of New Mexico children living in deep poverty. This has a profound impact on education, with data showing that only 85% of poor children are reading at grade level by fourth grade. Food insecurity is also a big factor in all outcomes, Ms. Wallin said. More New Mexico children experience trauma compared to the rest of the nation. Ethnic disparities also contribute to overall disparities. Ms. Wallin said that in light of all of this bad news, it is important to remember that policies that make children a priority do make a difference in the state, and New Mexico has seen progress. Thirty-one thousand more children have health insurance; 4,100 children have access to pre-K programs; 3,800 receive home visiting; and reductions are being seen in teen drug use and birth rates among teens.

Bill Jordan, senior policy advisor and government relations officer, NMVC, noted that New Mexico's tax system disproportionately affects low- and middle-income people. Current tax policy in the state has favored business without the hoped-for results in job creation. Recommended tax reform measures that would help families have been proposed, Mr. Jordan said. Mr. Jordan also identified several measures that would have a positive effect on the economy with no cost to the General Fund, including increasing the minimum wage, enacting paid sick leave and expanded family medical leave, ending predatory lending practices and investing a portion of the Land Grant Permanent Funds (LGPF) in early childhood care and education. Current funding is only addressing the care and education needs of a fraction of New Mexico's children. Had the legislature passed the constitutional amendment to invest a portion of the LGPF in early childhood education, the LGPF would be only fractionally smaller; however $1 billion would have been spent to improve the lives of children, Mr. Jordan said. Mr. Jordan believes that a major impact from that investment would have been realized.

Two additional priority areas for NMVC include fully funding child abuse prevention and maximizing enrollment in Medicaid and the Supplemental Nutrition Assistance Program through simplification of the enrollment process and through fully funding the programs.

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

- clarification regarding what steps can be taken to address food insecurity among children; measures that put more money in the pockets of families so that they can buy more food are critical; the after-school meal program, funded by the United States Department of Agriculture, is not being fully utilized;
- recognition that children are not the only ones affected by hunger; there are many elderly people also experiencing food insecurity;
- recognition that Louisiana implemented a tax credit program that could serve as a model for New Mexico to enhance early childhood and home visiting programs;
- clarification of the assertion made by the New Mexico Municipal League that the lowest-income families would not be affected by a reinstatement of the food tax; NMVC does not agree with this assertion but surmised that it may be based on an assumption that SNAP benefits are not taxed;
- recognition that children and the elderly often end up competing for social services dollars;
- recognition that proposals that have no General Fund impact, such as an increase in the minimum wage, can still have a large impact on small local businesses;
- an observation that an investment in the workforce should be a specific requirement of any approach to increase investment in children's programs;
- a request for more information from the Legislative Finance Committee (LFC) about increases in funding for early childhood education; Kelly Klundt, senior fiscal analyst, LFC, reported that, in recent years, funding has increased by approximately $100,000 and the number of children enrolled has increased by approximately 2,500;
- what the impact would be of a failure to pass federal Children's Health Improvement Program reauthorization; the HSD would need an additional $31 million to fund the program without federal dollars;
- recognition that the previous proposal to invest a portion of the LGPF in children's programs contained protections to prevent the depletion of the LGPF;
- clarification regarding when the NMVC conference is occurring in Las Cruces; November 9, 2017;
- recognition that most early childhood education workers are paid no more than workers in fast food businesses;
- a request for identification of the one item that would have the biggest impact for children; Ms. Wallin said that increased state investment, in addition to federal funds, in early childhood care and education programs is the single most important focus; Mr. Jordan opined that an override of either the funding veto of $350 million for children's programs or an override of the veto of the increase in the minimum wage would have the largest impact on children;
- a suggestion that funds for early childhood programs should be earmarked, and the possibility of using either the LGPF or recreational marijuana regulation proceeds for children's programs should gain legislative approval; and

- recognition of the impact of adverse childhood events (ACEs), including the long-term physical and health impacts, and the value of early childhood programs in reversing the effects of ACEs.

Update of Child Protective Services

Monique Jacobson, secretary, Children, Youth and Families Department (CYFD), Ms. Klundt and Jon Courtney, Ph.D., program evaluator, LFC, were invited to address the committee.

Ms. Klundt began by reviewing findings from an LFC report. The funding of child protective services has increased over time to its current level of more than $6.7 million. She noted the trends between filled full-time-equivalent positions and appropriations for workers. She noted the strain on the system, with increasing numbers of children in the state's care and increasing reports of maltreatment.

Dr. Courtney noted that New Mexico is experiencing dramatic increases in child victimization rates. Response to recurrent maltreatment continues to fall short of the national standards. The LFC contends that New Mexico continues to show high need of, but low spending on, preventive services. Need is demonstrated by data that show New Mexico's high risk due to substance abuse in families. At the same time, New Mexico was the second lowest in the nation in the percentage of children receiving prevention services in 2015. The legislature has increased investments in protective services; however, increased strain on the system has outpaced spending.

Secretary Jacobson noted that the CYFD receives around 40,000 calls per year, approximately 20,000 of which are screened for further investigation. Those that do not fall within the charge of the CYFD are referred to law enforcement. She described the process of an investigation, which begins with an assessment of the safety of the child. If the child is facing an immediate safety risk, placing the child in state custody is considered. Custody determinations are the purview of law enforcement and the courts — not the CYFD, Secretary Jacobson noted. She shared a compelling story of her personal experience with an investigation with CYFD staff and the complexity of the situations faced by investigators. She drew the committee's attention to a handout that identifies the mission, principles and strategic priorities of the department, which focus on core functions, prevention initiatives, financial controls and community and stakeholder engagement. Data were provided to the committee about results of the CYFD's work. The CYFD has increased the number of field workers and the number of foster care providers. Future initiatives include implementing evidence-based training and accountability provisions, addressing backlogs and developing a grievance process for foster youth. One initiative already implemented is the Pull Together Campaign, which reaches out to families needing services, their neighbors, law enforcement, schools and even businesses to work together to ensure the safety of New Mexico's children. Safety of the child is the paramount goal in all that the CYFD does, Secretary Jacobson said.

Questions and comments from committee members covered the following areas:

- whether there is a plan for improving the ratio of workers to identified need; yes; the budget request addresses this;
- whether success is being realized with the rapid hire program in filling positions quickly; yes; recently the department was successful in hiring 16 people in one day;
- whether there are regional differences in caseloads and other types of problems; yes; the department is focusing on these differences in identifying hiring and workforce needs;
- clarification of how the turnover rate in protective services compares with other divisions in the CYFD, other departments and other states; in the CYFD, the turnover rate is higher but recently has been reduced; Secretary Jacobson does not have information about comparisons with other departments or states;
- ways in which calls are screened; there are legal and other protocols; work has been done to encourage calls and reports of suspected abuse;
- clarification regarding how calls that are not within the purview of the CYFD are referred; law enforcement is contacted by email; the department works collaboratively to ensure that communications are received and are treated seriously;
- ways in which decisions are made for children to remain in the custody of their families; the CYFD cannot make the ultimate decision; law enforcement and the courts have the final decision; procedures for substantiation have been strengthened;
- ways in which other states are obtaining federal grants that New Mexico may not be taking advantage of; other states are finding ways to leverage federal funds to provide prevention services; opportunities might be possible; Secretary Jacobson will provide information on which grant programs New Mexico uses and how that usage coordinates, or could coordinate, with other CYFD initiatives;
- whether the LFC has ever evaluated the St. Joseph Home Visiting Program; no, as that is not a program funded by the state;
- clarification of the location of the Children's Reception Office; currently, it is co-located with the CYFD's Albuquerque office on San Mateo Boulevard;
- clarification regarding the level of spending on child abuse prevention this year; the expenditures are growing substantially; and
- clarification of the procedure when a call is received regarding a child care worker or a school; these are also calls that the CYFD must refer to law enforcement.

Senator Ortiz y Pino notified the committee that the PBS NewsHour was going to run a segment on opioid addiction in New Mexico that evening.

Recess

There being no further business, the meeting recessed at 5:09 p.m.

Tuesday, October 17

Welcome and Introductions

The meeting was reconvened by Representative Deborah A. Armstrong at 9:16 a.m. Members introduced themselves.

Grandparents Raising Grandchildren: Reporting Pursuant to Senate Memorial 92 and House Memorial 58 (2017, Regular Session)

Liz McGrath, Esq., introduced herself and told the committee that she has a long-standing interest in the topic of grandparents raising grandchildren. She stated that a task force that included participation from the CYFD, Aging and Long-Term Services Department (ALTSD), Public Education Department (PED) and Office of the Attorney General has been working to address the issues included in Senate Memorial 92 (regular session, 2017). The primary goal of the memorial is to identify ways to expand availability of resources and assistance to grandparents raising grandchildren. Ms. McGrath described the available maintenance payments for the care and support of children placed with kinship caregivers.

Recommendations arising from the task force include the following:

- provide appropriate funding for support services;
- fully fund subsidized child care;
- ensure that grandparents raising grandchildren are permitted to enroll their grandchildren in early intervention daycare, even if they do not have legal guardianship or custody;
- amend the New Mexico Administrative Code (NMAC) to allow grandparents raising grandchildren to obtain child care assistance benefits without regard to income;
- protect grandparents raising grandchildren from the threat of eviction from public housing;
- make Medicaid behavioral respite services and case management services available to grandparents raising grandchildren;
- increase the ALTSD appropriation for legal services to ensure access for grandparents raising grandchildren;
- improve training of the HSD's Income Support Division workers regarding eligibility for public benefits for children being raised by grandparents; and
- create a work group to study and develop recommendations to enhance the CYFD's interface with grandparents and their grandchildren.

Ms. McGrath concluded by asserting that support for all of these recommendations would substantially improve the lives of both children and the grandparents raising them.

Josephine Chaves, a grandmother who has been raising her grandson for the last seven years, offered a personal perspective. She has had issues with public support being inconsistent, discontinued and reinstated. She said that she has no control over her grandson's biological

parents, who are both addicted to drugs. She is also challenged by the fact that her husband has Alzheimer's disease. She told the committee that she needs the help that the task force has proposed.

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

- a question as to which actions would have the largest impact on the lives of grandparents raising grandchildren; more consistent communication and support from state agencies;
- whether there are any statutes that, if changed, would help with situations such as those outlined; the highest priority would be to change the NMAC to increase access to state-subsidized child care services;
- a suggestion to have a bill drafted for consideration for endorsement by the LHHS to change the NMAC to allow kinship caregivers access to child care assistance;
- a suggestion that legislation be drafted to permit child care in a child care center as well as in the home;
- whether regulations could be changed so that grandparents raising grandchildren could obtain child care assistance benefits without regard to income; Ms. Klundt noted that it might be possible but that there are federal requirements to consider;
- a statement that, in general, grandparents raising grandchildren should have an easier time accessing the services that they need;
- whether the fact of a child not being raised by a parent is a point on the ACEs scale; yes; multiple factors result in multiple points on the ACEs scale;
- whether use of the ACEs scale could automatically qualify a child being raised by grandparents for public services; the LFC and staff have discussed the use of risk factors as a mechanism to qualify these children, however, there are federal constraints that are difficult to circumvent;
- recognition that there are privacy barriers that make it difficult to use ACEs scores;
- an observation that grandparents raising grandchildren with developmental disabilities should get better consideration for access to the developmental disabilities waiting list;
- whether all kinship guardians should have access to the benefits identified for grandparents; that category is very broad; it is not known if they want or need access to these services;
- whether aunts and uncles should be included in these recommendations; and
- recognition that many departments of state government have a role in this issue; they should be asked to participate in finding solutions now without waiting for a new administration.

Representative Thomson made a motion that a letter be drafted from the LHHS to the HSD to ask the HSD to use the ACEs scale to determine eligibility for early and periodic screening, diagnosis and treatment; the motion was seconded and approved without objection.

Rights of Preschoolers with Disabilities: Preschool Behavioral Health Support Project

Claire E. Dudley Chavez, executive vice president for policy and stakeholder engagement, United Way of Santa Fe County, introduced herself and noted that the United Way has a substantial commitment to this issue, with a mission to create public awareness and political will to invest in early childhood care and education in New Mexico. Matthew Bernstein, Esq., staff attorney, Pegasus Legal Services for Children, noted that research regarding suspension and expulsion practices of young children shows that New Mexico is one of the worst states, if not the worst state, in the nation in regard to these practices. Children as young as age six are being expelled from early childhood classrooms in inconsistent and unfair ways that can affect a child for years to come. Suspension and expulsion do nothing to teach appropriate behavior, Mr. Bernstein said, and the practice denies some children the opportunity to access and excel in early childhood programs.

Ms. Dudley Chavez identified long-term negative impacts on these children that result in long-term, costly impacts to the state. At the federal level, Head Start programs now prohibit expulsion of children. The federal Every Student Succeeds Act and the reauthorization of the child care and development block grant recommend that states develop policies to prohibit suspension and expulsion practices. New Mexico's Public School Code requires that policies and procedures ensure fairness, equity and continuous improvement for children in child care centers. Mr. Bernstein noted that federal data indicate that students of color are retained and not promoted to the next grade level at disproportionate rates. In New Mexico, data show that 4% of preschool students overall are retained, while 5% of African American students and 6% of Native American students are retained. Both Ms. Dudley Chavez and Mr. Bernstein asserted that a clear definition of "expulsion" is needed. They support legislation to: 1) prohibit the expulsion of young children from programs; 2) require data collection; 3) provide early learning professional training; and 4) provide universal screening that contains a social-emotional component for all children.

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

- the extent to which parents are involved in decisions to hold a child back from promotion to the next grade level; schools have a lot of influence in this area that parents often feel unqualified to dispute;
- whether a child could be retained more than once in preschool; it is possible; however, this should generate a larger discussion regarding the child's needs, the teacher's abilities and the school environment;
- the extent to which the Sustainability, Tracking, Assessment and Rating System collects data on expulsion; the federal government collects data for kindergarten through grade 12 but not for preschool;
- acknowledgment that teachers are often in opposition to efforts of this sort;
- clarification regarding the recommendations proposed; it is desired that the recommendations cover both child care centers and public schools;

- ways in which disruptive behaviors, such as those exhibited by a child with autism, should be handled in lieu of expulsion; strong partnerships between parents and child care providers should be fostered; solutions will likely differ depending on the child;
- whether the recommendations proposed should extend to private as well as public schools; yes;
- an assertion that many children's issues would be eliminated if children were being served in the least restrictive setting with an individualized educational plan;
- recognition of the importance that children with ACEs should be able to find a safe haven in school;
- whether there are opportunities through Project ECHO to do training and provide supports for teachers and child care providers in this area; and
- the importance of clearly defining agreed-upon terms in both PED and CYFD interactions.

Public Comment

Jim Jackson, executive director, Disability Rights New Mexico, noted that there are many unique behavioral issues in children with disabilities. There are 50,000 children in New Mexico currently being served through special education programs. He noted that parents of disabled children are often vulnerable to pressure from schools. He urged the committee to encourage the PED to put more resources into ways to deal with children exhibiting challenging behaviors. Mr. Jackson noted that his organization has found the PED to be responsive when a formal written complaint is filed; however, he contends that formal complaints should not be necessary.

Ms. Pinnes commented that the HSD issued a revised version of the Centennial Care 2.0 waiver proposal. The revision clarifies that if a person fails to pay the premium to enroll in Medicaid, a grace period will be provided to give the person time to pay the premium and enroll; however, the proposed revision states that this will be followed by a lockout period. The amount being proposed as a premium was reduced, Ms. Pinnes said, and a household rate has been added in the proposed revision.

African American Infant Mortality and Mental Health Report

Sunshine Muse, pilot project manager, Rongal Nikora, Ph.D., lead research consultant, and Yvette Kaufman-Bell, executive director, Office on African American Affairs (OAAA), were invited to testify.

Ms. Kaufman-Bell described health care disparities in the African American population in New Mexico. She noted that she and her colleagues are present today to report findings from a project established in the 2014 legislative session pursuant to Senate Bill 69. That law called for the creation of a pilot program in Bernalillo County to address African American infant mortality and maternal health.

Ms. Muse and Dr. Nikora talked about the importance of infant mortality as a measure of health care disparities, noting that the rate of infant mortality in the African American population

is double that of the general population. A program called "Centering Pregnancy" became the model for addressing this disparity. It is a nationally respected program designed to improve outcomes through a series of group prenatal visits. UNM was selected as a partner and as the site to implement the pilot program. The OAAA was successful in recruiting two African American midwives to work with it. An online survey was developed to collect data regarding the birthing experience of African American women in New Mexico. The survey identified a knowledge gap regarding insurance coverage and birthing options for African American women. There is a need for greater attention to stress management during pregnancy and to better understand the importance assigned by mothers to their providers' race or ethnicity. The survey found that many women are unaware of options for out-of-hospital births, the availability of doula services and the benefits of group prenatal care.

Reasons for preterm birth, which is a high predictor of infant mortality, were identified. Many indicators were eliminated, leading the OAAA to hypothesize that stress in African American women is the major underlying cause of infant mortality. A great deal of outreach was conducted to educate women about their options for better care and improved outcomes. New partnerships and relationships were developed as a result of this pilot project. The OAAA has entered into an agreement with the March of Dimes, in which the March of Dimes will fund outreach and education efforts related to infant mortality and maternal health.

Recommendations for next steps include a dedicated effort to collect more robust data; to develop the pilot project into a multi-year project; to include questions designed to gauge stressors specific to African American women in the New Mexico Pregnancy Risk Assessment Monitoring System; and to target education to medical providers regarding ways to mitigate disparities among African American women. The OAAA representatives are optimistic, as they now feel they have strong partnerships with organizations that share their concerns.

Committee members asked questions and made comments on this topic as follows:

- clarification regarding best methods of learning for pregnant women; it is far better to talk in a collaborative manner with women, rather than speak in a pontifical or didactic manner;
- acknowledgment that Dr. Nikora was a fellow with the Robert Wood Johnson Foundation Health Policy Program at UNM;
- whether any of the women in the study were of mixed race; most did not identify as mixed race; however, this is an important identification to make, and it may be noted that African American people, like other Americans, generally have a great deal of heterogeneity in their ethnic backgrounds;
- an observation that the rate of infant mortality among black women has been reduced in recent years, but it is still twice the rate of white women;
- whether the health and well-being of fathers were examined; yes; no direct connection was found;

- whether the survey followed scientific methods; yes, although it did not have institutional review board approval;
- clarification of whether participants' income was a factor in the incidence of infant death; the rates are the highest among African American women nationwide, regardless of income;
- whether infant mortality rates within the African American population are different based on education; yes, but the differences are not statistically significant;
- whether opioid use is a predictor of infant mortality among African American women; opioid use is a factor but does not markedly change the overall data;
- clarification regarding the Centering Pregnancy model; implementation of the project generated significant interest in the model; it has received endorsement from the Institute for Healthcare Improvement; there are 500 sites across the nation at present that use the model;
- whether the model involves willing fathers; yes;
- how much additional funding would be needed to allow the project to continue; $250,000 would fund lead researchers, facilitators, some marketing materials, education and awareness and the cost of the site;
- a request that the OAAA provide the legislature with a budget request that would allow the project to be continued;
- clarification regarding the sources of stress among African American women; the data suggest that the way in which prenatal care is provided creates stress;
- what new data are needed to move the project forward versus just funding a continuation of the project; the pilot project was deliberately crafted to combine an intervention as well as data collection, and it yielded valuable information to improve health outcomes for this population;
- whether the survey included just African American women or a broader population; it included a broader population in order to give comparative data;
- whether there is potential for national funding for such a study; other granting entities may be very interested in a study of this nature;
- whether the LHHS would provide a letter of support for additional funding opportunities; yes; the chair said that she will pursue that; and
- whether there is any research that connects cortisol levels to premature births among African American women; yes; research supports this.

Medical Cannabis: Applications, Testing, Proposed Program Changes

Kenny Vigil, director, Medical Cannabis Program, Department of Health (DOH), provided details and data regarding the current medical cannabis program being implemented by the DOH. He identified performance measures and described improvements that have been made to the application process. The number of participants has been steadily increasing during 2017. Standard operating procedures have been developed and implemented, he said. Growers have received additional training. Committee members requested additional information about the number of growers and distributors currently approved by the DOH.

Mr. Vigil provided details about the qualifications and expertise of new hires for the program. Mr. Vigil also described education and outreach efforts and the creation of a new patient portal that gives patients the ability to apply online. In response to a request from a committee member, Mr. Vigil provided his email address: Kennyc.vigil@state.nm.us.

Jessica Gelay, policy manager, Drug Policy Alliance (DPA), provided a brief overview of the history of the medical cannabis program in New Mexico and the number of states currently operating such a program. She described DPA policy recommendations for the medical cannabis program, including improved civil protections for medical cannabis patients and updating the current law to add opioid use disorder and neurodegenerative dementias to the list of qualifying conditions. Finally, the DPA recommends removing the 70% tetrahydrocannabinol (THC) concentration limit on certain permissible medical marijuana products.

Kathleen O'Dea, J.D., M.S., owner and director of Scepter Laboratories, identified her company as the entity that the DOH has contracted with to test the safety of cannabis grown in New Mexico. She identified the rigorous requirements that New Mexico imposes prior to granting a license as a testing laboratory. She noted that Scepter Laboratories conducts potency, microbial contamination and mycotoxin testing as well as testing for pesticides and solvents. She provided details for each area of testing. She noted that 50% of states with recreational cannabis programs and 75% of states with medical cannabis programs do not require testing. She noted that new information on contaminants emerges regularly. She provided additional information regarding concerns about pesticide testing. Pesticide testing, in particular, has inconsistent standards, with a wide range of recommendations in law and regulation, Ms. O'Dea said. There are 3,197 known pesticides, and it is difficult to know exactly which ones to test for. Pesticide testing is expensive, and she warned the committee that demands from the public for wider pesticide testing are coming, and the issue promises to be a thorny one. She closed with a recommendation regarding which contaminants to test and which to eliminate from testing requirements.

Reggie Gaudino, Ph.D., vice president of scientific operations and director of intellectual property, Steep Hill Labs, stated that the goal of the company is to ensure safe and tested cannabis. He identified some risks with contaminants in cannabis plants that can lead to death. The old saying "cannabis never killed anyone" may not be completely accurate, he said. While the plant itself may not be deadly, some things that grow on plants can be. He believes that there are certain pesticides that are extremely dangerous and should be banned. He said that no state has risen to the level of safety required by the United States Food and Drug Administration. He discussed some problems with current testing regulations in New Mexico and raised concerns that, in his view, are not being adequately addressed. A lack of enforcement in the current law provides opportunities for growers to circumvent safety measures and introduce dangerous elements into their products, he said. Track and trace systems to identify contaminants have proven to be inconsistent around the country. Issues that his laboratory has found in New Mexico have not generated response from the DOH in months, either to the laboratory or to the affected person.

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

- whether Mr. Vigil was aware of bills from Senator McSorley and Representative Nate Gentry to revise the current medical cannabis law and whether he provided any input to the governor regarding her veto; he wrote an analysis of the bill but had no input on the veto message;
- whether the DOH is considering revisiting the requirements for the testing of certain pesticides; yes; it is a good opportunity to confer with experts and scientific researchers on this issue;
- the extent to which public input will be considered in determining policy changes; it is part of the regulatory process the DOH is required to undertake;
- whether the DOH is responsive to growers' concerns regarding the bio-tech system; it is trying to address producers' concerns with training and education;
- an observation that while there are problems with the bio-tech system, it does provide a form of quality assurance and enforcement;
- whether the standards in the United States are as rigorous as those in Europe; it is impossible to compare, as too many elements of production are different; however, there are some findings from research that can inform safety measures in the United States;
- clarification regarding the recommendation to remove the 70% THC concentration limit on certain medical marijuana products; the DOH would consider this;
- whether the DOH has plans to use the equipment that would allow "secret shopper" testing; the DOH is proceeding very cautiously, but desires to do everything possible to ensure quality assurance and is funding a new position to work at the new laboratory;
- clarification regarding how the DOH accomplished the elimination of the medical marijuana application backlog and why it took so long to fix a problem that apparently was resolved in one day; the backlog was cleared up in 2016; the current success achieved from one day of work addressed a different issue;
- how the decision was made, and by whom, to limit the THC concentration to 70%; it was done in response to instances in Colorado where users had adverse effects;
- a voiced objection as to why the secretary of health rejected the recommendation of the Medical Advisory Board to approve adding opioid use disorder as a qualifying condition in the medical marijuana law;
- identification of the number of complaints that Mr. Vigil's division receives in a year; the reason to hire someone to deal with complaints has more to do with the complexity of the complaints than the number; Mr. Vigil will provide the information about the number of complaints annually;
- whether the LFC or the Department of Finance and Administration looks at the budget, given that the program is self-funded, and how decisions are made to increase staff; those decisions are made in collaboration with internal experts and approved by the secretary of health;

- whether the legislature has any role in how the money is spent; according to Senator Rodriguez, the LFC is charged with approving new full-time-equivalent positions, although the secretary of health does have some discretion in this area;
- a contention that representatives from the DOH never came to LFC hearings in which members of the public complained about the inability to get approval for medical marijuana cards;
- clarification regarding the number of cases of over-consumption in the life of the program; that information is not known;
- clarification as to why New Mexico is so strict in its testing standards; the DOH worked with a scientific laboratory in Oregon to establish standards;
- clarification about why New Mexico is so rigid in the testing of some contaminants but not in the testing of pesticides; the regulations do not contain a standard for these;
- clarification about last year's budget; the budget was approximately $2.5 million, about $25,000 of which reverted; so far this year, about $2.9 million has been collected;
- a recommendation that some of the unused funds be used for research;
- clarification regarding what entity oversees kitchen requirements; the DOH does;
- an observation that the New Mexico Medical Board, the Pain Center at UNM and many pain management specialists all support the inclusion of opioid use disorder as a qualifying condition; and
- a motion, made and seconded, to support opioid use disorder as a qualifying medical condition for medical cannabis; the motion passed unanimously.

Recess

The committee recessed at 5:53 p.m.

Wednesday, October 18

The joint meeting of the LHHS and the Courts, Corrections and Justice Committee (CCJ) was convened at 9:18 a.m. by Representative Gail Chasey, co-chair, CCJ.

Tour — Bernalillo County Youth Services Center (BCYSC)

Members of the committees were divided into small groups for guided, secure tours of the BCYSC. Craig Sparks, director, Services Center, BCYSC, described the process that would be observed and identified staff who would escort members on the tour. Cell phones and laptops were not permitted inside the facility.

Welcome and Introductions

The meeting was reconvened at 10:46 a.m. by Representative Chasey. Committee members introduced themselves. Representative Chasey thanked Mr. Sparks for the very informative tour.

Welcome — BCYSC — Juvenile Detention Alternatives Initiative (JDAI)

Mr. Sparks provided a brief review of the BCYSC, beginning with a history of the facility and some statistics on the facility's services. The JDAI, a model developed by the Annie E. Casey Foundation in 1948, was instituted in Bernalillo County in 1992. Mr. Sparks described the purposes and objectives of this model. The model reversed many negative outcomes that preceded its institution. Mr. Sparks explained trends from 1999 to the present.

Committee members asked questions in the following areas:

- clarification of budget trends over time;
- identification of capital outlay needs;
- an observation that other counties benefiting from the center could contribute; and
- clarification regarding the daily cost per resident; $155 per day.

Update on Improving Outcomes for Youth Statewide — Juvenile Justice Initiative in New Mexico

Nancy Arrigona, research manager, Council of State Governments Justice Center (CSGJC); Nina Salomon, project manager, CSGJC; Secretary Jacobson; and Judge John J. Romero, Jr., Second Judicial District Court, were invited to present to the committees.

Secretary Jacobson noted that the CYFD operates three juvenile facilities in New Mexico, and committee members are invited to visit at any time. She discussed an initiative, Improving Outcomes for Youth, that began in April 2017 to determine what steps could be taken to strengthen public safety and improve outcomes for youth in the state's juvenile justice system (JJS). Through the initiative, a statewide bipartisan task force was established, co-chaired by Secretary Jacobson and New Mexico Supreme Court Justice Barbara Vigil. Secretary Jacobson emphasized that the CYFD relies on collaboration with many partners to accomplish its goals.

Ms. Salomon described the task force that was convened to establish a plan for improving outcomes for youth statewide. The task force worked with representatives from several other states as well as from the CYFD. Judge Romero emphasized the commitment of the courts to work with the task force to promote safe, reliable solutions for youth.

Secretary Jacobson reviewed the findings and recommendations of the task force. She provided data regarding the number of referrals to the JJS. Opportunities within the JJS have increased to match youth with the appropriate level and length of supervision based on an understanding of the risk of reoffending. Findings of the task force include the following:

- the number of youth referred to the JJS has declined significantly since 2012, in large part due to policy and practice changes. The decline in cases is due in part to improved initial assessments;

- a focus on prevention rather than intervention has led to community resources not being directed to youth with a high risk of reoffending. This is an area that needs to be addressed (see handout);
- the majority of youth referred to the JJS do not reoffend; however, there is a small number of youth who would benefit from more intensive services and supports; and
- New Mexico lacks sufficient data and research capacity to fully measure system performance and outcomes.

Ms. Arrigona expanded on this lack of data and research, which limits the ability of the state to address the most prevalent needs as well as the ability to know whether money is being spent in the most productive areas. Definitions need to be refined to fully understand why youth are reentering the JJS, Ms. Arrigona said.

Ms. Salomon noted that the task force will be meeting again on November 2 to reach consensus on policy proposals.

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

- an observation that the decrease in referrals to the JJS is impressive;
- clarification of the number of youth in the system today — between 180 and 200;
- whether behavioral health issues are a factor in youth incarceration; there are multiple behavioral health needs, but if behavioral health is a juvenile's primary need, the juvenile generally does not come through the JJS; virtually all youth in the JJS have experienced trauma of some sort;
- what the most effective strategies are to prevent recidivism; valid assessment tools and screening, mental health therapy and family therapy are all critical; services must be matched to the individual needs of the youth;
- an observation regarding the importance of staff in facilities being supportive rather than punitive;
- why it seems so hard to identify the number of youth who have successfully completed their reintegration yet still come back into the system; the CYFD is examining this closely; the circumstances are complex;
- whether there should be a state law to prohibit commitment of a child six years old or younger; the CYFD is exploring this;
- clarification regarding New Mexico's lack of the use of the "structured decision-making tool"; it is being used to a certain extent but has not been revalidated in recent years; the inconsistent use may be a reflection of inadequate training in its use;
- clarification regarding what is being used in place of the structured decision-making tool; ultimately, decisions are made in the court, and that is where the tool is being used;
- whether the courts have a rule requiring the structured decision-making tool's use; no — ways to build consistency are part of the task force's current discussions; the tool is

lengthy and takes a lot of time to use, thereby delaying treatment for the youth in the system;
- clarification regarding the future approval of a memorandum of understanding that will allow sharing of information between the courts and the CYFD; July 1, 2018 is the target date; the collection, matching and reporting of these data are a massive project;
- whether there are data regarding the number of youth who qualify for special education; Secretary Jacobson will follow up and provide this information;
- the importance of funding wrap-around services, especially in schools;
- the importance of very early intervention and screening that may signal a child at risk of future incarceration;
- a comment that the CYFD is in need of a significant technological upgrade in order to support growing data requirements;
- an observation that different districts have very different needs; and
- the importance of all agencies working together effectively to ensure maximum use of federal resources.

Molina Healthcare and Bernalillo County Metropolitan Detention Center — Medicaid Pilot Project

Amir Wodajo, director of case management and behavioral health, Molina Healthcare of New Mexico, was joined by Tina Rigler, vice president of government contracts, Molina Healthcare of New Mexico, to describe a project being implemented by Molina Healthcare of New Mexico to help inmates successfully reintegrate into society following incarceration. She noted that 1,200 inmates were enrolled in Medicaid in 2015. The project allows inmates to keep their eligibility while in prison or jail and have their benefits reactivated upon release. The pilot project was developed in collaboration with the Bernalillo County Metropolitan Detention Center in Albuquerque. Through care coordination, inmates have increased access to services and benefits that promote optimal health upon release. The pilot has resulted in a decrease in emergency department use, behavioral health services and physical health services due to increased understanding of benefits and what constitutes appropriate use of services.

In addition to health benefits, individuals enrolled in the program had a significantly lower rate of recidivism in the first year of the program. Of the 296 individuals enrolled in the program, cost savings of close to $8,000 per person per month were seen. Molina hopes to expand the program to 27 additional adult and juvenile detention centers statewide. A brief video presentation highlighted individual success stories.

Committee members had comments and questions in the following areas:

- whether all MCOs will ultimately be required to engage in the care coordination project; yes, according to a letter of direction from the HSD;

- clarification regarding a shift in payment responsibility; Medicaid is not responsible for payment of care once a person is jailed; the benefit can be shifted to fee-for-service care when an inmate is hospitalized;
- clarification regarding cost savings for enrollees in the pilot program; the savings are achieved due to reduced inappropriate use of services;
- at what point savings to the state will be realized; the HSD is working to implement this program more broadly, both through contract requirements with the MCOs and through the Centennial Care 2.0 waiver renewal;
- whether there is a target date for enrolling more incarcerated people in Medicaid in county jails; not all counties are pursuing this avenue;
- how this project will work in relation to non-public employees engaging in presumptive eligibility enrollment of inmates; HSD Deputy Secretary Michael Nelson will follow up;
- clarification that an individual enrolled in Medicaid while incarcerated is not enrolled in managed care; this could be an opportunity in the waiver renewal to facilitate greater access to care coordination; and
- whether other MCOs are working on similar projects; they are beginning to in jails in geographic areas outside of Albuquerque, but are in preliminary stages of development.

Health Care and Medical Personnel in Corrections

David Jablonski, secretary, Corrections Department (NMCD), was joined by numerous staff members to provide testimony to the committees. He introduced Wendy Price, Psy.D., chief, Behavioral Health Bureau, NMCD, and David Selvage, health services administrator, NMCD, who is a licensed certified physician assistant with a significant background in health care, including with Presbyterian Healthcare Services and the DOH. Also present to provide technical support and answer questions were Jerry Roark, deputy secretary of operations, NMCD, and Phillipe Rodriguez, acting director, Administrative Services Division, NMCD.

Secretary Jablonski reviewed the following NMCD contracts: Centurian (medical) for $42.6 million; MHM (behavioral health) for $2.2 million; and Boswell (pharmacy), which has an $11 million cap. He highlighted the efforts and costs of providing care for inmates with hepatitis C using Project ECHO. Hepatitis C is a prevalent condition among inmates that is very costly to treat. The NMCD has been working to reduce the cost of health care with some success. It is in the process of partnering with Christus St. Vincent Regional Medical Center in Santa Fe to obtain access to the federal 340B Drug Discount Program. Inmate initiatives include a diabetes wellness program, a lactation project and a sober living communities project. A project to treat opioid addiction provides naloxone to inmates upon discharge.

The NMCD uses evidence-based programs in over 90% of its behavioral health programs, which are broad-based and include healing trauma, anger management groups, grief support and a variety of therapeutic models. A mental health treatment center provides inpatient psychiatric hospitalization when necessary. A contract is in place with HealthInsight New Mexico for

oversight and registered nurse-led audits of health care services that are provided. The NMCD is working closely with the HSD to ensure that Medicaid is being properly billed, when possible, and to ensure appropriate tracking for inmates when they are released and are on probation.

Questions and comments covered the following areas:

- how NMCD health care outcomes for inmates compare with other states; it is not known;
- clarification regarding the meaning of "challenged" inmates; these are inmates with addictions or who demonstrate self-harm behavior;
- whether Medicare covers any inmates; it is not known;
- what the cost of health care is per inmate; about $6,300 per year;
- whether Centurion is an out-of-state entity; yes;
- a suggestion that the NMCD look for ways to provide its own health care services for inmates;
- whether the cost of the hepatitis C program is in the contract with Centurion; it is part of the pharmaceutical contract;
- a request for additional information about the mental health treatment center; it is a facility in Los Lunas; it is separate from the New Mexico Behavioral Health Institute at Las Vegas;
- clarification regarding the residential drug abuse center; it is not a single location; the NMCD contracts with 27 facilities around the state;
- whether there are health care services for sex offenders within the prison system; yes — there is a program that has services especially directed at sex offenders;
- a request for the number of inmates enrolled in sex offender treatment programs; it is not known; it is 100 or fewer; NMCD staff will provide numbers;
- a request for the number of inmates 65 years of age and older; about 200, or about 2% of the total population;
- whether a different method of health care treatment should be recommended for inmates 65 years of age and older; the NMCD has a geriatric unit in Los Lunas for those who qualify:
- clarification regarding the number of inmates with behavioral health issues who are on psychotropic drugs — currently around 49%;
- whether inmates with mental health disorders are integrated in the general population and how their needs are met; they have therapy offered to them; they also have access to acute and private care;
- clarification regarding the time frame for addressing formal grievances; 20 days;
- how many people are employed through health care contracts; the department will provide that information;
- an observation that, according to a state audit, the NMCD has the highest percentage of contract employees in state government and whether the NMCD feels that is necessary and justifiable; the cost of the contracts and the number of individuals employed have remained stable since the state audit was performed;

- clarification regarding the Centurion contract and whether it covers everything; it does not cover all extraordinary costs, such as transplants;
- why Otero County is excluded from the physical health contract; Otero County has a separate contract, and the county provides its own care;
- clarification regarding who audits the contracts; there are several methods of auditing and oversight, both internal and external; additionally, annual reports are required from the contractors;
- clarification regarding the cost of hepatitis C treatment; it has declined from $95,000 to $65,000 per treatment and continues to decline;
- clarification regarding the term of the health care contracts; it is four years; contracts are reviewed annually, including several detailed performance measures;
- whether opportunities exist for departments to share services rather than contracting out for those same services; possibly;
- what the policy is for female inmates for contraceptives; the department will look into it and provide a copy of its policy and incidence of use; and
- whether there are incidents of involuntary sterilization; no.

Breastfeeding and Incarceration

Sarah Gopman, M.D., assistant medical director, Milagro Outpatient Clinic, Lissa Knudsen, M.P.H., board chair, New Mexico Breastfeeding Task Force (NMBTF), and Candice Rae Padilla, B.P.C., I.B.C.L.C., board member, NMBTF, were invited to address the committees.

Ms. Knudsen described the overall objectives of the NMBTF and provided some statistics regarding the number of women who are currently incarcerated and the types of crimes they committed. The rate of incarceration of women increased by more than 700% in the nation between 1980 and 2014. On average, 6% to 10% of incarcerated women are pregnant.

Ms. Padilla spoke about the dangers of not allowing lactating mothers to breastfeed in prison, as well as the great benefit to babies when they have the opportunity to bond with their mothers. The health outcomes of infants and their mothers are much better than the health outcomes when mothers do not breastfeed. Dr. Gopman presented information regarding breastfeeding and substance abuse. Research shows that babies experiencing withdrawal symptoms as a result of opioid exposure during pregnancy have reduced symptoms if allowed to breastfeed.

Ms. Knudsen noted that inmates who breastfeed have certain care needs specific to their breastfeeding. She presented recommendations of the NMBTF, including alternative sentencing and early release options, to allow: nonviolent lactating mothers to be housed with or near their children; lactation policies both in prisons and detention centers that permit caregivers to bring infants to the correctional facilities for feeding; and policies that allow mothers to hand-express milk. She reviewed the history and progress of the NMBTF's work at the state, local and departmental levels. Collaborating partners were identified, as was the need for more data. Long-term recommendations include allowing mothers to be housed together with their babies

while breastfeeding; the establishment of prison nurseries; and the recognition of pregnancy and lactation as factors that must be considered during determinations for release and bond.

The committee members had comments and asked questions in the following areas:

- what the recommended treatment is for drug-addicted breastfeeding mothers; buprenorphine is recommended over methadone for substance abuse treatment;
- whether the recommendations offered should be implemented in all correctional facilities or only in some; it should be implemented in all state and local facilities;
- recognition that the recommendations come with potentially substantial costs; local counties would be challenged to fund all of these initiatives;
- a contention that most of the costs are minimal and that counties are beginning to support these proposals;
- acknowledgment that breastfeeding vastly improves not only the health, but also the mental and cognitive ability, of a child;
- acknowledgment that the lives of the breastfeeding incarcerated women are also vastly improved; and
- whether breastfeeding affects recidivism; it is speculated that recidivism is lower, but no known research exists to support this.

Public Comment

Elena Rubinfeld, staff attorney, Southwest Women's Law Center, expressed support for the NMBTF and its recommendations.

Tony Johnson also expressed support for the NMBTF.

Adjournment

There being no further business, the joint meeting of the LHHS and the CCJ was adjourned at 3:40 p.m.

Revised: October 20, 2017

TENTATIVE AGENDA
for the
SEVENTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 25, 2017
State Capitol, Room 321
Santa Fe

Wednesday, October 25

9:00 a.m.		**Welcome and Introductions** —Representative Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee (LHHS) —Senator Gerald Ortiz y Pino, Vice Chair, LHHS
9:10 a.m.	(1)	**Enhanced Nursing Compact** —Demetrius Chapman, M.P.H., M.S.M. (R.), R.N., Executive Director, Board of Nursing —Jeff Dye, President and Chief Executive Officer (CEO), New Mexico Hospital Association —Dawn Hunter, Deputy Secretary, Department of Health
11:00 a.m.	(2)	**Report on Senate Memorial 50, 2017 Regular Session — Study of New Mexico Families That Use Two or More Types of Social Services** —Jennifer Ramo, Executive Director, New Mexico Appleseed
12:00 noon	(3)	**Public Comment**
12:30 p.m.		**Lunch**
1:30 p.m.	(4)	**Senate Joint Memorial 6, 2017 Regular Session — Study Direct-Care Workforce** —Adrienne R. Smith, President and CEO, New Mexico Direct Caregivers Coalition
2:30 p.m.	(5)	**Domestic Violence in New Mexico: Batterers Intervention Program** —Pam Wiseman, Executive Director, New Mexico Coalition Against Domestic Violence
4:30 p.m.		**Adjourn**

MINUTES
of the
SEVENTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 25, 2017
State Capitol, Room 321
Santa Fe

The seventh meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on October 25, 2017 by Representative Deborah A. Armstrong, chair, at 9:18 a.m. in Room 321 of the State Capitol. A quorum was present.

Present
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong
Rep. Rebecca Dow
Sen. Mark Moores
Sen. Bill B. O'Neill
Sen. Cliff R. Pirtle
Rep. Elizabeth "Liz" Thomson

Absent

Advisory Members
Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. Linda M. Lopez
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Sen. Howie C. Morales
Sen. Mary Kay Papen
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Sen. Bill Tallman
Rep. Christine Trujillo

Rep. Nick L. Salazar
Sen. William P. Soules
Sen. Elizabeth "Liz" Stefanics

Guest Legislator
Rep. Harry Garcia

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee**.**

Staff

Michael Hely, Staff Attorney, Legislative Council Service (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.

Wednesday, October 25

Welcome and Introductions

Committee members and staff introduced themselves.

Enhanced Nursing Compact

Demetrius Chapman, M.P.H., M.S.M. (R.), R.N., executive director, Board of Nursing (BoN), provided an overview of the existing interstate Nurse Licensure Compact (NLC). He noted that the Enhanced Nurse Licensure Compact (eNLC) has been embraced by 26 states, with more expected to follow. On January 20, 2018, without legislative action, there will be only two states remaining in the existing compact. The eNLC seeks to have uniform licensure requirements in all participating states. Mr. Chapman described the 11 requirements in the eNLC. Nurses in the original NLC states will be automatically grandfathered into the eNLC until such time as the original NLC is dissolved. The eNLC makes it clear that nurses must be in compliance with state requirements.

Jeff Dye, president and chief executive officer (CEO), New Mexico Hospital Association (NMHA), noted that of the 48 hospitals that are members of the association, virtually all utilize out-of-state nurses. He reviewed the findings of a survey of NMHA members, which reflects the anticipated impact of New Mexico not embracing the eNLC. Hospitals are being urged to work to ensure that all nurses currently employed obtain a New Mexico license and not rely on a legislative fix in January. The inability of New Mexico's community hospitals to quickly fill nursing vacancies with temporary traveling nurses via the eNLC could compromise capacity for patient care. Hospitals need temporary traveling nurses to address the statewide shortage of qualified nurses, according to Mr. Dye.

Dawn Hunter, deputy secretary, Department of Health (DOH), described the effects on the DOH of failure to enact the eNLC. She noted that the majority of the impact would be indirect rather than direct, as the DOH does not employ a significant number of out-of-state

nurses. That being said, she highlighted several major areas that would be affected. During an epidemic or natural disaster, it is vital to be able to move nurses easily across state lines. She identified the difficulty in recruiting and retaining school nurses, particularly in the border areas. Deputy Secretary Hunter noted that flight nurses required to cross state lines in transporting patients may not be able to conduct transports. Schools of nursing report that lack of adoption of the eNLC may impact their ability to employ qualified nurse instructors.

Questions and comments from committee members covered the following areas:

- whether it is necessary to pass legislation and have it signed within the first three days of the 2018 legislative session; ideally, yes;
- a concern arising from union nurses regarding changes in subpoena powers, prosecutorial process and other concerns;
- whether the BoN is aware of opposition to the eNLC; the overwhelming majority of nurses have expressed support;
- whether a joint session of both chambers should meet on the first day of the 2018 legislative session to discuss the eNLC; possibly, as some states have adopted conditional compact approval;
- whether there is a requirement for a nurse to join the compact; no; and
- whether the current state law can be amended to address the eNLC; yes.

The chair invited members of the audience to comment.

Jim Puente, director, Nurse Licensure Compact, National Council of State Boards of Nursing, addressed the concerns previously expressed; these issues have not been raised in any other state; and the eNLC is a patient safety model, not a nurse safety model. With regard to subpoena powers, there is no change to existing compact requirements; there is nothing in the compact to affect due process; prosecutorial power of the commission with compact oversight authority under the compact is also not an issue; and the commission has no power over individual nurses.

Deborah Walker, director, New Mexico Nurses Association (NMNA), testified that the nurses raising concerns do not reflect the majority opinions. The NMNA has been traveling around the state to engage nurses on this topic and has discovered that there is limited information regarding the current NLC, on which it has been providing education. There are concerns about costs. The BoN in August raised the cost of a nurse license to the maximum allowed by state law. The NMNA is acutely aware of the workforce issues; rural communities tend to rely much more heavily on travelers. The NMNA has developed a list of issues that will need to be looked into more thoroughly in the future and will encourage the BoN to conduct more educational sessions before the eNLC is adopted.

Elaine Brightwater, nurse practitioner, has concerns regarding the powers that would be vested in the commission charged with rulemaking. She noted that advanced practice nurses are

not included in the multistate compact and do not want to be part of it. She asserted that the professional nursing boards exam, NCLEX, though widely used, is a private product owned by the commission. She is concerned that the eNLC enshrines the NCLEX as the only test of a nurse's competence.

Judy Bauer-Creegan, New Mexico School Nurse's Association, noted that the Gadsden Independent School District and the statewide school nurse association are in support of the eNLC. She contends that nurses would rather pay for one license than be required to have licenses in multiple states. She emphasized that New Mexico already has a compact and that the eNLC does not change much. In a recent statewide meeting of school nurses, there was no opposition to the eNLC.

Becky Rowley, New Mexico Independent Community Colleges and Clovis Community College, stated that New Mexico Independent Community Colleges and Clovis Community College stand in strong support of the eNLC. Nursing programs in New Mexico community colleges have a need to reach out to Texas and other states in order to support clinical training and lack the ability to recruit sufficient nurse educators from within the state.

Lorie MacIver, president, National Union of Hospital and Health Care Employees District 1199NM, stated that the union wants to work collaboratively and does not oppose the eNLC across the board. It desires the opportunity to meet in dialogue with the BoN.

Cleo Fowler, retired nurse, feels that more time is needed before a decision is made. The proposed eNLC gives further regulatory power to a non-New Mexico entity; it will increase nurses' costs; and it has potential to decrease due process for nurses. She agrees that it is an important action to be taken but not without a thorough look at the details.

Questions from committee members included:

- clarification of the impact if legislative action takes more than three days; many traveling nurses will simply leave the state and go to a state that has enacted the eNLC; the impact on small rural hospitals will be profound; care to patients will be affected, as staffing will be inevitably reduced;
- whether grandfathering provisions are affected if the legislation is not passed within three days; the grandfathering provision expires on January 19, 2018; New Mexico might miss out on this provision if it is the last state to enact the eNLC;
- an observation that the eNLC cannot be changed and must be adopted as is; it is a licensure compact, not a practice compact; adoption does not relieve nurses in New Mexico from complying with the Nursing Practice Act;
- whether adoption of the eNLC will ensure that an out-of-state nurse has had a criminal background check; yes;
- whether use of traveling nurses costs more than use of New Mexico nurses; yes, however, it is often necessary due to the nursing shortage;

- whether continuing education (CE) requirements will be uniform; no, that is not a requirement of the eNLC; that is up to the home state to determine;
- whether the $6,000 fee to participate in the current NLC would be changed; it is possible but not anticipated;
- an observation that in Chaves County, at least one hospital would likely shut down if the eNLC is not adopted;
- whether the eNLC has a sunset provision; no;
- whether it would violate the provisions of the compact if New Mexico added a measure to add a sunset clause; an opinion of the commission's legal council would be needed; Mr. Puente said the opinion will be provided;
- clarification that the state law to authorize the eNLC could have a separate section to include a sunset provision;
- whether a nurse in New Mexico would have any changes to the nurse's license as a result of the eNLC; no, because the state licensure requirements are already the same as the compact;
- clarification regarding the cost of a license in New Mexico; fees have been increased to $110 for renewal and $150 for a new license; travelers do not have to obtain a New Mexico license under the compact;
- whether licensing fee increases have resulted from participation in the compact; no;
- clarification regarding the extent to which public meetings were held to discuss the prospective eNLC rule changes; public meetings were held, and the BoN newsletter addressed this issue;
- whether the public hearing was announced in the BoN newsletter; yes, every nurse in the state received that newsletter;
- clarification regarding required actions of New Mexico nurses should the eNLC be adopted; no actions are required;
- an observation that the BoN voted unanimously to support the eNLC at its October meeting;
- whether a special session in November would protect New Mexico from untoward effects and loss of grandfathering protections of late endorsement of the eNLC; yes;
- whether the governor has endorsed action on the eNLC; this is not known;
- whether the eNLC has congressional approval; no, congressional approval is not required;
- a recommendation that the BoN host a meeting with nurses, especially union nurses, who have raised concerns to resolve issues; and
- whether a broader survey could be sent out to gather input from other institutions besides hospitals, including how long it takes for a nurse to get licensed and how long in advance a traveler would have to make a decision to bypass New Mexico, and a request for the DOH to encourage other state trade associations to gather input.

Mr. Puente offered to address concerns raised in public comment. He noted that 96% of hospitals and 90% of nurses nationwide want their state to be in the eNLC, and two out of three union nurses support the eNLC. The commission has set aside adequate funding to implement

the eNLC well into the future; this is among the least expensive of many compacts in which the state is involved and for which it pays steep costs. In terms of rulemaking, rules must be related to the statute and cannot change anything currently in the Nursing Practice Act. The commission is a quasi-governmental entity. The NCLEX is not owned by the commission; it is the national exam that all states have agreed upon to test standards of nursing practice. Concerns about due process and other stated concerns are not handled by the commission; they are the purview of state BoNs. Concerns regarding individual state CE requirements do not measure the readiness of a nurse to practice. There is no research that shows a direct link between CE and patient safety. He further stated that failure to join the eNLC would disable telehealth in the Four Corners area. Surveys show that new nurses do not want to practice in non-compact states.

Ms. Walker acknowledged that all nurses recognize the imperative of passing the eNLC. She is grateful for the dialogue but would like to continue to talk. Generally, there is appreciation for the time spent considering the issue. Ms. Brightwater restated her concerns regarding advanced practice nurses. Nurses generally like the sunset clause. Mr. Dye raised the issue that a sunset clause could raise uncertainty, and down the road, out-of-state nurses might opt out of working in New Mexico as the sunset date approached. Mr. Puente observed that such a clause would announce an intent to discontinue the compact and give six months' notice to the commission of that intent. There might be other ways of addressing this.

Senator Ortiz y Pino made a motion to request that a bill be drafted to endorse the eNLC to be considered at the November 17 meeting of the LHHS; the motion passed with no objection. Senator Moores requested that all parties involved work together so that the compact can be approved in a timely manner.

Report on Senate Memorial 50, 2017 Regular Session — Study of New Mexico Families That Use Two or More Types of Social Services

Jennifer Ramo, executive director, New Mexico Appleseed (Appleseed), introduced Gwendolyn Aldrich, Bureau of Business and Economic Research (BBER), University of New Mexico, and Meghan Mead, staff attorney, Appleseed.

Ms. Ramo stated that Appleseed has been studying the effects of poverty for many years. She described the typical family in poverty in New Mexico, with multisystem families being those that engage in two or more types of social services. Significant research shows a correlation between these problem areas. Currently, different agencies deal with different problems with no effective sharing of data or collaboration and coordination of care. She identified three reasons to study multisystem families: (1) they are the most expensive, accounting for 20% of the social services population but 80% of the budget for those services; (2) studying them could lead to predicting and preventing future problems; and (3) designing an integrated system would address their needs in a coordinated fashion.

Appleseed has been doing research on the potential for an integrated data system to focus on the greatest areas of need and cost. Senate Memorial 50 requests that the Legislative Finance

Committee (LFC) and the BBER work together to identify the costs of such a response. The BBER has been conducting the study, including development of a data source inventory and mapping process. A cost analysis of New Mexico's multisystem families reflects scattered data across state agencies dealing with these social services and needs. Effectiveness of the ways in which the populations are being served cannot be adequately identified at present. Long-term benefits of this work will reveal who these multisystem families are and how their needs can be effectively met with better outcomes and lower costs.

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

- clarification regarding the original hypothesis of Senate Memorial 50; the work is to prove or disprove the notion that multisystem families will be better served by an integrated approach;
- whether there has been any progress on former attempts to centralize and integrate social services; this study looks at identifying affected families and integrating data to be able to know where to start on centralizing services;
- whether there are federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) concerns in this project; yes, the data would be shared between covered agencies that are identified as exceptions in the HIPAA requirements;
- whether lessons learned from other states provide an idea of the potential savings through this approach; there is potential for this;
- clarification regarding research goals versus implementation goals; Appleseed hopes that identification of the relevant data will lead to that clarification;
- a suggestion that Appleseed gather data from other states and state agencies; that is part of the work it is doing without it being explicitly mentioned in the memorial; state agencies have agreed to participate in data sharing with the LFC;
- an observation that the state has no authority over federal programs, which may complicate the efforts;
- recognition of the importance of involving case managers in identifying and treating families with the greatest complexity;
- recognition that a Medicaid waiver might provide an avenue for implementation;
- whether data will be gathered from rural as well as urban areas; yes;
- whether the percentage of families who are homeless or who have members who are veterans is known; that is part of what the data collection is hoped to generate;
- clarification regarding the validity of comparisons of potential cost savings based on other states; it is a very preliminary estimate; the BBER is hoping to develop this data;
- whether health care and behavioral health care cost information is included in the data from other states; South Carolina has an all-payer claims database; other states are including Medicaid data; the project is pulling from different sources; the LFC noted that research seems to suggest it is a combination of data sources;
- a recommendation that child care, child assistance, aging issues and other areas should be included and identified; these are part of the study; and

- recognition that the project opens the possibility of better understanding adverse childhood events, social determinants of health and many other elements that contribute to the health and well-being of New Mexicans.

Jon Courtney, LFC, stated that the LFC has had difficulty obtaining information from some state agencies. Hopefully, the efforts and work on ongoing projects of some agencies can be leveraged to pursue the database envisioned by this project.

Senate Joint Memorial 6, 2017 Regular Session — Study Direct-Care Workforce

Adrienne R. Smith, president and CEO, New Mexico Direct Caregivers Coalition, introduced Alisha Norsworthy, caregiver and member of the task force created by Senate Joint Memorial 6. Ms. Smith provided an overview of the goals and purpose of Senate Joint Memorial 6, which created a task force to recommend measures to ensure state compliance with the federal Fair Labor Standards Act of 1938 (FLSA) "Home Care Rule" of 2015. The memorial asks the task force to recommend and implement policies to promote a stable workforce to meet the needs of seniors and individuals with disabilities. The report makes 16 recommendations, a few of which were highlighted.

The FLSA sets standards that direct care workers be paid at least minimum wage, overtime pay and travel time in the course of a caregiver's work day. In 2015, the U.S. Department of Labor revised the FLSA regulations to extend the minimum wage and overtime protections to nearly four million homecare workers in the United States. The report presented at this meeting represents phase one of the task force's work; a second report will be forthcoming.

Ellen Pinnes, consultant with the task force, noted that managed care organization (MCO) regulations state that no worker would be permitted to work more than 40 hours per week, in order to avoid paying overtime. The task force recommends that the Human Services Department (HSD) conduct a study to determine how much money should be budgeted to cover the cost of overtime. If the HSD determines that caps on hours are needed, exceptions to those caps should be established. If such a cap is implemented, there should be a process for an exception to the rule in both short-term and emergency situations, as well as long-term exceptions that must be built into the care plan.

Tallie Tolen, chief, Long Term Services and Supports Bureau, Medical Assistance Division, HSD, reported that the HSD has imposed a 40-hour cap in the Mi Via program in order to ensure that a member's monthly budget is not exceeded. There is no cap on the hours worked in the personal care services program.

Ms. Smith described an additional issue the task force has studied regarding the definition of "employer". The task force recommends that the Workforce Solutions Department work with the HSD to promulgate regulations that clarify this issue. Ms. Pinnes noted that under the FLSA, the employer is legally responsible for paying overtime. Given that, the task force felt it was important that an analysis be conducted to clarify this issue.

Questions and comments from committee members covered the following areas:

- clarification regarding what subset of caregivers and payers is affected by the FLSA rule; the FLSA applies to *all* caregivers; phase one of this study only affects Medicaid;
- whether the task force includes caregivers who work for an agency; yes, as well as independent caregivers;
- whether the task force is coordinating with agency employers as well as its workforce; yes;
- whether the management participating in the task force is threatened by the advocacy for independent caregivers; no, all agree the job is hard and important and needs clarity;
- a suggestion that both caregivers and those receiving care should have an avenue to register complaints; the report recommends the establishment of an ombudsman program for complaints regarding the FLSA;
- clarification regarding how widespread the distribution of this report will be; the memorial identifies the recipients of the report to include the agencies that are involved;
- whether the caregivers and recipients of services are involved in determining the amount of care needed; in Medicaid, that decision is made by the MCOs;
- an observation that Medicaid is one of the very few payers of long-term care services;
- whether there is any research about agencies that may have been observing these rules prior to the 2015 FLSA rule; no;
- recognition of a distinction between a payer's decision regarding the services provided and the number of hours a person may work to provide those services;
- an observation that the HSD not only has an obligation to pay for services provided, but also for requesting an adequate appropriation to cover those anticipated costs; and
- whether the FLSA applies to independent caregivers as well as caregivers who work for an agency; this can be looked at in phase two of the report.

Senator Ortiz y Pino made a motion to send a letter to all of the agencies involved in the task force with a copy of the report and a recommendation for follow-up as called for in the memorial; the motion passed without objection.

Domestic Violence in New Mexico: Batterers Intervention Program

Pam Wiseman, executive director, New Mexico Coalition Against Domestic Violence (NMCADV), addressed the significance of domestic violence in New Mexico. She identified five recommendations arising from the criminal justice system for reducing violence, as follows:

- develop and utilize a standardized risk assessment;
- strengthen judicial councils and provide support;
- implement the Colorado model that uses multidisciplinary teams for batterer interventions with a pilot in several areas;

- establish core competencies for service providers and training through a standardized curriculum; and
- develop outcome measures to assess how community attitudes affect recidivism.

Evidence is clear that when domestic violence program staff in prisons and jails do their work, violence is reduced. There will be costs, but it is unclear exactly how much money will be needed. Some studies suggest that the cost of one incident of recidivism is $54,000; any investment in reducing recidivism will be returned.

Committee members had questions and comments as follows:

- recognition that even small incidents of domestic violence lead to much bigger problems;
- whether the approach to treating batterers varies by district; it does vary by district, though whatever model is used, assessments, training, supervision and core competencies should be standard;
- recognition that the assessment process is critical and should be standardized;
- whether there is progress in the direction of standardization; the Children, Youth and Families Department (CYFD) is using a recommended assessment tool; the NMCADV is recommending a pilot project with law enforcement to use this assessment process;
- ways in which law enforcement can be made to participate in batterers intervention; this is difficult, but a pilot project in targeted areas would start the process;
- recognition that the system currently has very little consistency;
- whether the LFC conducted a report on this topic and whether it recommended a pilot; the LFC did not recommend a pilot, but it did recommend a coordinated community response;
- a suggestion that training in the New Mexico Law Enforcement Academy might be fruitful;
- recognition that the legislature passed a bill in 2017, which was vetoed, requiring a domestic violence offender to relinquish firearms following a conviction for domestic violence;
- a recommendation that a time line be set to establish and implement a validated assessment tool;
- consideration for inclusion in the assessment tool information regarding previous abuse of animals and recognition of the correlation between animal abuse and abuse of another human;
- a suggestion that consideration be given to a memorial studying the importance of law enforcement involvement in domestic violence; and
- a request for a follow-up report next year to the LHHS.

Emily Martin, chief, Community Services Bureau, CYFD, and Rebecca Edwards, supervisor, Domestic Violence Unit, CYFD, were invited to address the committee. Ms. Martin

and Ms. Edwards have no disagreement with the recommendations of the NMCADV. Law enforcement was not involved in developing the recommendations in the report. Ms. Martin noted that the CYFD has requirements for providers regarding training and use of the core competencies. She also supports the use of the Colorado model. The CYFD supports involvement of law enforcement but has little to no control over whether law enforcement agrees to participate. Ms. Wiseman noted that this might lend itself to a legislative proposal to fund a pilot.

Adjournment

There being no further business, the meeting was adjourned at 3:35 p.m.

Revised: October 30, 2017

TENTATIVE AGENDA
for the
EIGHTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

November 1, 2017
State Capitol, Room 317
Santa Fe

November 2, 2017 — Opioid Crisis Response Summit
Santa Fe Convention Center
201 W. Marcy St.
Santa Fe

November 3, 2017
State Capitol, Room 317
Santa Fe

Wednesday, November 1 — State Capitol, Room 317

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee (LHHS)
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (1) **Rio Arriba Behavioral Health Investment Zone Update**
—Lauren Reichelt, Director, Department of Health and Human Services, Rio Arriba County

10:30 a.m. (2) **Primary Care Safety Net Update**
—Eileen Goode, Chief Executive Officer, New Mexico Primary Care Association (NMPCA)
—David Roddy, Health Policy Director and Chief Financial Officer, NMPCA

11:30 a.m. (3) **Public Comment**

12:00 noon **Lunch**

1:30 p.m. (4) **Report of the J. Paul Taylor Early Childhood Task Force; Early Childhood Screening**
—Andrew Hsi, M.D., M.P.H., F.A.A.P., Professor, Department of Pediatrics, University of New Mexico (UNM) Health Sciences Center (HSC)
—Matthew Bernstein, Staff Attorney, Pegasus Legal Services

3:00 p.m. (5) **Health Insurance Market Update**
—Paige Duhamel, Esq., Health Care Policy Manager, Office of Superintendent of Insurance
—Lisa Cacari Stone, Ph.D., College of Population Health; Assistant Director, Robert Wood Johnson Foundation Center for Health Policy; Director, Transdisciplinary Research, Equity and Engagement Center for Advancing Behavioral Health, UNM HSC
—Nicholas Edwardson, Ph.D., School of Public Administration, UNM
—Claudia Diaz Fuentes, Ph.D., Department of Economics, UNM
—Melissa Roberts, Ph.D., College of Pharmacy, UNM

5:00 p.m. **Recess**

Thursday, November 2 — Opioid Crisis Response Summit, Santa Fe Convention Center

8:30 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, LHHS
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

(6) **Welcome from Santa Fe County and the Santa Fe Prevention Alliance**
—Anna Hansen, Commissioner, Santa Fe Board of County Commissioners
—Jennifer Romero, Chair, Santa Fe Prevention Alliance

(7) **Overview of the Opioid Use Crisis in New Mexico**
—Michael Landen, M.D., M.P.H., State Epidemiologist, Department of Health

(8) **Controlled Substance Prescribing and Clinician Education**
—Joanna G. Katzman, M.D., Executive Medical Director, UNM Pain Center

(9) **Overdose Death Prevention: Increasing Access to Naloxone**
—Bernie Lieving, M.S.W., Principal, The Lieving Group, LLC

(10) **Role of Pharmacies in the Prevention of Opioid Overdose**
—Brianna Harrand, Pharm.D., Southwest CARE Center

11:30 a.m. **Lunch — Visit Day of the Dead Displays**

12:30 p.m. (11) **Detox Services and Opioid Use Disorders**
—Sylvia Barela, M.B.A., Chief Executive Officer, Santa Fe Recovery Center (SFRC)
—Laura Brown, M.D., M.P.H., Medical Physician, SFRC

(12) **Expanding Access to Medication-Assisted Treatment Providers and Services**
—Leslie Hayes, M.D., El Centro Family Health

(13) **Medication-Assisted Treatment in Correctional Facilities**
—Bruce G. Trigg, M.D.

2:30 p.m. (14) **Roundtable Discussions: What Can the Legislature Do to Help Turn the Curve on Drug Overdose Deaths?**
—Roundtable Facilitators

4:00 p.m. (15) **Conclusions; Wrap-Up Discussion**
—Representative Deborah A. Armstrong, Chair, LHHS
—Roundtable Facilitators

5:00 p.m. **Recess**

Friday, November 3 — State Capitol, Room 317

9:10 a.m. (16) **2017 New Mexico Health Care Workforce Committee**
—Richard Larson, M.D., Ph.D., Executive Vice Chancellor, UNM HSC

10:30 a.m. (17) **Senate Memorial 38 (2017 Regular Session): Study Incidence of Strangulation in Domestic Violence**
—Sheila Lewis, Director, Santa Fe Safe

12:00 noon **Lunch**

1:00 p.m. (18) **New Mexico Adult Guardianship Study Commission (AGSC) Report**
—The Honorable Wendy York (Retired), Chair, AGSC
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS; Member, AGSC

2:30 p.m. (19) **Oversight of Contract Guardians and Conservators**
—Timothy M. Keller, State Auditor, Office of the State Auditor (OSA)
—Sarita Nair, General Counsel and Chief Government Accountability Officer, OSA
—John Block III, Executive Director, Development Disabilities Planning Council

4:00 p.m. (20) **Public Comment**

5:00 p.m. **Adjourn**

MINUTES
of the
EIGHTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

November 1, 2017
State Capitol, Room 317
Santa Fe

November 2, 2017 — Opioid Crisis Response Summit
Santa Fe Convention Center
201 W. Marcy St.
Santa Fe

November 3, 2017
State Capitol, Room 317
Santa Fe

The eighth meeting for the 2017 interim of the Legislative Health and Human Services Committee (LHHS) was called to order on November 1, 2017 by Representative Deborah A. Armstrong, chair, at 9:20 a.m. in Room 321 of the State Capitol. A quorum was present**.**

Present
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong
Rep. Rebecca Dow (11/1)
Sen. Mark Moores
Sen. Bill B. O'Neill
Sen. Cliff Pirtle (11/3)

Absent
Rep. Elizabeth "Liz" Thomson

Advisory Members
Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Sen. Linda M. Lopez (11/2)
Sen. Cisco McSorley (11/2, 11/3)
Sen. Howie C. Morales (11/1)
Sen. Nancy Rodriguez (11/2)
Rep. Nick L. Salazar (11/1, 11/3)
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

Guest Legislators
Rep. D. Wonda Johnson (11/1, 11/2)
Sen. James P. White (no per diem requested)

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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.

Wednesday, November 1

Welcome and Introductions
Committee members and staff introduced themselves.

Rio Arriba Behavioral Health Investment Zone Update
Lauren Reichelt, director, Department of Health and Human Services (RAHHS), Rio Arriba County, described a grant for behavioral health investment zones (BHIZs), of which Rio Arriba County is a grantee. The grant in Rio Arriba County has two goals: 1) to reduce the death rate; and 2) to create an accountable care network using internet technology. The following outcome measures were reported: 85% of clients received case management follow-up within 30 days of discharge from an inpatient facility; 97% of clients with a diagnosis of alcohol or drug dependency received additional services within 30 days of the initial visit; and 77% of clients who received detox services completed the full seven days. Many additional services were implemented, including strong participation of law enforcement in crisis intervention, resulting in a significant reduction of incidents of overdoses. The RAHHS has introduced all clients into a database called "Pathways" to track the care and services provided among multiple entities. Case management services are recognized as foundational to recovery. A medication-assisted treatment (MAT) task force is beginning in November. The RAHHS has introduced efforts to increase public awareness and understanding of opioid use disorder as a chronic disease. Rio Arriba County was featured in a PBS NewsHour segment as a county that is employing best practices in all sectors to address addictions. Several powerful educational videos were shown to the committee that will hopefully air on television. Monica Griego, Sancre Productions, was introduced as the producer of the videos. She provided additional information about their creation and future distribution.

Ms. Reichelt noted that without the financial commitment of managed care organizations (MCOs), it will be impossible to identify fully the cost of *not* providing treatment. So far, the MCOs have been unwilling to participate, except for care coordination participation at meetings.

Committee members asked questions and made comments regarding the following:

- clarification regarding ways to avoid incarceration for pregnant women living with substance dependence; the goal is to care for them under house arrest with aggressive case management services;
- clarification of the other BHIZ grant in Gallup;
- acknowledgment that Medicaid is the only way to sustain the efforts and achievements already made in Rio Arriba County; participation and commitment from MCOs are crucial;
- clarification regarding anticipated markets for the videos — radio and TV — targeted to specific demographics;
- ways in which HOY Recovery Program, Inc., services have changed; HOY has grown from a simple sobering model to a very sophisticated, state-of-the-art program;
- encouragement to include access to breastfeeding for incarcerated mothers, once they deliver; Ms. Reichelt is hoping to create a video on this topic;
- recognition that senior citizens can become dependent upon prescription medications; the RAHHS conducts brown-bag medication reconciliation events to raise awareness about this issue;
- recognition that since substance dependence is multigenerational in nature, families should be included in treatment; this is difficult; case managers and behavioral health providers try to facilitate this, but families are often "burned out"; and
- encouragement to pursue national attention for the videos with help from the New Mexico congressional delegation to find funding.

Wayne Lindstrom, director, Behavioral Health Services Division (BHSD), Human Services Department (HSD), indicated his willingness to work with MCOs to gain their involvement in these initiatives in Rio Arriba County.

Primary Care Safety Net Update

Eileen Goode, chief executive officer (CEO), New Mexico Primary Care Association (NMPCA), introduced herself and described her background. She also described the membership of the NMPCA and outlined the presentation to be given.

David Roddy, health policy director and chief financial officer, NMPCA, offered statistics of the patients and clients served by primary care clinics in New Mexico, noting that 42% are covered by Medicaid and 26% have no insurance coverage at all. NMPCA clinics serve 62% of all New Mexicans living below 200% of the federal poverty level. A breakdown of the age, race and ethnicity of those served was presented. Of the 282 primary care clinics in the state, 80% are in rural areas. Mr. Roddy noted that in 2016, over $57 million was provided in

discounts to the uninsured and through uncompensated care. He reviewed staffing challenges and successes. He presented statistics regarding behavioral health data.

Ms. Goode discussed quality processes and tools being implemented in medical homes and through care coordination. She described health information and technology challenges, primarily due to cost and management. The NMPCA is creating a health-center-controlled network to promote integrated data management. Preliminary data reported through this network were presented. Robust outcome measures that are aligned with national Healthy People 2020 goals are being tracked and reported.

Mr. Roddy identified challenges for clinics in the areas of workforce, prescription drugs, the complexity of regulations, new payment methodologies and integration of behavioral health into clinics. Funding from the state's Rural Primary Health Care Act has declined by $6 million since 2016. He identified the serious impact that a tax on nonprofit entities would have on primary care clinics, as well as a projected loss of Medicaid patients due to program cutbacks. Ms. Goode noted that 70% of federal funding for federally qualified health centers (FQHCs) expired in September 2017. All National Health Service Corps (NHSC) funding will likewise expire if Congress fails to act. Finally, proposals previously considered to repeal and replace the federal Patient Protection and Affordable Care Act (ACA) would have a devastating impact on New Mexico primary care clinics.

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

- whether the impact of proposed Centennial Care 2.0 revisions to establish co-payments and premiums would affect primary care clinics; the NMPCA is not opposed to co-payments philosophically; however, they would be expensive to implement; the NMPCA does oppose premiums, as it projects that 30% of beneficiaries would fall off Medicaid coverage; HSD revisions to the original proposals have mitigated these impacts somewhat;
- whether there are other proposed changes that would affect primary care clinics; the proposal to shift case management to providers would be welcome; reductions to dental access would be a serious problem and could increase costs to providers as well as patients;
- whether proposals for residency programs at primary care clinics are valuable; the NMPCA has concerns about the cost and scope of the proposals;
- clarification regarding the potential for a tax on nonprofits and the impact on primary care clinics;
- whether the NMPCA has made any plans for development of clinics in additional rural areas; it has been several years since this was done; by and large, clinics exist where they are sustainable;
- whether there is promise for mobile clinics in rural areas; it is possible but very costly and hard to sustain;

- whether there is congressional activity to fund or restore funding for threatened programs like the NHSC; a bill is expected to be presented this week; however, to fund the program, other prevention funds are proposed to be cut;
- whether vaccines are funded at FQHCs; yes, through the federal Vaccines for Children Program; this funding is coming from now-threatened prevention program funding;
- clarification regarding data-sharing for clinics that are not part of the network; the NMPCA obtains data from nonparticipating clinics and shares data internally; and
- clarification regarding the reduction in vaccinations; it is a reflection of changes to federal requirements for reporting and giving vaccinations.

Public Comment

Tracy Perry of Direct Therapy Services in Las Cruces commented on the impact of Centennial Care 2.0's proposed changes to therapy services, which will result in increased costs and decreased access to services. Although some of the changes are for services that are rarely used, they nonetheless are vital services and should not be eliminated.

Robert Kegel provided an historical review of programs and services provided to developmentally disabled persons in New Mexico from 1891 to the present. He proposed that the legislature appropriate at least $25 million to eliminate the waiting list for services and to provide adequate services to this vulnerable population.

Minutes

A motion was made and seconded to approve the LHHS minutes for October 4 and October 16-18, 2017 and to approve minutes for the Disabilities Concerns Subcommittee for September 29 and October 11, 2017. The motion was adopted without objection.

Report of the J. Paul Taylor Early Childhood Task Force; Early Childhood Screening

Andrew Hsi, M.D., M.P.H., F.A.A.P., professor, Department of Pediatrics, University of New Mexico (UNM) Health Sciences Center (HSC), and Matthew Bernstein, staff attorney, Pegasus Legal Services, were invited to address the committee.

Mr. Bernstein presented the findings of a report titled "Wellness Check-up", which calls for increasing the use of social-emotional screening to reduce the incidence of adverse childhood events (ACEs) and help parents understand what their children need in order to grow and thrive. He described social-emotional screening and identified its importance. Despite a federal mandate, New Mexico does not require this type of screening. There is no list of approved screening tools for providers, nor does Centennial Care 2.0 adequately promote screening. Pegasus has three recommendations to address this: 1) create an HSD-approved list of screening tools; 2) create an addendum to the current schedule for well-child visits to address social-emotional needs; and 3) improve the referral and provider structure for MCOs to lessen the burden on doctors regarding referral infrastructure. He noted that the full report is available online and will be posted on the legislature's website.

Dr. Hsi emphasized the importance of screening. As a pediatrician, he is aware of the impact of ACEs in the family home. Six out of 10 children in the state experience at least one ACE. Combined with a difficulty in dealing with social-emotional issues, this puts children at great risk. The goal of reducing ACEs for a child living at home with a parent who has a mental health issue relies on directing the parent to appropriate services and coordination of the parent's care with the social-emotional health of the child. The J. Paul Taylor Early Childhood Task Force recommends that the legislature direct the HSD to convene a task force to identify and recommend specific legislative action to prevent ACEs in children, including three measures for evaluating the impact and effectiveness of screening for ACEs by case managers in MCOs and legislation specifically to enhance screening by MCOs for ACEs and social-emotional risks.

Committee members had questions and comments in the following areas:

- an observation of the long-term detrimental effect of ignoring these needs;
- a suggestion that the LHHS endorse legislation to accomplish the legislative requests brought to the committee by Dr. Hsi;
- clarification regarding the appropriate entity or provider to accomplish the screening; it depends on the level of complexity arising out of an ACE;
- whether the proposal suggests redirecting screening from MCO care coordinators to providers; obligating providers to engage in screening will lead to better outcomes for children in the first six to 12 months of life; however, 80% of children are covered by Medicaid, so requiring MCOs to conduct ACE screening affects a larger volume of children and allows a stronger partnership among doctors;
- a suggestion that screening could be provided during home visits;
- recognition that many existing assessments are time-consuming, complicated and duplicative, without resulting in the needed care coordination; the proposed screening tool is accomplished through the power of the primary care physician relationship, thereby producing better results;
- how results can be conveyed to a child care center; there is a release that permits the sharing of this information for public health purposes;
- whether parents would willingly take part in a screening process that is burdensome and whether there is a way to streamline the process; an MCO case manager could become the single point of contact for obtaining and sharing data;
- recognition that there is an inevitable disconnect among all agencies conducting various assessments and screenings and the compelling need for facilitating better data-sharing;
- whether the recommendation calls for a new task force or broadens the scope of the J. Paul Taylor Early Childhood Task Force; it could be accomplished through a memorial to expand the scope of the current task force;
- whether the J. Paul Taylor Early Childhood Task Force is funded; it is not;
- clarification regarding the current composition of the task force; Legislative Finance Committee (LFC) staff participates, as does the Department of Health (DOH) staff, but there is no legislative representation;

- a suggestion that representation from children's courts be added to the membership of the task force; and
- an observation that many of the recommendations could be accomplished by the MCOs voluntarily; their participation on the task force would be valuable.

Health Insurance Market Update

Paige Duhamel, Esq., health care policy manager, Office of Superintendent of Insurance (OSI), introduced herself and the role of the OSI. She briefly reviewed the yearly responsibilities of insurance companies, including the setting of premiums, the review of claims experience and the prediction of what is coming up to inform risk determinations. She noted that the highly disruptive current landscape makes the ability of carriers to do all of that very challenging. She briefly reviewed the way in which small businesses and individuals obtain health insurance in New Mexico. About 72% of New Mexicans are eligible for cost-sharing. The reason that insurance premiums have dramatically increased is because carriers are now responsible for cost-sharing provisions previously covered by the federal government but withdrawn by executive order. She identified the impact on purchasers at this time. The OSI introduced a comparison tool to help people both on and off exchange plans to estimate their health care and insurance costs and compare plans in the future.

Lisa Cacari Stone, Ph.D., College of Population Health; and assistant director, Robert Wood Johnson Foundation Center for Health Policy, UNM HSC, introduced her colleagues: Nicholas Edwardson, Ph.D., School of Public Administration, UNM; Claudia Diaz Fuentes, Ph.D., Department of Economics, UNM; and Melissa Roberts, Ph.D., College of Pharmacy, UNM. She also recognized several members of the team of researchers and some students. Dr. Cacari Stone noted that seven health policy briefs have been developed addressing this topic. She identified marketplace enrollee characteristics in 2016 by age group, race and ethnicity.

Dr. Edwardson discussed the characteristics of uninsured people who entered the marketplace in 2016, noting that the data suggest populations that are likely to have high health care costs. He identified changes in behaviors relative to obtaining coverage, health care consumption and use of ancillary services, such as ambulatory and dental care. Finally, he noted that low-income people experience the highest out-of-pocket burden.

Dr. Roberts asserted that 70% of those buying insurance on the exchange in the state are receiving some cost-sharing. She noted that states that chose to expand Medicaid had higher enrollment in health insurance. She highlighted that New Mexico requires a carrier wishing to offer a plan in the exchange to offer it statewide, lending stability to the exchange. Data illustrate that in states where there is little to no competition, the rates are high. New Mexico has high competition and low premiums. The Medicaid expansion states with two or more carriers in the exchange also are shown to have lower deductibles and premiums.

Dr. Fuentes noted that in non-Medicaid expansion states, counties with a larger percentage of Spanish speakers had fewer uninsured people joining the marketplace. The greater

the proportion of Spanish speakers, the higher the likelihood that they will remain uninsured. This trend is more profound in rural parts of the state.

In conclusion, the research done in New Mexico shows that New Mexico as an expansion state has acted as an important buffer for the private market. Even though enrollment is degrading a bit, it is still higher than the national average. Dr. Cacari Stone emphasized the critical nature of collaboration with the OSI, the HSD and the insurance exchange. Ms. Duhamel stressed the importance of continued dialogue with the legislature.

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

- clarification regarding what entity has the primary responsibility to reshape the essential benefit package; states have the option of setting the benchmark for coverage on and off the exchange for health plans; the OSI has no role in identifying coverage in Medicaid;
- whether plans are different on and off the exchange; cost-sharing and value-added benefits are the only differences;
- clarification regarding why carriers do not want to participate in the exchange; they want to be able to appeal to purchasers who have more money; people over 400% of the federal poverty level receive no particular benefit by purchasing on the exchange;
- encouragement to have broad public participation when considering changes to the essential benefit plan;
- clarification regarding grievances and appeals; insurance companies have toll-free numbers to file a complaint; the OSI's Managed Health Care Bureau can also be notified of grievances through a toll-free number and a website when complaints are not resolved through the insurance company;
- whether a promised OSI report on surprise billing will be released soon; yes;
- whether family planning is a required benefit in the private and exchange markets for both men and women; yes, it is in line with federal contraception mandates;
- clarification regarding insurance companies' recourse if they suspect fraudulent provider billing practices; that would be handled through the Office of the Attorney General;
- clarification regarding the suggestion to diversify the risk pool; the OSI is trying to ensure that younger, healthier people are in the risk pool to keep premiums lower;
- an observation about the importance of having adequate provider networks to attract individuals, especially in rural areas, to become insured;
- an observation that the availability of claims data will be very informative in identifying who is buying insurance and why;
- an observation that merely obtaining health insurance has an impact on health;
- a request for the LHHS to look at health disparities during the interim next year;
- an observation that premiums for children have gone up significantly and whether it is anticipated that this will result in a drop in coverage for this group; this is not known yet;

- an observation that the insurance exchange, "bewellnm.com", is not using the health plan comparison tool, which also allows users to identify whether a particular provider is part of a health plan;
- whether the OSI is aware of any federal discussion regarding the need to continue to support states with cost-sharing and other provisions; no, there is no indication that any funding will be available to help states implement changes to the ACA;
- an assertion that the OSI is not asking for increases in funding but just to have its budget remain flat and to make temporary positions permanent;
- whether the OSI is conducting an analysis of behavioral health interventions and implementation of mental health parity; it is partnering with the Robert Wood Johnson Foundation on a survey to help determine regulatory changes in this area;
- an observation that information about the impact of people going on and off Medicaid is needed; and
- an observation that carrier reports to justify network adequacy are inaccurate as the carriers are all claiming the same providers as part of their network.

Ms. Duhamel identified Section 1332 waiver applications as a potential avenue to stabilize the market. Many states are leveraging these funds to establish reinsurance pools. New Mexico is trying to ensure that the most costly patients' needs are met without disruption of markets. Section 1332 waivers may be an avenue to accomplish this.

Representative Armstrong noted that use of a Section 1332 waiver application may not be the best way to go; the high-risk pool already gets federal funds. The OSI believes that there may be a way to get a Section 1332 waiver and still receive federal funds for a high-risk pool and a Medicaid match. Alaska has a model that is being studied.

Recess

The committee recessed for the day at 5:10 p.m.

<u>Thursday, November 2</u> — Opioid Crisis Response Summit, Santa Fe Convention Center

Welcome and Introductions

Representative Armstrong reconvened the meeting at 9:09 a.m. She welcomed the committee and members of the audience and thanked participants for their presence. Committee members and staff introduced themselves.

Welcome from Santa Fe County and the Santa Fe Prevention Alliance

Anna Hansen, commissioner, Santa Fe Board of County Commissioners, and Jennifer Romero, chair, Santa Fe Prevention Alliance, extended their welcomes to the legislators and participants. Commissioner Hansen emphasized the importance of the opioid crisis and related a personal experience of losing a niece to a heroin overdose. She noted that Santa Fe County is a leader in the state in dealing with the opioid crisis, with five community partners committed to it. She provided statistics that demonstrate the impact of opioid addiction and overdoses.

Ms. Romero identified a goal of bringing many people together to join forces and identify actions to address the opioid crisis in the state. She recognized all of the partners who helped make this event possible.

Overview of the Opioid Use Crisis in New Mexico

Michael Landen, M.D., M.P.H., state epidemiologist, DOH, presented data regarding drug overdose rates in New Mexico and the United States. The incidence in New Mexico far outpaces the national average. New Mexico ranks fifteenth in the nation for drug overdose deaths. Statistics by county were provided, including overdose rates for selected drugs. He identified fentanyl as a major contributing factor to overdose deaths. Other related outcomes include neonatal abstinence syndrome. Emergency department visits related to overdoses are steadily rising. He discussed the economic cost to the state of opioid misuse, which totals an estimated $1 million per year. The top-three successful interventions are reducing high-risk prescribing, increasing access to naloxone and increasing MAT. He highlighted New Mexico's progress in each of these areas. New Mexico has a prescription drug monitoring program (PMP) and the Prescription Drug Misuse and Overdose Prevention and Pain Management Advisory Council. The state is a leader in access to naloxone. Progress with MAT is enhanced by removing the preauthorization requirement for buprenorphine and by a statute that permits nurse practitioners and physician assistants to prescribe buprenorphine. Dr. Landen noted that legislation has already addressed many provisions called for in a federal public health emergency declaration; however, a long-term, ongoing approach to the crisis is still needed.

Controlled Substance Prescribing and Clinician Education

Joanna G. Katzman, M.D., executive medical director, UNM Pain Center, noted that drug overdose deaths exceed deaths due to car accidents and gun violence. She emphasized that many other substances besides opioids contribute to this trend, including legal substances, such as alcohol. It is important to remember that there is an epidemic of chronic pain in the nation. The White House's Office of National Drug Control Policy has identified three targeted approaches to treating opioid addictions: 1) MAT; 2) access to naloxone; and 3) safe-prescribing education to all clinicians with prescriptive authority. New Mexico is ahead of the curve in many areas in dealing with pain and substance use disorders. Dr. Katzman discussed federal Centers for Disease Control and Prevention (CDC) guidelines for treating chronic pain, which New Mexico adopted in 2016. Prescribing patterns revealed as a result of New Mexico's PMP were presented and showed a slight decline in prescribing practices. High-dose prescriptions have similarly declined, as shown by the PMP. Based on the CDC guidelines, New Mexico has seen remarkable progress in high-dose dispensing, multiple prescriptions and other areas. Dr. Katzman emphasized the critical need of mandates for clinician training, whether at the state or federal level.

Overdose Death Prevention: Increasing Access to Naloxone

Bernie Lieving, M.S.W., principal, The Lieving Group, LLC, identified grants that are funding overdose prevention and access to naloxone in the state. The HSD has a federal Substance Abuse and Mental Health Services Administration grant to distribute naloxone in four

counties. A state-targeted response grant is funding distributions by first responders in all 33 counties. General Fund money in the amount of $500,000 is targeted to jails and prisons. Dr. Lieving highlighted the local impact in five areas: 1) a county jail pilot project; 2) Santa Fe Fire Department overdose survivor outreach; 3) reported overdose reversals; 4) state-targeted opioid responses in law enforcement training; and 5) prescription drug/opioid overdose highlights, including during probation or parole.

Role of Pharmacies in the Prevention of Opioid Overdose

Brianna Harrand, Pharm.D., Southwest CARE Center, noted the pivotal role of pharmacies in training, improving prescribing practices, expanding MAT and developing processes to ensure safe distribution of naloxone. She believes there are opportunities to further enhance distribution, including encouraging MCOs to include at least two naloxone products on all plan formularies at the lowest-tier cost. Safe opioid practices could be improved by providing standardized educational material to clients and patients at all pharmacies. She also recommended that third-party payers reimburse pharmacist clinicians for their services. Access to MAT could be expanded through allowing mid-level practitioners and pharmacist clinicians prescriptive authority for buprenorphine when treating opioid addiction.

Questions for presenters and comments by committee members covered the following areas:

- clarification regarding the age range most affected by opioid addiction; the peak age range is between 35 and 54; however, there are trends of increased use among very young and elderly populations;
- clarification regarding the legal use of buprenorphine; it is an opioid, but it does not engage all of the receptors that opiates do, so it can be used in treatment of opioid addictions;
- whether buprenorphine and naloxone are the primary treatments for opioid addiction; yes; however, their use can be much more widely implemented;
- whether buprenorphine could be prescribed in lieu of Oxycontin; its primary beneficial use is to stop the craving for Oxycontin; research has shown that it can be used indefinitely;
- whether buprenorphine still provides pain relief; yes, it is extremely effective in patients with both substance abuse disorder and chronic pain;
- whether there are other drugs that can be prescribed off-label as a substitute for opioids; at pain clinics, the first line of treatment is a non-prescriptive approach; if the pain is not controlled in that way, clinics might consider use of buprenorphine if their prescriptive authority covers it;
- an observation that the federal Food and Drug Administration (FDA) does not recognize buprenorphine as a treatment for pain; it is not known whether there are any plans for the FDA to consider this;
- recognition that special waivers are required for many practitioners to prescribe buprenorphine;

- clarification regarding the use limits established by some states for acute pain following surgery; there are several studies that look both at the need for severe pain relief as well as the likelihood of an addiction, but they are not definitive; New Mexico does not have evidence that these limits decrease the number of deaths, but there is evidence of increased addictions;
- an observation that rural parts of the state have higher addiction rates and less access to MAT, pain management and naloxone;
- whether medical marijuana is an effective alternative to treat pain and why this is not more widely used; pain is on the list of approved conditions to treat with cannabis; however, it is not yet recognized as a best practice for this purpose; its overall efficacy is mostly anecdotal;
- the need for consistent regulation of PMPs;
- possibilities for inclusion of pharmacist clinicians as those who can prescribe drugs for opioid overdose;
- acknowledgment of the availability of different naloxone products through government-funded insurance and recognition that many patients cannot afford co-payments for those products;
- the possibility to increase nontraditional access points in places such as state and county detention facilities and to increase available treatment on demand;
- the importance of education in preventing opioid overdoses;
- recognition of results of a study by the UNM Pain Center indicating more favorable outcomes for substance use disorder patients who do not get a prescription but, instead, are given naloxone and overdose education onsite;
- recognition of studies that are being conducted with respect to issues affecting patients in chronic pain;
- identification of cost-effective products that are either currently available or may become available to overdose patients;
- how to help patients who have a legitimate need for some medications for pain management while avoiding addiction;
- a request to research the most successful program providing treatment on demand in each state and the cost of each program, in addition to similar information with respect to successful international treatment-on-demand models;
- consideration of loan forgiveness for doctors and physician assistants who work at treatment-on-demand centers;
- reasons for the increase in neonatal abstinence syndrome and possibilities for outreach to women and treatment for children with the syndrome; and
- how funding for monitoring the Zika virus has provided an opportunity for better birth defect surveillance.

Detox Services and Opioid Use Disorders

Sylvia Barela, M.B.A., CEO, Santa Fe Recovery Center (SFRC), and Laura Brown, M.D., M.P.H., medical physician, SFRC, spoke to the committee about detox services. Dr. Brown identified medical detox as only the first step in treatment of addictions. MAT is a known best

practice for successful long-term recovery. Some patients of the SFRC are appropriate for social detox treatment; however, some are really in need of medical detox. Medical detox requires a registered nurse on site and access to a prescribing physician on call.

Ms. Barela described the services and programs, as well as the limitations, of the SFRC. The SFRC is dedicated to building a fully integrated system of services for people with addictions at all levels of need. She noted that not all of those in need of medical detox will qualify for admission to a hospital. She is a proponent of providing medical detox in a non-hospital setting for those who do not need, or do not qualify for, admission to an acute-care hospital. She would like to see Medicaid coverage for this level of care.

Expanding Access to MAT Providers and Services

Leslie Hayes, M.D., El Centro Family Health, spoke about MAT, which involves use of buprenorphine and methadone to treat opioid use disorder. She described the chemical process by which buprenorphine works. MAT with buprenorphine and methadone is extremely effective and cost-effective. These medications are not addictive. Patients may be dependent on buprenorphine, but they remain opioid-free long term and are far more likely to be employed, raise children and live productive lives.

MAT in Correctional Facilities

Bruce G. Trigg, M.D., asserted that in order to improve public health and safety, substance use disorder should be treated as a chronic disease. The criminal justice system can provide a unique opportunity to intervene with individuals who would not otherwise seek treatment. He described a program at the Bernalillo County Metropolitan Detention Center (MDC), which is now nationally recognized and has been shown through a UNM study to be successful. He noted that detoxing people who are incarcerated and living with substance use disorders takes a long time.

Dr. Trigg discussed effective ways to use buprenorphine and methadone for those who are incarcerated to manage detox, provide treatment, continue treatment after release, initiate treatment two to four weeks before release and provide treatment for people in community corrections. The American Correctional Association now endorses MAT as a standard of care for incarcerated individuals. Currently, buprenorphine and methadone are not used in New Mexico prisons. He noted that MAT with buprenorphine and methadone is covered by Medicaid, and there is a growing number of providers willing to provide this treatment. He pointed out that deaths from overdoses are occurring at a higher rate in New Mexico than in the nation. What is not known is how many of those deaths occur within jails or prisons in the state and how many lives can be saved and improved with proper treatment.

Committee members asked questions and made comments as follows:

- clarification regarding the lack of coverage for medical detox on an outpatient basis and what it would take to change this; possibly a Medicaid waiver;

- what it would take to implement the MDC's MAT model statewide in correctional facilities; it is not known why this is not already the case; counties will have to take the lead on this;
- how MAT is administered; it requires a nurse to be available at all times and to have a physician on call;
- whether MAT with buprenorphine and methadone is the standard of care for opioid addiction; though there is some disagreement, there is growing acknowledgment that it is the standard and best practice;
- whether abstinence-based programs are just as successful; no, they are only successful 10% of the time and have been proven to be less successful in the long term;
- what it would take to include MAT coverage under Medicaid; it would either need to be included in the Medicaid state plan or the Medicaid waiver;
- whether the BHSD agrees that there is a need for MAT; Dr. Lindstrom stated unequivocally, "yes";
- at what stage MAT is appropriate for pregnant women; women during pregnancy are extremely motivated to seek treatment; MAT is the standard of care for pregnant women and for the first year post-partum;
- an observation that New Mexico spends the least in the nation on post-prison treatment;
- clarification regarding the number of primary care practitioners who are providing MAT with buprenorphine and methadone; it was 790, but that was prior to the ability of nurse practitioners and physician assistants to administer these drugs; FQHC funding for mid-level providers to do this is restricted;
- whether primary care physicians are reluctant to administer buprenorphine and methadone; that is becoming less the case, but this is still a significant issue; younger physicians are more enthusiastically embracing it, and UNM is providing training;
- an observation regarding the critical importance of education and training for providers;
- an acknowledgement of the importance of wraparound services;
- whether a new mother who is undergoing MAT with buprenorphine and methadone can breastfeed her baby; yes, there is no danger so long as the mother is not actively using opioids; and
- clarification about what language to use when describing MAT in legislation if the legislature were to introduce a bill to require prisons to provide MAT; MAT with buprenorphine and methadone *is* the best practice, and this is the language that should be used.

Roundtable Discussions: What Can the Legislature Do to Help Turn the Curve on Drug Overdose Deaths?

Roundtable facilitators led discussions for one and one-half hours. Legislators joined the roundtable discussions. Five tables focused on prevention, and five tables focused on treatment.

Conclusions; Wrap-Up Discussion

Following the facilitated roundtable discussions, conclusions and recommendations were offered. The discussions were robust, and innovative ideas arose. Priorities were offered based on the discussions. Similarities and overlaps were noted. Written summaries of each table were incorporated.

Committee members made final observations and comments as follows:

- recognition that advocacy is needed to gain support from the governor for some of these ideas;
- acknowledgment that the opioid crisis is not a problem that will disappear soon; conversations across governmental bodies should be encouraged;
- recognition for funding and policy to expand beyond current administrations or legislatures;
- encouragement to continue to explore innovative ideas;
- that substance abuse disorder is a chronic disease;
- recognition that Centennial Care 2.0 will have another opportunity for a public comment period once the proposal is sent to the federal Centers for Medicare and Medicaid Services; and
- a suggestion from the chair that during the 2018 interim, the LHHS meet jointly with the Courts, Corrections and Justice Committee (CCJ) to discuss and consider this important issue.

Representative Armstrong thanked everyone for their participation, particularly those who had personal stories to share. She thanked the Santa Fe Prevention Alliance and the city of Santa Fe and Santa Fe County for their support and participation.

There being no further business, the committee recessed at 4:40 p.m.

Friday, November 3

Reconvene

The meeting reconvened at 9:15 a.m. Committee members introduced themselves.

2017 New Mexico Health Care Workforce Committee

Richard Larson, M.D., Ph.D., executive vice chancellor, UNM HSC, presented the 2017 state workforce report. The report is an annual requirement pursuant to House Bill 19 (2012), which amended the Health Care Workforce Data Collection, Analysis and Policy Act. The law requires licensure boards to develop surveys on practice characteristics and for UNM HSC to be the steward of the data. An active and broadly representative committee analyzes the data and makes recommendations for action.

As of 2016, New Mexico had 9,457 licensed physicians and 2,017 nurse practitioners and clinical nurse specialists, an increase of 71 physicians and 86 mid-level practitioners. A map demonstrates the number of primary care physicians by county relative to national benchmarks. Ten counties are at the benchmark of providers per 1,000 residents; four counties have 10 or fewer providers per 1,000 population. Subsequent maps demonstrated the data for mid-level practitioners and physician specialists. Shortages of providers are most severe in less-populated counties. The average age of providers is 53.5 years. New Mexico has the highest percentage of physicians over the age of 60 in the country. The data reflect changes between 2016 and 2017. Eleven counties saw net gains, while 16 counties experienced net losses.

Special attention was given to behavioral health, which is in crisis in New Mexico. The Behavioral Health Subcommittee of the 2017 New Mexico Health Care Workforce Committee recommends new measures regarding continuing education, mechanisms to reimburse interns through Medicaid and expedited provision of telehealth services through participation in interstate compacts.

Specific recommendations for 2017 include the following:

- funding for efforts to support the New Mexico Nursing Education Consortium ($380,000);
- continued and expanded funding for primary and secondary residencies in the state;
- position the Higher Education Department to take full advantage of opportunities to reinstate federal matching grants that support New Mexico's loan repayment program;
- corrections to the pharmacists' survey;
- increase funding for state loan-for-service programs;
- request including pharmacists, social workers and counselors among the health professions eligible for tax credits; and
- provide funding for the New Mexico Health Care Workforce Committee ($300,000).

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

- clarification regarding regional variations of the supply of practitioners within a county; variations may reflect area needs and/or differences in the way counties report the data;
- conditions that influence recruitment efforts to place residents in shortage areas; schools that sponsor residencies have no control over where residents are placed; local hospitals and others try to recruit residents to remain in the community to practice;
- clarification regarding the need for legislative support to adequately fund residencies; it is as important as funding for loan repayment;
- recognition that the emphasis on nurse education at the bachelor's degree level may contribute to the nurse shortage because many associate degree nurses are unwilling to go back to school;

- whether traveling nurses are counted in the report; if they consistently register with the Board of Nursing, the board would be able to report those numbers;
- an observation that not all nurses licensed in New Mexico are practicing in New Mexico; salaries in New Mexico are generally lower than in other states;
- a request for an update on the status of the Enhanced Nurse Licensure Compact (eNLC); it was noted that the New Mexico Nurses Association (NMNA) is continuing to build support among nurses and that there is political will to expedite endorsement, so a special session may not be necessary;
- whether the committee recommends extending hospital admitting privileges to nurse practitioners; the committee does not weigh in on policy decisions;
- whether an expedited process to endorse the eNLC will protect grandfathering; yes;
- whether the NMNA supports a sunset provision; yes, but it will support modified language so as not to build in disincentives for traveling nurses to practice in New Mexico;
- whether UNM HSC is working to integrate MAT services that ensure transitions for incarcerated persons when they are released from prison; yes;
- a request for an estimate of what it would cost to develop a robust and integrated program of MAT at UNM;
- whether the committee will make formal appropriation requests for its recommendations; yes;
- recognition of the importance and cost of rural residencies;
- a request for LHHS support for increased funding for Western Interstate Commission for Higher Education programs;
- recognition of the importance of the Psychology Interjurisdictional Compact, an interstate compact that facilitates the practice of psychology using interstate telecommunications technologies;
- recognition that loan repayment programs serve not only to help recruit practitioners to rural areas, but also to retain them; and
- whether there are plans to expand the annual survey to other providers, such as psychologists; yes, all behavioral health providers are included in the report.

Senate Memorial 38 (2017 Regular Session): Study Incidence of Strangulation in Domestic Violence

Sheila Lewis, director, Santa Fe Safe, described the purpose and membership of a task force led by the New Mexico Coalition of Sexual Assault Programs. She introduced other members of the task force, as well as Mary Carmody, a student at UNM working in this area.

The significance of strangulation in domestic violence has grown in importance, highlighting the need for awareness, particularly among law enforcement and first responders. The goals of the task force are twofold: 1) reduce the incidence of strangulation; and 2) address the long-term health implications of strangulation. Ms. Lewis identified the following regarding the incidence of strangulation:

- nearly 10% of women will experience intimate partner violence in their lifetime;
- New Mexico's domestic violence rate is the second-worst in the nation;
- 13% of domestic violence victims reported being strangled; and
- strangulation is frequently used during sexual assault; 35% of all rape victims were also strangled.

Strangulation often results in traumatic brain injury. It changes the life of the victim in physical, cognitive, emotional and sleep-disruptive ways. It takes a mere four pounds of pressure, and only four minutes, to kill someone by strangulation; yet often there is no external post-event evidence of injury, making prosecution challenging.

Alexandria Taylor, executive director, Valencia Shelter Services, provided justification for a public health response, and not only a criminal justice response, to strangulation. She emphasized the critical importance of education.

Julianna Koob, registered lobbyist, identified herself as a volunteer working on domestic violence for more than 30 years. She stressed the high rate of sexual violence in New Mexico. It is difficult to recognize, and therefore report, strangulation.

Lisa Weisenfeld, policy coordinator, New Mexico Coalition Against Domestic Violence, reviewed accomplishments of the task force and its hopes going forward. Multidisciplinary teams (MDTs) have been created with individuals who have received advanced training and have provided training to their colleagues. These MDT members are now considered experts in the field of strangulation. Christus St. Vincent Regional Medical Center has agreed to be a test site for a screening tool. Protocols for emergency medical technicians are ready for implementation. Prosecutors and police in Santa Fe have been trained in traumatic brain injury as a result of strangulation. The DOH is exploring opportunities to improve data collection.

A final report of the task force will include specific recommendation for training, screening, treatment protocols, data collection and future policy initiatives. This report will be sent to the CCJ, with the request for endorsement of an appropriate criminal justice response.

Ms. Taylor reported on training provided to child protective services providers with the Children, Youth and Families Department. Requests for training for law enforcement have surfaced.

Ms. Koob requested that the LHHS support requests to the LFC for funding for training. She also would like the final report distributed to the LHHS and for members to review it carefully and send it to the LFC with recommendations for increased funding.

Committee members had questions and made comments as follows:

- whether training on the effect of strangulation is occurring in schools; not so far; the focus has been on domestic violence and the impact on children in the home;
- clarification regarding the impact on children who are witnesses to strangulation; training regarding forensic interviews with children is occurring; training is critically important in many environments to help and support children who have been witnesses of domestic violence;
- a recommendation that the Aging and Long-Term Services Department also be included in training, as it manages adult protective services;
- acknowledgment of past difficulties in obtaining legislative support to identify strangulation;
- recognition that victims themselves may not report incidents or even recognize strangulation as a crime;
- whether a victim of strangulation can observe that the victim has experienced a traumatic brain injury; it can be difficult; victim training in this regard is crucial;
- whether the incidence of strangulation among immigrants is known; no;
- whether there is training occurring at the New Mexico Law Enforcement Academy; not yet;
- whether training is occurring at the Albuquerque Family Advocacy Center; yes;
- a suggestion that staffers of home visitation programs and also the Brain Injury Advisory Council receive training;
- recognition that treatment of victims is as important as prevention; and
- recognition of the powerful impact, both physically and emotionally, on the life of a victim of strangulation who has experienced a traumatic brain injury.

New Mexico Adult Guardianship Study Commission (AGSC) Report

The Honorable Wendy York, retired district court judge, chair, AGSC, and Senator Ortiz y Pino, who is a member of the AGSC, were invited to address the committee.

Senator Ortiz y Pino stated that the report is the work of a committee appointed by the New Mexico Supreme Court. He introduced Tim Gardner and Emily Darnell-Nunez, members of the AGSC. He provided background regarding the impetus and goals for the commission. Problems and deficiencies in the current system were initially published in the newspaper, creating a groundswell of concern. Additionally, there was an agency that was alleged to have engaged in fraud, further raising concern. The commission held a series of meetings around the state. At the same time, the Uniform Law Commission has been working on revising the laws governing guardianship and has a revised uniform law to recommend. Senator Ortiz y Pino noted his personal belief that families are central to the process of providing for family members. Once the courts become involved in determining a guardian, family members become marginalized. He also has growing concerns regarding the lack of oversight for the process and system of guardianship. The lack of accountability is alarming to him. To address these concerns, it will be necessary to increase financing. Current budgeting cannot cover all that is required to improve the system.

Judge York noted that a full, extensive report is posted on the legislature's website. The commission, during the time it met, has come to believe that the problems can only be addressed by both the legislature and the courts. She described three scenarios in which a family pursues guardianship or conservatorship for a parent. The court appoints a professional guardian or conservator when it is clear that the family cannot get along. A second scenario is one in which the person needing a guardian does not have resources. The third scenario occurs in the case of a young adult who is developmentally disabled and unable to manage his/her affairs. Some situations are more complicated than others.

There are 17 recommendations that have been submitted to the New Mexico Supreme Court in the final report. Five of the recommendations are directed to the legislature. Implementation of the remaining recommendations are within the purview of the court, which has already indicated a willingness to address these issues.

Judge York briefly noted that the Uniform Law Commission's recommendations for revisions go a long way toward standardizing the process. They require that the protected person be provided an attorney. In the case of a person without resources, the Office of Guardianship would become responsible for paying legal fees.

Patricia Galindo, staff attorney, Administrative Office of the Courts (AOC), identified the scope of the problem. She highlighted flaws in the case management system and in monitoring older cases. The oldest cases date back to 1950. She noted that in 2016, 450 new cases were filed, making the review process manageable. It is critical to be able to collect, track and manage open cases. She reviewed the recommendations of the Uniform Law Commission for improving the system. She emphasized the importance of adequate funding, stressing that funding should not supplant funding that is already in place to manage the existing needs of the Office of Guardianship. Legislative support is sought for the following:

- to establish an oversight board;
- to authorize the AOC to hire special masters or commissioners;
- to fund the necessary technology and staffing to modernize the accounting system;
- to fund appropriate personnel, including monitors and auditors;
- to require bonding or an alternative asset-protection arrangement; and
- to require certification of professional guardians and conservators by a national organization.

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

- the system needs to find ways to treat protected people with the respect to which any independent person is entitled;
- an expression of support for the recommendations, especially accountability measures;

- acknowledgment of the challenge of giving protected adults the rights to which they are entitled;
- recognition of the oversight duties of the Office of Guardianship and holding it accountable to the job for which it is responsible;
- recognition that the recommendations of the Uniform Law Commission address many of the concerns raised by the AGSC;
- whether news reports have addressed other judicial districts; no; however, anecdotal information from phone calls and emails indicates that the problems are widespread;
- an expression of appreciation for the time and work spent by the AGSC to accomplish this task;
- clarification regarding the extent of the authority of guardians and conservators and whether they have access to the protected person's trust; yes, this has been a frequent concern of those testifying to the AGSC; there is a recommendation dealing with this;
- whether there is potential to further refine the list of recommendations; and
- clarification regarding requirements for becoming a guardian or conservator; those details were not provided.

Oversight of Contract Guardians and Conservators

Sarita Nair, general counsel and chief government accountability officer, Office of the State Auditor (OSA), and John Block III, executive director, Development Disabilities Planning Council (DDPC), were invited to address the committee.

Ms. Nair referred the committee to a letter from the OSA that, in summary, provides an emergency risk advisory arising out of an indictment of Ayudando Guardians, Inc., on charges of embezzlement. The OSA found a widespread failure to protect individuals against fraud and abuse by contract guardians. The OSA recommends that the Office of Guardianship immediately be subject to more oversight and management, including an evaluation of whether the DDPC is the appropriate agency to house the Office of Guardianship.

Mr. Block offered a clarification regarding the fund balance that caused the OSA concern. The guardianship program is permitted by statute to maintain a balance to cover unexpected future expenses. He summarized the role of the DDPC in guardianship and conservatorship. Its main function is to provide legal services to eligible, low-income, incapacitated adults needing a guardian. Services are provided through contracts. The DDPC handles complaints against guardians, including family and corporate guardians. The DDPC petitions the courts for conservatorship. It does not have staff with the training and expertise to handle financial audits of contract guardians or staff who are trained to identify fraud, exploitation or abuse. Mr. Block said that the DDPC has reviewed the findings of the OSA and has begun to resolve the complaints, including updating policies and reorganizing guardianship staff to provide for more compliance and efficiency of processes.

Questions and comments by committee members covered the following areas:

- clarification regarding what activities are accomplished by monitors; review of contractors to ensure accurate invoicing;
- whether monitoring visits include visits with the clients; that is not certain; however, DDPC staffers have visited clients around the state on other occasions;
- clarification of income limits; Medicaid does not allow more than $2,000 per month in income to qualify for state-supported guardianship;
- clarification regarding the statute that permits fund balances; Office of Guardianship funds do not revert; however, DDPC balances do revert;
- identification of the number of complaints received last year; two formal complaints were received and were formally investigated;
- clarification regarding the number of staff members in the Office of Guardianship; there are six; they have different responsibilities covering intake coordination, program management, billing and contract oversight; there is one vacancy;
- clarification regarding the caseload; there are 900 clients;
- whether the Office of Guardianship has any responsibility over private cases at Ayudando Guardians; it has no responsibility;
- an observation that the Office of Guardianship is underfunded to oversee the volume of work for which it is charged;
- whether the Office of Guardianship has had to cut staff in recent years; there have been changes in duties and responsibilities;
- clarification regarding the size of the waiting list for guardians; some have been waiting one and one-half to two years; in an emergency, guardians may be able to act more quickly;
- clarification regarding the amount of the annual budget that is reserved for clients and how much is dedicated to operations; out of $5 million, an estimated $600,000 covers operations;
- clarification of why the fund balance is not being spent; there are attempts to prioritize and increase the caseload, but resources need to be preserved for unexpected attorney costs;
- clarifications regarding efforts to recruit staff, especially attorneys; the DDPC is working with the state bar and local leadership training programs, and there are agreements for pro bono work;
- clarification regarding the 18 months needed to certify guardians; potential guardians must be trained and serve in a mentorship program;
- whether the DDPC is the appropriate place for the Office of Guardianship to reside; wherever it would be transferred to, adequate resources must be provided;
- clarification regarding the original decision to transfer the Office of Guardianship from the Office of the Attorney General to the DDPC; Doris Husted, policy director, The Arc New Mexico (Arc), testified that the attorney general does not want it and that advocates have argued that it should not be attached to an entity that provides direct services; the DDPC has stepped up and offered to take it on; Ms. Husted believes it would be better placed at the AOC;

- recognition that the DDPC has been given a very big job with very few resources, and the legislature should find funding; and
- a request for a budget prediction from the DDPC and the LFC that reflects true needs; Eric Chenier, fiscal analyst, LFC, notes that the Office of Guardianship has a fund balance of over $3 million.

Public Comment

Valerie Romero spoke on behalf of foster youth. She was a foster child with posttraumatic stress disorder (PTSD). She does not think people with PTSD should be criminalized. She advocates for a better venue for communication.

Lorraine Mendiola is the mother of an adult son under guardianship. She feels that the process for providing input to the AGSC is not transparent and not responsive. Regarding the Office of Guardianship, she emphasized the critical importance of accountability. She asserted that the Office of Guardianship has failed miserably in the case of her son.

Ms. Husted, who is the legal guardian of her adult daughter, provided a written copy of remarks she gave to the AGSC. These comments identify the role of Arc in providing guardianship services. She is available to answer questions.

Ms. Darnell-Nunez spoke on behalf of a family member of an adult with a guardian. She advocated for a more robust system of assessment prior to assigning a guardian to an adult. She emphasized the vital importance of transparency.

Mr. Gardner, who is also the legal director of Disability Rights New Mexico (DRNM), said DRNM represents people only with regard to the disability of the protected person. He generally likes the recommendation of the Uniform Law Commission but feels New Mexico can do better to protect the most vulnerable people. As an agency, DRNM has suggestions about how to improve guardianship in New Mexico. Senator Ortiz y Pino asked for its recommendations to be provided to the LHHS.

Marcia Southwick, National Association to Stop Guardian Abuse, agrees that the Uniform Law Commission recommendations do not go far enough, especially in the private pay arena. Its strength is that it protects the rights of the individual more than the guardian. She noted that the commission gives broad powers to people under guardianship. She believes that if families really knew the obligations of guardians, they would be more involved.

Joe Bob Nunez provided a personal story of a very restricted life with no rights experienced by his mother-in-law for five years. Her living trust was invaded, and she had no access to it. The system is in dire need of repair.

Jim Jackson, DRNM, stated that the process of guardianship needs to protect the rights of people in need of a guardian. The person alleged to be incapacitated should have a real advocate

in the legal process. He would like to see more alternatives to guardianship. Once a guardianship is established, there must be strong oversight to ensure full protection of the individual. Periodic field visits to see a situation first-hand are crucial.

Jim Ogle noted that people with mental illness can recover with treatment and proper care and could improve to a degree that they no longer need a guardian. A professional guardian should have training in behavioral health in order to recognize this possibility.

Bill Garcia offered a personal story of his father-in-law, who identified his daughter as being in charge of his life and finances, and he specified it in his will. Two other daughters fought this in court and created a huge problem. In the end, his wishes were not observed. The court assigned a guardian and gave his father-in-law's money to a third party to manage. The law should not allow this.

David Heater, a concerned senior citizen, asserted that the courts are no help. Transparency is important.

Cheryl Yerby, who owns a guardianship agency, wished to clarify requirements of certification for guardians. They are permitted 18 months to become certified; one-half of the hours of training must be in person. She asserted that payees and guardians can be one and the same.

Nat Dean identified herself as a traumatic brain injury survivor. She provided written material regarding guardianships for adults with disabilities and alternatives to guardianships for those same individuals. She said her brother claimed she was incompetent because of her brain injury. It is critical for people to be involved who really understand and are prepared to advocate for the protected person.

Lucinda Martinez shared her story regarding drug overdose. She is a grandmother raising her granddaughter. Her son was addicted to heroin and has spent time in prison. She worries about the trend of treating all addicts with drugs and the effect of this on society. She believes that holistic paradigms, including the use of curanderas, should be recognized. Society is judgmental about addiction.

Adjournment

There being no further business, the meeting was adjourned at 4:35 p.m.

Revised: November 8, 2017

TENTATIVE AGENDA
for the
NINTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

November 16-17, 2017
State Capitol, Room 321
Santa Fe

Thursday, November 16

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee (LHHS)
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (1) **Senate Memorial 99 (2017 Regular Session) State Agency Health Expenditures Study**
—Jenny Felmley, Ph.D., Program Evaluator, Legislative Finance Committee (LFC)
—Dawn Hunter, J.D., Deputy Secretary, Department of Health
—David Archuleta, Executive Director, Retiree Health Care Authority (RHCA)
—Lara White-Davis, Director, Risk Management Division (RMD), General Services Department (GSD)
—Vera M. Dallas, Senior Director, Employee Benefits, Albuquerque Public School District (APS)
—Ernestine Chavez, Deputy Director, Public School Insurance Authority (PSIA)

10:30 a.m. (2) **Interagency Benefits Advisory Committee Cost and Utilization Trends**
—Jenny Felmley, Ph.D., Program Evaluator, LFC
—Maria Griego, Program Evaluator, LFC
—David Archuleta, Executive Director, RHCA
—Lara White-Davis, Director, RMD, GSD
—Vera M. Dallas, Senior Director, Employee Benefits, APS
—Ernestine Chavez, Deputy Director, PSIA

11:30 a.m. (3) **Public Comment**

12:00 noon **Lunch**

1:30 p.m. (4) **Centennial Care 2.0 Waiver Application Impact Analysis**
—Sireesha Manne, Staff Attorney, New Mexico Center on Law and Poverty (NMCLP)

3:00 p.m. (5) **Supplemental Nutrition Assistance Program Court Order Compliance Update**
—Sovereign Hager, Staff Attorney, NMCLP

4:30 p.m. **Recess**

Friday, November 17

9:00 a.m. **Welcome and Introductions**
—Representative Deborah A. Armstrong, Chair, LHHS
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

9:10 a.m. (6) **Early Childhood Services Collaboration: Report Pursuant to Senate Memorial 23 (2017)**
—Michael Weinberg, Ed.D., Early Childhood Education Policy Officer, Thornburg Foundation

10:30 a.m. (7) **Developing a Primary Care Workforce in New Mexico Communities**
—John Andazola, M.D., Program Director, Southern New Mexico Family Medicine Residency Program
—Dan Otero, Chief Executive Officer, Hidalgo Medical Services
—Darrick Nelson, M.D., Chief Medical Officer, Hidalgo Medical Services
—Charlie Alfero, Director, New Mexico Primary Care Training Consortium
—Senator Howie C. Morales
—Representative Rebecca Dow

12:00 noon **Lunch**

1:30 p.m. (8) **Public Comment**

2:00 p.m. (9) **Endorsement Review of Legislation for 2018 Regular Session**
—Michael Hely, Staff Attorney, Legislative Council Service

3:30 p.m. **Adjourn**

MINUTES
of the
NINTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

November 16-17, 2017
State Capitol, Room 321
Santa Fe

The ninth meeting for the 2017 interim Legislative Health and Human Services Committee (LHHS) was called to order on November 16, 2017 by Representative Deborah A. Armstrong, chair, at 9:16 a.m. in Room 321 of the State Capitol. A quorum was present.

Present
Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong (11/17)
Rep. Rebecca Dow
Sen. Mark Moores
Sen. Bill B. O'Neill
Sen. Cliff R. Pirtle (11/17)
Rep. Elizabeth "Liz" Thomson

Absent

Advisory Members
Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia (11/16)
Sen. Gay G. Kernan (11/16)
Sen. Linda M. Lopez (11/17)
Sen. Cisco McSorley
Sen. Howie C. Morales (11/17)
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman
Rep. Christine Trujillo

Rep. Tim D. Lewis
Rep. Rodolpho "Rudy" S. Martinez
Sen. Mary Kay Papen
Rep. Angelica Rubio
Rep. Nick L. Salazar
Sen. William P. Soules

Guest Legislator
Sen. Pat Woods (11/17)

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

Staff
Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Karen Wells, Contract Staff, LCS

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, November 16

Welcome and Introductions

Committee members and staff introduced themselves.

Senate Memorial 99 (2017 Regular Session) State Agency Health Expenditures Study

Jenny Felmley, Ph.D., program evaluator, Legislative Finance Committee (LFC), described the findings of the study called for in Senate Memorial 99 (2017). The memorial requested that the LFC analyze prescription drug spending and savings in state agencies. In fiscal year (FY) 2017, New Mexico spent more than $737 million on prescription drugs, an 8% increase from 2016. The top 30 cost-driver drugs were predominantly non-generic and very expensive, she said. The unit price for those top 30 drugs increased 34% in FY 2017. Detailed charts included in the report reflect changes by specific drug name, including the percent growth. Dr. Felmley noted that information requested in the memorial regarding rebates was not obtainable due to the proprietary nature of the information. She noted that establishing the real prices paid by agencies for prescription drugs is a complex issue. The challenge to identifying the true cost of prescription drugs is largely a reflection of the lack of transparency by the prescription drug industry. The LFC report does, however, provide some approximate data and suggests future efforts that could be undertaken to understand agency costs and identify measures to control those costs.

David Archuleta, executive director, Retiree Health Care Authority (RHCA), acknowledged that prescription drug spending is a big cost to the RHCA. The RHCA does not disagree with the findings of the LFC study and recognizes the big challenges mentioned in the report. Vera M. Dallas, senior director, Employee Benefits, Albuquerque Public School District (APS), also recognized the very difficult challenge of controlling these costs. The APS is striving to control costs while ensuring access to necessary prescription drugs for the insured. Ernestine Chavez, deputy director, Public School Insurance Authority (PSIA), noted that the cost increase for specialty drugs is especially challenging. The PSIA is committed to continuing to find approaches to contain costs. Lara White-Davis, director, Risk Management Division, General Services Department, had nothing to add.

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

- ways in which state agencies are currently controlling costs; further study is required;
- clarification regarding the costs per pill of some medications, such as Viagra; it is $64.00 per pill; some drugs, including Viagra, have many uses; Amy Daily, a representative from Express Scripts, Inc., identified some of these other uses;
- recognition that as a drug approaches the end of its patent, the manufacturers often modify the drug in such a way as to renew the patent and increase the cost of the drug;
- whether there is an opportunity to identify the costs of not providing drugs or limiting the formulary for covered drugs; there are studies that support cost savings of keeping some people on a higher-cost drug;
- an observation that rural pharmacies are threatened by the Interagency Benefits Advisory Committee's (IBAC's) agencies' use of mail-order pharmacies;
- whether expansion of IBAC agency participation would present further opportunities for cost containment of prescription drugs; the LFC has long supported expansion of the IBAC;
- whether the drug discount program under Section 340B of the federal Public Health Service Act, as amended (340B), could be used to reduce drug costs for IBAC agencies; no; 340B is available to providers of care, not health coverage entities; it is a highly regulated federal program;
- clarification regarding the number of state agencies purchasing prescription drugs; the LFC study looked at 10 state agencies;
- recognition that the state has little control over manufacturers' price setting of prescription drugs;
- an assertion that lack of transparency in contracts limits access to more robust information about prescription drug costs;
- clarification regarding the 6.7% of drugs that results in the highest expenditure for Medicaid; these are drugs that Medicaid has specifically decided to track;
- clarification regarding the extent to which agencies get rebates for certain drugs; Ms. Daily asserted that IBAC agencies and the University of New Mexico (UNM) Hospital and employees get 100% of the available rebates, and she said that those agencies do have access to contract information on this topic in an audit;
- reasons why some over-the-counter drugs (OTCs) require prescriptions, which results in higher costs to the agencies; the strength in a prescription often exceeds the strength that is available in OTCs; Express Scripts is working with agencies to address this issue;
- whether IBAC agencies are using step therapy as an approach to controlling drug costs; IBAC agencies are looking at a variety of measures to contain costs;
- whether any other states have undertaken this kind of study; yes; California introduced a bill that addressed drug transparency;
- clarification regarding the process for approval of generic drugs versus name-brand drugs; it is done at the federal level through the Food and Drug Administration;
- encouragement to further explore access to 340B pricing;
- ways in which the New Mexico Medical Insurance Pool tracks drug costs and how those methods could be utilized in future studies;

- a reminder that, in 2002, the New Mexico Legislature passed legislation that required transparency about rebates and about the return of rebates to the state;
- whether rebates ever occur at the point of sale; Ms. Daily noted that this is happening a bit more frequently; sometimes plans want to share the rebates with patients in high-deductible plans; and
- an observation that copayments are being eliminated in many plans in order to encourage more prescription drug use.

IBAC Cost and Utilization Trends

Dr. Felmley then presented the LFC's findings from a study on the IBAC's cost and utilization trends. The LFC contends that IBAC agencies have yet to realize the full fiscal promise of combined purchasing power through the collaboration of these agencies. Over the past five years, health care costs have increased significantly despite declining enrollment. Specific findings were presented for each agency in the IBAC. She noted that premiums for all IBAC agencies are subsidized by state appropriations; premiums are found to compare favorably to national benchmarks. All IBAC agencies have made major changes to plans, premiums and deductibles in an effort to control costs.

Maria Griego, program evaluator, LFC, described specific increases in medical and prescription drug costs despite declining enrollment. Similar to national trends, IBAC costs for outpatient services have grown while inpatient costs have slowed. Between 2012 and 2016, the amount paid per claim increased at a much faster rate than the total number of claims, demonstrating that the cost of care, rather than a greater utilization of services, affected the growth rate. Ms. Griego provided details regarding the different results of each of the IBAC agencies.

Dr. Felmley noted that when compared to Medicare data, IBAC members were found to have higher hospital costs despite the fact that the members are generally younger and healthier than Medicare recipients. This could be attributed to the higher rates being paid for care when compared to Medicare rates, she said. In conclusion, a review of IBAC cost and utilization trends from 2012 to 2016 reflects that, despite cost-containment efforts, IBAC agencies have been unable to address the high rates negotiated on their behalf by commercial carriers. A redesign of agency contracts with carriers could result in some lowering of costs; however, only through true consolidation will real savings likely be realized.

Questions and comments from committee members addressed the following areas:

- an observation that care must be taken when considering the use of Medicare or Medicaid rates as the basis for determining appropriate commercial rates;
- recognition that New Mexico's ability to fairly address payer mix is limited due to the high percentage of federal programs that cover most residents;
- whether the IBAC has considered the potential for reduced costs from state- or agency-run clinics; the data on this potential is not well-developed at present; and

- recognition that data is being collected pursuant to the opening of a state-run health center at the Joseph Montoya building.

Ms. White-Davis noted that the health center is a new project, so trends are not yet definitive; however, there is great interest in expanding the project. Currently, the interest in using the clinic is largely limited to urgent care-type services versus wellness services. There is emerging cost data that seem to indicate cost-effectiveness and savings to the state. The contract to operate the center is with the Cerner Corporation. Although primarily known for its electronic health record services, Cerner Corporation has a health center that it started for its own employees.

Questions and comments continued, as follows:

- ways in which the Cerner Corporation is paid; the state provides the space and pays a monthly per consumer price;
- clarification regarding the opportunities that exist for greater collaboration and consolidation of IBAC agencies; consolidated purchasing opportunities are looked at every year when contracts are renewed; value-based purchasing arrangements are encouraged;
- whether a Medicaid buy-in should be considered; it might be worth pricing out that option;
- an observation that Oregon has a system of consolidated statewide coverage that is very cost-effective;
- an observation that statutory changes would be necessary to accomplish changes similar to Oregon's; the LFC supports this; lacking such changes, the LFC believes the IBAC agencies should be benchmarking the cost of premiums;
- clarification regarding the nature of "self-insurance"; New Mexico uses commercial companies to manage its self-insured plans;
- a comment that the best way to reduce costs is not to reduce provider rates, but to aggressively manage the care of high-cost patients; and
- whether each of the IBAC members has the option to use different plans; currently, they all use Presbyterian Health Plan and Blue Cross Blue Shield.

Public Comment

Dick Mason, Health Action New Mexico, noted that the legislature passed legislation that established consolidated purchasing for prescription drugs, but that legislation was vetoed by the governor.

Colin Baillio, director of policy and communication, Health Action New Mexico, commented that agencies are limited in their options to control prescription drug costs. He encouraged the study of foreign countries that regulate drug purchasing prices. He spoke to harm that will occur from proposals in Centennial Care 2.0 that could be partially mitigated by better purchasing practices for prescription drugs.

Joyce Gonzalez, Angioma Alliance, testified regarding a gene mutation that exists in a higher-than-average rate in New Mexico's Hispanic population, known as cerebral cavernous malformation (CCM). People at risk should have coverage for genetic testing through health plans and Medicaid, she said. The alliance is requesting an appropriation of $20,000 to support education regarding CCM. The alliance is especially interested in seeking a requirement that Medicaid cover the cost of genetic testing for CCM.

Aaron Rodriguez provided a personal story of the impact of CCM. He and his wife lost a daughter to the condition. His son and his wife also are affected. There is no cure for the condition. Jennifer Morfin has eight family members diagnosed with CCM. Othello Gamboa offered personal testimony about his experience with CCM, which involved spinal surgery. He currently has lesions on his brain. Tobias Pino offered testimony regarding his son who died as an infant from the condition. Unknowingly, he and his wife (who is a carrier) passed the gene along to five children. His wife ultimately died. Tobias Pino, Jr., provided additional testimony.

Centennial Care 2.0 Waiver Application Impact Analysis

Sireesha Manne, staff attorney, New Mexico Center on Law and Poverty (NMCLP), and Mandisa Routeni, Institute for Policy Study Studies, healthcare policy fellow, NMCLP, were invited to address the committee. Ms. Manne testified that the NMCLP is very concerned about the changes proposed in the Centennial Care 2.0 plan. The NMCLP recommends elimination of all cuts to the program that would negatively impact beneficiaries. She highlighted areas of proposed cuts, including: the imposition of premiums; copayments; ending retroactive coverage; ending transitional medical assistance; and eliminating important health benefits for parents living in deep poverty. The NMCLP contends that these proposals will create financial hardships for New Mexico families, drive up long-term costs and result in the loss of substantial federal matching funds.

Ms. Routeni provided feedback on the public hearings that were held around the state. She contends that the hearings were scheduled at inconvenient times and in areas of limited access. Promised telephone lines were not always available or were not workable. Turnout in Albuquerque was minimal. Requests were made for additional hearings and sites for hearings; however, only Las Vegas was added. Overall, the NMCLP felt that the public comments in the meetings were critical of the proposed changes. The NMCLP submitted formal comments, which were distributed to committee members.

Ms. Manne contends that: Human Services Department (HSD) responses to public input have been inadequate; the HSD is primarily interested in reducing the cost of the Medicaid program and not the impact on beneficiaries; and savings to the state do not match the financial burden imposed on beneficiaries.

Questions and comments from committee members covered the following areas:

- a suggestion that language that these proposed cuts be withdrawn be attached to any Medicaid appropriation request before the House Appropriations and Finance Committee and the Senate Finance Committee;
- whether there was any effort at the public hearings to poll participants or ask for a show of hands to indicate reaction to the proposed cuts; no;
- whether the NMCLP had an impression of the level of support for these changes; it believes that close to 99% of participants opposed the changes;
- Patricia Boies, health services director, Santa Fe County Community Services Department, noted that very few of the attendees of the last Medicaid Advisory Committee (MAC) meeting testified about their reactions to the proposed changes;
- whether the NMCLP has seen the Medicaid budget request; yes; it anticipates a need for $30 million to cover anticipated shortfalls due to the inability of Congress to reauthorize the Children's Health Insurance Program and due to other inefficiencies;
- whether there is currently adequate funding for Medicaid; no;
- whether the imposition of copayments is intended to restore the budget deficit in Medicaid; there is definitely a deficit; however, the NMCLP contends that there are other ways to make up the deficit besides imposing copayments on poor families;
- an observation that imposing copayments reduces the amount of the federal match that the state can obtain;
- clarification regarding the NMCLP position on the home visiting program; impact studies exist on including home visits as a Medicaid benefit;
- clarification regarding the response of the HSD to NMCLP requests for further information; the NMCLP requested information regarding impact studies; the only information provided described the impact of copayments in Indiana;
- whether the HSD has information about the direct impact of proposed changes on New Mexicans; the NMCLP feels that the HSD has not done the necessary due diligence;
- clarification regarding the implications if the waiver is approved and whether legal recourse that challenged the approval would be possible; the NMCLP has been reviewing the issue of whether the proposal violates the requirements of Medicaid and what parts of the proposal are not waivable;
- clarification regarding the opportunity to comment at the federal level after the proposal has been submitted by the state; comments may be made at that time;
- a comment that the HSD has publicly said that it is contemplating not imposing the premiums or copayment portions of the proposal for the first six months after the implementation date;
- an observation that ending the retroactive coverage provision would harm hospitals the most and that most of the proposals are simply provider taxes;
- an observation about the ripple effect of many of the cuts; Ruth Hoffman, a member of the MAC, noted that subcommittees of the MAC met last summer and recommended that copayments and premiums not be imposed, but this recommendation was ignored;

- a comment that the subcommittee recommendations requested that an impact assessment be conducted prior to proposing copayments and premiums; and
- whether there have been any court cases in other states on any of these issues; there are no known legal challenges; however, the imposition of premiums is under legal review.

Supplemental Nutrition Assistance Program (SNAP) Court Order Compliance Update

Maria Griego, staff attorney, NMCLP, briefed the committee on the status of a federal court order requiring the HSD to bring the processing of medical and food assistance benefits into compliance with federal law. She noted that in July 2016, a special master was appointed by a federal judge to monitor and provide recommendations to bring the HSD into compliance with the law. As of this meeting, the HSD has not complied with any of these recommendations. The HSD is now required to take certain specific actions to avoid further court intervention.

Ms. Griego identified barriers to obtaining food and medical assistance as follows: failure to timely renew food and medical assistance; failure to timely deny and notify families that they are not eligible for assistance; improperly denied benefits; failure to provide benefits to eligible families that include immigrants; failure to provide accurate notices to families about their food and medical assistance; a phone system that lacks the ability to communicate with non-English-speaking callers; and management that lacks leadership, knowledge and skills.

The NMCLP requests that the LHHS write a letter to the governor asking for compliance with the required actions and asking for full funding of Medicaid and the Income Support Division of the HSD. Sovereign Hager, staff attorney, NMCLP, offered additional details about the eligibility of clients and the time lines for compliance with special master requirements, and she offered specific details of barriers to receiving benefits that clients still face, despite their eligibility for those benefits.

Questions were asked and comments made in the following areas:

- a question to RubyAnn Esquibel, principal analyst, LFC, about the amount that the HSD reverted last year; $20 million;
- clarification regarding the time line for the HSD to comply with the requirements of the special master; the first date is in March; a separate meeting is scheduled to allow the judge to review the actions the department has taken since the appointment of the special master;
- clarification regarding the steps needed to bring the phone system into compliance;
- an observation that a letter from the secretary of human services identifies a different time line for compliance than the NMCLP has presented;
- clarification regarding the current caseloads for workers from the Income Support Division; there are around 8,000 Medicaid clients and close to 5,000 clients eligible for SNAP benefits;

- clarification regarding the number of overdue applications is that 12,000 applications for Medicaid are overdue;
- an observation that the HSD's information technology (IT) system cannot handle the creation of accurate denials so all of that work is being done manually;
- whether upgrades to the IT system are in the budget request; it is possible that the HSD already has the resources for this;
- whether the $20 million reversion last year was all from denials of SNAP benefits; Ms. Esquibel noted the information that the LFC has does not break out that information;
- whether the turnover rate of staff is known; the turnover rate is not known; however, the vacancy rate is estimated to be 5%; Ms. Esquibel noted that in the current fiscal year, the department was able to adjust its federal match, which allowed hiring an additional 55 people, and the HSD is requesting funding for an additional 77 people in the coming fiscal year;
- an observation that it has become more difficult to justify federal match dollars and that every dollar lost to the program directly impacts patients and clients;
- recognition that there are many long-term dedicated staff in the HSD; and
- recognition that the problems of lack of access, inadequate staff and not enough money are not limited to the HSD and these programs; the number of truly vulnerable people in New Mexico is astounding; it is hard to believe that anyone deliberately wants to harm these individuals.

Senator Ortiz y Pino offered to draft a letter to the HSD that encourages it to meet the obligations laid out by the special master and reflects the recommendations of the NMCLP. He requested that consideration of the letter be added to the Friday agenda.

Recess

The committee recessed at 4:55 p.m.

Friday, November 17

Welcome and Introductions

The meeting was reconvened by the chair at 9:16 a.m. Members and staff introduced themselves.

Early Childhood Services Collaboration: Report Pursuant to Senate Memorial 23 (2017)

Michael Weinberg, Ed.D., early childhood education policy officer, Thornburg Foundation, and Erica Stubbs, chair, State Early Learning Advisory Council (ELAC), addressed the committee. Ms. Stubbs identified the purpose and composition of the ELAC. She described the intent of Senate Memorial 23 (2017), which was to explore opportunities for collaboration among the multitude of entities that are engaged in child care activities. A work group of the ELAC identified questions relevant to the purpose, then contracted with an organization called EduDream to conduct the research. Findings will be reported in the ELAC Annual Report.

Among topics researched was a scan of New Mexico early childhood funding policies and processes, as reported by local and national foundations and organizations. Additionally, interviews were conducted with numerous individuals and entities running programs in New Mexico. The research is still under way, so the presentation to the committee represents a status report of findings to date.

Preliminary findings revealed that pre-K provider eligibility and funding are clearly established in state law; however, the Children, Youth and Families Department (CYFD) and the Public Education Department (PED) have different approaches, applications and time lines for providers to access funding. Providers expressed concerns regarding the criteria used by state agencies to verify unmet needs and regarding the transparency of the verification process. Collaboration is inconsistent and fragmented between pre-K and Head Start. Head Start enrollment is governed by federal regulations and other external factors. Limited numbers of providers and agencies are combining funding streams; however, many providers are simply running separate programs based on the funding source.

Models exist in Georgia, Oklahoma and Washington, D.C., that could be used to guide streamlining of government structures and processes. The final report from the ELAC is expected to be completed by November 30, and it will include recommendations for short- and long-term action.

Committee members had questions and comments in the following areas:

- clarification regarding the meaning of blended, or braided, funding; it would be an environment in which children served by different funding sources could be seamlessly served in the same program;
- ways in which duplicative paperwork impacts a provider's ability to run a successful program; there are different requirements for different sources of funds, so some duplication is inevitable;
- an observation that other state models should be quite instructive;
- ways in which the mobility factor of families affects funding; the intention is that an eligible child can be served without regard to the location of the child's home;
- whether standard curricula are required to be used, regardless of funding sources; yes; there are standards for what children should know at each level;
- whether early learning programs are currently coordinating learning guidelines; yes;
- an observation that the pre-K legislation required collaboration and coordination between the CYFD and the PED; the legislation is clear; however, the agencies have strayed from that collaboration over time;
- an observation that currently, there is duplication and overlap between federal and state programs; two Head Start sites are in jeopardy of closure; the federal rules are cumbersome;
- a concern that federal Head Start dollars are being reverted; better coordination and commingling of funds between state and federal Head Start programs, pre-K

programs, the CYFD and the PED would go far in meeting unmet needs for early learning in the state while maximizing opportunities for federal funding;
- recognition that rural New Mexico presents some very unique challenges and may not be able to adapt to statewide standardization;
- opportunities that may exist for leveraging sources of funding; and
- recognition that the official creation of the ELAC was necessary to ensure eligibility for federal funding for Head Start and other early childhood learning programs.

Developing a Primary Care Workforce in New Mexico Communities

Senator Morales noted the importance of the primary care workforce topic, and he reminded members that much important work has been accomplished. Representative Dow noted the importance of keeping health care providers in rural areas.

Charlie Alfero, director, New Mexico Primary Care Training Consortium (NMPCTC), introduced John Andazola, M.D., program director, Southern New Mexico Family Medicine Residency Program (SNMFMRP); Dan Otero, chief executive officer, Hidalgo Medical Services (HMS); Darrick Nelson, M.D., chief medical officer, HMS; Dolores Gomez, M.D., faculty, SNMFMRP; Oliver Hayes, D.O., Burrell College of Osteopathic Medicine; Miriam Kellerman, director, Forward New Mexico; and Lori Ann Loera, M.J., program manager, NMPCTC.

Mr. Alfero stated that the presentation will primarily address the need to develop and retain health care providers in rural parts of New Mexico and the challenges faced in doing so. He noted that there is a significant shortage of primary care physicians nationwide. New Mexico's efforts to expand training for this critical sector have not increased in 25 years. He described the Southwest Center for Health Innovation, Forward New Mexico and the NMPCTC as organizations that exist to train, recruit and retain primary care providers in the state. He provided data regarding current residency programs in New Mexico, which train approximately 25 physicians a year. Future needs and opportunities for family residencies were identified.

Mr. Otero described the mission, vision and values of HMS. HMS is committed to providing an innovative health care delivery system in what is a very rural part of the state. He provided a brief history of the creation and progress of HMS. Currently, HMS serves more than 16,000 people each year in a variety of service areas. He highlighted HMS's clinical performance measures, in which it is meeting or exceeding national benchmarks. He identified the number of providers HMS has been able to recruit since 2016. HMS provides 215 professional health care jobs in Hidalgo and Grant counties. The HMS Family Medicine Residency Program is key to its recruitment and retention efforts.

Dr. Nelson provided detailed information regarding the HMS Family Medicine Residency Program, which is the only teaching health center in New Mexico. He highlighted the nature of the 15,390 encounters since the inception of the program. HMS residents are performing better than the nation in nine out of 14 state quality measures and excelled in quality measures. He shared numerous positive comments from graduating residents and a letter of appreciation from a

grateful graduate of the Dream Makers Program. Dr. Nelson noted that Grant County has now joined the ranks of New Mexico urban counties that have more primary care providers than the national average.

Dr. Andazola provided information about the SNMFMRP and the history of primary care training in New Mexico, beginning with the founding of the medical school at UNM in 1964. The HMS Family Medicine Residency Program was founded in 2014. National data show that in 2016, 38.5% of physicians were active in the same state in which they completed medical school, and 67.1% of physicians who completed both medical school and residency in the same state remained in that state. Retention rates in Las Cruces are higher than the national average for graduates of residency programs and show 100% board certification in the last two years. Dr. Andazola made recommendations for changes in Medicaid regulations that would support residency development and operations, including leveling the playing field financially, providing incentives to meet needs and establishing a focus on national accreditation as the standard for payment.

Steve Ruwoldt, chief operating officer, Memorial Medical Center, noted that its residency program, as good as it is, has trouble recruiting primary care physicians. Las Cruces is not getting residents from Albuquerque. He stressed the looming problem of an aging physician community. He contends that if residencies in southern New Mexico received the same level of financial support as residencies in Albuquerque do, that state would greatly benefit.

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

- clarification regarding the long-term effects if funding for the southern part of the state is not realized; $260,000 would allow efforts to continue;
- ways in which compensation disparities between primary care and specialty care could be addressed; this is a long-standing and serious problem; the disparities lead to a lack of graduates choosing primary care as a specialty;
- by what criteria are residents chosen; New Mexico residency, interest in remaining in a rural practice and top test scores;
- ways to increase the dispersement of graduate medical education (GME) funding to the southern part of the state; expansion of GME availability to other parts of the state; and funding for residency programs in southern rural hospitals;
- the estimated cost of funding residency programs in rural New Mexico; an estimated $5 million over time, spread among organizations doing the training;
- clarification of changes that would be required to accomplish a rural residency program; it would take several years for a program to be accredited; a letter in support of proposed changes to GME funding in Centennial Care 2.0 has been shared with the HSD;
- an observation that New Mexico is not being successful at recruiting students from New Mexico to go to medical school in New Mexico and remain in New Mexico to practice here;

- issues surrounding funding medical students at the Burrell College of Osteopathic Medicine, a for-profit entity; Dr. Hayes identified investors in the college and the rate of return they expect for their investment; there is no request for state funding for the medical school;
- clarification regarding why HMS took over the senior meal program; there was a desire in the community to integrate senior meals with health services;
- recognition that funding for meals programs is threatened statewide due to great disparities between reimbursement for meals and approvals for meal sites;
- whether there is a pattern emerging that new graduates do not see the need for primary care physicians; in general, young people do not seek medical care as often as older people; and
- whether nurse practitioners are good substitutes for primary care physicians and, if so, why not shift focus to them; primary care physicians have a broader scope of practice and are, therefore, more valuable to rural communities.

Dr. Mac Bowen, La Familia Medical Center, commented on the residency program in Santa Fe. The center has the goal of growing the program to serve northern New Mexico and is on a path to accomplish that. Family medicine is the only residency that provides four doctors for the price of one. Dr. Hayes acknowledged his appreciation for his colleagues from around the state. He noted the importance of public policy support for rural residency programs for primary care and family practice physicians. Ms. Kellerman testified to the importance of providing support to local students.

Public Comment

David Roddy, New Mexico Primary Care Association, voiced strong support for expansion of primary care residencies. UNM is doing a good job with the funds it gets; however, more funding is always needed. He provided some statistics regarding the experience of UNM's residency program. He noted that most primary care clinics do not have the resources or expertise to support rural residencies. The biggest tool for recruitment of physicians is loan repayment. He encouraged the committee to consider expanding loan repayment programs.

Jim Jackson, Disability Rights New Mexico (DRNM), addressed two bills scheduled to be debated for endorsement. The appropriation request for $25 million to address disability issues does not specify reducing the waiting list, an oversight that DRNM would like corrected. Secondly, DRNM strongly supports the guardianship compact bill, but urges the committee to be open to amendments during the legislative process.

Susan Loubet, New Mexico Women's Agenda, raised the issue of human trafficking. The 2017 interim Courts, Corrections and Justice Committee endorsed two bills dealing with this topic, and she suggested that the LHHS support these bills as well.

Mr. Ruwoldt responded to concerns about state support for residency programs at for-profit hospitals. In his opinion, the profit or not-for-profit status should not be an issue. The need to sustain residency programs is all that should be considered.

Endorsement Review of Legislation for 2018 Regular Session

Mr. Hely presented legislation for which the sponsors requested the LHHS to consider for endorsement.

***The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act* (.208901.3)**, proposed by Senator James P. White, was presented by Jack Burton, commissioner, Uniform Law Commission. Mr. Burton asserted that the bill is entirely uniform with other states' versions of the compact, updating provisions for guardianship, conservatorship and protective arrangements. He reviewed the key provisions of the bill. Senator Ortiz y Pino noted that adequate funding of the measure will be critical. The 2017 interim Courts, Corrections and Justice Committee has endorsed this bill. After discussion, and pursuant to a motion by Senator Moores and seconded by Senator Ortiz y Pino, the endorsement was adopted by affirmation.

***Temporary Assistance for Needy Families (TANF) program work requirements* (.208981.1)**, proposed by Senator Woods, would provide $1 million to the HSD for the re-implementation of the Employment Retention and Advancement Bonus Incentive Program to establish work participation outcome requirements and reporting under the New Mexico Works Act, which uses federal funding under the TANF program. Ruth Hoffman, director, Lutheran Advocacy Ministry-New Mexico, provided clarifying information. Senator Woods offered input regarding the "cliff effect" of losing access to certain funded benefits. This bill is intended to address that effect. Following discussion, a motion to endorse the bill was made by Senator Ortiz y Pino and seconded by Representative Thomson. Representatives Gail Armstrong and Dow and Senators Moores and Pirtle objected; Representatives Thomson and Deborah A. Armstrong and Senators O'Neill and Ortiz y Pino voted to endorse. By a vote of four to four, the motion to endorse failed.

***Nursing compact* (.208934.2)**, requested by Senator Kernan, enacts the Enhanced Nurse Licensure Compact and makes conforming changes to the Nursing Practice Act. A motion to endorse was made by Representative Dow and seconded by Senator Pirtle. The motion was approved by affirmation.

***Medicaid opioid prescribing* (.208551.2)** would require the HSD to commission a study on the effects of the prescription drug monitoring program on opioid prescribing practices. Following discussion, Representative Thomson withdrew her request for this bill.

***Kidney transplant counseling* (.208724.1)**, requested by Representative Thomson, would establish certain requirements for renal dialysis facilities for counseling about kidney transplants and other current best practices in kidney care. A motion to endorse was made by Senator Ortiz

y Pino and seconded by Senator O'Neill. The motion carried with dissenting votes by Representative Gail Armstrong and Senators Moores and Pirtle.

Statewide 911 board **(.208787.1)**, requested by the committee, is a memorial that asks the secretary of finance and administration to study a proposal that a single, statewide 911 program oversight board be created and charged with the administration of 911 programs statewide. Ken R. Martinez, chair, 911 Dispatch Association, asserted that the study is necessary as resources do not exist to fully implement E911. A motion to endorse was made by Senator Moores and seconded by Representative Dow. The motion was approved by affirmation. Senator Stefanics requested that she be named sponsor of the bill, and the chair affirmed Senator Stefanics' sponsorship.

Recoupment limit **(.208770.1)**, proposed by Representative Thomson, would establish a limitation on recoupment or retroactive denial of health care provider claims. A motion to endorse was made by Senator Moores and seconded by Senator Ortiz y Pino. The motion was approved by affirmation.

Physician loan for service **(.208827.1)**, requested by Senator Kernan, amends various acts to establish professional loan repayment funding to assist both allopathic and osteopathic primary care physicians working in designated health professional shortage areas. Senator McSorley requested that staff research the Higher Education Department's definition of "primary care physician" to ensure that its definition aligns with the requirements of the proposed bill. The chair questioned whether obstetrical and gynecological physicians would qualify under this bill as a primary care physicians. Following discussion, given that Senator Kernan was not present at the time of the debate, it was suggested that the chair approach Senator Kernan to see if she would object to adding that provision to the bill. Representative Deborah A. Armstrong offered a motion to endorse, pending Senator Kernan's approval of changes, and Representative Gail Armstrong seconded the motion. The motion was approved by affirmation.

Funding for developmental disability waiver supports **(.208904.1)**, requested by Representative Garcia, would appropriate $25 million to the Department of Health to fund supports and services under the Medicaid developmental disabilities waiver. It was clarified that the appropriation specifically prohibits using the funds to take people off the waiting list. Ellen Pinnes asserted that such a large program increase without funding any new people is a problem. It was noted that aside from prohibiting funding people on the waiting list, the bill does not identify specifically what the funds are to be used for. Nat Dean asserted that many people currently on the waiver are receiving very poor or limited services. Senator Ortiz y Pino suggested a conditional endorsement, contingent on amending the bill to use the appropriation to fund people currently on the waiting list as well as provide supports and services to current clients, if Representative Garcia will agree to the changes. Senator Ortiz y Pino made a motion for endorsement of the bill with the conditions discussed by the committee, and Senator O'Neill seconded the motion. Representative Thomson agreed to sponsor the bill, as amended, if

Representative Garcia does not approve of the recommended changes. The motion was approved by affirmation.

Child care assistance for kinship caregivers **(.208907.1)**, requested by the committee, would establish access to child care assistance and respite care for kinship caregivers without consideration of income or resources. Mr. Hely recommended deleting the word "provided" on page 1, line 25. Senator Ortiz y Pino made a motion to endorse, as amended, and Senator O'Neill seconded the motion. The motion was approved by affirmation. Senator Lopez requested to carry the bill, and the chair affirmed Senator Lopez's sponsorship.

Appropriation to fund law enforcement-assisted diversion (LEAD) **(.208919.2)**, sponsored by Senator Rodriguez, appropriates $450,000 to fund LEAD programming in Santa Fe County and to expand LEAD to Bernalillo and Dona Ana counties. Senator Rodriguez explained that the bill would provide wrap-around services to incarcerated individuals in local jails who have committed minor crimes, and the program is based on a successful model in Santa Fe County. Representative Thomson made a motion to endorse, and Senator Ortiz y Pino seconded the motion. The motion passed with Representative Dow abstaining.

Health councils **(.208963.1)**, recommended by Representative Thomson, makes an appropriation of $700,000 to the Department of Health to fund tribal and county health council's efforts to identify and address local communities' health needs. Senator Ortiz y Pino made a motion to endorse, with Representative Thomson seconding the motion. The motion was approved by affirmation.

Senator Ortiz y Pino distributed a proposed letter that he drafted to express the concerns of the LHHS regarding various elements of the proposed Centennial Care 2.0 waiver; requirements of the special master that involve enrollment in social programs; and a request to adequately fund Medicaid for the upcoming fiscal year. Following discussion, he offered a motion in support of sending the letter, pending modifications to be made by Mr. Hely. The motion carried with Representative Gail Armstrong and Senators Moores and Pirtle objecting.

The chair asked for approval of three sets of minutes: minutes of the LHHS for the meeting of November 1-3, 2017; minutes of the Behavioral Health Subcommittee (BHS) for the meeting of September 8, 2017; and minutes of the BHS for the October 24, 2017 meeting. The motion carried without objection.

Adjournment

There being no further business for the 2017 interim, the ninth meeting of the LHHS was adjourned at 4:31 p.m.

BEHAVIORAL HEALTH SUBCOMMITTEE AGENDAS AND MINUTES

Revised: August 24, 2017

TENTATIVE AGENDA
for the
SECOND MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

August 25, 2017
Science and Technology Center Rotunda
University of New Mexico
801 University Boulevard SE
Albuquerque

Friday, August 25

9:00 a.m. **Welcome and Introductions**
—Senator Bill B. O'Neill, Chair, Behavioral Health Subcommittee (BHS)
—Representative Christine Trujillo, Vice Chair, BHS

9:10 a.m. (1) **Welcome to University of New Mexico (UNM) Health Sciences Center (HSC)**
—Paul Roth, M.D., Chancellor for Health Sciences, UNM HSC

9:30 a.m. (2) **Legislative Finance Committee (LFC) Program Evaluation Report: Childhood Behavioral Health**
—Maria D. Griego, Program Evaluator, LFC
—Sarah Dinces, Program Evaluator, LFC
—Bryce Pittenger, L.P.C.C., Behavioral Health Services Director, Children, Youth and Families Department
—Wayne Lindstrom, Ph.D., Director, Behavioral Health Services Division, Human Services Department; Chief Executive Officer, Interagency Behavioral Health Purchasing Collaborative

11:00 a.m. (3) **Relationship-Based, Outcome-Focused Therapy**
—Michele Coleman, Ph.D., President, Attachment Healing Center
—Jan Greco, Parent

12:30 p.m. **Lunch**

2:00 p.m. (4) **Bernalillo County Behavioral Health Consortium**

—Debbie O'Malley, Commissioner, District 1, Bernalillo County
—Maggie Hart Stebbins, Commissioner, District 3, Bernalillo County
—Douglas H. Chaplin, Director, Family and Community Services, City of Albuquerque
—Mauricio Tohen, M.D., Dr.PH, M.B.A., Chair, Department of Psychiatry, UNM HSC
—Paul Guerin, Ph.D., Director, Center for Applied Research and Analysis, UNM Institute for Social Research

4:00 p.m. (5) **Public Comment**

4:30 p.m. **Adjourn**

MINUTES
of the
SECOND MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

August 25, 2017
Science and Technology Center Rotunda
University of New Mexico
Albuquerque

The second meeting of the Behavioral Health Subcommittee (BHS) of the Legislative Health and Human Services Committee (LHHS) was called to order on August 25, 2017 by Senator Bill B. O'Neill, chair, at 9:12 a.m. in the Science and Technology Center Rotunda at the University of New Mexico (UNM) in Albuquerque.

Present
Sen. Bill B. O'Neill, Chair
Rep. Christine Trujillo, Vice Chair
Rep. Sharon Clahchisichilliage
Rep. Rebecca Dow
Sen. Howie C. Morales

Absent
Rep. Doreen Y. Gallegos
Rep. Elizabeth "Liz" Thomson

Advisory Members
Sen. Gerald Ortiz y Pino

Rep. Deborah A. Armstrong
Sen. Mary Kay Papen

Guest Legislators
Rep. Miguel P. Garcia
Rep. Sarah Maestas Barnes
Sen. Nancy Rodriguez

Staff
Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Karen Wells, Contract Staff, LCS

Friday, August 25

The subcommittee members and staff introduced themselves. A quorum was present.

Welcome to UNM Health Sciences Center (HSC)

Paul Roth, M.D., chancellor for health sciences, UNM HSC, welcomed the subcommittee members to UNM. He described the array of services available through UNM HSC, including two new inpatient beds to provide medical detoxification services to adolescents. He provided historical perspective, particularly noting reimbursement challenges. He highlighted the array of behavioral health and substance abuse programs and services in which UNM HSC is engaged. Opportunities to expand services, including an Arizona model for crisis triage centers, are being explored. Dr. Roth responded to questions regarding the scope and availability of programs and services. He noted that UNM HSC has also explored models of restorative justice in San Francisco.

Additional questions and comments were made as follows:

- recognition of the widespread nature of addiction and substance use disorder (SUD) issues in New Mexico;
- limitations of managed care in appropriately meeting the needs of individuals suffering from behavioral health and SUD issues;
- whether UNM HSC could reestablish a local entity to provide a more comprehensive array of services for these individuals with care coordination at the provider level; Dr. Roth thinks that would be an ideal system; however, it would need to have access to adequate resources;
- limitations regarding reimbursement through state requests for proposals (RFPs) for new programs and services;
- opportunities for UNM to serve greater geographical areas in meeting behavioral health and substance abuse needs; telepsychiatry and Project ECHO help in this regard; however, issues of withdrawal require physical presence and a facility to serve these needs; Dr. Roth mentioned a restorative justice program in Taos; he told the subcommittee that he would follow up with the subcommittee regarding the availability of inpatient services, particularly in Taos County;
- a desire for the LHHS, perhaps in conjunction with the Courts, Corrections and Justice Committee, to explore and support restorative justice models of treatment;
- ways in which New Mexico could expand service availability, particularly for inpatient services; although UNM HSC often responds to needs, even without reimbursement, there is no reliable systemic availability of residential treatment centers as there is no reliable funding to sustain such centers;
- recognition that the state currently is funding services for incarcerated youth with behavioral health and addiction issues; facilities are not full; local and community-based services would be more effective; and
- a request for data regarding the capacity and use of the Children's Psychiatric Center at UNM.

Legislative Finance Committee (LFC) Program Evaluation Report: Childhood Behavioral Health

Maria D. Griego, program evaluator, LFC, introduced herself and the other members of the panel presenting on the childhood behavioral health evaluation report, including Sarah Dinces, Ph.D., program evaluator, LFC, and Dr. Wayne Lindstrom, director of the Behavioral Health Services Division of the Human Services Department (HSD). Ms. Griego began with background information regarding the availability of services in New Mexico. The childhood behavioral health evaluation report is a joint project of the LFC, Children, Youth and Families Department (CYFD) and HSD. She reviewed the findings and recommendations of the full report, which was also provided in hard copy to subcommittee members. The effects of poverty, adverse childhood experiences and familial substance abuse are major contributors to the incidence of behavioral health disorders in the state. Ms. Griego reviewed data provided in the report regarding the prevalence of the most expensive child behavioral health disorders in 2015. Trauma is a primary driver of these conditions. A multiplicity of funding sources and access points contributes to confusion and a lack of efficiency in addressing these serious issues. In fiscal year (FY) 2016, New Mexico spent a total of $525 million on behavioral health services and programs, $196 million of which was spent on children, largely through Medicaid. Although the importance of spending funds early in a child's life was acknowledged, the state spent $30 million on prevention and promotion, representing only 15% of the total amount spent on children. Seventy-six million dollars was spent on intervention, and $89 million was spent on acute interventions. Charts included in the report reflect a breakdown of how total dollars were spent and diagnostic categories. The importance of performance measurement was stressed.

Dr. Dinces described an inventory of children's behavioral health programs in New Mexico and the dollars allocated to each. Interventions at the acute, interventional and prevention levels were briefly described. She highlighted the effectiveness and return on investment of spending ($9.00 for every $1.00 spent) for prevention and promotion programs and services. Eighty-two percent of spending in this area went to evidence-based programs. Intervention therapies such as multi-systemic therapy are evidence-based and can be very effective; however, they are not available in rural areas, where functional family therapy may be more effective.

Ms. Griego described three areas of potential for improving the management of the children's behavioral health system: planning, implementation and monitoring. She noted the challenges of accomplishing improvement in a state with varied abilities and limited resources. Data regarding availability of services can be obtained, but identification of need is less reliable. Identification of appropriate benchmarks for measurement is difficult. Many questions are unanswered at this point, she said.

The report concludes that the impact of undiagnosed or untreated behavioral health issues has dire long-term effects, including a lower potential for employment, lower earnings, high suicide rates, increased memory problems and emotional instability. Collection of data is essential to determine not only the prevalence of disorders, but the effectiveness of programs.

Program evaluation is critical, especially for newly implemented programs, to ensure proper stewardship of scarce resources. The report strongly recommends that goals be set for planning, implementing and monitoring program development in the next strategic plan of the Interagency Behavioral Health Purchasing Collaborative.

The CYFD and HSD recommended actions that could be taken in each area of management. The LFC has volunteered to conduct annual reports on progress.

Dr. Lindstrom touched on some highlights, noting that this report represents the first time that a "results-based" report has been created upon which the three agencies whose work is covered by the report actually collaborated on a successful report. He spoke about the dependence on residential treatment centers (RTCs) in the state, which have been shown to be either unsuccessful or even damaging to children. It will take time to replace RTCs with other evidence-based programs that are much more successful but that are not available. He identified that a misleading part of the report is the decision that was made early on to focus on primary diagnoses, which leads to an impression that SUDs are not prevalent in the state. This is not true, according to Dr. Lindstrom. He identified the PAX Good Behavior Game as the most successful approach in schools to teach children how to self-regulate. This is a skill that children can learn and that significantly reduces the incidence of behavioral health and addiction disorders. The program has a demonstrable and impressive return on investment. By the end of this year, there will be 600 teachers trained in the model and 6,000 children who have benefited. Implementation statewide is desired and would be beneficial. Given its track record, he believes the PAX Good Behavior Game to be the one investment that would have the greatest impact in the state.

Questions and comments were made as follows:

- clarification of the number of children in RTCs who are also taking prescription drugs; according to the report, 8% of expenditures for children's behavioral health are for prescription drugs;
- whether New Mexico's reliance on residential treatment is comparable to national data; the prevalence of RTCs is a nationwide trend;
- acknowledgment that treatment of behavioral health disorders is very dependent on a medical model of treatment; many medications used for behavioral health disorders have never been studied for use in children;
- whether spending on autism is included in behavioral health spending reports; it is considered a developmental disorder and, therefore, is not included in this report;
- whether and how wrap-around services are included in comprehensive community support services (CCSS) and where case management fits into the picture; Dr. Lindstrom noted that the current trend is that high-fidelity wrap-around services are more intense than CCSS but could be included and would result in a more robust and inclusive treatment approach;
- clarification regarding how Medicaid dollars are being spent in different ways than General Fund dollars; the BHS asked Dr. Lindstrom to provide a summary breakdown

of how and what children's behavioral health services are funded by non-Medicaid dollars;
- clarification regarding PAX Good Behavior Game funding and whether evidence has been gathered from schools that have implemented this model; Dr. Lindstrom responded there is more evidence on the effectiveness of this model than any other model; a 60% reduction in disruptive behavior is reported within the first 90 days of implementation; other results will not be seen in the short term; Dr. Lindstrom agreed to provide results of independent evaluators;
- ways in which the PAX Good Behavior Game affects the incidence of mental illness and helps children with special needs; children in schools implementing this model develop resiliency due to the safe, supportive environment; children feel more valued and protected; and
- clarification regarding models that use incentives to keep youth out of RTCs.

Relationship-Based, Outcome-Focused Therapy

Dr. Michele Coleman, president and founder of the Attachment Healing Center (AHC), introduced Gwendolyn Griffin, placement supervisor, CYFD, and Jan Greco, a parent whose family the AHC has served. Dr. Coleman provided a brief description of the AHC, which is an outpatient, relationship-based, in-home form of therapy. It is informed by neuroscience. Treatment, which focuses on attachment, is provided through the parents. She offered an example of successful treatment with a real-life case. She projected the potential for significant cost savings with greater use of the model. She has conducted qualitative as well as quantitative research with the CYFD. She is eager to be a part of the solution to treat behavioral health disorders in children more effectively through greater collaboration with the state and higher reimbursement.

Ms. Griffin provided additional anecdotal information to support the effectiveness of this approach to therapy. Parents learn techniques for healing from trauma, and children are able to stop taking psychotropic medications with the help of the AHC, according to Ms. Griffin.

Ms. Greco shared a personal story of rescuing eight children from an unsafe living situation in foster care. After three years of traditional therapy, the children are still experiencing negative behaviors. They trust no one. Dr. Coleman and attachment therapy offered a way to interact in a more positive way and to become a better parent to these children.

Subcommittee members had questions and concerns in the following areas:

- whether there has been follow-up with the mother in the story provided by Dr. Coleman; yes, there has been follow-up with that family;
- whether this approach to therapy is available elsewhere in New Mexico; yes, in several locations;
- agreement that more relationship-based, outcome-focused attachment therapy providers are needed;

- support for therapy approaches that support families and parent-child relationships;
- whether there is a possibility of this type of therapy being included in Centennial Care; it is currently funded by Medicaid; Dr. Lindstrom is very supportive of the approach;
- how long the AHC has been in operation — since 2006; and how many clients have been treated — about 500 clients;
- clarification regarding how the AHC is funded; it is funded through Medicaid and private payers;
- how this approach could be embedded statewide; since Medicaid is statewide, and since this is a covered service, expansion is possible as providers see the advantage; and
- whether the Centennial Care contracts could make use of attachment therapy; the current shortage of providers makes that problematic; Dr. Coleman noted that a training program for providers is already under way.

Bernalillo County Behavioral Health Consortium

Debbie O'Malley, commissioner, District 1, Bernalillo County; Maggie Hart Stebbins, commissioner, District 3, Bernalillo County; Douglas H. Chaplin, director, Family and Community Services, City of Albuquerque; Maurice Tohen, M.D., Dr. PH, M.B.A., chair, Department of Psychiatry, UNM HSC; Eric Garcia, deputy chief, Albuquerque Police Department; Lieutenant Pete Golden, Bernalillo County Sheriff's Office; and Paul Guerin, Ph.D., director, Center for Applied Research and Analysis, UNM Institute for Social Research, were invited to address the subcommittee.

Commissioner O'Malley began by providing an overview of the behavioral health initiative. It started with a ballot question in 2014 to establish a one-eighth percent gross receipts tax to be used to expand access to more behavioral health services in Bernalillo County. The ballot was supported by 69% of the voters. She described a flow chart that the Bernalillo County Board of Commissioners used to identify a path forward.

Commissioner Hart Stebbins described the need for services based on facts and statistics in the county. Programs to address those needs include mobile crisis teams, prevention, support and early intervention services. Programs also include: services to reduce adverse childhood experiences; youth transitional living services; community connections; a peer support drop-in center; and a transition planning and re-entry resource center. The county is collaborating with UNM, UNM Hospital and the New Mexico crisis line. She identified future plans for a crisis center, development of a database, expansion of youth transitional living and sober housing for adults. Finally, the county is partnering with the Department of Health on the distribution of Suboxone for those who have overdosed on opiates.

Dr. Chaplin talked about the collaboration with the city and county on the behavioral health initiative. The initiative falls into four "buckets": crisis services; community supports; supportive housing; and prevention, intervention and harm reduction. Each bucket is allotted a

portion of $15,833,490 of FY 2018 funding for city programming in relation to behavioral health interventions.

Dr. Tohen described the elements of behavioral health services and programs at UNM, which include an adult psychiatric hospital, a children's psychiatric hospital, outpatient programs, psychosocial rehabilitation, addiction programs and integrated services in primary care settings. He noted that education and training of providers are also a large part of UNM's mission. He provided statistics regarding the number of admissions, inpatient days, patients seen and adult and child encounters. He noted that individuals with a SUD are far more likely to develop a mental health disorder. He identified challenges that include inadequate reimbursement, gaps in services in rural and frontier areas and regulations that exceed those in other areas of the health care system.

Deputy Chief Garcia spoke about law enforcement crisis response services and partnerships. He said that the incidence of crisis intervention team calls and computer-aided dispatch calls has leveled out due to the crisis response program. Lieutenant Golden identified the level of staffing within the Bernalillo County Sheriff's Office to handle crisis response.

Dr. Guerin described problem-based procurement, data and evaluation being conducted at the Institute for Social Research. Programs are developed upon a clear description of a problem and identification of a target population. The process allows targeting of high-frequency utilizers in need of behavioral health services, as well as continual identification of programs and approaches that work and ones that do not. Evaluation of the effectiveness of the approaches informs whether or not to continue and expand tested approaches.

Subcommittee members had questions and comments in the following areas:

- whether there are existing programs that allow those addicted to alcohol who have no Medicaid or insurance coverage to access needed services; Ellen Braden, division manager, Behavioral Health and Wellness, City of Albuquerque, provided details regarding the evolution of those services;
- clarification regarding case management services and who will provide those services; there is currently an RFP for those services;
- clarification regarding the number of inpatient beds at UNM Hospital for adolescent services; there are currently 35 inpatient beds; the availability of beds depends on how many beds are currently occupied and the length of stay for those inpatients;
- the means by which an individual is diverted from law enforcement interventions when that is an appropriate action; Katrina Hotrum, director, Behavioral Health Department, Bernalillo County, described the process and the partnership that allows for identification of the appropriate response and needed services immediately;
- clarification regarding the volume of diversion calls per month; there are between five and 12 calls per month just in the county;

- clarification of the public's role in identifying and reporting individuals experiencing severe behavioral health issues; the police and the county are both working on training of UNM Hospital workers; free courses are available for interested members of the public; a pilot program is under development for a "train the trainer" program;
- recognition that work needs to be done to reduce the stigma of mental illness;
- the potential for duplicating any part of this program in rural New Mexico; the law enforcement partnerships and many new technologies, such as telemedicine, can help to train individuals in rural areas;
- a request for additional information about the use of the UNM HSC Project ECHO telehealth program in relation to this area; Project ECHO is training providers across the state in Suboxone use;
- clarification regarding transitional services for individuals struggling with alcohol abuse;
- clarification regarding what Medicaid does and does not reimburse; the services are often covered but at a reimbursement rate that is too low to adequately cover the costs;
- whether reimbursement rates in Medicaid will be increased; at the moment, the rates are being reduced due to statewide budgetary constraints;
- an observation that a revenue enhancement bill passed that would have allowed for the federal Medicaid match, but it was vetoed by the governor;
- clarification regarding whether the federal Health Insurance Portability and Accountability Act of 1996, also known as "HIPAA", limits the ability to collect personal data; this is a challenge; identification of trends and populations may reveal community needs without personal identification;
- clarification regarding the challenges of addressing the needs of youth who are homeless or incarcerated;
- clarification regarding overcoming Medicaid reimbursement barriers; meetings are scheduled to explore opportunities for including elements of this model into Medicaid reimbursement;
- recognition of the challenges of workforce shortages in behavioral health services;
- whether community health workers and mid-level practitioners can serve to fill some of the workforce needs;
- the importance of addressing alcohol abuse among youth;
- a suggestion that a mobile crisis unit is needed in Bernalillo County; and
- what happens to unspent funds; the county is being deliberate in how it sends available funds to make sure they are spent wisely.

Public Comment

Valerie Romero testified about previous struggles in her life due to posttraumatic stress disorder, in part because of a lack of support services in the community; she was hospitalized against her will, and she could not afford to pay for it. She expressed appreciation for the previous presentations but feels there are additional services that are needed.

Loretta Enox provided a handout and discussed changes needed to New Mexico's mental health statutes to provide for court orders to allow police to enter the house of a person experiencing a psychotic breakdown.

Adjournment

There being no further business, the meeting was adjourned at 5:10 p.m.

Revised: August 23, 2017

TENTATIVE AGENDA
for the
THIRD MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 8, 2017
Memorial Medical Center
Conference Rooms A & B
2450 South Telshor Blvd.
Las Cruces

Friday, September 8

9:00 a.m. **Welcome and Introductions**
—Senator Bill B. O'Neill, Chair, Behavioral Health Subcommittee (BHS)
—Representative Christine Trujillo, Vice Chair, BHS

9:10 a.m. (1) **Welcome to Memorial Medical Center (MMC)**
—John Harris, Chief Executive Officer, MMC

9:30 a.m. (2) **Southwest New Mexico Inmate Support Program (SNMISP) Update**
—Mary Stoecker, Lead Consultant, SNMISP
—Michael Carillo, Administrator, Grant County Detention Center
—Cari Lemon, Director, Grant County Community Health Council; Program Manager, SNMISP

10:30 a.m. (3) **Improving Behavioral Health Access**
—Maggie McCowen, Executive Director, Behavioral Health Providers Association of New Mexico
—David Ley, Ph.D., Executive Director, New Mexico Solutions
—Sylvia Barela, M.B.A., Chief Operations Officer, Santa Fe Recovery Center

12:30 p.m. **Lunch**

1:30 p.m. (4) **Dona Ana County Behavioral Health Update**
—Jamie Michael, Director, Dona Ana County Health and Human Services
—Rosario Olivera, Chief Behavioral Health Officer, La Clinica de Familia

2:30 p.m. (5) **New Mexico State University (NMSU) Behavioral Health Update; Mental Health Nurse Practitioner Program Update**
—Alexa Doig, Ph.D., Professor and Enriquez Endowed Chair, School of Nursing, NMSU

NMSU Psychopharmacology Program Update
—Enedina Garcia Vázquez, Ph.D., Associate Dean for Students and Programs, College of Education, NMSU

Integrated Health Care Initiatives: Behavioral Health Psychology Training Program
—Eve M. Adams, Ph.D., Professor of Counseling and Educational Psychology, College of Education, NMSU

4:30 p.m. (6) **Public Comment**

5:00 p.m. **Adjourn**

MINUTES
of the
THIRD MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 8, 2017
Memorial Medical Center
Las Cruces

The third meeting of the Behavioral Health Subcommittee was called to order on September 8, 2017 by Senator Bill B. O'Neill, chair, at 9:10 a.m. in Conference Rooms A and B of the Memorial Medical Center (MMC) in Las Cruces.

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

Absent
Rep. Sharon Clahchischilliage
Rep. Rebecca Dow
Rep. Doreen Y. Gallegos .

Advisory Members
Rep. Deborah A. Armstrong
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen

Guest Legislator
Rep. Joanne J. Ferrary

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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.

Friday, September 8

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

Welcome to MMC

John Harris, chief executive officer (CEO), MMC, made welcoming remarks. Mr. Harris commented that the hospital is moving toward being a regional health system and that it has a 12-bed inpatient behavioral health unit.

Southwest New Mexico Inmate Support Program (SNMISP)

Mary Stoecker, lead consultant, SNMISP; and Cari Lemon, director, Grant County Community Health Council, and program manager, SNMISP, introduced themselves. Ms. Stoecker provided an overview of the history and goals of the SNMISP. The program utilizes the "wraparound" model incorporating both inmates and their families. Ms. Lemon reviewed the principles of the model, which is a team-based, outcome-oriented approach that respects the individual and family voice and choice.

Ms. Stoecker identified cost savings of the model, noting that, although the program began with a three-year funding grant, that grant has expired, and the governor vetoed a bill to renew it. She identified the benefits and successes of the program to date. The SNMISP has experienced positive developments with its recidivism rate. Of all inmates served, only one has returned to jail. Personal stories were shared. Barriers to continuing wraparound services include lack of funding, lack of outpatient services, transitions and post-incarceration job placement. Ms. Stoecker asked the subcommittee to support a bill for funding of a three-year grant to support the program.

Subcommittee members asked questions and expressed concerns regarding the following:

- a recommendation that the SNMISP partner with the New Mexico Association of Counties to work with the Governor's Office to support legislation to fund the SNMISP;
- clarification regarding the extent to which the opioid overdose reversal drug, naloxone, is used in jails; it is used, but no details exist on how widespread its use is;
- clarification regarding the process for evaluation for inmate participation in the program; it is a voluntary program;
- ways in which barriers to program participation are being addressed; continued funding is essential; communication is key;
- recognition that funding for local programs is always challenging, especially in tight budget times;
- a recommendation to consider framing legislation as a project in a judicial district or a statewide project to make funding more likely;
- opportunities for accessing community value-added dollars within Medicaid managed care organization (MCO) contracts; special projects are also required under their contracts and might be more fruitful;
- why violent inmates are not currently included; in the future, they probably will not be excluded; and
- clarification of follow-up after release from jail.

Improving Behavioral Health Care Access

Maggie McCowen, executive director, New Mexico Behavioral Health Providers Association (NMBHPA); David Ley, Ph.D., executive director, New Mexico Solutions; and Sylvia Barela, M.B.A., chief operations officer, Santa Fe Recovery Center, were invited to address the subcommittee.

Ms. McCowen began by stressing that this issue is ongoing and is still fraught with difficulties. The Office of the Inspector General of the U.S. Department of Health and Human Services (DHHS) is planning to come to New Mexico to conduct an evaluation of the Human Services Department (HSD), the extent to which Medicaid MCOs include behavioral health providers and the providers' availability to meet the needs of enrollees with behavioral health issues. She believes that there is a lack of connectivity at present that impairs access to services. Three key areas of focus are: monitoring; administrative burdens; and provider-based workforce issues.

Dr. Ley noted that although behavioral health issues are now talked about freely and openly, the issues are complex and difficult to address. Program monitoring begins with defining in advance what will be measured and with consistent attention to those measures. This is especially important with Medicaid, which tends to change monitoring approaches frequently due to changing goals, partners and stakeholders and required reporting methods. There is still no publicly available data about access to services statewide. Collecting, tracking and monitoring data on a consistent and ongoing basis is critical. Methods must anticipate the changing nature of health care delivery systems and the effect of these changes on the vulnerable population being served. The inevitable changes that will occur with Centennial Care 2.0 are likely to be disruptive. Continual disruption of administrative requirements leads to disruption in service delivery. Lack of consistent information challenges the ability of providers and policymakers to identify client and budget needs and properly address them.

Ms. Barela addressed the lack of a consistent process for establishing fiscal priorities for community-based behavioral health services. Very few codes can be billed, and there are limits to what can be billed for different types of services. Therefore, providers are not incentivized to provide those services. Members of the NMBHPA are committed to improving access to needed services and providing input into the development and implementation of approaches that will improve administrative burdens. Ms. Barela also spoke about provider workforce issues related to compensation and lack of job stability. In Item 3 of the handout, a chart describes the challenges posed by increased employee health insurance rates in an uncertain business environment.

Ms. McCowen acknowledged that the issue of rising health insurance premiums is not unique to the behavioral health community; however, in an industry that is already fragile, this issue has a huge impact. She spoke about the potential for developing a comprehensive rate-setting methodology. Colorado has a law that could serve as a model for such an approach, and

such a methodology could go a long way toward stabilizing the behavioral health provider workforce. It would have the further effect of reducing regulatory and administrative burdens and allow delivery of improved quality of care.

The NMBHPA requests legislative support for Senator Papen's bill addressing "Medicaid Access, Disputes and Fraud". The association highlighted a desire for NMBHPA inclusion on the Medicaid Advisory Subcommittee. The NMBHPA requested support for legislative action to define HSD requirements relative to access to services and monitoring and for development of a rate-setting methodology.

Subcommittee members asked questions and made comments as follows:

- recognition that many issues raised in the presentation mirror testimony heard from hospital providers;
- acknowledgment of serious challenges that arise out of inconsistent administration and oversight by four Medicaid MCOs;
- whether telehealth is a partial solution to the lack of community-based services;
- ways in which administrative burdens impair the ability of agencies to engage in innovative approaches to improve service delivery;
- observations about increases in incidents of police intervention in mental health events;
- affirmation about testimony regarding the inconsistency of current collection and reporting of reliable behavioral health data;
- issues of varying reimbursements from various payers, including Medicaid MCOs; it is difficult to negotiate rates; different rates also result in difficulties in billing;
- an observation that having multiple Medicaid MCOs adds an unnecessary level of complexity for providers;
- whether any NMBHPA members are able to purchase health insurance on the exchange; it depends on whether they meet current requirements as a small business; they will be meeting with the exchange leadership to identify what opportunities may exist;
- a request for additional research about opportunities and limitations of creating an Interagency Benefits Advisory Committee approach for small businesses to negotiate health insurance together;
- an observation that the issues affecting behavioral health are universal; child care providers, for example, face the same issues;
- a suggestion that Senator Papen's legislation to address identified problems be broadened to include all entities contracting with state government;
- the extent to which the complexity of the system is the greatest barrier to clients receiving services;
- an observation that the HSD and all state agencies are seriously understaffed; and
- whether another gap analysis is needed or if the one conducted years ago is still relevant; an analysis of what has been done in terms of recommendations in the

previous report would be very valuable; a legislative directive to do the analysis might be needed.

Roque Garcia, CEO, Southwest Counseling Center, a provider that was put out of business in 2013 due to allegations of fraud by the HSD, was asked to make some comments. He noted that administrative costs and the cost of health insurance have always been big issues. Mr. Garcia emphasized that unless the HSD agrees that it has some things to learn from the 2013 experience, no forward progress can be achieved. He also noted an inevitable friction between MCOs and providers, unless there is an intermediary to serve as an advocate. Prior to 2013, the HSD was this entity.

Karen Meador, J.D., senior policy director, Behavioral Health Services Division, HSD, was asked to make some comments about the Administrative Burdens Task Force that the HSD convened. Her understanding is that, currently, the task force is primarily focused on physical health providers rather than behavioral health providers. Ms. Meador noted that consolidation of behavioral health programs into one department has been helpful in addressing this and other issues.

Dona Ana County Behavioral Health Update

Jamie Michael, executive director, Dona Ana County Health and Human Services, provided information to the subcommittee regarding a jail diversion project, known as Stepping Up, which includes projects to establish a crisis triage center, establish collaboration between the 911 center and the New Mexico crisis line, develop a psychiatric residency program and plan for more supportive housing. Ms. Michael also reported on an assisted outpatient treatment program that was made possible through a federal Substance Abuse and Mental Health Services Administration (SAMHSA) of the DHHS grant that the county was awarded to pilot the program. The program assists people to obtain needed services upon release from jail. Based on a letter of interest received by Dona Ana County, the Dona Ana County Board of Commissioners has decided to operate a crisis treatment center as a reentry and jail diversion center. Finally, Ms. Michael informed the subcommittee that Dona Ana County engaged in behavioral health care through support of a county indigent program, a program to provide substance and detox services and various health promotion activities.

Rosario Olivera, chief behavioral health officer, La Clinica de Familia (LCDF), provided an update on the facility, beginning with a report of the number of patients served from 2015 through 2017. In August 2015, LCDF took over the mental health facility Frontera New Mexico. LCDF was able to demonstrate compliance with the Medicaid program in order to submit bills. Efforts to address workforce challenges have been met by partnering with the Behavioral Health Services Division of the HSD, New Mexico State University (NMSU) and the University of Texas at El Paso (UTEP). Internships have been utilized through NMSU and UTEP, and LCDF was able to hire 12 interns. Using an innovative approach known as Treat First, LCDF is improving clinical practice through ensuring timely and effective response to a patient's needs.

Integrated behavioral health and interdisciplinary services are being provided at each LCDF clinic.

Subcommittee members had questions and comments as follows:

- identification of the circumstances under which LCDF was able to assume care of behavioral health services in the southern part of the state;
- mechanics by which peer specialists are reimbursed;
- clarification regarding which levels of licensed alcohol and drug addiction counselors can be reimbursed; those who are associates are not reimbursable;
- how mental health patients are reimbursed upon release from jail; Molina Healthcare reimburses for covered services; presumptive eligibility determiners ensure Medicaid coverage immediately;
- whether suicide avoidance is included in crisis intervention training;
- whether reentry behavioral health services apply to adolescents; at present, only adults are covered in this part of the program;
- encouragement to extend all crisis services to adolescents as well as adults as soon as possible;
- clarification about what the SAMHSA is; and
- clarification on workforce needs; psychiatry and licensed independent clinicians are the hardest positions to fill.

NMSU Behavioral Health Update

Alexa Doig, Ph.D., professor and chair, School of Nursing, NMSU, spoke about New Mexico's mental health provider shortage and identified reasons for the shortage. She contends that psychiatric-mental health nurse practitioners could go a long way toward alleviating this shortage. She provided a brief description of these practitioners' training and scope of work. As independent practitioners, they are able to work in rural and frontier areas of the state. NMSU is the only institute that offers a doctoral nurse practitioner program. NMSU offers a $6,000 stipend to graduates of the program who commit to working in New Mexico for three years. The program is growing, with 20 students currently enrolled. In the past three years, 88 percent of graduates have practiced in the border region. Future goals include an increase in yearly admissions. Increased recruitment activities, mental health career workshops and telemedicine health training should help meet that goal.

Enedina Garcia Vasquez, Ph.D., associate dean for students and programs, College of Education, NMSU, presented information on NMSU's master's degree program in psychopharmacology. The program is the only not-for-profit program in the country offering this degree. Dr. Vasquez explained that the program grew out of the passage of House Bill 170 in the 2002 regular session, which gave prescriptive authority to psychologists. She described the goals of the program, benefits to New Mexico, an overview of the program and highlights of the curriculum. Dr. Vasquez identified the distribution of prescribing psychologists licensed throughout New Mexico. She emphasized NMSU's commitment to quality in this program.

Eve M. Adams, Ph.D., professor of counseling and educational psychology, College of Education, NMSU, spoke about integrated primary care psychology training at NMSU. She identified the primary care sites with which the integrating primary care psychology training program partners and the elements of interdisciplinary and interprofessional education at the university. Students are exposed to interprofessional immersion through team exercises. Immersion outcomes build necessary competencies and develop team expertise. She described elements of the program and curriculum. Graduates of this program are capable of utilizing existing team-based structures and are creating new ones. Dr. Adams told the subcommittee that, because the training occurs in medically underserved areas, the program creates a more culturally competent workforce. Thirty to 40 percent of all students completing the program remain in the state, according to Dr. Adams.

Subcommittee members asked questions and made comments as follows:

- whether there is any collaboration with University of New Mexico's (UNM's) Project ECHO telehealth program; yes;
- the extent to which the population of psychiatric nurse practitioners has grown over time; the legislature has supported six new admissions for two years; this year, the goal is 12 new admissions;
- clarification regarding the location of prescribing psychologists; most remain local;
- whether a prerequisite of the prescribing psychologist program is to be a licensed psychologist; yes;
- whether any of the panelists have input regarding a licensing compact for psychologists; if so, Representative Armstrong would like to be notified;
- whether graduates of NMSU's nurse practitioner program have admitting privileges; very few do; NMSU hopes to work through those barriers;
- an observation that there is international interest in the prescribing psychologist degree;
- clarification regarding where one can get a psychiatric-mental health degree in New Mexico; at NMSU and at UNM; NMSU is the only institution offering a doctoral degree; and
- concern regarding over-prescription of controlled substances and how the prescribing psychologist degree program addresses this; it is part of the curriculum, and prescribing practices are monitored after graduation.

Public Comment

Dr. Harlan Hoover, the seventh psychologist certified to prescribe in the state, noted that he spends much of his time trying to get people off prescription drugs. Dr. Hoover told the subcommittee that he works closely with primary physicians to achieve this. He thanked Senator Papen and all members of the subcommittee who were members at the time of the enabling legislation for their votes to support the measure. He also acknowledged NMSU for supporting the program.

Chris Lopez thanked the members of the subcommittee for all the positive work they do and their support for mental health services. He offered a personal story of a young boy whose suicide was averted due to local services.

Adjournment

There being no further business, the meeting was adjourned at 3:30 p.m.

Revised: October 20, 2017

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 24, 2017
State Capitol, Room 321
Santa Fe

Tuesday, October 24

9:00 a.m. **Welcome and Introductions**
—Senator Bill B. O'Neill, Chair, Behavioral Health Subcommittee (BHS)
—Representative Christine Trujillo, Vice Chair, BHS

9:10 a.m. (1) **High-Risk Youth Suicide**
—April Miller, Executive Director, The Sky Center/New Mexico Suicide Intervention Project
—Jenn Jevertson, Prevention Coordinator, Santa Fe Public School District
—Carol Moss, Epidemiologist, Injury Prevention Program, Epidemiology and Response Division, Department of Health

11:00 a.m. (2) **Human Services Department (HSD) Transition Processes When a Behavioral Health Provider Intends to Terminate Services**
—Wayne Lindstrom, Director, Behavioral Health Services Division, HSD

12:00 noon **Lunch**

1:30 p.m. (3) **Public Comment**

2:00 p.m. (4) **Santa Fe County Behavioral Health Initiatives**
—Rachel O'Connor, Director, Community Services Department (CSD), Santa Fe County
—Alex Dominguez, Behavioral Health Manager, CSD, Santa Fe County
—Kyra Ochoa, M.P.H., Program Manager, CSD, Santa Fe County
—Mark Boschelli, L.P.C.C., L.D.A.C., Presbyterian Medical Services
—Monica Leyba, Chief Nursing Executive, Christus St. Vincent Regional Medical Center

4:00 p.m. **Adjourn**

MINUTES
of the
FOURTH MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 24, 2017
State Capitol, Room 321
Santa Fe

The fourth meeting of the Behavioral Health Subcommittee was called to order on October 24, 2017 by Senator Bill B. O'Neill, chair, at 9:14 a.m. in Room 321 of the State Capitol in Santa Fe.

Present
Sen. Bill B. O'Neill, Chair
Rep. Christine Trujillo, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Doreen Y. Gallegos
Sen. Howie C. Morales
Rep. Elizabeth "Liz" Thomson

Absent
Rep. Rebecca Dow

Advisory Members
Sen. Gerald Ortiz y Pino

Rep. Deborah A. Armstrong
Sen. Mary Kay Papen

Guest Legislators
Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Rep. Sarah Maestas Barnes
Sen. Nancy Rodriguez

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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 24

Welcome and Introductions

Subcommittee members and staff introduced themselves.

High-Risk Youth Suicide

April Miller, executive director, The Sky Center/New Mexico Suicide Intervention Project (Sky Center), identified the history and mission of the Sky Center. She provided a snapshot of suicide among youth in the nation, county and city. New Mexico's incidence of youth suicide ranks fourth in the nation. A 2015 youth risk and resiliency survey (YRRS) reported that 43.3% of Santa Fe County adolescents had seriously thought about suicide. Data regarding attempted suicide as well as risk factors and warning signs were described. Depression is a key factor in suicide attempts. There are four steps to help avert suicide: 1) know the warning signs; 2) notice changes in moods and behavior; 3) express "I'm concerned about you"; and 4) invite young people to describe what they are feeling. Following up with a direct question, "Are you thinking of hurting or killing yourself", provides the opportunity for concrete intervention. The Sky Center is providing many services to help mitigate the occurrence of suicide, including counseling, education, training, outreach to schools, a crisis hotline and other direct interventions.

Jenn Jevertson, prevention coordinator, Santa Fe Public School District (SFPSD), noted that one population that is especially vulnerable to suicide is the LGBTQ+ population. Gender-identity issues addressed in the 2015 YRRS reflected that LGBTQ+ students have missed school and/or experienced bullying in higher percentages than straight youth, and they report feeling unsafe at school. Young people who are homeless have issues regarding family rejection, which is a contributing factor in placing these youth at risk of suicide. Each episode of LGBTQ+ victimization increases the likelihood of self-harming behavior by 2.5%. Suicide is now the second-leading cause of death among all individuals between the ages of 10 and 24. LGBTQ+ youth are four times more likely to attempt suicide. In New Mexico, 8% of young people have attempted suicide and 32% of LGBTQ+ young people have attempted suicide. Ways to protect LGBTQ+ youth include suggestions for legislative and public action to protect them, prevention of bullying and education of the public to reduce the stigma.

Carol Moss, epidemiologist, Injury Prevention Program, Epidemiology and Response Division, Department of Health (DOH), discussed suicide among American Indian youth. Statistics over a five-year period indicate that New Mexico has a higher incidence of suicide than the rest of the nation. Data regarding suicide by race and ethnicity reflect a significant disparity between Native Americans of all ages and American Indian youth. Data for all ages show that the rate of suicide among males is three and one-half times the rate among females. This trend is significant among American Indian males. Geographic data regarding American Indian youth in the northwest part of the state reflect a suicide rate that is more than double that of the metropolitan region. Data regarding the method of death show that American Indian youth use strangulation (suffocation) to a much greater degree than the white population. Ms. Moss

identified numerous evidence-based suicide prevention programs and other public health strategies currently being implemented by the DOH. The department is seeking to hire a suicide prevention coordinator to help communities develop and support suicide prevention programs.

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

- whether districts outside of Santa Fe have a suicide prevention coordinator; this is not known; in Santa Fe, having one is very effective;
- recognition of the importance of communities and schools working together;
- whether laws regarding bullying-prevention efforts are effective; having laws on bullying sets expectations and raises awareness and, to that extent, is effective in making schools safer;
- clarification regarding the source of the DOH demographic data that were shared; those slides come from the death file;
- whether the data reflecting a drop in the incidence of suicide among American Indian youth reveal anything about the reason for the decline; this is not specifically known;
- whether there are efforts to provide shelter for LGBTQ+ youth outside of Albuquerque; more and more entities are recognizing the needs of this population;
- whether programs working with animals are being used to reach youth at risk of suicide; there is not awareness of any research in this area specific to suicide;
- whether talking about suicide directly is effective in identifying youth at risk; yes, the opportunity to talk about suicide is very effective in lowering the risk of suicide among vulnerable youth;
- clarification regarding the meaning of the "+" in LGBTQ+; it is intended to make the acronym more inclusive and means "etc.";
- clarification regarding funding for the Sky Center; funding is primarily through donations, local grants, the city, the county and the DOH;
- whether services are covered by Medicaid; the Sky Center does not have the infrastructure to manage Medicaid billing;
- whether there is a role for school-based health centers in suicide prevention; yes;
- ways in which classroom teachers can become more aware of the risk factors for suicide; the most important thing is for teachers to develop a comfort level in asking questions when risk factors are noticed;
- recognition of the importance of in-service training regarding suicide prevention;
- whether there is a crisis line for LGBTQ+ youth who are feeling suicidal; national resources exist to guide the response of local hotlines;
- whether the Children, Youth and Families Department (CYFD) trains staff in recognizing risk signs; the Sky Center is available to conduct training for the department;
- the potential for research to be done regarding the role of public health in addressing youth suicide;
- an observation that requiring gun registration at gun shows could reduce the incidence of youth suicide;

- clarification regarding the annual budget of the Sky Center; it is $450,000; and
- whether there is an intergenerational aspect to suicide; yes; additionally, social pressures, such as the "choking game", may have an effect.

Human Services Department (HSD) Transition Processes When a Behavioral Health Provider Intends to Terminate Services

Wayne Lindstrom, Ph.D., director, Behavioral Health Services Division (BHSD), HSD, introduced three colleagues: Michael Nelson, deputy secretary, HSD; Karen Meador, deputy director, BHSD, HSD; and Mica Tari, deputy director, BHSD, HSD.

Dr. Lindstrom identified specific requirements for managed care organizations (MCOs) at such time as a provider notifies the HSD of its intention to terminate involvement with Medicaid. Policies and procedures are intended to ensure safe transitions for behavioral health clients. Details of the process were provided in a handout. Dr. Lindstrom noted that, generally, behavioral health clients do not officially resign from active involvement in treatment, making identification of an accurate caseload difficult. Within the BHSD, there are two contract managers who work with MCOs and providers to achieve a smooth transition. There are a variety of reasons for closure of provider organizations that may or may not be voluntary, according to Dr. Lindstrom. Termination may be necessary due to health and safety issues or improper business activities. A series of tools have been developed over time to respond to different types of transitions. Because of the wide array of reasons for termination, Dr. Lindstrom noted that the tools and processes are often inadequate and that customized approaches may be necessary. He emphasized the importance of working with behavioral health providers to understand the elements necessary to ensure a safe and seamless transition, with no interruption of necessary services. Dr. Lindstrom discussed the circumstances under which a closure can be averted and ways in which technical and other support can be provided to keep the provider organization open, including provision of outside consultants.

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

- circumstances under which the state could get a court order to take over a provider organization; this is a contingency of which the BHSD is aware if there are no overriding health or safety issues that require immediate closure;
- whether clients have the opportunity to change MCOs when there is a dispute between an MCO and a provider that cannot be resolved; Mr. Nelson stated that the preference is to broker an agreement between the MCO and the provider, and there are provisions that can allow this to take place;
- a recommendation that this provision should be streamlined in favor of the client;
- clarification regarding the number of terminations that have occurred in the current MCO contract period; there have been six;
- clarification regarding the process by which a provider terminated by an MCO may appeal; some providers initiate termination; if the termination is initiated by the

MCO, the HSD strives to mitigate the differences; when a provider and an MCO are unable to come to a formal financial agreement, there is no appeal process;

- whether the HSD has a contract with a consultant in Arizona in these situations; no; Presbyterian Healthcare Services has such a contract, which it has offered to the HSD as a resource;
- whether the lawsuit between La Frontera and OptumHealth New Mexico has been settled; this is not known;
- whether there is recourse if a provider announces its intention to terminate with very short notice; yes; the HSD works closely with the MCO, and the providers to try to avoid a closure;
- whether MCOs can withhold payments or take other measures; each circumstance is different and requires individualized approaches;
- clarification regarding the 30-day window for a provider and an MCO to resolve issues; communication between the BHSD and the MCO is key;
- clarification regarding requirements to become a provider; the answer depends on the type of provider, the services it provides, credentialing and certification by national organizations and state licensure requirements;
- clarification regarding the reason for closure of two youth facilities in the Las Cruces area; they had very low occupancy rates; both facilities were unable to increase occupancy;
- whether MCO contracts can be made available to legislators who are asked to approve funding for MCOs; the contracts are public and are posted on the HSD website; the HSD does not have copies of the contracts between MCOs and providers;
- a comment that there is no transparency in Medicaid managed care to show accountability and how money appropriated by the legislature is being spent; the accountability arises from oversight and compliance that the state ensures with its contracts with the MCOs;
- whether there is legal authority to require copies of proprietary contracts between MCOs and providers; Mr. Nelson will check into that;
- an observation that the names of MCO providers are contained in provider network directories; however, names of other contractors with which the MCOs consult are not available;
- a comment that behavioral health services are operated under a payment model and are no longer operated under a public health model;
- encouragement to rewrite the MCO contracts to benefit providers; MCOs are making a lot of money from behavioral health programs and are not adequately reimbursing providers;
- whether the Arizona companies that took over behavioral health services are required to reimburse the state for money paid to lure them to New Mexico; this is not known;
- whether there were written agreements at the time; agreements would have been between OptumHealth New Mexico and the Arizona companies, and the HSD does not have that information; and

- whether assurance can be given that New Mexicans are receiving the behavioral health services that they deserve; services could expand if the state were to have an adequate workforce to meet the known needs.

Public Comment

Dr. Michelle Coleman, president, Attachment Healing Center, provided follow-up information based on suggestions offered by the Legislative Health and Human Services Committee (LHHS) at its August meeting. She would like to expand to other communities, if funding can be found.

Santa Fe County Behavioral Health Initiatives

Rachel O'Connor, director, Community Services Department (CSD), Santa Fe County, introduced Alex Dominguez, behavioral health manager, CSD; Kyra Ochoa, M.P.H., program manager, CSD; Mark Boschelli, L.P.C.C., L.D.A.C., Presbyterian Medical Services; and Monica Leyba, chief nursing executive, Christus St. Vincent Regional Medical Center (CSV).

Ms. O'Connor provided an historical view of how behavioral health initiatives have evolved in Santa Fe County. The Santa Fe County Health Action Plan, covering 2015 through 2017, prioritizes needs and action steps. Indicators include reducing alcohol abuse, reducing drug abuse, reducing the incidence of low-birth-weight babies, reducing suicides and increasing consumption of healthy foods as well as enrollment in health insurance. These priorities grew out of a health needs assessment completed in 2013.

Ms. Ochoa identified behavioral health and substance abuse treatment initiatives provided and/or funded by Santa Fe County in partnership with other entities in the county, including La Familia Medical Center, the SFPSD, CSV and United Way. Programs include residential substance abuse treatment, treatment for pregnant women, navigation services and a mobile integrated health office. Ms. Ochoa spoke about harm-reduction and -prevention services through a program called Santa Fe Opiate Safe, developed in partnership with the Santa Fe Prevention Alliance to address the opioid epidemic. Narcan is now being made available in accordance with current federal Centers for Disease Control and Prevention best practices. The SFPSD purchased 650 Narcan kits, which led to numerous reversals of overdoses. In coordination with the city-run Mobile Integrated Health Office program, families are visited and trained within a day of an episode. The Law Enforcement Assisted Diversion Program is financially supported by the county.

Mr. Dominguez discussed enhanced social wraparound services and detox services supported by Santa Fe County, CSV and the Santa Fe Recovery Center. He also addressed crisis services in the county. Mr. Boschelli described the program implemented by Presbyterian Medical Services: a crisis line is open 24 hours per day, with appropriate dispatches and follow-up linkages to services. Data reflect that 101 emergency room (ER) visits have been diverted to community service providers.

Ms. O'Connor reported on a summit Santa Fe County hosted to identify behavioral health priorities. A bond initiative has allowed the county to proceed with development of a crisis center model to provide a safe and secure place for adults with behavioral health issues and their families and to connect them with resources. The primary goals of the center and the population to be served were identified. An array of integrated services was described. A request for proposals (RFP) has been issued to manage and implement the model.

Ms. Ochoa described a project called an "accountable health community", which is a model promoted by the federal Centers for Medicare and Medicaid Services to align services and ensure that behavioral health clients move efficiently through a variety of services. The project entails conducting a gap analysis, developing navigation services and enhancing information technology capability and data analysis. Ms. O'Connor stressed the seriousness of the opioid crisis and the anticipated need for more medical detox services.

Ms. Leyba introduced Mary Bednar, director of emergency services, CSV; Mary Magnusson, clinical manager, Behavioral Health Services, CSV; and Jesse Cirolia, manager of community health, CSV, as experts should questions arise. She described the intersection among many conditions for which a person accesses ER services that are either caused by, or related to, addiction and/or behavioral health issues. An estimated 11% of the 55,000 ER visits per year at CSV have a primary behavioral health diagnosis. She described the services provided by the hospital, including inpatient and outpatient behavioral health services, emergency psychiatric assessment services and high utilizer group services. She described the ways in which CSV financially supports adult behavioral health in the community, for a total of $763,811. She noted that an outside behavioral health consultant has been engaged to review the appropriate support role of the hospital.

Sylvia Barela, chief executive officer, Santa Fe Recovery Center, and Andres Mercado, mobile integrated health officer, Santa Fe Fire Department, introduced themselves.

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

- whether the indigent fund pays for county programs and services; a small portion is paid for through the indigent fund;
- clarification regarding Santa Fe County's goals for alcohol treatment; the detox center will be located at the Santa Fe Recovery Center; wraparound services and navigation will be provided there;
- whether there are opportunities to maximize Medicaid funding for behavioral health services; a few programs are able to receive a small amount of Medicaid funding; once rules are promulgated, the Santa Fe Crisis Center may offer an opportunity to allow Medicaid reimbursement;
- whether medical detox is provided at CSV; yes, on the floors but not in the behavioral health unit; CSV and Santa Fe County are in discussion regarding how to expand that service;

- clarification regarding admission criteria for the inpatient behavioral health unit; that is part of what the behavioral health consultant is looking at; Ms. Magnusson noted the unit is primarily used for those who are acutely psychotic and for some dually diagnosed individuals;
- clarification regarding the anticipated length of stay in the county crisis center; it is 24 hours;
- a question for Dr. Lindstom regarding progress on development of regulations for crisis centers; the HSD has worked with the DOH and the CYFD to do this; their intention has been to make regulations as flexible as possible; the HSD is exploring reimbursement mechanisms for the living-room-model crisis center that the county intends to develop;
- whether Santa Fe County has been consulted in the development of the regulations; no;
- an observation that, in the past, community providers were at the table in developing regulations to get the best expertise available;
- whether there is a time line for when the proposed regulations will be available for public comment; not at the moment;
- whether Santa Fe County has explored the use of the "centering parenting" model as presented by the Office on African American Affairs at the last meeting of the LHHS; La Familia Medical Center is looking at doing this;
- whether county indigent funds are limited to providing detox services to residents of Santa Fe County; some people outside of the county can qualify;
- an observation of the importance of the availability of detox services;
- clarification regarding the capacity of the Sangre de Cristo House, which is an inpatient transitional living facility; it currently has about 25 residents, who will stay approximately 30 days;
- whether the Santa Fe Recovery Center has a residential component; yes, it has a limited number of inpatient beds, but expansions are under way;
- whether the Santa Fe Crisis Center exists yet; it does not; an RFP has been issued;
- ways in which the mobile crisis unit is funded; the county provides about $450,000 to fund this;
- ways in which the Santa Fe Crisis Center is to be funded; a bond initiative combined with a gross receipts tax increase will fund the center;
- clarification of why children and youth are excluded from the inpatient behavioral unit; the population is small, so it has not been possible to staff such a program; the University of New Mexico is helping to cover these services;
- whether there are plans for outpatient rehabilitation services; there will be both outpatient and residential services.
- whether court-ordered services are covered by any funding source; yes; they are covered by BHSD general funds so long as clients meet medical necessity criteria for admission; the fact that the services are court-ordered will not alone ensure coverage by private insurance;

- clarification that residential treatment center regulations do not apply when it comes to crisis triage centers; Medicaid does reimburse for residential treatment for children and adolescents; and
- clarification that under proposed regulations, a crisis treatment center would not be considered such and would need to be called something else.

Adjournment

There being no further business, the meeting was adjourned at 4:05 p.m.

DISABILITIES CONCERNS SUBCOMMITTEE AGENDAS AND MINUTES

Revised: August 2, 2017

TENTATIVE AGENDA
for the
SECOND MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

August 3, 2017
Science and Technology Center Rotunda
University of New Mexico
801 University Boulevard SE
Albuquerque

Thursday, August 3

9:00 a.m. **Welcome and Introductions**
—Senator Nancy Rodriguez, Chair

9:10 a.m. (1) **Welcome to University of New Mexico (UNM)**
—Paul Roth, M.D., Chancellor for Health Sciences, UNM Health Sciences Center (HSC)
—Patricia Osbourn, Associate Director, Center for Development and Disability (CDD), UNM HSC

9:30 a.m. (2) **Developmental Disabilities Medicaid Waiver Update**
—Jim Copeland, Director, Developmental Disabilities Supports Division, Department of Health
—Jason Gordon, Litigation Manager, Disability Rights New Mexico
—Peter Cubra, Attorney at Law

11:30 a.m. (3) **Public Comment**

12:00 noon **Lunch**

1:00 p.m. (4) **Mi Via Provider Update**
—Shari Roanhorse-Aguilar, Bureau Chief, Exempt Services and Programs, Medical Assistance Division, Human Services Department
—Jennifer Rodriguez, Bureau Chief, Community Programs, Developmental Disabilities Supports Division, Department of Health
—Lecie McNees, Executive Director, Self-Directed Provider Association

3:00 p.m. (5) **Autism: Status of Camp Rising Sun**
—Patricia Osbourn, Associate Director, CDD, UNM HSC

4:30 p.m. **Adjourn**

MINUTES
of the
SECOND MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

August 3, 2017
Science and Technology Center Rotunda
University of New Mexico
801 University Boulevard SE
Albuquerque

The second meeting for the 2017 interim of the Disabilities Concerns Subcommittee (DCS) of the Legislative Health and Human Services Committee (LHHS) was called to order on August 3, 2017 by Senator Nancy Rodriguez, chair, at 9:40 a.m. in the Science and Technology Center Rotunda at the University of New Mexico (UNM).

Present
Sen. Nancy Rodriguez, Chair
Rep. Gail Armstrong
Sen. Linda M. Lopez
Rep. Elizabeth "Liz" Thomson

Absent
Rep. Joanne J. Ferrary, Vice Chair

Advisory Members
Sen. Elizabeth "Liz" Stefanics

Rep. Deborah A. Armstrong
Rep. Miguel P. Garcia
Rep. Angelica Rubio

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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.

<u>Thursday, August 3</u>

Senator Rodriguez offered welcoming remarks. Members and staff introduced themselves.

Welcome to UNM

Paul Roth, M.D., chancellor for health sciences, and Patricia Osbourn, associate director, Center for Development and Disability (CDD), both of the UNM Health Sciences Center (HSC), greeted subcommittee members. Dr. Roth briefly identified the programs in the HSC that serve disabled individuals through the CDD, as well as other departments within UNM, highlighting the services they provide. Subcommittee members asked for additional information and clarification regarding Dr. Roth's presentation.

Ms. Osbourn provided an overview of the CDD, which exists to identify and serve the needs of people with disabilities in New Mexico. The CDD is part of the national network University Centers for Excellence in Developmental Disabilities. Its goals include conducting research, supporting state and local governments in implementing best practices, providing continuing education, training undergraduate and graduate students and publishing research. Its programmatic areas include services in autism spectrum disorders, early childhood and preschool services, medically fragile case management and employment for individuals with disabilities. Subcommittee members had questions regarding the source of funding for the CDD; additional information regarding Project SEARCH, an employment training program, and Healthy Workshops, an older version of employment training that is no longer considered a best practice; whether these programs lead to job placement; and the extent of family involvement in this area. Thanks were expressed for the work of the CDD, as well as concern for the perceived lack of support for and availability of these essential programs in New Mexico. Dr. Roth acknowledged that limited resources and a lack of adequate funding, particularly under Medicaid, challenge the UNM HSC every day in meeting the needs of not only this population but many others as well.

Medicaid Developmental Disabilities (DD) Waiver Update

A panel that included Jim Copeland, director, Developmental Disabilities Supports Division (DDSD), Department of Health (DOH), Jason Gordon, litigation manager, Disability Rights New Mexico (DRNM), and Peter Cubra, attorney at law, was asked to provide an update and status report on the Medicaid DD waiver program.

Mr. Copeland introduced himself and discussed his experiences and expertise in this area. He identified new staff members that have been added to the DDSD. He highlighted provisions of the DD waiver renewal that include the addition of an outside review process, a discontinuation of the Supports Intensity Scale (SIS), the addition of new language to transition *Jackson* class members to the new waiver and other language updates. New DDSD initiatives include a statewide transition plan (now in final rulemaking), rewriting standards, contract management, provider engagement and renewal of the DD waiver. He provided current statistics on the DD waiver: 6,564 people are on the central registry; 3,945 people are on the waiting list for the DD and Mi Via waivers; 4,694 are in services; and 356 allocations are on hold.

Mr. Gordon provided a brief update regarding the *Waldrop et al. vs. New Mexico Human Services Department et al.* (*Waldrop*) lawsuit, pursuant to which a settlement was entered to address concerns regarding the SIS. The *Waldrop* settlement establishes a process for approval

of individualized service plans (ISPs) that discontinues the use of the SIS. Team involvement and outside approval are crucial to ensuring provision of an appropriate array of services. Calls to DRNM expressing concerns about outside approval of ISPs have diminished. The budget approval process is still problematic. Mr. Gordon touched on the DD waiver waiting list. DRNM is troubled by the ongoing problems in management of the waiting list, Mr. Gordon stated, and the amount of time it still takes for a client to receive services. He reminded the subcommittee that a bill was passed by the legislature in the 2016 regular session to require reporting on the waiting list, but that bill was vetoed by the governor. He encouraged the subcommittee to continue to pursue this in the future. He noted that the federal Centers for Medicare and Medicaid Services final rule requiring integrated service settings in the community has now been delayed until 2020. The details of this rule are crucial and affect individual lives. A campaign called "Know Your Rights" is working to ensure that all people potentially affected by the final rule and other issues, including employment issues, will be well-informed.

Mr. Cubra mentioned the Ayudando Guardians case management agency, which provides guardianship for adults and is being prosecuted for fraud. Mr. Cubra contends that the Office of Guardianship in New Mexico is grossly underfunded. He also referenced the *Hatten-Gonzales* lawsuit, which contends that the Human Services Department (HSD) is terminating Medicaid benefits without proper notification and that clients affected by this are about to lose benefits. He updated the subcommittee on the status of the *Jackson* lawsuit. Mr. Cubra then commended the DOH for working hard to improve the DD waiver system while the lawsuit is ongoing. He stated that he believes that progress is now occurring and that the DOH is cooperating with national experts. Referring to a state of the states report on disabilities, he highlighted New Mexico-specific data regarding the adequacy of funding for disability services and supports. New Mexico is currently ranked nineteenth among all states in fiscal effort to fund these services.

Subcommittee members expressed concerns and asked questions regarding the following:

- a statement that DD waiver clients are not overserved; funding still needs to be increased;
- clarification regarding the need to rewrite standards for the DD waiver at this time; standards regarding guardianship, planning, human rights, transportation and more are being added;
- whether resource allocation for families will be changed; no significant change is anticipated at this time;
- clarification regarding the process for ensuring quality review in guardianship cases; the LHHS will hear more about this at an upcoming meeting;
- recognition and compliments to Mr. Copeland, Mr. Cubra and Mr. Jackson for their work;
- a concern that standards and requirements to receive DD services are very burdensome, while the Mi Via waiver requirements may be too lax;
- whether Xerox is still the fiscal agent for the DD waiver and whether serious problems are still being experienced; Shari Roanhorse-Aguilar, bureau chief, exempt

services and programs, Medical Assistance Division, HSD, stated that she is prepared to address this issue in the Mi Via waiver presentation later in the day;
- concern that the process for recertification is very cumbersome;
- a request for a presentation on what it would take to get out from under the *Jackson* lawsuit;
- a request for the full LHHS to hear a presentation about the critical need for additional funding for the DD waiver and that the Legislative Finance Committee be invited to attend this presentation;
- the importance of accommodating people with special needs and doing everything that can be done to help them;
- whether there is high turnover among the external reviewers and whether the same reviewers are assigned to the same clients; external reviews are accomplished on a team basis; to the extent possible, members of the team remain the same;
- the process by which information is submitted to reviewers responsible for evaluating the appropriateness of ISPs; the process is inconsistent due to inconsistencies of data submissions;
- the critical importance of communication among and between parties; and
- an assurance by Mr. Copeland that the DDSD is committed to continued work on all of the issues raised at the meeting.

The chair announced that a letter had been received from Brent Earnest, secretary of human services, responding to concerns expressed by the LHHS at its June 16, 2017 meeting regarding Medicaid enrollment and recertification for DD waiver clients. Mr. Hely read the letter out loud at the request of the chair. The letter will be posted on the website.

Public Comment

Ira Cohen requested that the legislature not cut funding for Camp Rising Sun. Robert Bundy, Emma Ruth, Tim Brown and Miranda Patay provided personal testimony about the importance of the camp. Katie Stone, a camp employee, provided details about the training that is given to peer counselors and families. She spoke strongly about the unique and critical need for continued funding for the camp.

Mr. Copeland responded to questions regarding funding cuts. With no additional appropriations and growing expenses, difficult decisions had to be made. He affirmed that the CDD has been given flexibility to continue funding for Camp Rising Sun but that other programming is likely to be negatively affected by this. A member asserted that the legislature did not cut the funding and voiced that the member does not wish to cut funding for Camp Rising Sun and other autism services. She encouraged advocates to talk to the governor about the cuts.

Robert Kegel reviewed state law regarding authorization for providing community-based services for persons with developmental disabilities. He raised concerns about communications that are not timely or that are inaccurate and that result in disastrous outcomes for recipients, as well as delays for people on waiting lists. He also testified to the difficulty of presenting public

comment before changes are implemented. He contends that the law is not being followed, especially regarding reporting to the legislature.

Marsha Secord advocated for individuals with traumatic brain injury, who experience many of the same concerns as people with developmental disabilities. She asked the subcommittee to address brain injury more aggressively. The chair noted that brain injury is included in the work plan for the LHHS.

Tracy Perry, Direct Therapy Services, expressed concerns regarding unresolvable eligibility issues and the time it takes to begin covered services and recertifications.

Glenn Ford, Brain Injury Alliance New Mexico, spoke to the need for increased funding for brain injury services. He stated that he is eager for the DCS to hear issues related to brain injury this interim.

Wendy Cory, advocate for people with disabilities, highlighted some good work that is now being done, especially the Know Your Rights campaign. Many agencies have become involved. Ten town halls have occurred around the state with more than 600 participants this year. Many positive collaborations statewide have made this work possible.

Sarah Baca, executive director, New Mexico Autism Society, expressed thanks for all the support the legislature has given to autism services.

John Block, executive director, Developmental Disabilities Planning Council, provided additional information about Ayudando Guardians and guardianship services statewide. By court order, 166 individuals need to be transferred to other guardianship providers.

David Murley, Mi Via consultant and broker, spoke in opposition to action taken by Presbyterian Healthcare Services to provide support broker services in-house. He feels that this step will limit the ability of clients to fully self-direct their services and have their needs appropriately met. He provided written comments.

Julia Alzofon addressed a serious health problem that arises from retail grocery store security systems that hinder access by disabled individuals. Sigmund Silver noted the adverse effect of this system, which automatically locks a shopping cart's wheels if a shopper does not leave the store within a certain period of time after checkout. He described the pitfalls of Albertsons' use of timers on wheelchair carts, which creates great disadvantages for disabled individuals who depend upon these carts for shopping.

Felice Garcia identified herself as the sister of a DD waiver participant and the aunt of someone on the autism spectrum. She asked that the DCS deliver a message to the governor that Camp Rising Sun is not frivolous but an essential provider of respite services for families that are

overburdened and that it provides training and hands-on skillbuilding for camp attendees. She noted that the camp is known and studied worldwide.

Sandy Skaar, a self-directed supports worker and Mi Via consultant, identified problems for individuals with developmental disabilities who require prompting to be provided these services. She noted that benefits for individuals living with HIV and AIDS have been cut and that budgets are being decreased.

Mi Via Update

Ms. Roanhorse-Aguilar and Jennifer Rodriguez, bureau chief, community programs, DDSD, DOH, gave an overview of the Mi Via waiver program. It is different from the DD waiver in that it is a self-directed program. Participants choose which services, supports and goods they need from available services and decide when and how those services will be provided. They can choose to hire their own employees or work with their choice of vendors for services. The array of services and supports available was described. Participants receive an annual budget allotment. An organizational chart was provided to better delineate responsibilities. The HSD and the DOH work in partnership to administer the program. The role of third-party assessors and financial management agents was described. FOCoS*online* is the system for receiving and processing payments.

Lecie McNees, executive director, Self-Directed Provider Association, offered information from the provider perspective. Cheryl Durham, Consumer Direct New Mexico, and Fallon Vincell, Care Network Resource Assistance Group, stated that they were available to answer questions. Jentry Hinton, director, long term care, Presbyterian Healthcare Services, was called upon to answer questions regarding Centennial Care issues.

Subcommittee members had questions and concerns regarding the following:

- clarification regarding the role of Xerox (now Conduent) and whether Conduent is doing a good job; Conduent, a subcontractor of Xerox, processes payments for clients;
- questions regarding the accuracy of previously reported numbers of persons served by the Mi Via waiver; they are accurate;
- a breakdown of people younger than 21 and 21 and older serviced by Mi Via; the data are not broken down in that way;
- the process by which participants may lodge complaints or express dissatisfaction regarding services provided; these issues can be reported to consultants to handle;
- how participants' rights are upheld and respected; the DOH and the DDSD are advocates for clients and help them understand their rights;
- clarification of the multiplicity of terms and programs and the potential for poor communication among all involved parties and agencies;
- clarification regarding the maximum amount of respite services that can be accessed; under Medicaid, there are 720 hours of respite that are available through the behavioral benefit; additional hours are available through the community benefit;

- methods by which participants learn benefits for which they are eligible; there is a variety of personal and published methods to fully inform participants about benefits; this process begins when the initial health needs assessment is performed;
- clarification regarding grievance processes; there is a formal process; grievances are filed though contractors or directly through the state;
- a sense that the program is overly bureaucratic and therefore inefficient and not user-friendly;
- clarification of how determinations are made regarding the services a client needs or receives; there is an annual review process that is different than the DD waiver process; the individual participant decides what is wanted or needed, within available services and supports, then a budget is created;
- there is a difference between the Mi Via program and Mi Via services under Centennial Care; Ms. Roanhorse-Aguilar will provide information about the differences;
- how support brokers are chosen and paid; Centennial Care has "support brokers"; Mi Via has "consultants"; and
- a request for data by diagnosis on behavioral care respite services.

Autism: Status of Camp Rising Sun

Ms. Osbourn began by discussing and clarifying how funding for Camp Rising Sun occurs. The camp is part of the overall budget for the CDD's autism programs. Funding comes from the DOH. Funding levels have gradually diminished since 2007. Over time, the CDD has identified a broad variety of needs in autism funding. Currently, funding for autism programs is at $2.7 million. A description of autism programs within the CDD and the program cuts that have occurred was provided. Ms. Osbourn identified the ways in which the CDD has responded to cuts in funding. In fiscal year (FY) 2018, Camp Rising Sun funding is in jeopardy. She discussed the value of the camp and concluded with a request for FY 2018 to restore $160,000, asserting that, given the dramatic rise in the prevalence of autism spectrum disorders, further cuts cannot be accommodated without a loss of services upon which families rely.

Questions and comments from subcommittee members included the following:

- the number of people served in New Mexico; the number is hard to identify, as there are many programs, and parents are served as well as participants; Ms. Osbourn estimates the number is around 350,000;
- frustration regarding the difficulty for parents of children with autism spectrum disorders to access the system of services, despite years of active advocacy; and
- a reminder that the known number of people with autism grew from one in 166 to one in 88 in the last seven years, while funding for services has declined.

Public Comment

Bill Jordan, New Mexico Voices for Children, commented that it is "morally bankrupt" to cut necessary services while awarding tax cuts.

Ms. Vincell voiced concerns that the changes to Centennial Care affecting support brokers will have a disastrous effect on clients. She is not opposed to managed care organizations utilizing their own support brokers, but she is opposed to clients not having the option to choose other support brokers as well.

Adjournment

There being no further business, the meeting was adjourned at 3:40 p.m.

Revised: September 28, 2017

TENTATIVE AGENDA
for the
THIRD MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 29, 2017
Disability Rights New Mexico
Conference Room
3916 Juan Tabo Blvd. NE
Albuquerque

Friday, September 29

9:00 a.m. **Welcome and Introductions**
—Senator Nancy Rodriguez, Chair, Disabilities Concerns Subcommittee (DCS)
—Representative Joanne J. Ferrary, Vice Chair, DCS

9:10 a.m. (1) **Welcome to Disability Rights New Mexico (DRNM)**
—Jim Jackson, Executive Director, DRNM

10:00 a.m. (2) **Work Matters**
—Jim Reed, Group Director, Environment, Energy and Transportation Program and Task Force on Military and Veterans Affairs, National Conference of State Legislatures (NCSL); Team Member, State Exchange on Employment and Disability (SEED Project)
—Bobby Silverstein, J.D., Principal, Powers Pyles Sutter and Verville, PC; Team Member, SEED Project
—Richard Davis, Policy Advisor, Office of Disability Employment Policy, United States Department of Labor

11:30 a.m. (3) **Public Comment**

12:00 noon **Lunch**

1:00 p.m. (4) **Minimum Wage Exemptions**
—Jackson Brainerd, Policy Associate, Fiscal Affairs Program, Labor and Economic Development Committee, NCSL
—Mike Kivitz, Chief Executive Officer, Adelante Development Center
—Tim Gardner, Legal Director, DRNM

2:30 p.m. (5) **New Mexico Employment of Persons with Disabilities**

—Karen Courtney-Peterson, Director, Governor's Commission on Disability
—Joe D. Cordova, Executive Director, Vocational Rehabilitation Division, Public Education Department
—Carrie Roberts, Community Inclusion Manager, Developmental Disabilities Supports Division, Department of Health
—John Block, Executive Director, Developmental Disabilities Planning Council
—Tanya Baker-McCue, Director, Family and Community Partnerships Division, Partners for Employment, Center for Development and Disability, University of New Mexico
—Richard Bailey, M.A., Community Engagement Specialist, Commission for Deaf and Hard-of-Hearing Persons
—Greg Trapp, J.D., Executive Director, Commission for the Blind

4:30 p.m. **Adjourn**

MINUTES
of the
THIRD MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

September 29, 2017
Disability Rights New Mexico Conference Room
3916 Juan Tabo Blvd. NE
Albuquerque

The third meeting of the Disabilities Concerns Subcommittee (DCS) of the Legislative Health and Human Services Committee was called to order at 9:27 a.m. by Senator Nancy Rodriguez, chair, on September 29, 2017 at the Disability Rights New Mexico (DRNM) Conference Room at 3916 Juan Tabo Blvd. NE in Albuquerque.

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

Staff
Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file. Handouts can also be found at https://www.nmlegis.gov/Committee/Interim_Committee?CommitteeCode=DISC.

Friday, September 29

Welcome to DRNM
Senator Rodriguez welcomed members to the third meeting of the DCS, which was hosted by DRNM. Members of the subcommittee and staff introduced themselves. Jim Jackson, executive director, DRNM, welcomed the subcommittee and provided an overview of DRNM's

work. He explained that DRNM is an independent, private nonprofit agency founded in 1979 with a mission to protect, promote and expand the legal and civil rights of persons with disabilities (PWDs).

Mr. Jackson indicated that DRNM has a board of directors composed of 15 members and employs 21 staff members. He said that DRNM has a $1.8 million budget, mostly composed of funding from federal agencies. Mr. Jackson stated that DRNM is the designated protection and advocacy system for New Mexico and was created in response to a federal government initiative to create agencies to address the rights of PWDs.

Mr. Jackson said that DRNM serves people statewide with a wide range of disabilities, including mental illness, physical disabilities, traumatic brain injuries, sensory impairment and developmental disabilities. DRNM's services include outreach, information and referral, training, investigation of abuse and neglect, individual advocacy and systemic advocacy.

Mr. Jackson highlighted some of DRNM's current priorities. One priority includes reduction of abuse and neglect of PWDs. To address this priority, DRNM is involved in individual and facilitywide investigations of abuse and neglect, quarterly monitoring of developmental disability programs and outreach and training to facility residents. Additional priorities include vocational rehabilitation, transitional services and special education. Mr. Jackson also stated that DRNM is actively involved in addressing violations of the rights of PWDs. He stated that DRNM has provided services to address the rights of residents in mental health facilities and those who have fallen victim in cases of overly restrictive or unnecessary guardianships. Mr. Jackson noted that the Disability Coalition is currently administered as a project of DRNM.

Mr. Jackson indicated that employment issues are a major area of interest for the people DRNM serves. He stated concern about the statistics regarding unemployment of PWDs and noted that PWDs should have the same rights and protections as others in the workforce. He stated that DRNM supports the provision of inclusive settings and competitive wages for workers with disabilities. He further encouraged support for incentives for employment of PWDs, including tax credits and contract bidding preferences. He indicated that, while the State Use Act currently encourages employment of businesses with staff composed of at least 75 percent PWDs, he would encourage additional incentives that support a more integrated workforce. In response to a question from a subcommittee member, Mr. Jackson indicated that there have been some bills introduced in recent years to amend the State Use Act, but they have not become law.

Work Matters

Jim Reed, National Conference of State Legislatures (NCSL), and Robert "Bobby" Silverstein, State Exchange on Employment and Disability, discussed a number of initiatives to improve opportunities for PWDs in the workforce. Mr. Reed indicated that, while there is a higher unemployment rate for PWDs, these individuals are a key factor in the ability of states to build inclusive and successful workforces. As such, the National Taskforce on Workforce

Development for People with Disabilities was convened to explore issues, identify key themes and provide policy options for states to foster increased employment of PWDs. The task force was convened by the Council of State Governments (CSG) and the NCSL. The task force oversaw the work of four subcommittees, each composed of 10 to 12 state policymakers and four to six nonvoting private-sector stakeholders and experts.

Mr. Silverstein discussed the policy framework for the work of the task force. A guiding principle for the task force included the principle that disability is a natural part of the human experience. Also part of the task force's policy framework were goals of equal opportunity, full participation, economic self-sufficiency and independent living. The task force also adopted principles that PWDs are underutilized in the workforce and that inclusion of the population of PWDs in the workforce boosts the bottom line for businesses through increased innovation, creativity and productivity.

Mr. Silverstein described overarching themes that guided the work of the task force. One theme included the desire for state agencies to lead by example in adopting the identified policy framework principles. Another theme included a desire to adopt robust reporting requirements to measure progress. Mr. Silverstein identified increased coordination and the provision of seamless systems as another theme. He additionally mentioned the need to design policies for PWDs at the outset rather than adopting policies that are retrofitted to address their needs. The task force also focused on expanding existing diversity and inclusion initiatives to PWDs.

Mr. Silverstein explained that the task force studied about 250 policies developed by the states and organized them by subject matter. He said that those policies are included on the CSG website and can be traced according to the states that adopted those policies.

Mr. Silverstein indicated that, in its work, the task force categorized policy options under five categories. The first category involved laying the groundwork to provide employment opportunities for PWDs. Mr. Silverstein discussed how some state government leaders have passed legislation and issued executive orders to require states to employ policy initiatives to increase opportunities for workers with disabilities. He added that some states have developed task forces to examine their processes in implementing policy initiatives. Mr. Silverstein additionally discussed how private and nonprofit sector participation can be encouraged through tax incentives and expansion of existing government initiatives, initially established for employment of minority populations and women, to workers with disabilities. Mr. Silverstein also discussed how interagency coordination and collaboration can help break down silos and improve the services available for workers with disabilities.

Another category within the task force's policy framework includes policy options to prepare PWDs for the workplace. Mr. Silverstein identified education and career readiness, skill development and family engagement as policy options to assist with this goal.

Mr. Reed discussed various options to improve access to work for PWDs. He mentioned that the task force examined various transportation initiatives, including options to provide for remote work and to improve existing state transportation programs. The task force also examined possibilities for improved coordination among transportation programs, including ridesharing programs. Mr. Reed mentioned that in Florida, a state fund has been established to serve a population that is "transportation disadvantaged". He indicated that since the fund's inception, $200 million has been dedicated for this purpose. Mr. Reed additionally mentioned that Washington, D.C., and Colorado have developed advisory councils to explore the issue of transportation for PWDs. He also noted that in some states, bills that regulate transportation networks have explicitly prohibited discrimination against PWDs.

Mr. Silverstein discussed how the internet can improve access to work opportunities for PWDs. He suggested that accessible websites and mobile device applications, in addition to technical assistance for households, can assist in improving opportunities for workers with disabilities.

Mr. Silverstein indicated that the task force also examined ways to keep PWDs engaged in the workforce after obtaining jobs. He stated that the task force examined options for stay-at-work programs and return-to-work programs. He also said that the task force discussed possible improvements in retention services and benefit counseling.

The task force also discussed possible initiatives to support increased self-employment and entrepreneurship among PWDs. Mr. Silverstein indicated that the task force discussed encouragement of expansion of businesses owned by PWDs through certification programs. However, the task force also discussed initiatives to ensure that certified businesses meet all requirements necessary for such certification. Mr. Reed added that some states have developed loan and grant programs for businesses owned by PWDs.

Mr. Reed discussed how the report resulting from the work of the task force could serve as a resource to states seeking options to expand workforce opportunities for populations living with disabilities. He additionally stated that in the context of a task force that examines military and veterans' affairs, the NCSL will examine issues that affect military veterans with disabilities.

Richard Davis, policy advisor, Office of Disability Employment Policy (ODEP), United States Department of Labor (DOL), provided the subcommittee with an overview of the Employment First initiative. He explained that the goal of the initiative is to change systems in a manner that results in increased community-based, integrated employment opportunities for individuals with significant disabilities. He said that the initiative is centered on the premise that all citizens, including individuals with significant disabilities, are capable of full participation in competitive, integrated employment and community life. The initiative focuses on all disabilities, including physical, mental, intellectual and developmental disabilities.

Under the Employment First approach, publicly financed systems are urged to coordinate policies, practices and funding mechanisms to make competitive, integrated employment a priority, with respect to the use of publicly financed day and employment services for PWDs. Mr. Davis noted that many states have committed to this approach by passing legislation or through the issuance of executive orders. Mr. Davis stated that the ODEP defines "competitive integrated employment" as "work paid directly by employers at the greater of minimum or prevailing wages with commensurate benefits, occurring in a typical work setting where the employee with a disability interacts or has the opportunity to interact continuously with co-workers without disabilities, has an opportunity for advancement and job mobility, and is preferably engaged full time".

Mr. Davis described the work of the ODEP's Employment First State Leadership Mentor Program (EFSLMP). The program was initiated in October 2012 to provide mentoring, intensive technical assistance and training from a national pool of subject matter experts and peer mentors, with emphasis on an Employment First approach. Under this program, training is also provided on effective practices. Mr. Davis said that 22 states have received intensive technical assistance under this program since 2012.

Mr. Davis mentioned that states may receive assistance in implementing Employment First principles by becoming designated as "core" states. States can obtain this designation by submitting an application and enlisting at least six agencies to formally commit to work together on Employment First initiatives. Core states may receive technical assistance in developing policies for provider transformation, capacity building, school-to-work transition and employment engagement. Subject matter experts will assist core states to facilitate systematic changes. Methods to implement such changes may include funding diversification, stakeholder engagement, program and staff development, use of best practices and a focus on sustainability.

Mr. Davis noted that if states cannot qualify as core states, they might qualify for designation as "vision quest" states. In a more limited capacity, the federal government works with those states on policy development.

Mr. Davis described the results of a study of the effectiveness of the implementation of Employment First principles in Iowa. He provided some statistics showing job placement for PWDs. He noted that in 2014-2015, there were 725 of those placements. Of those placements, 150 were identified as customized placements. Wages also increased from $7.81 per hour in 2013-2014 to $8.31 per hour in 2014-2015.

Mr. Davis indicated that states can apply to get involved with the EFSLMP by filing an online application by October 13, 2017. He also indicated that additional information and resources, including individual state profiles, are available at the Employment First website.

A subcommittee member asked why a probationary period of two or three years might exist for some workers with disabilities before they are designated as permanent employees under

some employment programs. Mr. Silverstein explained that a probationary period is required under the federal Schedule A program.

A subcommittee member asked what opportunities might be available for PWDs who live in rural areas without internet connectivity. Mr. Davis responded that states may explore the provision of transportation for individuals in rural communities. Mr. Davis and Mr. Reed suggested that in tight-knit communities, community members may be more inclined to assist each other. Mr. Reed also indicated that autonomous vehicles may present an opportunity to provide PWDs with transportation and increase their employment options. He suggested that, as a state initiative, another option is the continued development of access to broadband infrastructure in rural areas. A subcommittee member suggested that nonprofits could also play a role in increasing accessibility for PWDs in rural areas.

A subcommittee member asked how many states have a Work Matters task force. Mr. Silverstein indicated that Kentucky and Oregon have such task forces. Mr. Reed added that Colorado is conducting a Work Matters transportation study of two counties. Mr. Silverstein added that, while they might not have a Work Matters task force, some states have special committees or task forces to study policies to improve employment for PWDs.

A subcommittee member asked whether New Mexico has applied for status as a core state, but Mr. Davis indicated that he was not aware of any applications that had been submitted by New Mexico to date. However, Mr. Reed indicated that a collaborative of western states is being developed to get more states involved in the Work Matters program.

A subcommittee member asked for recommendations to better integrate policies and resources to assist PWDs in the workforce. Mr. Silverstein suggested implementation of Employment First policies, including policies that are transition inclusive, that support professional development and that provide options for self-employment.

A subcommittee member asked whether trends are reflecting an increased number of employed PWDs. Mr. Davis indicated that employment and graduation rates among PWDs generally show an increase. He further suggested that chambers of commerce and others from the business community should become more integrated in the employment of PWDs.

A subcommittee member asked for clarification of the definition of "significant disability" in the context of the ODEP's mission to increase community-based, integrated employment opportunities for persons with "significant disabilities". Mr. Davis explained that the use of the term "significant disability" is derived from language included in the federal Workforce Innovation and Opportunity Act. The subcommittee member expressed concern that the manner in which such a term is defined could have the effect of limiting access to resources for certain PWDs. The subcommittee member commented that accommodation of PWDs in the workforce must be coupled with integration. Mr. Reed indicated that recent proposals to move

vocational rehabilitation agencies into state employment agencies might act as a catalyst toward this goal.

A subcommittee member said that state, local and federal governments should work together to provide more young PWDs with opportunities to get experience in the workforce. Another subcommittee member commented that experiences for workers with disabilities should also build in an element of flexibility.

Public Comment

Robert Kegel spoke in support of the contribution made by workers with disabilities. He said that he employed several staff members who were disabled, and those staff members were good workers who were punctual and honest. He suggested that the Workforce Solutions Department take a more active role in fostering employment opportunities for PWDs. He also suggested that the state should take a more active role in hiring PWDs. Mr. Kegel subsequently discussed the process for public input with respect to the state's developmental disabilities waiver program and the Centennial Care Medicaid waiver program. Mr. Kegel additionally described difficulties some schoolchildren in wheelchairs have faced in receiving school bus transportation when school buses are ill-equipped or in disrepair. He also spoke in favor of increased oversight of government contracts that provide goods or services for PWDs. A subcommittee member suggested that increased transparency is needed from agencies with respect to such contracts.

Phillip Cordova, who works as an employment specialist for PWDs, expressed concern about difficulties PWDs face in obtaining employment. He also expressed support for a fair and equal wage for workers with disabilities.

Molly Madden, a parent of a worker who is disabled, expressed support for a wide spectrum of employment opportunities for PWDs. She stated that some PWDs, particularly those with severe impairments, primarily want to work to be a part of the community.

Patrick Murray discussed the opportunities for his daughter, a person with a disability, to work under the program available pursuant to Section 14(c) of the federal Fair Labor Standards Act of 1938 (14(c) program). He expressed support for the program and stated that the program provides some individuals with opportunities that would not otherwise be available in an employment setting.

Bob Thompson, a parent of a son with a learning disability, indicated that he was interested in changing the community perspective on the right to work for PWDs. He expressed support for opportunities available through the 14(c) program and said that workers with disabilities are able to achieve and earn a minimum wage through the program. He added that a place to belong, rather than a specific wage rate, is what is most important to some workers with disabilities.

Jill Beets explained that she supervised a team of PWDs. Ms. Beets expressed support for employment choices and a range of services for PWDs. She also stated that PWDs should be afforded an opportunity to work their way up in their places of employment.

A subcommittee member discussed how employers could increase engagement with workers with disabilities as part of an integrated staff. Another subcommittee member expressed concern that wages below the statutory minimum for workers with disabilities could provide an implication that their work is not as valuable as the work of others.

Minimum Wage Exemptions

Jackson Brainerd, policy associate, Fiscal Affairs Program, Labor and Economic Development Committee, NCSL, provided the subcommittee with an overview of state minimum wage exemptions. Mr. Brainerd indicated that minimum wage debates have been prevalent across the country, and in the last four years, there have been 30 minimum wage increases. There have not yet been any increases enacted in 2017. However, Mr. Brainerd noted that the New Mexico Legislature was one of three legislatures in the country to pass a minimum wage increase that was subsequently vetoed.

Mr. Brainerd indicated that six states and Washington, D.C., have minimum wages exceeding $10.00. About one-half of the states have minimum wages between $7.50 and $10.00, while the rest of the states mirror the federal rate of $7.25. Mr. Brainerd said that some states have sought to raise wages for certain types of employees who are allowed to be paid at rates below the statutory minimum. Such employees may include tipped workers, youth workers or workers with disabilities.

Mr. Brainerd provided the subcommittee with an overview of the federal Fair Labor Standards Act of 1938 (FLSA). The FLSA provides for a national minimum wage, along with exemptions to the minimum wage rate for certain types of employees, including PWDs. Mr. Brainerd explained that states may establish standards that provide additional protections to workers beyond those provided through the FLSA. He added that states can also regulate the wages and hours of employees who are not subject to the FLSA. Mr. Brainerd said that, for the most part, states have chosen to adopt the exemptions included in the FLSA, but some states have sought to limit them.

Mr. Brainerd discussed contexts in which wages below the statutory minimum are allowed. He stated that, while tipped wages are considered "subminimum wages", the FLSA requires that the total of tipped earnings and the subminimum wage be equal to or exceed the minimum wage. Mr. Brainerd also informed the subcommittee that the FLSA provides for subminimum wages for workers under the age of 20, as well as full-time students, student-learners and apprentices.

Mr. Brainerd also provided the subcommittee with an overview of the 14(c) program. He explained that Section 14(c) of the FLSA authorizes an employer to pay subminimum wages to a

worker with a disability after receiving a certificate from the DOL. The 14(c) program does not apply unless a disability impairs the worker's productive capacity for the work being performed. The DOL determines special minimum wage rates using a comparison of the production of workers with and without disabilities. The rates are reviewed and redetermined at least once every six months.

Mr. Brainerd said that, according to the National Council on Disability, the 14(c) program is used mostly by nonprofit or state-operated social service providers. He stated that about 5,600 employers pay subminimum wages to 424,000 workers with disabilities nationwide. Seventy-four percent of those employees have an intellectual disability. Forty-six percent of those workers have multiple disabilities.

The 14(c) program previously had a wage floor of 50 percent of the statutory minimum rate, which was eventually repealed. Currently, the program requires wage rates "commensurate with those paid to non-handicapped workers" and "related to the individual's productivity".

Mr. Brainerd described federal efforts to reduce the use of subminimum wage certificates under the 14(c) program. He explained that the DOL has increased standards for providing exemptions to employers and has required the provision of transitional services for workers receiving a subminimum wage. In addition, Mr. Brainerd mentioned that there have been recent efforts in Congress to phase out special wage certificates and raise the minimum wage for workers with disabilities.

Mr. Brainerd provided the subcommittee with an overview of various state approaches with respect to the 14(c) program. Those approaches include:

- adoption of the provisions of Section 14(c) of the FLSA by reference;
- requirements for state-issued subminimum wage certificates; and
- explicit provisions for subminimum wage floors.

Mr. Brainerd suggested that state efforts to direct funding away from sheltered workshops could have a relationship to a phaseout of subminimum wages. He described state initiatives to:

- close sheltered workshops;
- allow persons with developmental disabilities to choose to remain in sheltered employment;
- eliminate subminimum wages for PWDs;
- phase out existing certificates authorizing a subminimum wage; and
- require the state to subsidize the employers of workers with disabilities in a manner that permits them to pay those workers a minimum wage.

Mike Kivitz, chief executive officer, Adelante Development Center, suggested that a wage below the statutory minimum wage does not necessarily constitute a "subminimum wage",

but instead constitutes a "commensurate wage". He said that people who have certain disabilities, such as deafness or blindness, are just as productive as other workers and should earn the minimum wage or higher. However, he said that individuals with severe intellectual disabilities or with a loss of cognitive ability may find it difficult to find a job in the workforce. Mr. Kivitz said that, while there is a preference to assist PWDs in finding competitive, integrated jobs, he also believes it is important to help PWDs find jobs when other opportunities are not otherwise available. He expressed concern that a phaseout of the 14(c) program might result in a loss of employment options for many PWDs. He stated that, often, placements for PWDs who leave employment are difficult. He additionally stated that for many PWDs, the value of work is important, and he is concerned about the potential elimination of workforce options for those individuals.

Mr. Kivitz stated that the State Use Act is a successful program that employs 600 to 700 workers with disabilities at or above the minimum wage. Mr. Kivitz recommended that data regarding the relationship between the 14(c) program and employment of PWDs be carefully studied.

Tim Gardner, legal director, DRNM, said that there is a trend toward elimination of a subminimum wage. He said that an equal wage is necessary to ensure that PWDs in the workforce are equally valued. He added that a Centers for Medicare and Medicaid Services rule has been explicit about eliminating sheltered workshops and a subminimum wage. He also stated that the ODEP has recommended a phaseout of the 14(c) program.

Mr. Gardner suggested that existing data do not indicate that elimination of a subminimum wage results in diminished opportunities for workers with disabilities. He also suggested that customized employment options should be explored for workers with disabilities. Additionally, he suggested that agencies are currently receiving funding under the state's developmental disabilities waiver program, which could potentially be used to assist individuals with developmental disabilities to find jobs.

Subcommittee members and presenters discussed reports on the results of a phaseout of the 14(c) program in Vermont. Mr. Gardner and Mr. Kivitz also elaborated on the wage payment requirements for workers with disabilities in New Mexico. In response to a question from a subcommittee member, Mr. Brainerd indicated that state oversight is not required with respect to the 14(c) program. The subcommittee members and the presenters also discussed local minimum wage requirements and the manner in which wage rates are determined through the 14(c) program.

Subcommittee members discussed the possibility of providing a contract bidding preference in conjunction with a mandate to employ workers with disabilities at a minimum wage rate. They also discussed how to change business perceptions in employment of workers with disabilities and in provision of customized jobs for PWDs. Mr. Brainerd suggested that tax credits, in addition to contract bidding preferences, might encourage business involvement in

employing workers with disabilities. Subcommittee members additionally discussed the need for compromise on the issue of wage rates for workers with disabilities.

New Mexico Employment of PWDs

Karen Courtney-Peterson, director, Governor's Commission on Disability (GCD), provided the subcommittee with an overview of the work of the GCD. The commission is composed of 15 members, nine of whom have disabilities. Ms. Courtney-Peterson indicated that the commission is working on several initiatives, including:

- a project to provide certification for federal Americans with Disabilities Act of 1990 (ADA) coordinators;
- a technical assistance program for PWDs seeking employment;
- architectural assessments of public facilities to improve access for PWDs;
- information technology access improvements in schools and workplaces; and
- preferences for PWDs applying for state jobs.

Joe D. Cordova, executive director, Vocational Rehabilitation Division (VRD), Public Education Department, discussed unemployment rates for PWDs. He indicated that 50 percent of people with general disabilities are unemployed, while that percentage increases to 60 to 70 percent for individuals with severe disabilities.

Mr. Joe Cordova indicated that the ADA has not necessarily improved employment rates for PWDs. As such, he indicated that the VRD has been increasing services for its clients. He expressed that a high level of training makes a difference in employment levels for PWDs. He also indicated that training for individuals with severe cognitive disabilities should be customized.

Carrie Roberts, community inclusion manager, Developmental Disabilities Supports Division (DDSD), Department of Health, indicated that the DDSD issued a new "Employment First" policy in 2016, which is currently being implemented. She stated that the DDSD is implementing an outreach plan and is in the process of providing widespread information on the policy through statewide presentations and webinars. She also indicated that the DDSD is in the process of incorporating policy requirements into the state developmental disabilities waiver program standards.

Ms. Roberts indicated that the DDSD has worked with the Supported Employment Leadership Network to redesign how to capture outcome data, including data on employment hours and community participation, in a supported employment database. The DDSD is also collecting data pertaining to wages, paycheck sources and time in job development.

The DDSD is now in its sixth quarter of collecting data for the database. Ms. Roberts said that the database provides a mechanism that allows the DDSD to review outcomes and compare them with billing numbers.

The DDSD has also been working with the Institute for Community Inclusion (ICI) on a "community life engagement" (CLE) project. The ICI developed guideposts to support PWDs with community integration. The CLE project tracked progress toward those guideposts, which include:

- individualized supports for each person;
- promotion of community membership and contribution;
- use of human and social capital to decrease dependence on paid supports; and
- provision of supports that are outcome-oriented and regularly monitored.

The ICI provided technical assistance from experts, and the DDSD identified specific goals for measurement. Ms. Roberts discussed the following results of the project:

- time spent in facility-based non-work fell by 65.5 percent;
- the number of people in facility-based non-work decreased by 7.25 percent;
- the average number of hours spent in community participation increased by 25.42 percent; and
- the number of people in community participation increased by 6.12 percent.

Ms. Roberts stated that the DDSD has undertaken an initiative to determine the level and quality of community participation for *Jackson* class members. This initiative involves completion of an individual service plan and other document review, followed up with a site visit to compare the documentation to field observations. Ms. Roberts indicated that the DDSD's goal is to follow up with every *Jackson* class member on an annual basis.

The DDSD is additionally working with national subject matter expert Linda Rolfe to establish new expectations for providers. Ms. Roberts explained that the DDSD is seeking to redesign provider applications under the state developmental disabilities waiver program, which will score, among other things, a provider's business model. Providers would also be responsible for providing the required information on a quarterly basis. Ms. Roberts indicated that several entities will work with the DDSD on a focus group to review the redesigned application before it is instituted.

Ms. Roberts provided the subcommittee with an overview of the "transition to employment" grant program. She stated that the program is designed to provide opportunities for employment to individuals who are exiting or graduating from high school and who might not otherwise have employment supports. The program provides "follow-along" and transportation supports to recipients.

Ms. Roberts stated that the VRD is working with the DDSD to provide outreach and vocational counseling to *Jackson* class members who:

- earn less than minimum wage;

- work less than 10 hours per week; or
- receive a paycheck from a provider agency, rather than a community business.

Ms. Roberts also talked about the DDSD's "informed choice" project. She stated that the DDSD intends for the project to use discovery strategies to assist individuals in assessing their interests in integrated, community employment. Ms. Roberts indicated that through this project, individuals might determine that they would like to engage in customized employment. However, she added that through the assessment process, individuals could also decide on other alternatives.

John Block, executive director, Developmental Disabilities Planning Council, provided the subcommittee with an overview of the council's work. He stated that the council is working on integrating students in junior-high-level grades into the job market. He also described the work of the Advocate Leadership Academy, which is designed to provide mentoring and tools for self-advocacy. Mr. Block suggested that employers should operate from a premise that PWDs, with accommodation, are able to perform in the workplace. Mr. Block also suggested that the state should adopt policies that foster the hiring of more PWDs for state jobs. He additionally suggested that some employer practices that require driver's license numbers on job applications may inadvertently leave out workers with disabilities who do not possess driver's licenses.

Tanya Baker-McCue, director, Family and Community Partnerships Division, Partners for Employment, Center for Development and Disability, University of New Mexico, stated that resources should be maximized for workforce providers to remove barriers for PWDs. Ms. Baker-McCue said that perceptions about workforce composition are changing. She stated that New Mexico's state agencies are on the cutting edge of breaking barriers for workers with disabilities, citing training and technical assistance initiatives and initiatives to encourage customized employment through discovery programs and paid internships. Ms. Baker-McCue discussed initiatives to educate the workforce and to provide school-to-work transition programs.

Richard Bailey, M.A., community engagement specialist, Commission for Deaf and Hard-of-Hearing Persons, described his work in assisting students in their transitions from high school to the workplace. Mr. Bailey stated that he thinks the Work Matters program is a positive step for such transitions. Mr. Bailey indicated that the results of a study of employment rates for those graduating from high school and college reflect low employment numbers for individuals with hearing loss. He stated that one-half of the individuals with hearing loss who earned college degrees were employed. Mr. Bailey indicated that to facilitate successful school-to-work transitions, students should have increased exposure to the workforce. He also stated that technology and communication barriers need to be addressed. He cited the use of jargon and monolingual assessments as specific communication barriers. He also addressed barriers for PWDs in rural areas without internet access. He stated that social attitudes can present additional barriers to PWDs.

Mr. Bailey discussed how PWDs might use the resources available through the VRD to achieve employment. He noted, however, that once these individuals enter employment, the resources that were once available often disappear. He stated that PWDs will sometimes experience isolation or may not feel comfortable remaining at work. As such, he suggested that ongoing resources be provided to individuals once they have obtained positions in the workforce. He also suggested that best practices be established to encourage placement and retention of workers with disabilities.

Greg Trapp, J.D., executive director, Commission for the Blind, discussed the work of that commission. He stated that much of the commission's funding is targeted toward employment of its constituent base. He also indicated that the commission provides early intervention services to individuals. For instance, the commission has a program that provides technology, such as video magnifiers, to children. He stated that a goal of the commission is to assist individuals in ceasing to receive supplemental security income benefits and to become taxpayers. He also said that pre-employment transition services at the federal level are critical to the experience of eligible individuals and provide an understanding of workforce participation.

Subcommittee members and panelists engaged in a discussion of various topics. A subcommittee member suggested that additional supports should be provided for autistic individuals who are seeking employment.

Another subcommittee member asked how the VRD and the DDSD, under their *Jackson* class outreach project, provide counseling services to severely impaired individuals. Ms. Roberts indicated that, through the project, counseling services are mostly provided to individuals who are currently employed and that a holistic approach is taken. In response to a request from a subcommittee member, Ms. Roberts indicated that she would make an additional inquiry as to what steps are taken with respect to class members who are severely impaired.

A subcommittee member asked about the extent of planned changes to the state developmental disabilities waiver program application for providers. Ms. Roberts indicated that six new items are proposed for the application, including a requirement for use of data. In response to another question, Ms. Roberts indicated that a rate study will be conducted in one and one-half years with respect to provider rate changes.

A subcommittee member asked Ms. Roberts whether the initiatives undertaken by the DDSD are offered only to individuals receiving a waiver under the state developmental disabilities waiver program. Ms. Roberts stated that the DDSD's transition to employment grant program is not limited to individuals who have the waiver, but the majority of the DDSD's other projects are limited. The subcommittee member suggested that other initiatives be offered to individuals who are not currently on the waiver, such as those who are currently on the waiting list for the waiver. The subcommittee member also suggested that some programs available to *Jackson* class members should be expanded and offered to other PWDs as well. In response to

this suggestion, Mr. Kegel spoke in favor of making the waiver available for individuals upon exit from school.

Mr. Trapp commented that the state should seek certain creative funding strategies that leverage existing resources for these individuals. Ms. Baker-McCue stated that PWDs who achieve employment are less reliant on traditional services and are happier. She stated that it is important to operate from a premise that all people can work.

Adjournment

There being no further business before the subcommittee, it adjourned at 4:50 p.m.

Revised: October 6, 2017

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 11, 2017
Southwest Conference on Disability
Picuris Room, Albuquerque Convention Center
401 Second Street NW
Albuquerque

Wednesday, October 11

9:00 a.m. **Welcome and Introductions**
—Senator Nancy Rodriguez, Chair, Disabilities Concerns Subcommittee (DCS)
—Representative Joanne J. Ferrary, Vice Chair, DCS

9:10 a.m. (1) **Brain Injury Fund Programming; New Mexico Brain Injury Resource Center (NMBIRC)**
—Melanie Buenviaje, Deputy Bureau Chief, Exempt Services and Programs, Medical Assistance Division, Human Services Department
—Sara Penn, Service Director, Goodwill Industries of New Mexico (GINM)
—Sesha Lee, Brain Injury Program Manager, GINM
—Michael Langford, Director, NMBIRC

11:00 a.m. (2) **Public Comment**

11:30 a.m. **Lunch: Legislators Attend "Welcome and Remarks", Southwest Conference on Disability, Ballrooms A/B/C, Upper Level**

1:00 p.m. (3) **Greeting from the Center for Development and Disability, University of New Mexico (UNM) School of Medicine**
—Marcia Moriarta, Psy.D., Professor, UNM Department of Pediatrics; Executive Director, Center for Development and Disability

1:30 p.m. (4) **Brain Injury Advisory Council (BIAC); Governor's Commission on Disability (GCD)**
—Karen Courtney-Peterson, Director, GCD
—Monica Montoya, Coordinator, BIAC

2:30 p.m. (5) **Medicaid Centennial Care Services and Brain Injury**
—Glenn Ford, Secretary and Member of the Legislative Issues Committee, Brain Injury Alliance of New Mexico

3:30 p.m. (6) **Michael's Law: Protection of Students in Need of Accommodation Who Are Accused of Sanctioned Offenses**
—Senator Linda M. Lopez
—Laura Gutierrez

4:30 p.m. **Adjourn**

MINUTES
of the
FOURTH MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

October 11, 2017
Albuquerque Convention Center
Albuquerque

The fourth meeting for the 2017 interim of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee (LHHS) was called to order on October 11, 2017 by Senator Nancy Rodriguez, chair, at 9:27 a.m. in the Picuris Room, Albuquerque Convention Center, Albuquerque.

Present	**Absent**
Sen. Nancy Rodriguez, Chair	Rep. Joanne J. Ferrary, Vice Chair
Rep. Gail Armstrong	
Sen. Linda M. Lopez	
Rep. Elizabeth "Liz" Thomson	

Advisory Members	
Rep. Deborah A. Armstrong	Rep. Angelica Rubio
Rep. Miguel P. Garcia	
Sen. Elizabeth "Liz" Stefanics	

Staff
Michael Hely, Staff Attorney, Legislative Council Service (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.

<u>Wednesday, October 11</u>

Senator Rodriguez offered welcoming remarks. Members and staff introduced themselves.

Brain Injury Fund Programming: New Mexico Brain Injury Resource Center (NMBIRC)

Melanie Buenviaje, deputy bureau chief, Exempt Services and Programs, Medical Assistance Division, Human Services Department (HSD), Sara Penn, service director, Goodwill Industries of New Mexico (GINM), and Michael Langford, director, NMBIRC, were invited to address the subcommittee. Sesha Lee, manager, Brain Injury Program, GINM, was present to answer questions.

Ms. Buenviaje described the purpose of the Brain Injury Services Fund (BISF), which is to provide short-term, state-funded General Fund services for individuals who do not have private insurance or Medicaid coverage. She presented a brief history of the program. In order to be eligible for services, a person must be a New Mexico resident with a brain injury that meets the qualifications of the *International Statistical Classification of Diseases and Related Health Problems*, Tenth Revision, commonly known as the "ICD-10", for traumatic or acquired brain injury. The program provides an array of direct care and support services. Ms. Buenviaje reviewed demographics describing the number and characteristics of the clients served by the program. She noted that, according to the data, more than 17,000 individuals are living with brain injury in the state. However, the program is only able to serve about 200 individuals, largely due to limited funding. The program is funded by a $5.00 fine that is levied pursuant to moving vehicle accidents. The total budget for the program is $1.2 million; the estimated collections from the BISF are $739,000. The HSD has supplemented the funding for the program for the last three years using state general funds.

Ms. Penn identified the role of GINM in providing services and supports to clients. The program allows clients to work intensively with a case manager to identify needs and how to meet them. This form of case management is only available through the BISF. She provided a success story of one client it served and read an email that the client wrote expressing gratitude for the services provided by the GINM case manager.

Mr. Langford provided information about the NMBIRC, which exists to answer questions, provide support to families of brain-injured individuals and guide individuals through the difficulties encountered following a brain injury. The NMBIRC has an online center, an on-site library and many outreach and education programs. Mr. Langford provided statistics regarding the use of the NMBIRC and identified the many collaborative relationships in which it is engaged to reach the population it serves. He asserted that there is no infrastructure to ensure a continuum of care to serve brain-injured individuals from the time of injury. Most people must travel out of state to receive the treatment they need or any specialized services.

Approval of Minutes

Prior to entertaining questions and comments from the subcommittee, the chair asked for a motion to approve the minutes for the August 3 and September 29 meetings. A motion was made, seconded and approved unanimously. She invited additional subcommittee members to introduce themselves.

Questions and Comments

Questions and comments for the panel addressed the following issues:

- how the evidence projections of budget deficits are determined; the projections are based on historic trends; the HSD is not certain why there has been a decrease in funds received through the vehicle accident fee mechanism;
- how outreach is targeted to rural areas; currently, the primary focus is in urban areas, but there is a goal to reach out to rural areas;
- why most brain-injured individuals leave the state to receive care; there is a lack of infrastructure to supply acute and post-acute service providers for treatment in times of crisis;
- clarification regarding shaken baby syndrome as an acquired versus a traumatic brain injury; the definition of "acquired" includes traumatic injury;
- clarification regarding a decline in services provided to Native Americans; this occurred as a result of greater enrollment of Native Americans in Medicaid;
- whether the budget supplement to the BISF is a line item of the HSD budget; yes;
- whether unused funds in the BISF revert; no;
- clarification regarding service provision to Medicaid recipients; many services are covered by Medicaid managed care; services that are not available under Centennial Care may be provided by the BISF;
- recognition that the discontinuation of cameras to record moving violations has negatively affected the source of funding for brain injury services;
- whether GINM or the NMBIRC works with the University of New Mexico (UNM); yes;
- whether there are waiting lists for services; not at present, largely due to Medicaid expansion;
- the extent to which the managed care organizations' (MCOs') care coordinators are accurately identifying and addressing the services that brain-injured individuals need; Ms. Buenviaje will research and provide some additional information;
- encouragement for the brain injury community and providers to work closely with programs that serve victims of domestic violence, particularly those experiencing strangulation;
- clarification regarding the incidence of brain injury in individuals aged 51 through 64; Ms. Buenviaje will research and provide some additional information;
- a suggestion to pursue stricter enforcement of "red light" violations in school zones;
- clarification regarding the amount of money in the BISF compared to the budget for fiscal year 2018; Ms. Buenviaje will research and provide some additional information;
- clarification regarding the basis for allocation of the $1.2 million; the bulk of the funds is for direct services;
- by what process contractors such as United Way are funded; accountability regarding service provision and client demographics is required and received in monthly billing;

- clarification regarding MCO payment for the provision of out-of-state services; this is a requirement for Medicaid recipients when services are not available in New Mexico; it would be preferable to develop an adequate infrastructure to provide those services in-state;
- whether there are attempts to more adequately address the incidence of brain injury among Native Americans; not currently, however, UNM and the HSD are collaborating to apply for a federal Health Resources and Services Administration grant; and
- a suggestion that the HSD invest in training the MCOs' care coordinators in brain injury; this is something that has been done in the past and is worth revisiting, not only for MCOs but also for other providers.

Public Comment

Nat Dean told her personal story of the difficulty of obtaining a diagnosis of traumatic brain injury and the challenges in trying to obtain help and support to reestablish a new life. Ultimately, she was given life skills training and received services from the BISF. The assistance she received, even though it was short-term, was incredibly helpful and valuable. She recommended educating the judicial system about brain injury, the BISF and the source of funding.

Tracy Perry, Direct Therapy Services, updated subcommittee members on difficulties in obtaining services for clients through the Medicaid developmental disabilities waiver (DD waiver) program. She noted a case in which an individual with cerebral palsy needs 24-hour care. She finds the Department of Health (DOH) unresponsive to her phone calls and queries.

Glenn Ford, Brain Injury Alliance of New Mexico, addressed a few issues that came up in the morning testimony. Shaken baby syndrome is a brain injury with lifetime effects. Native Americans, in his experience, know about Centennial Care but may not be informed about how they can access services. Infants of mothers in domestic violence programs should be screened for brain injury, he said. Development of post-acute services for brain injury in New Mexico is critical to stop the outflow of brain-injured individuals from New Mexico.

Robert Kegel presented concerns on the ability of the public to give input regarding Medicaid waivers. He said that the DOH is uninterested in public input and that the plan intentionally curtails or denies services in the DD waiver program. Over the last five years, barriers to providing input have increased while the DD waiver waiting list has continued to grow. A memorial passed unanimously during the 2017 regular legislative session that requested the addition of Rett syndrome to the list of covered services under the DD waiver. Despite this, the HSD has passed regulations to remove Rett syndrome, as well as alcohol spectrum disorders, from coverage. He exhorted the legislature to support adequate funding for the DD waiver in the amount of $25 million.

Senator Rodriguez requested a copy of the joint powers agreement between the HSD and the DOH. Mr. Kegel noted that he forwarded the agreement to Mr. Hely electronically; however, he noted, the agreement has expired.

Greeting from the Center for Development and Disability, UNM School of Medicine

Marcia Moriarta, Psy.D., professor, UNM Department of Pediatrics, and executive director, Center for Development and Disability (Center), welcomed the subcommittee and thanked members for being part of the Southwest Conference on Disability. She notified the subcommittee members that the Center will be taking a hiatus from the conference next year. The next Southwest Conference on Disability will take place in October 2019, after a careful planning and budgeting process.

Questions and Comments

Questions and comments from subcommittee members covered the following areas:

- a request for updated information about the autism programs at the Center; the Center faced budget cuts but has absorbed the losses and will continue to offer programs and experiences, but on a somewhat limited basis;
- clarification regarding the waiting list for a full diagnostic workup for autism; it is 18 months;
- clarification regarding what UNM has in mind to extend brain injury services and infrastructure in New Mexico; UNM is working on it in a cross-disciplinary manner, but there are many barriers to accomplishment; and
- Representative Garcia suggested introducing a memorial to establish a broad-based task force to work to identify solutions to this problem; UNM is willing to be the lead agency in such an initiative.

Brain Injury Advisory Council (BIAC); Governor's Commission on Disability (GCD)

Karen Courtney-Peterson, director, GCD, and Monica Montoya, coordinator, BIAC, were joined by several members of the BIAC. Valerie Ann Bollschweiler, chair, BIAC, provided a personal perspective on the value of the BIAC and the BISF. Melissa Esquibel presented on behalf of her son, who has a brain injury. She reiterated the importance of the work of the BIAC. She identified the critical need for more outreach to let people know what is available. She noted that without her vigorous advocacy, her son would not now be receiving many necessary services.

Ms. Courtney-Peterson explained that the BIAC is part of the GCD. She highlighted the statutory responsibilities of the BIAC, which include studying and providing recommendations and advice on issues to the legislature and the governor regarding a broad array of issues related to brain injury. Mitchell Lawrence, Veterans' Services Department, spoke to the focus on brain injuries among veterans. He noted that the need extends beyond what can be provided by the federal government. David Martinez, a person with a traumatic brain injury, described his personal experience following his injury. He now volunteers in the school system and is proud

that several of the students he has helped have now graduated from high school. He, too, identified the challenge of trying to obtain necessary services.

Ms. Montoya identified several projects in which the BIAC has been engaged in recent years. The BIAC conducted a study of traumatic brain injury among veterans and what services are needed to better serve them. The BIAC looked at the incidence of concussion among high school students, with the goal of partnering with schools to train teachers and coaches. Another project was the creation of a work group that sought to clarify existing services, what is included in each category of service and the current continuum of care and how it could be improved. The BIAC has just completed a strategic planning process outlining goals through the year 2020.

Questions and Comments

Subcommittee members had questions and comments as follows:

- recognition that rehabilitation therapy is limited in scope and time but should be extended to include long-term care services; a law in Texas serves as a model for the provision of these services;
- an expression of thanks for the courage of presenters to share their personal stories;
- a request for specifics about what the legislature could do to help; a continuation of the work group referenced earlier would be very helpful;
- a suggestion to add brain injury education to the safety curriculum of public schools;
- clarification regarding the BIAC's initiative to distribute bicycle helmets to students; the distribution is accompanied by education on the importance of helmets and the provision of a helmet for the student to keep;
- encouragement for the BIAC to support efforts to expand the infrastructure of brain injury services at all levels;
- whether the BIAC works with providers such as GINM; yes;
- identification of ways in which the BIAC assists clients to get connected with services;
- recognition that the services of the NMBIRC are vital; and
- a suggestion by Senator Rodriguez that an appropriation bill or capital outlay request be introduced to help people with disabilities receive more services, perhaps in partnership with the New Mexico Mortgage Finance Authority; the suggestion was enthusiastically received; the BIAC would like to work on this request.

Rachel Riboni provided public comment emphasizing the importance of such services as safety in the home, a social work visit prior to discharge from a hospital and the critical need for wider education in many audiences regarding the nature and consequences of brain injury.

Medicaid Centennial Care Services and Brain Injury

Mr. Ford began by defining "brain injury" and identified statistics regarding the number of individuals affected by brain injury in the country each year. Although Centennial Care has taken steps forward to provide appropriate services, Mr. Ford identified a litany of issues and

deficits in Centennial Care for people who have sustained a brain injury. The Brain Injury Alliance of New Mexico has been working for a long time to address these concerns. Some issues include the difficulty of navigating the Medicaid system, the limited availability of acute and post-acute care in New Mexico, the lack of access to neurorehabilitation services and the inappropriateness of nursing homes as a setting for care of a brain-injured person. Specific examples of failed Centennial Care access, implementation and coordination were described.

Questions and Comments

Subcommittee members asked questions and made comments covering the following areas:

- whether brain injury develops over time following a traumatic injury; yes, especially in children; additionally, problems are compounded if the brain injury is accompanied by other physical issues;
- recognition of the value of hearing input from people suffering from brain injuries;
- whether the Centers for Medicare and Medicaid Services (CMS) has issued guidelines for long-term care for brain-injured individuals; the CMS has guidelines; however, implementation is inconsistent, especially among payers; and
- recognition that UNM has instituted a neuroscience center at the old Lovelace facility and is working on a residency program in this area.

Representative Garcia requested that Mr. Kegel's request for an appropriation bill for $25 million to fund developmental disabilities supports and services be presented to the LHHS at the last meeting of the interim when legislation is considered for endorsement; the chair acknowledged that it would ultimately be the decision of the chair of the LHHS to do so.

Adjournment

There being no further business, the meeting was adjourned at 3:20 p.m.

ENDORSED LEGISLATION

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; ENACTING THE UNIFORM GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Uniform Guardianship, Conservatorship and Other Protective Arrangements Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act:

A. "adult" means an individual at least eighteen years of age or an emancipated individual under eighteen years

underscored material = new
[bracketed material] = delete

of age;

B. "adult subject to conservatorship" means an adult for whom a conservator has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

C. "adult subject to guardianship" means an adult for whom a guardian has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

D. "claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort or otherwise;

E. "conservator":

(1) means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship; and

(2) includes a co-conservator;

F. "conservatorship estate" means the property subject to conservatorship under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

G. "full conservatorship" means a conservatorship that grants the conservator all powers available to a conservator under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

H. "full guardianship" means a guardianship that

underscored material = new
[bracketed material] = delete

grants the guardian all powers available to a guardian under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

I. "guardian":

(1) means a person appointed by the court to make decisions with respect to the personal affairs of an individual;

(2) includes a co-guardian; and

(3) does not include a guardian ad litem;

J. "guardian ad litem" means a person appointed to inform the court about, and to represent, the needs and best interest of an individual;

K. "individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

L. "individual subject to guardianship" means an adult or minor for whom a guardian has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

M. "less restrictive alternative":

(1) means an approach to meeting an individual's needs that restricts fewer rights of the individual than would the appointment of a guardian or conservator; and

underscored material = new
[bracketed material] = delete

(2) includes supported decision making, appropriate technological assistance, appointment of a representative payee and appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances;

N. "letters of office" means a record issued by a court certifying a guardian's or conservator's authority to act;

O. "limited conservatorship" means a conservatorship that grants the conservator less than all powers available to a conservator under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, grants powers over only certain property or otherwise restricts the powers of the conservator;

P. "limited guardianship" means a guardianship that grants the guardian less than all powers available to a guardian under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or otherwise restricts the powers of the guardian;

Q. "long-term care facility" means a nursing home licensed by the department of health to provide intermediate or skilled nursing care;

R. "mental health treatment facility" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide mental

underscored material = new
[~~bracketed material~~] = delete

health treatment in the ordinary course of business;

S. "minor" means an unemancipated individual under eighteen years of age;

T. "minor subject to conservatorship" means a minor for whom a conservator has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

U. "minor subject to guardianship" means a minor for whom a guardian has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

V. "parent" does not include an individual whose parental rights have been terminated;

W. "person" means an individual; estate; business or nonprofit entity; public corporation; government; governmental subdivision, agency or instrumentality; or other legal entity;

X. "power of attorney for finances" includes a power of attorney signed under the Uniform Power of Attorney Act;

Y. "power of attorney for health care" includes:

(1) a record signed under the Uniform Health-Care Decisions Act; and

(2) a record signed under the Mental Health Care Treatment Decisions Act;

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Z. "property" includes tangible and intangible property;

AA. "protective arrangement instead of conservatorship" means a court order entered under Section 503 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

BB. "protective arrangement instead of guardianship" means a court order entered under Section 502 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

CC. "protective arrangement under Article 5" means a court order entered under Section 502 or 503 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

DD. "record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

EE. "respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought;

FF. "sign" means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound or process;

GG. "standby guardian" means a person appointed by the court under Section 207 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

HH. "state":

(1) means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

(2) includes an Indian tribe, nation, pueblo or band located within the United States and recognized by federal law or formally acknowledged by a state of the United States; and

II. "supported decision making" means assistance:

(1) from one or more persons of an individual's choosing;

(2) in understanding the nature and consequences of potential personal and financial decisions;

(3) that enables the individual to make the decisions; and

(4) in communicating a decision once made when consistent with the individual's wishes.

SECTION 103. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY APPLICABLE.--Unless displaced by a particular

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provision of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the principles of law and equity supplement that act's provisions.

SECTION 104. [NEW MATERIAL] SUBJECT-MATTER JURISDICTION.--

A. Except to the extent jurisdiction is precluded by the Uniform Child-Custody Jurisdiction and Enforcement Act, the district court has jurisdiction over a guardianship for a minor domiciled or present in New Mexico. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled or having property in New Mexico.

B. The district court has jurisdiction over a guardianship, conservatorship or protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for an adult as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

C. After notice is given in a proceeding for a guardianship, conservatorship or protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for the guardianship, conservatorship or protective

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arrangement;

(2) exclusive jurisdiction to determine how property of the respondent must be managed, expended or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent or another claimant;

(3) nonexclusive jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

(4) if a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

D. A court that appoints a guardian or conservator, or authorizes a protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

SECTION 105. [NEW MATERIAL] TRANSFER OF PROCEEDING.--

A. This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of Article 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

B. After appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding

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to a court in another county in New Mexico or another state if transfer is in the best interest of the individual subject to the guardianship or conservatorship.

C. If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship for the same individual is filed in a court in New Mexico, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

D. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in New Mexico for the same individual if jurisdiction in New Mexico is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in New Mexico.

E. Notice of hearing on a petition under Subsection D of this section, together with a copy of the petition, shall be given to the respondent, if the respondent is at least twelve years of age at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under the Uniform

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Guardianship, Conservatorship and Other Protective Arrangements Act were applicable. The court shall make the appointment unless it determines the appointment would not be in the best interest of the respondent.

F. Not later than fourteen days after appointment under Subsection E of this section, the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is at least twelve years of age, and to all persons given notice of the hearing on the petition.

SECTION 106. [NEW MATERIAL] VENUE.--

A. Venue for a guardianship proceeding for a minor is in:

(1) the county in which the minor resides or is present at the time the proceeding commences; or

(2) the county in which another proceeding concerning the custody or parental rights of the minor is pending.

B. Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:

(1) the county in which the respondent resides;

(2) if the respondent has been admitted to an institution by court order, the county in which the court is

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located; or

(3) if the proceeding is for appointment of an emergency guardian for an adult, the county in which the respondent is present.

C. Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

(1) the county in which the respondent resides, whether or not a guardian has been appointed in another county or other jurisdiction; or

(2) if the respondent does not reside in New Mexico, in any county in which property of the respondent is located.

D. If proceedings under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act are brought in more than one county, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

SECTION 107. [NEW MATERIAL] PRACTICE IN COURT.--

A. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or the Uniform Probate Code, the New Mexico Rules of Evidence, Rules of Civil Procedure for the District Courts and Rules of Appellate Procedure govern a proceeding under the

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Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and appellate review of the proceeding.

B. If proceedings for a guardianship, conservatorship or protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

C. A respondent may demand a jury trial in a proceeding under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act on the issue of whether a basis exists for appointment of a guardian or conservator.

SECTION 108. [NEW MATERIAL] LETTERS OF OFFICE.--

A. The court shall issue letters of office to a guardian on filing by the guardian of an acceptance of appointment.

B. The court shall issue letters of office to a conservator on filing by the conservator of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court.

C. Limitations on the powers of a guardian or conservator or on the property subject to conservatorship shall be stated on the letters of office.

D. The court at any time may limit the powers conferred on a guardian or conservator. The court shall issue new letters of office to reflect the limitation. The court

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shall give notice of the limitation to the guardian or conservator, individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship or conservatorship and any other person the court determines.

SECTION 109. [NEW MATERIAL] EFFECT OF ACCEPTANCE OF APPOINTMENT.--On acceptance of appointment, a guardian or conservator submits to personal jurisdiction of the court in New Mexico in any proceeding relating to the guardianship or conservatorship.

SECTION 110. [NEW MATERIAL] CO-GUARDIAN--CO-CONSERVATOR.--

A. The court at any time may appoint a co-guardian or co-conservator to serve immediately or when a designated event occurs.

B. A co-guardian or co-conservator appointed to serve immediately may act when that co-guardian or co-conservator complies with Section 108 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

C. A co-guardian or co-conservator appointed to serve when a designated event occurs may act when:

(1) the event occurs; and

(2) that co-guardian or co-conservator complies with Section 108 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

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D. Unless an order of appointment under Subsection A of this section or subsequent order states otherwise, co-guardians or co-conservators shall make decisions jointly.

SECTION 111. [NEW MATERIAL] JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.--

A. The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated event occurs.

B. A person entitled under Section 202 or 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under Section 402 of that act to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

C. A successor guardian or successor conservator appointed to serve when a designated event occurs may act as guardian or conservator when:

(1) the event occurs; and

(2) the successor complies with Section 108 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

D. A successor guardian or successor conservator has the predecessor's powers unless otherwise provided by the court.

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SECTION 112. [NEW MATERIAL] EFFECT OF DEATH, REMOVAL OR RESIGNATION OF GUARDIAN OR CONSERVATOR.--

A. Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator or when the court under Subsection B of this section approves a resignation of the guardian or conservator.

B. To resign, a guardian or conservator shall petition the court. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

C. Death, removal or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for:

(1) an action taken on behalf of the individual subject to guardianship or conservatorship; or

(2) the individual's funds or other property.

SECTION 113. [NEW MATERIAL] NOTICE OF HEARING GENERALLY.--

A. Except as otherwise provided in Sections 203, 207, 303, 403 and 505 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, if notice of a hearing under that act is required, the movant shall give notice of the date, time and place of the hearing to the person to be notified unless otherwise ordered by the court

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for good cause. Except as otherwise provided in that act, notice shall be given as provided in Section 45-1-401 NMSA 1978 at least fourteen days before the hearing.

B. Proof of notice of a hearing under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be made before or at the hearing and filed in the proceeding.

C. Notice of a hearing under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be in at least sixteen-point font, in plain language and, to the extent feasible, in a language in which the person to be notified is proficient.

SECTION 114. [NEW MATERIAL] WAIVER OF NOTICE.--

A. Except as otherwise provided in Subsection B of this section, a person may waive notice under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act in a record signed by the person or person's attorney and filed in the proceeding.

B. A respondent, individual subject to guardianship, individual subject to conservatorship or individual subject to a protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall not waive notice under that act.

SECTION 115. [NEW MATERIAL] GUARDIAN AD LITEM.--The court

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at any time may appoint a guardian ad litem for an individual if the court determines the individual's interest otherwise would not be adequately represented. If no conflict of interest exists, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem shall not be the same individual as the attorney representing the respondent. The court shall state the duties of the guardian ad litem and the reasons for the appointment.

SECTION 116. [NEW MATERIAL] REQUEST FOR NOTICE.--

A. A person may file with the court a request for notice under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act if the person is:

(1) not otherwise entitled to notice; and

(2) interested in the welfare of a respondent, individual subject to guardianship or conservatorship or individual subject to a protective arrangement under Article 5 of that act.

B. A request under Subsection A of this section shall include a statement showing the interest of the person making the request and the address of the person or an attorney for the person to whom notice is to be given.

C. If the court approves a request under Subsection A of this section, the court shall give notice of the approval to the guardian or conservator, if one has been appointed, or the respondent if no guardian or conservator has been

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appointed.

SECTION 117. [NEW MATERIAL] DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.--

A. Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:

(1) is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or

(2) has been convicted of:

(a) a felony;

(b) a crime involving dishonesty, neglect, violence or the use of physical force; or

(c) another crime relevant to the functions the individual would assume as guardian or conservator.

B. A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence or the use of physical force or another crime relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the court.

C. If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency or receivership proceeding, the

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conservator promptly shall disclose that knowledge to the court.

SECTION 118. [NEW MATERIAL] MULTIPLE NOMINATIONS.--If a respondent or other person makes more than one nomination of a guardian or conservator, the latest in time governs.

SECTION 119. [NEW MATERIAL] COMPENSATION AND EXPENSES--IN GENERAL.--

A. Unless otherwise compensated or reimbursed, an attorney for a respondent in a proceeding under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the respondent.

B. Unless otherwise compensated or reimbursed, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or for whom a protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act was ordered is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the individual.

C. The court shall approve compensation and expenses payable under this section before payment. Approval is not required before a service is provided or an expense is incurred.

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D. If the court dismisses a petition under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the petitioner.

SECTION 120. [NEW MATERIAL] COMPENSATION OF GUARDIAN OR CONSERVATOR.--

A. Subject to court approval, a guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, clothing and other appropriate expenses advanced for the benefit of the individual subject to guardianship. If a conservator, other than the guardian or a person affiliated with the guardian, is appointed for the individual, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without court approval.

B. Subject to court approval, a conservator is entitled to reasonable compensation for services and reimbursement for appropriate expenses from the property of the individual subject to conservatorship.

C. In determining reasonable compensation for a guardian or conservator, the court, or a conservator in determining reasonable compensation for a guardian as provided in Subsection A of this section, shall consider:

(1) the necessity and quality of the services

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provided;

(2) the experience, training, professional standing and skills of the guardian or conservator;

(3) the difficulty of the services performed, including the degree of skill and care required;

(4) the conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;

(5) the effect of the services on the individual subject to guardianship or conservatorship;

(6) the extent to which the services provided were or were not consistent with the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or conservator's plan under Section 419 of that act; and

(7) the fees customarily paid to a person that performs a like service in the community.

D. A guardian or conservator need not use personal funds of the guardian or conservator for the expenses of the individual subject to guardianship or conservatorship.

E. If an individual subject to guardianship or conservatorship seeks to modify or terminate the guardianship or conservatorship or remove the guardian or conservator, the court may order compensation to the guardian or conservator for

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time spent opposing modification, termination or removal only to the extent the court determines the opposition was reasonably necessary to protect the interest of the individual subject to guardianship or conservatorship.

SECTION 121. [NEW MATERIAL] LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP.--A guardian or conservator is not personally liable to another person solely because of the guardianship or conservatorship for an act or omission of the individual subject to guardianship or conservatorship.

SECTION 122. [NEW MATERIAL] PETITION AFTER APPOINTMENT FOR INSTRUCTION OR RATIFICATION.--

A. A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act related to the guardianship or conservatorship.

B. On notice and hearing on a petition under Subsection A of this section, the court may give an instruction and issue an order.

SECTION 123. [NEW MATERIAL] THIRD-PARTY ACCEPTANCE OF AUTHORITY OF GUARDIAN OR CONSERVATOR.--

A. A person shall not recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(1) the person has actual knowledge or a

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reasonable belief that the letters of office of the guardian or conservator are invalid or the conservator or guardian is exceeding or improperly exercising authority granted by the court; or

(2) the person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

B. A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(1) the guardian's or conservator's proposed action would be inconsistent with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; or

(2) the person makes, or has actual knowledge that another person has made, a report to the children, youth and families department or the aging and long-term services department stating a good-faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

C. A person that refuses to accept the authority of a guardian or conservator in accordance with Subsection B of

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this section may report the refusal and the reason for refusal to the court. The court on receiving the report shall consider whether removal of the guardian or conservator or other action is appropriate.

D. A guardian or conservator may petition the court to require a third party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

SECTION 124. [NEW MATERIAL] USE OF AGENT BY GUARDIAN OR CONSERVATOR.--

A. Except as otherwise provided in Subsection C of this section, a guardian or conservator may delegate a power to an agent that a prudent guardian or conservator of comparable skills could delegate prudently under the circumstances if the delegation is consistent with the guardian's or conservator's fiduciary duties and the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or the conservator's plan under Section 419 of that act.

B. In delegating a power under Subsection A of this section, the guardian or conservator shall exercise reasonable care, skill and caution in:

(1) selecting the agent;

(2) establishing the scope and terms of the agent's work in accordance with the guardian's plan under

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Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or conservator's plan under Section 419 of that act;

(3) monitoring the agent's performance and compliance with the delegation; and

(4) redressing an act or omission of the agent that would constitute a breach of the guardian's or conservator's duties if done by the guardian or conservator.

C. A guardian or conservator shall not delegate all powers to an agent.

D. In performing a power delegated under this section, an agent shall:

(1) exercise reasonable care to comply with the terms of the delegation and use reasonable care in the performance of the power; and

(2) if the guardian or conservator has delegated to the agent the power to make a decision on behalf of the individual subject to guardianship or conservatorship, use the same decision-making standard the guardian or conservator would be required to use.

E. By accepting a delegation of a power under Subsection A of this section from a guardian or conservator, an agent submits to the personal jurisdiction of the courts of New Mexico in an action involving the agent's performance as agent.

F. A guardian or conservator that delegates and

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monitors a power in compliance with this section is not liable for the decision, act or omission of the agent.

SECTION 125. [NEW MATERIAL] TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.--

A. The court may appoint a temporary substitute guardian for an individual subject to guardianship for a period not exceeding six months if:

(1) a proceeding to remove a guardian for the individual is pending; or

(2) the court finds a guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.

B. The court may appoint a temporary substitute conservator for an individual subject to conservatorship for a period not exceeding six months if:

(1) a proceeding to remove a conservator for the individual is pending; or

(2) the court finds that a conservator for the individual is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.

C. Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator.

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The authority of the existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.

D. The court shall give notice of appointment of a temporary substitute guardian or temporary substitute conservator, not later than five days after the appointment, to:

(1) the individual subject to guardianship or conservatorship;

(2) the affected guardian or conservator; and

(3) in the case of a minor, each parent of the minor and any person currently having care or custody of the minor.

E. The court may remove a temporary substitute guardian or temporary substitute conservator at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.

SECTION 126. [NEW MATERIAL] REGISTRATION OF ORDER--EFFECT.--

A. If a guardian has been appointed in another state for an individual and a petition for guardianship for the individual is not pending in New Mexico, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in New Mexico by filing as a foreign judgment, in a court of an appropriate

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county of New Mexico, certified copies of the order and letters of office.

B. If a conservator has been appointed in another state for an individual and a petition for conservatorship for the individual is not pending in New Mexico, the conservator appointed for the individual in the other state, after giving notice to the appointing court, may register the conservatorship in New Mexico by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.

C. On registration under this section of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in New Mexico all powers authorized in the order except as prohibited by the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or other law of New Mexico. If the guardian or conservator is not a resident of New Mexico, the guardian or conservator may maintain an action or proceeding in New Mexico subject to any condition imposed by New Mexico on an action or proceeding by a nonresident party.

D. The court may grant any relief available under the Uniform Guardianship, Conservatorship and Other Protective

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Arrangements Act or other law of New Mexico to enforce an order registered under this section.

SECTION 127. [NEW MATERIAL] GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.--

A. An individual who is subject to guardianship or conservatorship, or a person interested in the welfare of an individual subject to guardianship or conservatorship, that reasonably believes the guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may file a grievance in a record with the court.

B. Subject to Subsection C of this section, after receiving a grievance under Subsection A of this section, the court:

(1) shall review the grievance and, if necessary to determine the appropriate response, court records related to the guardianship or conservatorship;

(2) shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(a) removal of the guardian and appointment of a successor may be appropriate under Section 318 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

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(b) termination or modification of the guardianship may be appropriate under Section 319 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(c) removal of the conservator and appointment of a successor may be appropriate under Section 430 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; or

(d) termination or modification of the conservatorship may be appropriate under Section 431 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; and

(3) may take any action supported by the evidence, including:

(a) ordering the guardian or conservator to provide the court a report, accounting, inventory, updated plan or other information;

(b) appointing a guardian ad litem;

(c) appointing an attorney for the individual subject to guardianship or conservatorship; or

(d) holding a hearing.

C. The court may decline to act under Subsection B of this section if a similar grievance was filed within the six months preceding the filing of the current grievance and the court followed the procedures of that subsection in considering

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the earlier grievance.

SECTION 128. [NEW MATERIAL] DELEGATION BY PARENT.--Unless otherwise provided by law, a parent of a minor, by a power of attorney, may delegate to another person for a period not exceeding six months any of the parent's powers regarding care, custody or property of the minor, other than power to consent to marriage or adoption.

ARTICLE 2

GUARDIANSHIP OF MINOR

SECTION 201. [NEW MATERIAL] BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR.--

A. A person becomes a guardian for a minor only on appointment by the court.

B. The court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest and:

(1) each parent of the minor, after being fully informed of the nature and consequences of guardianship, consents;

(2) all parental rights have been terminated; or

(3) there is clear and convincing evidence that no parent of the minor is willing or able to exercise the powers the court is granting the guardian.

SECTION 202. [NEW MATERIAL] PETITION FOR APPOINTMENT OF

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GUARDIAN FOR MINOR.--

A. A person interested in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor.

B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the minor, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

(1) the minor's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the minor will reside if the appointment is made;

(2) the name and current street address of the minor's parents;

(3) the name and address, if known, of each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;

(4) the name and address of any attorney for the minor and any attorney for each parent of the minor;

(5) the reason guardianship is sought and

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would be in the best interest of the minor;

(6) the name and address of any proposed guardian and the reason the proposed guardian should be selected;

(7) if the minor has property other than personal effects, a general statement of the minor's property with an estimate of its value;

(8) whether the minor needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

(9) whether any parent of the minor needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; and

(10) whether any other proceeding concerning the care or custody of the minor is pending in any court in New Mexico or another jurisdiction.

SECTION 203. [NEW MATERIAL] NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.--

A. If a petition is filed under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall schedule a hearing and the petitioner shall:

(1) serve notice of the date, time and place of the hearing, together with a copy of the petition, personally on each of the following that is not the petitioner:

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(a) the minor, if the minor will be twelve years of age or older at the time of the hearing;

(b) each parent of the minor or, if there is none, the adult nearest in kinship who can be found with reasonable diligence;

(c) any adult with whom the minor resides;

(d) each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition; and

(e) any other person the court determines should receive personal service of notice; and

(2) give notice under Section 113 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act of the date, time and place of the hearing, together with a copy of the petition, to:

(a) any person nominated as guardian by the minor, if the minor is twelve years of age or older;

(b) any nominee of a parent;

(c) each grandparent and adult sibling of the minor;

(d) any guardian or conservator acting for the minor in any jurisdiction; and

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(e) any other person the court determines.

B. Notice required by Subsection A of this section shall include a statement of the right to request appointment of an attorney for the minor or object to appointment of a guardian and a description of the nature, purpose and consequences of appointment of a guardian.

C. The court shall not grant a petition for guardianship of a minor if notice substantially complying with Paragraph (1) of Subsection A of this section is not served on:

(1) the minor, if the minor is twelve years of age or older; and

(2) each parent of the minor, unless the court finds by clear and convincing evidence that the parent cannot with due diligence be located and served or the parent waived, in a record, the right to notice.

D. If a petitioner is unable to serve notice under Paragraph (1) of Subsection A of this section on a parent of a minor or alleges that the parent waived, in a record, the right to notice under this section, the court shall appoint a visitor who shall:

(1) interview the petitioner and the minor;

(2) if the petitioner alleges the parent cannot be located, ascertain whether the parent cannot be located with due diligence; and

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(3) investigate any other matter relating to the petition the court directs.

SECTION 204. [NEW MATERIAL] ATTORNEY FOR MINOR OR PARENT.--

A. The court shall appoint an attorney to represent a minor who is the subject of a proceeding under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act if:

(1) requested by the minor and the minor is twelve years of age or older;

(2) recommended by a guardian ad litem; or

(3) the court determines the minor needs representation.

B. An attorney appointed under Subsection A of this section shall:

(1) make a reasonable effort to ascertain the minor's wishes;

(2) advocate for the minor's wishes to the extent reasonably ascertainable; and

(3) if the minor's wishes are not reasonably ascertainable, advocate for the minor's best interest.

C. A minor who is the subject of a proceeding under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may retain an attorney to represent the minor in the proceeding.

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D. A parent of a minor who is the subject of a proceeding under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may retain an attorney to represent the parent in the proceeding.

SECTION 205. [NEW MATERIAL] ATTENDANCE AND PARTICIPATION AT HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.--

A. The court shall require a minor who is the subject of a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act to attend the hearing and allow the minor to participate in the hearing unless the court determines, by clear and convincing evidence presented at the hearing or a separate hearing, that:

(1) the minor consistently and repeatedly refused to attend the hearing after being fully informed of the right to attend and, if the minor is twelve years of age or older, the potential consequences of failing to do so;

(2) there is no practicable way for the minor to attend the hearing;

(3) the minor lacks the ability or maturity to participate meaningfully in the hearing; or

(4) attendance would be harmful to the minor.

B. Unless excused by the court for good cause, the person proposed to be appointed as guardian for a minor shall attend a hearing under Section 203 of the Uniform Guardianship,

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Conservatorship and Other Protective Arrangements Act.

C. Each parent of a minor who is the subject of a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act has the right to attend the hearing.

D. A person may request permission to participate in a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court may grant the request, with or without hearing, on determining that it is in the best interest of the minor who is the subject of the hearing. The court may impose appropriate conditions on the person's participation.

SECTION 206. [NEW MATERIAL] ORDER OF APPOINTMENT--PRIORITY OF NOMINEE--LIMITED GUARDIANSHIP FOR MINOR.--

A. After a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court may appoint a guardian for a minor, if appointment is proper under Section 201 of that act, dismiss the proceeding or take other appropriate action consistent with that act or other law of New Mexico.

B. In appointing a guardian under Subsection A of this section:

(1) the court shall appoint a person nominated as guardian by a parent of the minor in a will or other record unless the court finds the appointment is contrary to the best

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interest of the minor;

(2) if multiple parents have nominated different persons to serve as guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor; and

(3) if a guardian is not appointed under Paragraph (1) or (2) of this subsection, the court shall appoint the person nominated by the minor if the minor is twelve years of age or older unless the court finds that appointment is contrary to the best interest of the minor. In that case, the court shall appoint as guardian a person whose appointment is in the best interest of the minor.

C. In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor or for other good cause, the court, at the time of appointment of a guardian for the minor or later, on its own or on motion of the minor or other interested person, may create a limited guardianship by limiting the powers otherwise granted by this article to the guardian. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

D. The court, as part of an order appointing a guardian for a minor, shall state rights retained by any parent of the minor, which may include contact or visitation with the

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minor, decision making regarding the minor's health care, education or other matter or access to a record regarding the minor.

E. An order granting a guardianship for a minor shall state that each parent of the minor is entitled to notice that:

(1) the guardian has delegated custody of the minor subject to guardianship;

(2) the court has modified or limited the powers of the guardian; or

(3) the court has removed the guardian.

F. An order granting a guardianship for a minor shall identify any person in addition to a parent of the minor that is entitled to notice of the events listed in Subsection E of this section.

SECTION 207. [NEW MATERIAL] STANDBY GUARDIAN FOR MINOR.--

A. A standby guardian appointed under this section may act as guardian, with all duties and powers of a guardian under Sections 209 and 210 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, when no parent of the minor is willing or able to exercise the duties and powers granted to the guardian.

B. A parent of a minor, in a signed record, may nominate a person to be appointed by the court as standby guardian for the minor. The parent, in a signed record, may

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state desired limitations on the powers to be granted the standby guardian. The parent, in a signed record, may revoke or amend the nomination at any time before the court appoints a standby guardian.

C. The court may appoint a standby guardian for a minor on:

(1) petition by a parent of the minor or a person nominated under Subsection B of this section; and

(2) finding that no parent of the minor likely will be able or willing to care for or make decisions with respect to the minor not later than two years after the appointment.

D. A petition under Paragraph (1) of Subsection C of this section shall include the same information required under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the appointment of a guardian for a minor.

E. On filing a petition under Paragraph (1) of Subsection C of this section, the petitioner shall:

(1) serve a copy of the petition personally on:

(a) the minor, if the minor is twelve years of age or older, and the minor's attorney, if any;

(b) each parent of the minor;

(c) the person nominated as standby

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guardian; and

(d) any other person the court determines; and

(2) include with the copy of the petition served under Paragraph (1) of this subsection a statement of the right to request appointment of an attorney for the minor or to object to appointment of the standby guardian and a description of the nature, purpose and consequences of appointment of a standby guardian.

F. A person entitled to notice under Subsection E of this section, not later than sixty days after service of the petition and statement, may object to appointment of the standby guardian by filing an objection with the court and giving notice of the objection to each other person entitled to notice under Subsection E of this section.

G. If an objection is filed under Subsection F of this section, the court shall hold a hearing to determine whether a standby guardian should be appointed and, if so, the person that should be appointed. If no objection is filed, the court may make the appointment.

H. The court shall not grant a petition for a standby guardian of the minor if notice substantially complying with Subsection E of this section is not served on:

(1) the minor, if the minor is twelve years of age or older; and

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(2) each parent of the minor, unless the court finds by clear and convincing evidence that the parent, in a record, waived the right to notice or cannot be located and served with due diligence.

I. If a petitioner is unable to serve notice under Subsection E of this section on a parent of the minor or alleges that a parent of the minor waived the right to notice under this section, the court shall appoint a visitor who shall:

(1) interview the petitioner and the minor;

(2) if the petitioner alleges the parent cannot be located and served, ascertain whether the parent cannot be located with due diligence; and

(3) investigate any other matter relating to the petition the court directs.

J. If the court finds under Subsection C of this section that a standby guardian should be appointed:

(1) the court shall appoint the person nominated under Subsection B of this section unless the court finds the appointment is contrary to the best interest of the minor; and

(2) if the parents have nominated different persons to serve as standby guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the

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nominees is in the best interest of the minor.

K. An order appointing a standby guardian under this section shall state that each parent of the minor is entitled to notice, and identify any other person entitled to notice, if:

(1) the standby guardian assumes the duties and powers of the guardian;

(2) the guardian delegates custody of the minor;

(3) the court modifies or limits the powers of the guardian; or

(4) the court removes the guardian.

L. Before assuming the duties and powers of a guardian, a standby guardian shall file with the court an acceptance of appointment as guardian and give notice of the acceptance to:

(1) each parent of the minor, unless the parent, in a record, waived the right to notice or cannot be located and served with due diligence;

(2) the minor, if the minor is twelve years of age or older; and

(3) any person, other than the parent, having care or custody of the minor.

M. A person that receives notice under Subsection L of this section or any other person interested in the welfare

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of the minor may file with the court an objection to the standby guardian's assumption of duties and powers of a guardian. The court shall hold a hearing if the objection supports a reasonable belief that the conditions for assumption of duties and powers have not been satisfied.

SECTION 208. [NEW MATERIAL] EMERGENCY GUARDIAN FOR MINOR.--

A. On its own, or on petition by a person interested in a minor's welfare, the court may appoint an emergency guardian for the minor if the court finds:

(1) appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety or welfare; and

(2) no other person appears to have authority and willingness to act in the circumstances.

B. The duration of authority of an emergency guardian for a minor shall not exceed sixty days and the emergency guardian may exercise only the powers specified in the order of appointment. The emergency guardian's authority may be extended once for not more than sixty days if the court finds that the conditions for appointment of an emergency guardian in Subsection A of this section continue.

C. Except as otherwise provided in Subsection D of this section, reasonable notice of the date, time and place of a hearing on a petition for appointment of an emergency

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guardian for a minor shall be given to:

(1) the minor, if the minor is twelve years of age or older;

(2) any attorney appointed under Section 204 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(3) each parent of the minor;

(4) any person, other than a parent, having care or custody of the minor; and

(5) any other person the court determines.

D. The court may appoint an emergency guardian for a minor without notice under Subsection C of this section and a hearing only if the court finds from an affidavit or testimony that the minor's health, safety or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without notice to an unrepresented minor or the attorney for a represented minor, notice of the appointment shall be given not later than forty-eight hours after the appointment to the individuals listed in Subsection C of this section. Not later than five days after the appointment, the court shall hold a hearing on the appropriateness of the appointment.

E. Appointment of an emergency guardian under this section, with or without notice, is not a determination that a

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basis exists for appointment of a guardian under Section 201 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

F. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.

SECTION 209. [NEW MATERIAL] DUTIES OF GUARDIAN FOR MINOR.--

A. A guardian for a minor is a fiduciary. Except as otherwise limited by the court, a guardian for a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety and welfare. A guardian shall act in the minor's best interest and exercise reasonable care, diligence and prudence.

B. A guardian for a minor shall:

(1) be personally acquainted with the minor and maintain sufficient contact with the minor to know the minor's abilities, limitations, needs, opportunities and physical and mental health;

(2) take reasonable care of the minor's personal effects and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect other property of the minor;

(3) expend funds of the minor that have been received by the guardian for the minor's current needs for

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support, care, education, health, safety and welfare;

(4) conserve any funds of the minor not expended under Paragraph (3) of this subsection for the minor's future needs, but if a conservator is appointed for the minor, pay the funds at least quarterly to the conservator to be conserved for the minor's future needs;

(5) report the condition of the minor and account for funds and other property of the minor in the guardian's possession or subject to the guardian's control, as required by court rule or ordered by the court on application of a person interested in the minor's welfare;

(6) inform the court of any change in the minor's dwelling or address; and

(7) in determining what is in the minor's best interest, take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian.

SECTION 210. [NEW MATERIAL] POWERS OF GUARDIAN FOR MINOR.--

A. Except as otherwise limited by court order, a guardian of a minor has the powers a parent otherwise would have regarding the minor's support, care, education, health, safety and welfare.

B. Except as otherwise limited by court order, a guardian for a minor may:

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(1) apply for and receive funds and benefits otherwise payable for the support of the minor to the minor's parent, guardian or custodian under a statutory system of benefits or insurance or any private contract, devise, trust, conservatorship or custodianship;

(2) unless inconsistent with a court order entitled to recognition in New Mexico, take custody of the minor and establish the minor's place of dwelling and, on authorization of the court, establish or move the minor's dwelling outside New Mexico;

(3) if the minor is not subject to conservatorship, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or make a payment for the benefit of the minor;

(4) consent to health or other care, treatment or service for the minor; or

(5) to the extent reasonable, delegate to the minor responsibility for a decision affecting the minor's well-being.

C. The court may authorize a guardian for a minor to consent to the adoption of the minor if the minor does not have a parent.

D. A guardian for a minor may consent to the marriage of the minor.

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SECTION 211. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR MINOR--TERMINATION OF GUARDIANSHIP--APPOINTMENT OF SUCCESSOR.--

A. Guardianship under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a minor terminates:

(1) on the minor's death, adoption, emancipation or attainment of majority; or

(2) when the court finds that the standard in Section 201 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a guardian is not satisfied, unless the court finds that:

(a) termination of the guardianship would be harmful to the minor; and

(b) the minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

B. A minor subject to guardianship or a person interested in the welfare of the minor may petition the court to terminate the guardianship, modify the guardianship, remove the guardian and appoint a successor guardian, or remove a standby guardian and appoint a different standby guardian.

C. A petitioner under Subsection B of this section shall give notice of the hearing on the petition to the minor, if the minor is twelve years of age or older and is not the

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petitioner, the guardian, each parent of the minor and any other person the court determines.

D. The court shall follow the priorities in Subsection B of Section 206 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act when selecting a successor guardian for a minor.

E. Not later than thirty days after appointment of a successor guardian for a minor, the court shall give notice of the appointment to the minor subject to guardianship, if the minor is twelve years of age or older, each parent of the minor and any other person the court determines.

F. When terminating a guardianship for a minor under this section, the court may issue an order providing for transitional arrangements that will assist the minor with a transition of custody and is in the best interest of the minor.

G. A guardian for a minor that is removed shall cooperate with a successor guardian to facilitate transition of the guardian's responsibilities and protect the best interest of the minor.

ARTICLE 3

GUARDIANSHIP OF ADULT

SECTION 301. [NEW MATERIAL] BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT.--

A. On petition and after notice and hearing, the court may:

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(1) appoint a guardian for an adult if the court finds by clear and convincing evidence that:

(a) the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; and

(b) the respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative; or

(2) with appropriate findings, treat the petition as one for a conservatorship under Article 4 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or protective arrangement under Article 5 of that act, issue any appropriate order or dismiss the proceeding.

B. The court shall grant a guardian appointed under Subsection A of this section only those powers necessitated by the demonstrated needs and limitations of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court shall not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of the

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respondent.

SECTION 302. [NEW MATERIAL] PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT.--

A. A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for appointment of a guardian for the adult.

B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

(1) the respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

(2) the name and address of the respondent's:

(a) spouse or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period immediately before the filing of the petition;

(b) adult children or, if none, each parent and adult sibling of the respondent or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

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(c) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the petition;

(3) the name and current address of each of the following, if applicable:

(a) a person responsible for care of the respondent;

(b) any attorney currently representing the respondent;

(c) any representative payee appointed by the federal social security administration for the respondent;

(d) a guardian or conservator acting for the respondent in New Mexico or in another jurisdiction;

(e) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(f) any fiduciary for the respondent appointed by the federal department of veterans affairs;

(g) an agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(h) an agent designated under a power of attorney for finances in which the respondent is identified as

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the principal;

(i) a person nominated as guardian by the respondent;

(j) a person nominated as guardian by the respondent's parent or spouse in a will or other signed record;

(k) a proposed guardian and the reason the proposed guardian should be selected; and

(l) a person known to have routinely assisted the respondent with decision making during the six months immediately before the filing of the petition;

(4) the reason a guardianship is necessary, including a brief description of:

(a) the nature and extent of the respondent's alleged need;

(b) any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;

(c) if no protective arrangement instead of guardianship or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(d) the reason a protective arrangement instead of guardianship or other less restrictive alternative

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is insufficient to meet the respondent's alleged need;

(5) whether the petitioner seeks a limited guardianship or full guardianship;

(6) if the petitioner seeks a full guardianship, the reason a limited guardianship or protective arrangement instead of guardianship is not appropriate;

(7) if a limited guardianship is requested, the powers to be granted to the guardian;

(8) the name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

(9) if the respondent has property other than personal effects, a general statement of the respondent's property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(10) whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

SECTION 303. [NEW MATERIAL] NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR ADULT.--

A. On filing of a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a guardian for an adult, the court shall set a date, time and place for hearing the

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petition.

B. A copy of a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and notice of a hearing on the petition shall be served personally on the respondent. The notice shall inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant the petition if notice substantially complying with this subsection is not served on the respondent.

C. In a proceeding on a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the notice required under Subsection B of this section shall be given to the persons required to be listed in the petition under Paragraphs (1) through (3) of Subsection B of Section 302 of that act and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

D. After the appointment of a guardian, notice of a hearing on a petition for an order under this article together with a copy of the petition shall be given to:

(1) the adult subject to guardianship;

(2) the guardian; and

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(3) any other person the court determines.

SECTION 304. [NEW MATERIAL] APPOINTMENT AND ROLE OF VISITOR.--

A. On receipt of a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a guardian for an adult, the court shall appoint a visitor. The visitor shall be an individual with training or experience in the type of abilities, limitations and needs alleged in the petition.

B. A visitor appointed under Subsection A of this section shall interview the respondent in person and, in a manner the respondent is best able to understand:

(1) explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing on the petition and the general powers and duties of a guardian;

(2) determine the respondent's views about the appointment sought by the petitioner, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship;

(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

(4) inform the respondent that all costs and

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expenses of the proceeding, including respondent's attorney's fees, may be paid from the respondent's assets.

C. The visitor appointed under Subsection A of this section shall:

(1) interview the petitioner and proposed guardian, if any;

(2) visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;

(3) obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; and

(4) investigate the allegations in the petition and any other matter relating to the petition the court directs.

D. A visitor appointed under Subsection A of this section promptly shall file a report in a record with the court that includes:

(1) a summary of self-care and independent-living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage;

(2) a recommendation regarding the appropriateness of guardianship, including whether a protective

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arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available and:

(a) if a guardianship is recommended, whether it should be full or limited; and

(b) if a limited guardianship is recommended, the powers to be granted to the guardian;

(3) a statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;

(4) a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;

(5) a recommendation whether a professional evaluation under Section 306 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is necessary;

(6) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(7) a statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(8) any other matter the court directs.

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SECTION 305. [NEW MATERIAL] APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT.--

A. Unless the respondent in a proceeding for appointment of a guardian for an adult is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.

B. An attorney representing the respondent in a proceeding for appointment of a guardian for an adult shall:

(1) make reasonable efforts to ascertain the respondent's wishes;

(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and

(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration and scope, consistent with the respondent's interests.

SECTION 306. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

A. At or before a hearing on a petition for a guardianship for an adult, the court shall order a professional evaluation of the respondent:

(1) if the respondent requests the evaluation; or

(2) in other cases, unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.

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B. If the court orders an evaluation under Subsection A of this section, the respondent shall be examined by a licensed physician, psychologist, social worker or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file report in a record with the court. Unless otherwise directed by the court, the report shall contain:

(1) a description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;

(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

(3) a prognosis for improvement and recommendation for the appropriate treatment, support or habilitation plan; and

(4) the date of the examination on which the report is based.

C. The respondent may decline to participate in an evaluation ordered under Subsection A of this section.

SECTION 307. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT HEARING.--

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A. Except as otherwise provided in Subsection B of this section, a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

B. A hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

(1) the respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so; or

(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.

C. The respondent may be assisted in a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act by a person or persons of the respondent's choosing, assistive technology or an

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interpreter or translator or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

D. The respondent has a right to choose an attorney to represent the respondent at a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

E. At a hearing held under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the respondent may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including any court-appointed evaluator and the visitor; and

(3) otherwise participate in the hearing.

F. Unless excused by the court for good cause, a proposed guardian shall attend a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

G. A hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be closed on request of the respondent and a showing of good cause.

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H. Any person may request to participate in a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

SECTION 308. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

A. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the record after:

(1) the respondent or individual subject to guardianship requests the record be sealed; and

(2) either:

(a) the petition for guardianship is dismissed; or

(b) the guardianship is terminated.

B. An adult subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the adult and a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order are entitled to access court records of the proceeding and resulting guardianship, including the guardian's plan under Section 316 of that act and report under

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Section 317 of that act. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship, including the guardian's report and plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interests of the adult.

C. A report under Section 304 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act of a visitor or a professional evaluation under Section 306 of that act is confidential and shall be sealed on filing, but is available to:

(1) the court;

(2) the individual who is the subject of the report or evaluation, without limitation as to use;

(3) the petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

(4) unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the respondent is the principal; and

(5) any other person if it is in the public interest or for a purpose the court orders for good cause.

SECTION 309. [NEW MATERIAL] WHO MAY BE GUARDIAN OF

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ADULT--ORDER OF PRIORITY.--

A. Except as otherwise provided in Subsection C of this section, the court in appointing a guardian for an adult shall consider persons qualified to be guardian in the following order of priority:

(1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;

(2) a person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;

(3) an agent appointed by the respondent under a power of attorney for health care;

(4) a spouse of the respondent; and

(5) a family member or other individual who has shown special care and concern for the respondent.

B. If two or more persons have equal priority under Subsection A of this section, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences and the likelihood the person will be able to perform the duties of a guardian successfully.

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C. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under Subsection A of this section and appoint a person having a lower priority or no priority.

D. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, shall not be appointed as guardian unless:

(1) the individual is related to the respondent by blood, marriage or adoption; or

(2) the court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

E. An owner, operator or employee of a long-term care facility at which the respondent is receiving care shall not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

SECTION 310. [NEW MATERIAL] ORDER OF APPOINTMENT OF GUARDIAN.--

A. A court order appointing a guardian for an adult shall:

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(1) include a specific finding that clear and convincing evidence established that the identified needs of the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative, including use of appropriate supportive services, technological assistance or supported decision making;

(2) include a specific finding that clear and convincing evidence established that the respondent was given proper notice of the hearing on the petition;

(3) state whether the adult subject to guardianship retains the right to vote and, if the adult does not retain the right to vote, include findings that support removing that right; and

(4) state whether the adult subject to guardianship retains the right to marry and, if the adult does not retain the right to marry, include findings that support removing that right.

B. An adult subject to guardianship retains the right to vote unless the order under Subsection A of this section includes the statement required by Paragraph (3) of Subsection A of this section. An adult subject to guardianship retains the right to marry unless the order under Subsection A of this section includes the findings required by Paragraph (4) of Subsection A of this section.

C. A court order establishing a full guardianship

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for an adult shall state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.

D. A court order establishing a limited guardianship for an adult shall state the specific powers granted to the guardian.

E. The court, as part of an order establishing a guardianship for an adult, shall identify any person that subsequently is entitled to:

(1) notice of the rights of the adult under Subsection B of Section 311 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(2) notice of a change in the primary dwelling of the adult;

(3) notice that the guardian has delegated:

(a) the power to manage the care of the adult;

(b) the power to make decisions about where the adult lives;

(c) the power to make major medical decisions on behalf of the adult;

(d) a power that requires court approval under Section 315 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; or

(e) substantially all powers of the guardian;

(4) notice that the guardian will be unavailable to visit the adult for more than two months or unavailable to perform the guardian's duties for more than one month;

(5) a copy of the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the guardian's report under Section 317 of that act;

(6) access to court records relating to the guardianship;

(7) notice of the death or significant change in the condition of the adult;

(8) notice that the court has limited or modified the powers of the guardian; and

(9) notice of the removal of the guardian.

F. A spouse and adult children of an adult subject to guardianship are entitled to notice under Subsection E of this section unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.

SECTION 311. [NEW MATERIAL] NOTICE OF ORDER OF APPOINTMENT--RIGHTS.--

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A. A guardian appointed under Section 309 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall give the adult subject to guardianship and all other persons given notice under Section 303 of that act a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice shall be given not later than fourteen days after the appointment.

B. Not later than thirty days after appointment of a guardian under Section 309 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall give to the adult subject to guardianship, the guardian and any other person entitled to notice under Subsection E of Section 310 of that act or a subsequent order a statement of the rights of the adult subject to guardianship and procedures to seek relief if the adult is denied those rights. The statement shall be in at least sixteen-point font, in plain language and, to the extent feasible, in a language in which the adult subject to guardianship is proficient. The statement shall notify the adult subject to guardianship of the right to:

(1) seek termination or modification of the guardianship, or removal of the guardian and choose an attorney to represent the adult in these matters;

(2) be involved in decisions affecting the

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adult, including decisions about the adult's care, dwelling, activities or social interactions, to the extent reasonably feasible;

(3) be involved in health care decision making to the extent reasonably feasible and supported in understanding the risks and benefits of health care options to the extent reasonably feasible;

(4) be notified at least fourteen days before a change in the adult's primary dwelling or permanent move to a nursing home, mental health treatment facility or other facility that places restrictions on the individual's ability to leave or have visitors unless the change or move is proposed in the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or authorized by the court by specific order;

(5) object to a change or move described in Paragraph (4) of this subsection and the process for objecting;

(6) communicate, visit or interact with others, including receiving visitors and making or receiving telephone calls, personal mail or electronic communications, including through social media, unless:

(a) the guardian has been authorized by the court by specific order to restrict communications, visits or interactions;

(b) a protective order or protective

arrangement instead of guardianship is in effect that limits contact between the adult and a person; or

(c) the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological or financial harm to the adult and the restriction is: 1) for a period of not more than seven business days if the person has a family or preexisting social relationship with the adult; or 2) for a period of not more than sixty days if the person does not have a family or preexisting social relationship with the adult;

(7) receive a copy of the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the guardian's report under Section 317 of that act; and

(8) object to the guardian's plan or report.

SECTION 312. [NEW MATERIAL] EMERGENCY GUARDIAN.--

A. On its own after a petition has been filed under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, or on petition by a person interested in an adult's welfare, the court may appoint an emergency guardian for the adult if the court finds:

(1) appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare;

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(2) no other person appears to have authority and willingness to act in the circumstances; and

(3) there is reason to believe that a basis for appointment of a guardian under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act exists.

B. The duration of authority of an emergency guardian for an adult shall not exceed sixty days, and the emergency guardian may exercise only the powers specified in the order of appointment. The emergency guardian's authority may be extended once for not more than sixty days if the court finds that the conditions for appointment of an emergency guardian in Subsection A of this section continue.

C. Immediately on filing of a petition for an emergency guardian for an adult, the court shall appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided in Subsection D of this section, reasonable notice of the date, time and place of a hearing on the petition shall be given to the respondent, the respondent's attorney and any other person the court determines.

D. The court may appoint an emergency guardian for an adult without notice to the adult and any attorney for the adult only if the court finds from an affidavit or testimony that the respondent's physical health, safety or welfare will be substantially harmed before a hearing with notice on the

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appointment can be held. If the court appoints an emergency guardian without giving notice under Subsection C of this section, the court shall:

(1) give notice of the appointment not later than forty-eight hours after the appointment to:

(a) the respondent;

(b) the respondent's attorney; and

(c) any other person the court determines; and

(2) hold a hearing on the appropriateness of the appointment not later than five days after the appointment.

E. Appointment of an emergency guardian under this section is not a determination that a basis exists for appointment of a guardian under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

F. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.

SECTION 313. [NEW MATERIAL] DUTIES OF GUARDIAN FOR ADULT.--

A. A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health and welfare of the adult subject to guardianship to the

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extent necessitated by the adult's limitations.

B. A guardian for an adult shall promote the self-determination of the adult and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

(1) become or remain personally acquainted with the adult and maintain sufficient contact with the adult, including through regular visitation, to know the adult's abilities, limitations, needs, opportunities and physical and mental health;

(2) to the extent reasonably feasible, identify the values and preferences of the adult and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities or social interactions; and

(3) make reasonable efforts to identify and facilitate supportive relationships and services for the adult.

C. A guardian for an adult at all times shall exercise reasonable care, diligence and prudence when acting on behalf of or making decisions for the adult. In furtherance of this duty, the guardian shall:

(1) take reasonable care of the personal effects, pets and service or support animals of the adult and

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bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property;

(2) expend funds and other property of the adult received by the guardian for the adult's current needs for support, care, education, health and welfare;

(3) conserve any funds and other property of the adult not expended under Paragraph (2) of this subsection for the adult's future needs, but if a conservator has been appointed for the adult, pay the funds and other property at least quarterly to the conservator to be conserved for the adult's future needs; and

(4) monitor the quality of services, including long-term care services, provided to the adult.

D. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's previous or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.

E. If a guardian for an adult cannot make a

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decision under Subsection D of this section because the guardian does not know and cannot reasonably determine the decision the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

(1) information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

(2) other information the guardian believes the adult would have considered if the adult were able to act; and

(3) other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.

F. A guardian for an adult immediately shall notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed.

SECTION 314. [NEW MATERIAL] POWERS OF GUARDIAN FOR ADULT.--

A. Except as limited by court order, a guardian for an adult may:

(1) apply for and receive funds and benefits

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for the support of the adult, unless a conservator is appointed for the adult and the application or receipt is within the powers of the conservator;

(2) unless inconsistent with a court order, establish the adult's place of dwelling;

(3) consent to health or other care, treatment or service for the adult;

(4) if a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit;

(5) to the extent reasonable, delegate to the adult responsibility for a decision affecting the adult's well-being; and

(6) receive personally identifiable health care information regarding the adult.

B. The court by specific order may authorize a guardian for an adult to consent to the adoption of the adult.

C. The court by specific order may authorize a guardian for an adult to:

(1) consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed under Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

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(2) petition for divorce, dissolution or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage; or

(3) support or oppose a petition for divorce, dissolution or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage.

D. In determining whether to authorize a power under Subsection B of this section, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values and prior directions and whether the underlying act would be in the adult's best interest.

E. In exercising a guardian's power under Paragraph (2) of Subsection A of this section to establish the adult's place of dwelling, the guardian shall:

(1) select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in Subsections D and E of Section 313 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with Subsection E of that

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section a residential setting that is consistent with the adult's best interest;

(2) in selecting among residential settings, give priority to a residential setting in a location that will allow the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in Subsections D and E of Section 313 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(3) not later than thirty days after a change in the dwelling of the adult:

(a) give notice of the change to the court, the adult and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order; and

(b) include in the notice the address and nature of the new dwelling and state whether the adult received advance notice of the change and whether the adult objected to the change;

(4) establish or move the permanent place of dwelling of the adult to a nursing home, mental health treatment facility or other facility that places restrictions on the adult's ability to leave or have visitors only if:

(a) the establishment or move is in the

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guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(b) the court authorizes the establishment or move; or

(c) the guardian gives notice of the establishment or move at least fourteen days before the establishment or move to the adult and all persons entitled to notice under Paragraph (2) of Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and no objection is filed;

(5) establish or move the place of dwelling of the adult outside New Mexico only if consistent with the guardian's plan and authorized by the court by specific order; and

(6) take action that would result in the sale of or surrender of the lease to the primary dwelling of the adult only if:

(a) the action is specifically in the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(b) the court authorizes the action by specific order; or

(c) notice of the action was given at least fourteen days before the action to the adult and all

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persons entitled to the notice under Paragraph (2) of Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and no objection has been filed.

F. In exercising a guardian's power under Paragraph (3) of Subsection A of this section to make health care decisions, the guardian shall:

(1) involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options;

(2) defer to a decision by an agent under a power of attorney for health care signed by the adult and cooperate to the extent feasible with the agent making the decision; and

(3) take into account:

(a) the risks and benefits of treatment options; and

(b) the current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

SECTION 315. [NEW MATERIAL] SPECIAL LIMITATIONS ON GUARDIAN'S POWER.--

A. Unless authorized by the court by specific order, a guardian for an adult does not have the power to

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revoke or amend a power of attorney for health care or power of attorney for finances signed by the adult. If a power of attorney for health care is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

B. A guardian for an adult shall not initiate the commitment of the adult to a mental health treatment facility except in accordance with the state's procedure for involuntary civil commitment.

C. A guardian for an adult shall not restrict the ability of the adult to communicate, visit or interact with others, including receiving visitors and making or receiving telephone calls, personal mail or electronic communications, including through social media or participating in social activities, unless:

(1) authorized by the court by specific order;

(2) a protective order or a protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or

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(3) the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological or financial harm to the adult and the restriction is:

(a) for a period of not more than seven business days if the person has a family or preexisting social relationship with the adult; or

(b) for a period of not more than sixty days if the person does not have a family or preexisting social relationship with the adult.

SECTION 316. [NEW MATERIAL] GUARDIAN'S PLAN.--

A. A guardian for an adult, not later than sixty days after appointment and when there is a significant change in circumstances, or the guardian seeks to deviate significantly from the guardian's plan, shall file with the court a plan for the care of the adult. The plan shall be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the guardian. The guardian shall include in the plan:

(1) the living arrangement, services and supports the guardian expects to arrange, facilitate or continue for the adult;

(2) social and educational activities the

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guardian expects to facilitate on behalf of the adult;

(3) any person with whom the adult has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;

(4) the anticipated nature and frequency of the guardian's visits and communication with the adult;

(5) goals for the adult, including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals;

(6) whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the adult's plan; and

(7) a statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

B. A guardian shall give notice of the filing of the guardian's plan under Subsection A of this section, together with a copy of the plan, to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice shall include a statement of the right to object to the plan and be given not later than fourteen days after the filing.

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C. An adult subject to guardianship and any person entitled under Subsection B of this section to receive notice and a copy of the guardian's plan may object to the plan.

D. A guardian shall petition the court for approval of a plan filed under Subsection A of this section. The court shall review the plan and determine whether to approve it or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under Subsection C of this section and whether the plan is consistent with the guardian's duties and powers under Sections 313 and 314 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall not approve the plan without:

(1) notice to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court deems entitled to notice; and

(2) a hearing.

E. After the guardian's plan filed under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the

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court determines.

SECTION 317. [NEW MATERIAL] GUARDIAN'S REPORT--MONITORING OF GUARDIANSHIP.--

A. A guardian for an adult, not later than sixty days after appointment and at least annually thereafter, shall file with the court a report in a record regarding the condition of the adult and accounting for funds and other property in the guardian's possession or subject to the guardian's control.

B. A report under Subsection A of this section shall state or contain:

(1) the mental, physical and social condition of the adult;

(2) the living arrangements of the adult during the reporting period;

(3) a summary of the supported decision making, technological assistance, medical services, educational and vocational services and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

(4) a summary of the guardian's visits with the adult, including the dates of the visits;

(5) action taken on behalf of the adult;

(6) the extent to which the adult has participated in decision making;

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(7) if the adult is living in a mental health treatment facility or living in a facility that provides the adult with health care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment or habilitation consistent with the adult's preferences, values, prior directions and best interest;

(8) anything of more than de minimis value that the guardian, any individual who resides with the guardian or the spouse, parent, child or sibling of the guardian has received from an individual providing goods or services to the adult;

(9) if the guardian delegated a power to an agent, the power delegated and the reason for the delegation;

(10) any business relation the guardian has with a person the guardian has paid or that has benefited from the property of the adult;

(11) a copy of the guardian's most recently approved plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

(12) plans for future care and support of the adult;

(13) a recommendation as to the need for continued guardianship and any recommended change in the scope

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of the guardianship; and

(14) whether any co-guardian or successor guardian appointed to serve when a designated event occurs is alive and able to serve.

C. The court may appoint a visitor to review a report submitted under this section or a guardian's plan submitted under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, interview the guardian or adult subject to guardianship or investigate any other matter involving the guardianship.

D. Notice of the filing under this section of a guardian's report, together with a copy of the report, shall be given to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice and report shall be given not later than fourteen days after the filing.

E. The court may establish procedures for monitoring a report submitted under this section and may review each report at any time to determine whether:

(1) the report provides sufficient information to establish the guardian has complied with the guardian's duties;

(2) the guardianship should continue; and

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(3) the guardian's requested fees, if any, should be approved.

F. If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

(1) shall notify the adult, the guardian and any other person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order;

(2) may require additional information from the guardian;

(3) may appoint a visitor to interview the adult or guardian or investigate any matter involving the guardianship; and

(4) consistent with Sections 318 and 319 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, may hold a hearing to consider removal of the guardian, termination of the guardianship or a change in the powers granted to the guardian or terms of the guardianship.

G. If the court has reason to believe fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees and give notice of the hearing to the adult subject to guardianship, a person entitled to notice under

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Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court deems entitled to notice.

H. A guardian for an adult may petition the court for approval of a report filed under this section and shall petition the court for approval of an annual report, a report filed upon resignation, removal or termination or a report filed upon the court's direction. The court shall not approve the report without:

(1) notice to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court deems entitled to notice; and

(2) a hearing.

SECTION 318. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR ADULT--APPOINTMENT OF SUCCESSOR.--

A. The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

B. The court shall hold a hearing to determine whether to remove a guardian for an adult and appoint a successor guardian on:

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(1) petition of the adult, guardian or person interested in the welfare of the adult, that contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor guardian may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

(2) communication from the adult, guardian or person interested in the welfare of the adult that supports a reasonable belief that removal of the guardian and appointment of a successor guardian may be appropriate; or

(3) determination by the court that a hearing would be in the best interest of the adult.

C. Notice of a petition under Paragraph (1) of Subsection B of this section shall be given to the adult subject to guardianship, the guardian and any other person the court determines.

D. An adult subject to guardianship who seeks to remove the guardian and have a successor guardian appointed has the right to choose an attorney to represent the adult in this matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney for the adult as

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provided in Section 119 of that act.

E. In selecting a successor guardian for an adult, the court shall follow the priorities under Section 309 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

F. Not later than thirty days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship and any person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order.

SECTION 319. [NEW MATERIAL] TERMINATION OR MODIFICATION OF GUARDIANSHIP FOR ADULT.--

A. An adult subject to guardianship, the guardian for the adult or a person interested in the welfare of the adult may petition for:

(1) termination of the guardianship on the ground that a basis for appointment under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act does not exist or termination would be in the best interest of the adult or for other good cause; or

(2) modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

B. The court shall hold a hearing to determine

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whether termination or modification of a guardianship for an adult is appropriate on:

(1) petition under Subsection A of this section that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

(2) communication from the adult, guardian or person interested in the welfare of the adult that supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because the functional needs of the adult or supports or services available to the adult have changed;

(3) a report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternative for meeting the adult's needs is available; or

(4) a determination by the court that a hearing would be in the best interest of the adult.

C. Notice of a petition under Paragraph (1) of Subsection B of this section shall be given to the adult

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subject to guardianship, the guardian and any other person the court determines.

D. On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that a basis for appointment of a guardian under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act exists.

E. The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports or other circumstances.

F. Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult that apply to a petition for guardianship.

G. An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has the right to choose an attorney to represent the adult in the matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney for the adult as provided in

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ARTICLE 4

CONSERVATORSHIP

SECTION 401. [NEW MATERIAL] BASIS FOR APPOINTMENT OF CONSERVATOR.--

A. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor if the court finds by a preponderance of evidence that appointment of a conservator is in the minor's best interest and:

(1) if the minor has a parent, the court gives weight to any recommendation of the parent whether an appointment is in the minor's best interest; and

(2) either:

(a) the minor owns funds or other property requiring management or protection that otherwise cannot be provided;

(b) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(c) appointment is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health or welfare of the minor.

B. On petition and after notice and hearing, the

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court may appoint a conservator for the property or financial affairs of an adult if the court finds by clear and convincing evidence that:

(1) the adult is unable to manage property or financial affairs because:

(a) of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance or supported decision making; or

(b) the adult is missing, detained or unable to return to the United States;

(2) appointment is necessary to:

(a) avoid harm to the adult or significant dissipation of the property of the adult; or

(b) obtain or provide funds or other property needed for the support, care, education, health or welfare of the adult or of an individual entitled to the adult's support; and

(3) the respondent's identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative.

C. The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development

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of the respondent's maximum self-determination and independence. The court shall not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship or other less restrictive alternative would meet the needs of the respondent.

SECTION 402. [NEW MATERIAL] PETITION FOR APPOINTMENT OF CONSERVATOR.--

A. The following may petition for the appointment of a conservator:

(1) the individual for whom the order is sought;

(2) a person interested in the estate, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; or

(3) the guardian for the individual.

B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

(1) the respondent's name, age, principal residence, current street address, if different, and, if

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different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

(2) the name and address of the respondent's:

(a) spouse or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period before the filing of the petition;

(b) adult children or, if none, each parent and adult sibling of the respondent or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(c) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship during the two years immediately before the filing of the petition;

(3) the name and current address of each of the following, if applicable:

(a) a person responsible for the care or custody of the respondent;

(b) any attorney currently representing the respondent;

(c) the representative payee appointed by the federal social security administration for the respondent;

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(d) a guardian or conservator acting for the respondent in New Mexico or another jurisdiction;

(e) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(f) the fiduciary appointed for the respondent by the federal department of veterans affairs;

(g) an agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(h) an agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(i) a person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition;

(j) any proposed conservator, including a person nominated by the respondent, if the respondent is twelve years of age or older; and

(k) if the individual for whom a conservator is sought is a minor: 1) an adult not otherwise listed with whom the minor resides; and 2) each person not otherwise listed that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the

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petition;

(4) a general statement of the respondent's property with an estimate of its value, including any insurance or pension and the source and amount of other anticipated income or receipts;

(5) the reason conservatorship is necessary, including a brief description of:

(a) the nature and extent of the respondent's alleged need;

(b) if the petition alleges the respondent is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;

(c) any protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's alleged need that has been considered or implemented;

(d) if no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason it has not been considered or implemented; and

(e) the reason a protective arrangement or other less restrictive alternative is insufficient to meet the respondent's need;

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(6) whether the petitioner seeks a limited conservatorship or a full conservatorship;

(7) if the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

(8) if the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed;

(9) if the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any requested limitation on the authority of the conservator;

(10) whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; and

(11) the name and address of an attorney representing the petitioner, if any.

SECTION 403. [NEW MATERIAL] NOTICE AND HEARING.--

A. On filing of a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a conservator, the court shall set a date, time and place for a hearing on the petition.

B. A copy of a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective

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Arrangements Act and notice of a hearing on the petition shall be served personally on the respondent. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent shall be made as provided in Section 45-1-401 NMSA 1978. The notice shall inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice also shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant a petition for appointment of a conservator if notice substantially complying with this subsection is not served on the respondent.

C. In a proceeding on a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, notice of the hearing shall be given to the persons required to be listed in the petition under Paragraphs (1) through (3) of Subsection B of Section 402 of that act and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

D. After the appointment of a conservator, notice of a hearing on a petition for an order under this article, together with a copy of the petition, shall be given to:

(1) the individual subject to conservatorship, if the individual is twelve years of age or older and not

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missing, detained or unable to return to the United States;

(2) the conservator; and

(3) any other person the court determines.

SECTION 404. [NEW MATERIAL] ORDER TO PRESERVE OR APPLY PROPERTY WHILE PROCEEDING PENDING.--While a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent. The court may appoint a special master to assist in implementing the order.

SECTION 405. [NEW MATERIAL] APPOINTMENT AND ROLE OF VISITOR.--

A. If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.

B. If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor unless the adult is represented by an attorney appointed by the court. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor shall be an individual with training or experience in

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the type of abilities, limitations and needs alleged in the petition.

C. A visitor appointed under Subsection B of this section for an adult shall interview the respondent in person and, in a manner the respondent is best able to understand:

(1) explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing on the petition and the general powers and duties of a conservator;

(2) determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties and the scope and duration of the proposed conservatorship;

(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, may be paid from the respondent's assets.

D. The visitor appointed for an adult under Subsection B of this section shall:

(1) interview the petitioner and proposed conservator, if any;

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(2) review financial records of the respondent, if relevant to the visitor's recommendation under Paragraph (1) of Subsection E of this section;

(3) investigate whether the respondent's needs could be met by a protective arrangement instead of conservatorship or other less restrictive alternative and, if so, identify the arrangement or other less restrictive alternative; and

(4) investigate the allegations in the petition and any other matter relating to the petition the court directs.

E. A visitor appointed for an adult under Subsection B of this section promptly shall file a report in a record with the court that includes:

(1) a recommendation:

(a) regarding the appropriateness of conservatorship or whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available;

(b) if a conservatorship is recommended, whether it should be full or limited; and

(c) if a limited conservatorship is recommended, the powers to be granted to the conservator and the property that should be placed under the conservator's control;

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(2) a statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

(3) a recommendation whether a professional evaluation under Section 407 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is necessary;

(4) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(5) a statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(6) any other matter the court directs.

SECTION 406. [NEW MATERIAL] APPOINTMENT AND ROLE OF ATTORNEY.--

A. Unless the respondent in a proceeding for appointment of a conservator is represented by an attorney, the court shall appoint an attorney to represent the respondent regardless of the respondent's ability to pay.

B. An attorney representing the respondent in a proceeding for appointment of a conservator shall:

(1) make reasonable efforts to ascertain the respondent's wishes;

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(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and

(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration and scope, consistent with the respondent's interests.

SECTION 407. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

A. At or before a hearing on a petition for conservatorship for an adult, the court shall order a professional evaluation of the respondent:

(1) if the respondent requests the evaluation; or

(2) in other cases, unless the court finds it has sufficient information to determine the respondent's needs and abilities without the evaluation.

B. If the court orders an evaluation under Subsection A of this section, the respondent shall be examined by a licensed physician, psychologist, social worker or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report shall contain:

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(1) a description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;

(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

(3) a prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs; and

(4) the date of the examination on which the report is based.

C. A respondent may decline to participate in an evaluation ordered under Subsection A of this section.

SECTION 408. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT HEARING.--

A. Except as otherwise provided in Subsection B of this section, a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time

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audio-visual technology.

B. A hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

(1) the respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;

(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services or technological assistance; or

(3) the respondent is a minor who has received proper notice and attendance would be harmful to the minor.

C. The respondent may be assisted in a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

D. The respondent has a right to choose an attorney to represent the respondent at a hearing under Section 403 of

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the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

E. At a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the respondent may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including any court-appointed evaluator and the visitor; and

(3) otherwise participate in the hearing.

F. Unless excused by the court for good cause, a proposed conservator shall attend a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

G. A hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be closed on request of the respondent and a showing of good cause.

H. Any person may request to participate in a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

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SECTION 409. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

A. The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

(1) the respondent, the individual subject to conservatorship or the parent of a minor subject to conservatorship requests the record be sealed; and

(2) either:

(a) the petition for conservatorship is dismissed; or

(b) the conservatorship is terminated.

B. An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual and a person entitled to notice under Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order may access court records of the proceeding and resulting conservatorship, including the conservator's plan under Section 419 of that act and the conservator's report under Section 423 of that act. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest

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of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

C. A report under Section 405 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act of a visitor or professional evaluation under Section 407 of that act is confidential and shall be sealed on filing, but is available to:

(1) the court;

(2) the individual who is the subject of the report or evaluation, without limitation as to use;

(3) the petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

(4) unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal; and

(5) any other person if it is in the public interest or for a purpose the court orders for good cause.

SECTION 410. [NEW MATERIAL] WHO MAY BE CONSERVATOR--ORDER OF PRIORITY.--

A. Except as otherwise provided in Subsection C of this section, the court in appointing a conservator shall consider persons qualified to be a conservator in the following order of priority:

(1) a conservator, other than a temporary or

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emergency conservator, currently acting for the respondent in another jurisdiction;

(2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances;

(3) an agent appointed by the respondent to manage the respondent's property under a power of attorney for finances;

(4) a spouse of the respondent; and

(5) a family member or other individual who has shown special care and concern for the respondent.

B. If two or more persons have equal priority under Subsection A of this section, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences and the likelihood the person will be able to perform the duties of a conservator successfully.

C. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under Subsection A of this section and appoint a person having a lower priority or no priority.

D. A person that provides paid services to the

respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, shall not be appointed as conservator unless:

(1) the individual is related to the respondent by blood, marriage or adoption; or

(2) the court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

E. An owner, operator or employee of a long-term care facility at which the respondent is receiving care shall not be appointed as conservator unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

SECTION 411. [NEW MATERIAL] ORDER OF APPOINTMENT.--

A. A court order appointing a conservator for a minor shall include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

B. A court order appointing a conservator for an adult shall:

(1) include a specific finding that clear and

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convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative, including use of appropriate supportive services, technological assistance or supported decision making; and

(2) include a specific finding that clear and convincing evidence established the respondent was given proper notice of the hearing on the petition.

C. A court order establishing a full conservatorship for an adult shall state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

D. A court order establishing a limited conservatorship shall state the specific property placed under the control of the conservator and the powers granted to the conservator.

E. The court, as part of an order establishing a conservatorship, shall identify any person that subsequently is entitled to:

(1) notice of the rights of the individual subject to conservatorship under Subsection B of Section 412 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(2) notice of a sale of or surrender of a

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lease to the primary dwelling of the individual;

(3) notice that the conservator has delegated a power that requires court approval under Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or substantially all powers of the conservator;

(4) notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

(5) a copy of the conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the conservator's report under Section 423 of that act;

(6) access to court records relating to the conservatorship;

(7) notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

(8) notice of the death or significant change in the condition of the individual;

(9) notice that the court has limited or modified the powers of the conservator; and

(10) notice of the removal of the conservator.

F. If an individual subject to conservatorship is an adult, the spouse and adult children of the adult subject to

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conservatorship are entitled under Subsection E of this section to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest of the adult.

G. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under Subsection E of this section to notice unless the court determines notice would not be in the best interest of the minor.

SECTION 412. [NEW MATERIAL] NOTICE OF ORDER OF APPOINTMENT--RIGHTS.--

A. A conservator appointed under Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall give to the individual subject to conservatorship and to all other persons given notice under Section 403 of that act a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice shall be given not later than fourteen days after the appointment.

B. Not later than thirty days after appointment of a conservator under Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall give to the individual subject to conservatorship, the conservator and any other person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship,

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Conservatorship and Other Protective Arrangements Act a statement of the rights of the individual subject to conservatorship and procedures to seek relief if the individual is denied those rights. The statement shall be in plain language, in at least sixteen-point font and, to the extent feasible, in a language in which the individual subject to conservatorship is proficient. The statement shall notify the individual subject to conservatorship of the right to:

(1) seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;

(2) participate in decision making to the extent reasonably feasible;

(3) receive a copy of the conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the conservator's inventory under Section 420 of that act and the conservator's report under Section 423 of that act; and

(4) object to the conservator's inventory, plan or report.

C. If a conservator is appointed for the reasons stated in Subparagraph (b) of Paragraph (1) of Subsection B of Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the individual subject to conservatorship is missing, notice under this section to the

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individual is not required.

SECTION 413. [NEW MATERIAL] EMERGENCY CONSERVATOR.--

A. On its own or on petition by a person interested in an individual's welfare after a petition has been filed under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court may appoint an emergency conservator for the individual if the court finds:

(1) appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests;

(2) no other person appears to have authority and willingness to act in the circumstances; and

(3) there is reason to believe that a basis for appointment of a conservator under Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act exists.

B. The duration of authority of an emergency conservator shall not exceed sixty days, and the emergency conservator may exercise only the powers specified in the order of appointment. The emergency conservator's authority may be extended once for not more than sixty days if the court finds that the conditions for appointment of an emergency conservator under Subsection A of this section continue.

C. Immediately on filing of a petition for an emergency conservator, the court shall appoint an attorney to

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represent the respondent in the proceeding. Except as otherwise provided in Subsection D of this section, reasonable notice of the date, time and place of a hearing on the petition shall be given to the respondent, the respondent's attorney and any other person the court determines.

D. The court may appoint an emergency conservator without notice to the respondent and any attorney for the respondent only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency conservator without giving notice under Subsection C of this section, the court shall give notice of the appointment not later than forty-eight hours after the appointment to:

(1) the respondent;

(2) the respondent's attorney; and

(3) any other person the court determines.

E. Not later than five days after the appointment, the court shall hold a hearing on the appropriateness of the appointment.

F. Appointment of an emergency conservator under this section is not a determination that a basis exists for appointment of a conservator under Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements

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Act.

G. The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires.

SECTION 414. [NEW MATERIAL] POWERS OF CONSERVATOR REQUIRING COURT APPROVAL.--

A. Except as otherwise ordered by the court, a conservator shall give notice to persons entitled to notice under Subsection D of Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

(1) make a gift, except a gift of de minimis value;

(2) sell, encumber an interest in or surrender a lease to the primary dwelling of the individual subject to conservatorship;

(3) convey, release or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(4) exercise or release a power of appointment;

(5) create a revocable or irrevocable trust of

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property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;

(6) exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(7) exercise a right to an elective share in the estate of a deceased spouse of the individual subject to conservatorship or renounce or disclaim a property interest;

(8) grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under Subsection E of Section 428 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; and

(9) make, modify, amend or revoke the will of the individual subject to conservatorship in compliance with the Uniform Probate Code.

B. In approving a conservator's exercise of a power listed in Subsection A of this section, the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained.

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C. To determine under Subsection B of this section the decision the individual subject to conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the conservator. The court also shall consider:

(1) the financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support and the interests of creditors of the individual;

(2) possible reduction of income, estate, inheritance or other tax liabilities;

(3) eligibility for governmental assistance;

(4) the previous pattern of giving or level of support provided by the individual;

(5) any existing estate plan or lack of estate plan of the individual;

(6) the life expectancy of the individual and the probability the conservatorship will terminate before the individual's death; and

(7) any other relevant factor.

D. A conservator shall not revoke or amend a power of attorney for finances signed by the individual subject to conservatorship. If a power of attorney for finances is in

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effect, a decision of the agent takes precedence over that of the conservator, unless the court orders otherwise.

SECTION 415. [NEW MATERIAL] PETITION FOR ORDER AFTER APPOINTMENT.--An individual subject to conservatorship or a person interested in the welfare of the individual may petition for an order:

A. requiring the conservator to furnish a bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;

B. requiring an accounting for the administration of the conservatorship estate;

C. directing distribution;

D. removing the conservator and appointing a temporary or successor conservator;

E. modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;

F. rejecting or modifying the conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the conservator's inventory under Section 420 of that act or the conservator's report under Section 423 of that act; or

G. granting other appropriate relief.

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SECTION 416. [NEW MATERIAL] BOND--ALTERNATIVE ASSET-PROTECTION ARRANGEMENT.--

A. Except as otherwise provided in Subsection C of this section, the court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. Except as otherwise provided in Subsection C of this section, the court shall not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service.

B. Unless the court directs otherwise, the bond required under this section shall be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under an arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

C. A financial institution that possesses and is

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exercising general trust powers in New Mexico is not required to give a bond under this section. As used in this subsection, "financial institution" means a state- or federally chartered, federally insured depository bank or trust company.

SECTION 417. [NEW MATERIAL] TERMS AND REQUIREMENTS OF BOND.--

A. The following rules apply to the bond required under Section 416 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act:

(1) except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable;

(2) by executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the court that issued letters of office to the conservator in a proceeding relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding shall be given to the surety at the address shown in the records of the court in which the bond is filed and any other address of the surety then known to the person required to provide the notice;

(3) on petition of a successor conservator or person affected by a breach of the obligation of the bond, a proceeding may be brought against the surety for breach of the obligation of the bond; and

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(4) a proceeding against the bond may be brought until liability under the bond is exhausted.

B. A proceeding shall not be brought under this section against a surety of a bond on a matter as to which a proceeding against the conservator is barred.

C. If a bond under Section 416 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is not renewed by the conservator, the surety or sureties immediately shall give notice to the court and the individual subject to conservatorship.

SECTION 418. [NEW MATERIAL] DUTIES OF CONSERVATOR.--

A. A conservator is a fiduciary and has duties of prudence and loyalty to the individual subject to conservatorship.

B. A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf and develop or regain the capacity to manage the individual's personal affairs.

C. In making a decision for an individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or

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otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the conservator.

D. If a conservator cannot make a decision under Subsection C of this section because the conservator does not know and cannot reasonably determine the decision the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual, the conservator shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

(1) information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

(2) other information the conservator believes the individual would have considered if the individual were able to act; and

(3) other factors a reasonable person in the

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circumstances of the individual would consider, including consequences for others.

E. Except when inconsistent with the conservator's duties under Subsections A through D of this section, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

(1) the circumstances of the individual subject to conservatorship and the conservatorship estate;

(2) general economic conditions;

(3) the possible effect of inflation or deflation;

(4) the expected tax consequences of an investment decision or strategy;

(5) the role of each investment or course of action in relation to the conservatorship estate as a whole;

(6) the expected total return from income and appreciation of capital;

(7) the need for liquidity, regularity of income and preservation or appreciation of capital; and

(8) the special relationship or value, if any, of specific property to the individual subject to conservatorship.

F. The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator

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decides or acts and not by hindsight.

G. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

H. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

I. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative or appointive instrument of the individual.

J. A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds:

(1) the property lacks sufficient equity; or

(2) insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual.

K. If a power of attorney for finances is in

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effect, a conservator shall cooperate with the agent to the extent feasible.

L. A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or court order.

M. A conservator for an adult shall notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed. The notice shall be given immediately upon learning of the change.

SECTION 419. [NEW MATERIAL] CONSERVATOR'S PLAN.--

A. A conservator, not later than sixty days after appointment and when there is a significant change in circumstances or the conservator seeks to deviate significantly from the conservator's plan, shall file with the court a plan for protecting, managing, expending and distributing the assets of the conservatorship estate. The plan shall be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

(1) a budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement

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or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual;

(2) how the conservator will involve the individual in decisions about management of the conservatorship estate;

(3) any step the conservator plans to take to develop or restore the ability of the individual to manage the conservatorship estate; and

(4) an estimate of the duration of the conservatorship.

B. A conservator shall give notice of the filing of the conservator's plan under Subsection A of this section, together with a copy of the plan, to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice shall include a statement of the right to object to the plan and be given not later than fourteen days after the filing.

C. An individual subject to conservatorship and any person entitled under Subsection B of this section to receive notice and a copy of the conservator's plan may object to the plan.

D. A conservator shall petition the court for

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approval of a plan filed under Subsection A of this section. The court shall review the plan and determine whether to approve it or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under Subsection C of this section and whether the plan is consistent with the conservator's duties and powers. The court shall not approve the plan without:

(1) notice to the adult subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court deems entitled to notice; and

(2) a hearing.

E. After a conservator's plan under this section is approved by the court, the conservator shall provide a copy of the plan to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines.

SECTION 420. [NEW MATERIAL] INVENTORY--RECORDS.--

A. Not later than sixty days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be

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complete and accurate as far as information permits.

B. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice shall be given not later than fourteen days after the filing.

C. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian for the individual or any other person the conservator or the court determines.

SECTION 421. [NEW MATERIAL] ADMINISTRATIVE POWERS OF CONSERVATOR NOT REQUIRING COURT APPROVAL.--

A. Except as otherwise provided in Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional power granted to a trustee by law of New Mexico other than that act.

B. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the

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purpose of the conservatorship, without specific court authorization or confirmation, may with respect to the conservatorship estate:

(1) collect, hold and retain property, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

(2) receive additions to the conservatorship estate;

(3) continue or participate in the operation of a business or other enterprise;

(4) acquire an undivided interest in property in which the conservator, in a fiduciary capacity, holds an undivided interest;

(5) invest assets;

(6) deposit funds or other property in a financial institution, including one operated by the conservator;

(7) acquire or dispose of property, including real property in another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of or abandon property;

(8) make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any

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improvement or raze an existing or erect a new party wall or building;

(9) subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration and dedicate an easement to public use without consideration;

(10) enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

(12) grant an option involving disposition of property or accept or exercise an option for the acquisition of property;

(13) vote a security, in person or by general or limited proxy;

(14) pay a call, assessment or other sum chargeable or accruing against or on account of a security;

(15) sell or exercise a stock subscription or conversion right;

(16) consent, directly or through a committee or agent, to the reorganization, consolidation, merger,

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dissolution or liquidation of a corporation or other business enterprise;

(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(18) insure:

(a) the conservatorship estate, in whole or in part, against damage or loss in accordance with Subsection J of Section 418 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; and

(b) the conservator against liability with respect to a third person;

(19) borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;

(20) advance funds for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate;

(21) pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration or otherwise or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is

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uncollectible;

(22) pay a tax, assessment, compensation of the conservator or any guardian and other expense incurred in the collection, care, administration and protection of the conservatorship estate;

(23) pay a sum distributable to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:

(a) to the guardian for the distributee;

(b) to the custodian of the distributee under the Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act; or

(c) if there is no guardian, custodian or custodial trustee, to a relative or other person having physical custody of the distributee;

(24) bring or defend an action, claim or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties;

(25) structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values and prior directions, if the

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conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

(26) execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the conservator.

SECTION 422. [NEW MATERIAL] DISTRIBUTION FROM CONSERVATORSHIP ESTATE.--Except as otherwise provided in Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or qualified or limited in the court's order of appointment and stated in the letters of office and unless contrary to a conservator's plan under Section 419 of that act, the conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules:

A. the conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health or welfare for the individual subject to conservatorship or individual who is dependent on the individual subject to conservatorship, made by a guardian for

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the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a parent of the minor;

B. the conservator acting in compliance with the conservator's duties under Section 418 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is not liable for an expenditure or distribution made based on a recommendation under Subsection A of this section unless the conservator knows the expenditure or distribution is not in the best interest of the individual subject to conservatorship;

C. in making an expenditure or distribution under this section, the conservator shall consider:

(1) the size of the conservatorship estate, the estimated duration of the conservatorship and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

(2) the accustomed standard of living of the individual subject to conservatorship and individual who is dependent on the individual subject to conservatorship;

(3) other funds or source used for the support of the individual subject to conservatorship; and

(4) the preferences, values and prior directions of the individual subject to conservatorship; and

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D. funds expended or distributed under this section may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be provided to the individual subject to conservatorship or individual who is dependent on the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

SECTION 423. [NEW MATERIAL] CONSERVATOR'S REPORT AND ACCOUNTING--MONITORING.--

A. A conservator shall file with the court a report in a record regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time the court directs.

B. A report under Subsection A of this section shall state or contain:

(1) an accounting that lists property included in the conservatorship estate and the receipts, disbursements, liabilities and distributions during the period for which the report is made;

(2) a list of the services provided to the individual subject to conservatorship;

(3) a copy of the conservator's most recently

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approved plan and a statement whether the conservator has deviated from the plan and, if so, how the conservator has deviated and why;

(4) a recommendation as to the need for continued conservatorship and any recommended change in the scope of the conservatorship;

(5) to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship with all but the last four digits of the account numbers and social security number redacted;

(6) anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

(7) any business relation the conservator has with a person the conservator has paid or that has benefited from the property of the individual subject to conservatorship; and

(8) whether any co-conservator or successor conservator appointed to serve when a designated event occurs is alive and able to serve.

C. The court may appoint a visitor to review a

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report under this section or conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, interview the individual subject to conservatorship or conservator or investigate any other matter involving the conservatorship. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

D. Notice of the filing under this section of a conservator's report, together with a copy of the report, shall be provided to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and other persons the court determines. The notice and report shall be given not later than fourteen days after filing.

E. The court may establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

(1) the reports provide sufficient information to establish the conservator has complied with the conservator's duties;

(2) the conservatorship should continue; and

(3) the conservator's requested fees, if any, should be approved.

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F. If the court determines there is reason to believe a conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

(1) shall notify the individual subject to conservatorship, the conservator and any other person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order;

(2) may require additional information from the conservator;

(3) may appoint a visitor to interview the individual subject to conservatorship or conservator or investigate any matter involving the conservatorship; and

(4) consistent with Sections 430 and 431 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, may hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.

G. If the court has reason to believe fees requested by a conservator are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees and give notice of the hearing to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship,

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Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court deems entitled to notice.

H. A conservator may petition the court for approval of a report filed under this section and shall petition the court for approval of an annual report, a report filed upon resignation, removal or termination or a report filed upon the court's direction. The court after review shall not approve the report without:

(1) notice to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court deems entitled to notice; and

(2) a hearing.

I. An order, after notice and hearing, approving an interim report of a conservator filed under this section adjudicates liabilities concerning a matter adequately disclosed in the report, as to a person given notice of the report or accounting.

J. An order, after notice and hearing, approving a final report filed under this section discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.

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SECTION 424. [NEW MATERIAL] ATTEMPTED TRANSFER OF PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--

A. The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferrable or assignable by the individual and is not subject to levy, garnishment or similar process for claims against the individual unless allowed under Section 428 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

B. If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

C. A person other than the conservator that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of New Mexico other than the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

SECTION 425. [NEW MATERIAL] TRANSACTION INVOLVING CONFLICT OF INTEREST.--A transaction involving a conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary duties and personal interest is voidable unless the transaction is

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authorized by court order after notice to persons entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order. A transaction affected by a substantial conflict includes a sale, encumbrance or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, descendant, sibling, agent or attorney of the conservator or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

SECTION 426. [NEW MATERIAL] PROTECTION OF PERSON DEALING WITH CONSERVATOR.--

A. A person that assists or deals with a conservator in good faith and for value in any transaction, other than a transaction requiring a court order under Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, is protected as though the conservator properly exercised any power in question. Knowledge by a person that the person is dealing with a conservator alone does not require the person to inquire into the existence of authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority stated in letters of office, or otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for

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proper application of the property.

B. Protection under Subsection A of this section extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and does not substitute for protection for a person that assists or deals with a conservator provided by comparable provisions in law of New Mexico other than the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act relating to a commercial transaction or simplifying a transfer of securities by a fiduciary.

SECTION 427. [NEW MATERIAL] DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--

A. If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will, if feasible, or, if not feasible, a beneficiary named in the will, of the delivery.

B. On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate as provided in Section 431 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

SECTION 428. [NEW MATERIAL] PRESENTATION AND ALLOWANCE OF CLAIM.--

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A. A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship, on presentation and allowance in accordance with the priorities under Subsection D of this section. A claimant may present a claim by:

(1) sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the name and address of the claimant and the amount claimed; or

(2) filing the claim with the court, in a form acceptable to the court, and sending or delivering a copy of the claim to the conservator.

B. A claim under Subsection A of this section is presented on receipt by the conservator of the statement of the claim or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed in whole or in part by the conservator in a record sent or delivered to the claimant not later than sixty days after its presentation. Before payment, the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls until thirty days after disallowance of the claim the running of a statute of limitations that has not expired relating to

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the claim.

C. A claimant whose claim under Subsection A of this section has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

D. If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

(1) costs and expenses of administration;

(2) a claim of the federal or state government having priority under law other than the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;

(3) a claim incurred by the conservator for support, care, education, health or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;

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(4) a claim arising before the conservatorship; and

(5) all other claims.

E. Preference shall not be given in the payment of a claim under Subsection D of this section over another claim of the same class. A claim due and payable shall not be preferred over a claim not due unless:

(1) doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and

(2) the court authorizes the preference under Paragraph (8) of Subsection A of Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

F. If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

SECTION 429. [NEW MATERIAL] PERSONAL LIABILITY OF CONSERVATOR.--

A. Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of

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administration of the conservatorship estate unless the conservator fails to reveal the conservator's representative capacity before entering into the contract or in the contract.

B. A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

C. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate or a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

D. A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge or indemnification or another appropriate proceeding or action.

SECTION 430. [NEW MATERIAL] REMOVAL OF CONSERVATOR--APPOINTMENT OF SUCCESSOR.--

A. The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the

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conservator.

B. The court shall hold a hearing to determine whether to remove a conservator and appoint a successor on:

(1) petition of the individual subject to conservatorship, conservator or person interested in the welfare of the individual that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

(2) communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

(3) determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

C. Notice of a petition under Paragraph (1) of Subsection B of this section shall be given to the individual subject to conservatorship, the conservator and any other person the court determines.

D. An individual subject to conservatorship who seeks to remove the conservator and have a successor appointed

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has the right to choose an attorney to represent the individual in this matter. If the individual is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 406 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney as provided in Section 119 of that act.

E. In selecting a successor conservator, the court shall follow the priorities under Section 410 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

F. Not later than thirty days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and any person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order.

SECTION 431. [NEW MATERIAL] TERMINATION OR MODIFICATION OF CONSERVATORSHIP.--

A. A conservatorship for a minor terminates on the earliest of:

(1) a court order terminating the conservatorship;

(2) the minor becoming an adult or, if the minor consents or the court finds by clear and convincing

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evidence that substantial harm to the minor's interests is otherwise likely, attaining twenty-one years of age;

(3) emancipation of the minor; or

(4) death of the minor.

B. A conservatorship for an adult terminates on order of the court or when the adult dies.

C. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

(1) termination of the conservatorship on the ground that a basis for appointment under Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act does not exist or termination would be in the best interest of the individual or for other good cause; or

(2) modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

D. The court shall hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(1) petition under Subsection C of this section that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or

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substantially similar facts was filed within the preceding six months;

(2) a communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because the functional needs of the individual or supports or services available to the individual have changed;

(3) a report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual have changed or a protective arrangement instead of conservatorship or other less restrictive alternative is available; or

(4) a determination by the court that a hearing would be in the best interest of the individual.

E. Notice of a petition under Subsection C of this section shall be given to the individual subject to conservatorship, the conservator and any such other person the court determines.

F. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless it is proven that a basis for appointment of a conservator under Section 401 of the Uniform Guardianship,

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Conservatorship and Other Protective Arrangements Act exists.

G. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

H. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

I. An individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship has the right to choose an attorney to represent the individual in this matter. If the individual is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 406 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney as provided in Section 119 of that act.

J. On termination of a conservatorship other than by reason of the death of the individual subject to conservatorship, property of the conservatorship estate passes to the individual. The order of termination shall direct the conservator to file a final report and petition for discharge

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on approval by the court of the final report.

K. On termination of a conservatorship by reason of the death of the individual subject to conservatorship, the conservator promptly shall file a final report and petition for discharge on approval by the court of the final report. On approval of the final report, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual's estate or as otherwise ordered by the court. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be made.

L. The court shall issue a final order of discharge on the approval by the court of the final report and satisfaction by the conservator of any other condition the court imposed on the conservator's discharge.

SECTION 432. [NEW MATERIAL] TRANSFER FOR BENEFIT OF MINOR WITHOUT APPOINTMENT OF CONSERVATOR.--

A. Unless a person required to transfer funds or other property to a minor knows that a conservator for the minor has been appointed or a proceeding is pending for conservatorship, the person may transfer an amount or value not exceeding fifteen thousand dollars ($15,000) in a twelve-month period to:

(1) a person that has care or custody of the minor and with whom the minor resides;

(2) a guardian for the minor;

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(3) a custodian under the Uniform Transfers to Minors Act; or

(4) a financial institution as a deposit in an interest-bearing account or certificate solely in the name of the minor and shall give notice to the minor of the deposit.

B. A person that transfers funds or other property under this section is not responsible for its proper application.

C. A person that receives funds or other property for a minor under Paragraph (1) or (2) of Subsection A of this section may apply it only to the support, care, education, health or welfare of the minor and shall not derive a personal financial benefit from it, except for reimbursement for necessary expenses. Funds not applied for these purposes shall be preserved for the future support, care, education, health or welfare of the minor and the balance, if any, transferred to the minor when the minor becomes an adult or otherwise is emancipated.

ARTICLE 5

OTHER PROTECTIVE ARRANGEMENTS

SECTION 501. [NEW MATERIAL] AUTHORITY FOR PROTECTIVE ARRANGEMENT.--

A. Under this article, a court:

(1) on receiving a petition for a guardianship for an adult may order a protective arrangement instead of

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guardianship as a less restrictive alternative to guardianship; and

(2) on receiving a petition for a conservatorship for an individual may order a protective arrangement instead of conservatorship as a less restrictive alternative to conservatorship.

B. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this article for a protective arrangement instead of guardianship.

C. The following persons may petition under this article for a protective arrangement instead of conservatorship:

(1) the individual for whom the protective arrangement is sought;

(2) a person interested in the property, financial affairs or welfare of the individual, including a person that would be affected adversely by lack of effective management of property or financial affairs of the individual; and

(3) the guardian for the individual.

SECTION 502. [NEW MATERIAL] BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.--

A. After the hearing on a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other

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Protective Arrangements Act for a guardianship or under Subsection B of Section 501 of that act for a protective arrangement instead of guardianship, the court may issue an order under Subsection B of this section for a protective arrangement instead of guardianship if the court finds by clear and convincing evidence that:

(1) the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; and

(2) the respondent's identified needs cannot be met by a less restrictive alternative.

B. If the court makes the findings under Subsection A of this section, the court, instead of appointing a guardian, may:

(1) authorize or direct a transaction necessary to meet the respondent's need for health, safety or care, including:

(a) a particular medical treatment or refusal of a particular medical treatment;

(b) a move to a specified place of dwelling; or

(c) visitation or supervised visitation

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between the respondent and another person;

(2) restrict access to the respondent by a specified person whose access places the respondent at serious risk of physical, psychological or financial harm; and

(3) order other arrangements on a limited basis that are appropriate.

C. In deciding whether to issue an order under this section, the court shall consider the factors under Sections 313 and 314 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act that a guardian shall consider when making a decision on behalf of an adult subject to guardianship.

SECTION 503. [NEW MATERIAL] BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.--

A. After the hearing on a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for conservatorship for an adult or under Subsection C of Section 501 of that act for a protective arrangement instead of conservatorship for an adult, the court may issue an order under Subsection C of this section for a protective arrangement instead of conservatorship for the respondent if the court finds:

(1) by clear and convincing evidence that the respondent is unable to manage the respondent's property or financial affairs because:

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(a) of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; or

(b) the adult is missing, detained or unable to return to the United States;

(2) by a preponderance of the evidence that:

(a) the respondent has property likely to be wasted or dissipated unless management is provided; or

(b) an order under Subsection C of this section is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health or welfare of the respondent or an individual entitled to the respondent's support; and

(3) the respondent's identified needs cannot be met by a less restrictive alternative.

B. After the hearing on a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for conservatorship for a minor or under Subsection C of Section 501 of that act for a protective arrangement instead of conservatorship for a minor, the court may issue an order under Subsection C of this section for a protective arrangement instead of conservatorship for the respondent if the court finds by a preponderance of the evidence that the arrangement is in the minor's best interest

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and:

(1) if the minor has a parent, the court gives weight to any recommendation of the parent whether an arrangement is in the minor's best interest;

(2) either:

(a) the minor owns money or property requiring management or protection that otherwise cannot be provided;

(b) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(c) the arrangement is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health or welfare of the minor; and

(3) the order under Subsection C of this section is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

C. If the court makes the findings under Subsection A or B of this section, the court, instead of appointing a conservator, may:

(1) authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

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(a) an action to establish eligibility for benefits;

(b) payment, delivery, deposit or retention of funds or property;

(c) sale, mortgage, lease or other transfer of property;

(d) purchase of an annuity;

(e) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;

(f) addition to or establishment of a trust;

(g) ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or

(h) settlement of a claim; or

(2) restrict access to the respondent's property by a specified person whose access to the property places the respondent at serious risk of financial harm.

D. After the hearing on a petition under Paragraph (2) of Subsection A of Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or Subsection C of that section, whether or not the court makes the findings under Subsection A or B of this section, the court

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may issue an order to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear and convincing evidence:

(1) through fraud, coercion, duress or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and

(2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

E. Before issuing an order under Subsection C or D of this section, the court shall consider the factors under Section 418 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act that a conservator shall consider when making a decision on behalf of an individual subject to conservatorship.

F. Before issuing an order under Subsection C or D of this section for a respondent who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor and the preference of the minor, if the minor is twelve years of age or older.

SECTION 504. [NEW MATERIAL] PETITION FOR PROTECTIVE ARRANGEMENT.--A petition for a protective arrangement instead of guardianship or conservatorship shall state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the

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protective arrangement, the name and address of any attorney representing the petitioner and, to the extent known, the following:

A. the respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

B. the name and address of the respondent's:

(1) spouse or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period before the filing of the petition;

(2) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the petition;

C. the name and current address of each of the following, if applicable:

(1) a person responsible for the care or custody of the respondent;

(2) any attorney currently representing the

respondent;

(3) the representative payee appointed by the federal social security administration for the respondent;

(4) a guardian or conservator acting for the respondent in New Mexico or another jurisdiction;

(5) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) the fiduciary appointed for the respondent by the federal department of veterans affairs;

(7) an agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) an agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) a person nominated as guardian or conservator by the respondent if the respondent is twelve years of age or older;

(10) a person nominated as guardian by the respondent's parent or spouse in a will or other signed record;

(11) a person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition; and

(12) if the respondent is a minor:

(a) an adult not otherwise listed with

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whom the respondent resides; and

(b) each person not otherwise listed that had primary care or custody of the respondent for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;

D. the nature of the protective arrangement sought;

E. the reason the protective arrangement sought is necessary, including a brief description of:

(1) the nature and extent of the respondent's alleged need;

(2) any less restrictive alternative for meeting the respondent's alleged need that has been considered or implemented;

(3) if no less restrictive alternative has been considered or implemented, the reason less restrictive alternatives have not been considered or implemented; and

(4) the reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

F. the name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

G. whether the respondent needs an interpreter,

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translator or other form of support to communicate effectively with the court or understand court proceedings;

H. if a protective arrangement instead of guardianship is sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension and the source and amount of any other anticipated income or receipts; and

I. if a protective arrangement instead of conservatorship is sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension and the source and amount of other anticipated income or receipts.

SECTION 505. [NEW MATERIAL] NOTICE AND HEARING.--

A. On filing of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall set a date, time and place for a hearing on the petition.

B. A copy of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and notice of a hearing on the petition shall be served personally on the respondent. The notice shall inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice shall include a description of the nature,

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purpose and consequences of granting the petition. The court shall not grant the petition if notice substantially complying with this subsection is not served on the respondent.

C. In a proceeding on a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, notice of the hearing shall be given to the persons required to be listed in the petition under Subsections A through C of Section 504 of that act and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

D. After the court has ordered a protective arrangement under this article, notice of a hearing on a petition filed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, together with a copy of the petition, shall be given to the respondent and any other person the court determines.

SECTION 506. [NEW MATERIAL] APPOINTMENT AND ROLE OF VISITOR.--

A. On filing of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a protective arrangement instead of guardianship, the court shall appoint a visitor. The visitor shall be an individual with training or experience in the type of abilities, limitations and needs alleged in the petition.

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B. On filing of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a protective arrangement instead of conservatorship for a minor, the court may appoint a visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.

C. On filing of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a protective arrangement instead of conservatorship for an adult, the court shall appoint a visitor unless the respondent is represented by an attorney appointed by the court. The visitor shall be an individual with training or experience in the types of abilities, limitations and needs alleged in the petition.

D. A visitor appointed under Subsection A or C of this section shall interview the respondent in person and, in a manner the respondent is best able to understand:

(1) explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding and the respondent's rights at the hearing on the petition;

(2) determine the respondent's views with respect to the order sought;

(3) inform the respondent of the respondent's right to employ and consult with an attorney at the

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respondent's expense and the right to request a court-appointed attorney;

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, may be paid from the respondent's assets;

(5) if the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

(6) if a protective arrangement instead of guardianship is sought, obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition;

(7) if a protective arrangement instead of conservatorship is sought, review financial records of the respondent, if relevant to the visitor's recommendation under Paragraph (2) of Subsection E of this section; and

(8) investigate the allegations in the petition and any other matter relating to the petition the court directs.

E. A visitor under this section promptly shall file a report in a record with the court that includes:

(1) to the extent relevant to the order sought, a summary of self-care, independent-living tasks and financial-management tasks that the respondent:

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(a) can manage without assistance or with existing supports;

(b) could manage with the assistance of appropriate supportive services, technological assistance or supported decision making; and

(c) cannot manage;

(2) a recommendation regarding the appropriateness of the protective arrangement sought and whether a less restrictive alternative for meeting the respondent's needs is available;

(3) if the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

(4) a recommendation whether a professional evaluation under Section 508 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is necessary;

(5) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(6) a statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's

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ability to participate; and

(7) any other matter the court directs.

SECTION 507. [NEW MATERIAL] APPOINTMENT AND ROLE OF ATTORNEY.--

A. Unless the respondent in a proceeding under this article is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.

B. An attorney representing the respondent in a proceeding under this article shall:

(1) make reasonable efforts to ascertain the respondent's wishes;

(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and

(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive alternative in type, duration and scope, consistent with the respondent's interests.

SECTION 508. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

A. At or before a hearing on a petition under this article for a protective arrangement, the court shall order a professional evaluation of the respondent:

(1) if the respondent requests the evaluation; or

(2) or in other cases, unless the court finds

that it has sufficient information to determine the respondent's needs and abilities without the evaluation.

B. If the court orders an evaluation under Subsection A of this section, the respondent shall be examined by a licensed physician, psychologist, social worker or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report shall contain:

(1) a description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;

(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

(3) a prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged and recommendation for the appropriate treatment, support or habilitation plan; and

(4) the date of the examination on which the report is based.

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C. The respondent may decline to participate in an evaluation ordered under Subsection A of this section.

SECTION 509. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT HEARING.--

A. Except as otherwise provided in Subsection B of this section, a hearing under this article shall not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

B. A hearing under this article may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

(1) the respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;

(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

(3) the respondent is a minor who has received

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proper notice and attendance would be harmful to the minor.

C. The respondent may be assisted in a hearing under this article by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

D. The respondent has a right to choose an attorney to represent the respondent at a hearing under this article.

E. At a hearing under this article, the respondent may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including any court-appointed evaluator and the visitor; and

(3) otherwise participate in the hearing.

F. A hearing under this article shall be closed on request of the respondent and a showing of good cause.

G. Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

SECTION 510. [NEW MATERIAL] NOTICE OF ORDER.--The court

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shall give notice of an order under this article to the individual who is subject to the protective arrangement instead of guardianship or conservatorship, a person whose access to the individual is restricted by the order and any other person the court determines.

SECTION 511. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

A. The existence of a proceeding for or the existence of a protective arrangement instead of guardianship or conservatorship is a matter of public record unless the court seals the record after:

(1) the respondent, the individual subject to the protective arrangement or the parent of a minor subject to the protective arrangement requests the record be sealed; and

(2) either:

(a) the proceeding is dismissed;

(b) the protective arrangement is no longer in effect; or

(c) an act authorized by the order granting the protective arrangement has been completed.

B. A respondent, an individual subject to a protective arrangement instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to a protective arrangement and any other person the court determines are entitled to access court records of the proceeding and

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resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection for good cause may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangement or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

C. A report of a visitor or professional evaluation generated in the course of a proceeding under this article shall be sealed on filing, but is available to:

(1) the court;

(2) the individual who is the subject of the report or evaluation, without limitation as to use;

(3) the petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

(4) unless the court orders otherwise, an agent appointed under a power of attorney for finances in which the respondent is the principal;

(5) if the order is for a protective arrangement instead of guardianship and unless the court orders otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and

(6) any other person if it is in the public interest or for a purpose the court orders for good cause.

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SECTION 512. [NEW MATERIAL] APPOINTMENT OF SPECIAL MASTER.--The court may appoint a special master to assist in implementing a protective arrangement under this article. The special master has the authority conferred by the order of appointment and serves until discharged by court order.

ARTICLE 6

MISCELLANEOUS PROVISIONS

SECTION 601. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 602. [NEW MATERIAL] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 603. REPEAL.--Sections 45-5-101 through 45-5-105, 45-5-201 through 45-5-205, 45-5-206 through 45-5-301.1, 45-5-302 through 45-5-411, 45-5-413 through 45-5-418, 45-5-420

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through 45-5-431 and 45-5-434 through 45-5-436 NMSA 1978 (being Laws 1975, Chapter 257, Sections 5-101 through 5-104, Laws 1993, Chapter 301, Section 23, Laws 1975, Chapter 257, Section 5-201, Laws 1995, Chapter 210, Section 51, Laws 1975, Chapter 257, Sections 5-203 through 5-208, Laws 1995, Chapter 210, Section 54, Laws 1975, Chapter 257, Sections 5-210 through 5-212 and 5-301, Laws 1989, Chapter 252, Section 4, Laws 1975, Chapter 257, Section 5-302, Laws 1989, Chapter 252, Sections 5 through 7, Laws 1975, Chapter 257, Sections 5-305 through 5-307, Laws 1989, Chapter 252, Section 9, Laws 1975, Chapter 257, Sections 5-309 through 5-313, Laws 1989, Chapter 252, Sections 14 and 15, Laws 1975, Chapter 257, Sections 5-401 and 5-402, Laws 1993, Chapter 301, Section 25, Laws 1975, Chapter 257, Sections 5-403 and 5-404, Laws 1989, Chapter 252, Section 18, Laws 1975, Chapter 257, Section 5-405, Laws 1993, Chapter 301, Section 26, Laws 1975, Chapter 257, Sections 5-406 and 5-407, Laws 1989, Chapter 252, Sections 21 and 22, Laws 1975, Chapter 257, Sections 5-410, 5-411, 5-413 through 5-418, 5-420 and 5-421, Laws 1989, Chapter 252, Section 26, Laws 1975, Chapter 257, Sections 5-422 through 5-425, Laws 1989, Chapter 252, Section 27, Laws 1975, Chapter 257, Sections 5-427 through 5-431 and Laws 2011, Chapter 124, Sections 59 through 61, as amended) are repealed.

SECTION 604. APPLICABILITY.--The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act applies

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to a proceeding for appointment of a guardian or conservator or for a protective arrangement instead of guardianship or conservatorship commenced after January 1, 2019 and a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship in existence on January 1, 2019 unless the court finds application of a particular provision of that act would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, in which case the particular provision of that act does not apply and the superseded law applies.

SECTION 605. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2019.

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE; ENACTING THE NURSE LICENSURE COMPACT; MAKING CONFORMING CHANGES TO THE NURSING PRACTICE ACT; REPEALING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-3-24.1 NMSA 1978 (being Laws 2003, Chapter 307, Section 1) is repealed and a new Section 61-3-24.1 NMSA 1978 is enacted to read:

"61-3-24.1. [NEW MATERIAL] NURSE LICENSURE COMPACT ENTERED INTO.--The Nurse Licensure Compact is entered into law and entered into with all other jurisdictions legally joining therein in a form substantially as follows:

"Nurse Licensure Compact

ARTICLE 1 - Findings and Declaration of Purpose

A. The party states find that:

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(1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

(6) uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

B. The general purposes of this compact are to:

(1) facilitate the states' responsibility to protect the public's health and safety;

(2) ensure and encourage the cooperation of

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party states in the areas of nurse licensure and regulation;

(3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

(4) promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

(6) decrease redundancies in the consideration and issuance of nurse licenses; and

(7) provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE 2 - Definitions

As used in this compact:

A. "adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including

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issuance of a cease and desist action;

B. "alternative program" means a non-disciplinary monitoring program approved by a licensing board;

C. "commission" means the Interstate Commission of Nurse Licensure Compact Administrators established in this compact;

D. "coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards;

E. "current significant investigative information" means:

(1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond;

F. "encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of

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nursing imposed by a licensing board;

G. "home state" means the party state which is the nurse's primary state of residence;

H. "licensing board" means a party state's regulatory body responsible for issuing nurse licenses;

I. "multistate license" means a license to practice as a registered nurse or a licensed practical or vocational nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege;

J. "multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in a remote state;

K. "nurse" means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's practice laws;

L. "party state" means any state that has adopted this compact;

M. "prior compact" means the prior nurse licensure compact that is superseded by this compact;

N. "remote state" means a party state, other than the home state;

O. "single-state license" means a nurse license issued by a party state that authorizes practice only within

the issuing state and does not include a multistate licensure privilege to practice in any other party state;

P. "state" means a state, territory or possession of the United States and the District of Columbia; and

Q. "state practice laws" means a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE 3 - General Provisions and Jurisdiction

A. A multistate license to practice registered or licensed practical or vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse or as a licensed practical or vocational nurse, under a multistate licensure privilege, in each party state.

B. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency

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responsible for retaining that state's criminal records.

C. For an applicant to obtain or retain a multistate license in the home state, each party state shall require that the applicant:

(1) meets the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws;

(2) has graduated:

(a) or is eligible to graduate from a licensing board-approved registered nurse or licensed practical or vocational nurse prelicensure education program; or

(b) from a foreign registered nurse or licensed practical or vocational nurse prelicensure education program that: 1) has been approved by the authorized accrediting body in the applicable country; and 2) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

(3) has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the applicant's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening;

(4) has successfully passed a national council licensure examination for registered nurses or a national

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council licensure examination for practical or vocational nurses given by the national council of state boards of nursing or an exam given by a recognized predecessor or successor organization, as applicable;

(5) is eligible for or holds an active, unencumbered license;

(6) has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;

(7) has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

(8) has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

(9) is not currently enrolled in an alternative program;

(10) is subject to self-disclosure requirements regarding current participation in an alternative program; and

(11) has a valid United States social security

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number.

D. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

E. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

F. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state.

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However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this compact shall affect the requirements established by a party state for the issuance of a single-state license.

G. Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that a nurse who:

(1) changes primary state of residence after this compact's effective date must meet all applicable requirements of Subsection C of Article 3 of the Nurse Licensure Compact to obtain a multistate license from a new home state; or

(2) fails to satisfy the multistate licensure requirements in Subsection C of Article 3 of the Nurse Licensure Compact due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the commission.

ARTICLE 4 - Applications for Licensure in a Party State

A. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether

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the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

B. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

C. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.

(1) The nurse may apply for licensure in advance of a change in primary state of residence.

(2) A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

D. If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

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ARTICLE 5 - Additional Authorities Invested in Party State Licensing Boards

A. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

(1) take adverse action against a nurse's multistate licensure privilege to practice within that party state; provided that:

(a) only the home state shall have the power to take adverse action against a nurse's license issued by the home state; and

(b) for purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action;

(2) issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state;

(3) complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system.

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The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions;

(4) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located;

(5) obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions;

(6) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse; and

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(7) take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

B. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

C. Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE 6 - Coordinated Licensure Information System and Exchange of Information

A. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical or vocational nurses. This system will include information on the licensure and

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disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

C. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

D. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

E. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

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F. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

G. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

H. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which shall include, at a minimum:

(1) identifying information;

(2) licensure data;

(3) information related to alternative program participation; and

(4) other information that may facilitate the administration of this compact, as determined by commission rules.

I. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE 7 - Establishment of the Interstate Commission of Nurse

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Licensure Compact Administrators

A. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

(1) The commission is an instrumentality of the party states.

(2) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting and Meetings

(1) Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(2) Each administrator shall be entitled to

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one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 8 of the Nurse Licensure Compact.

(5) The commission may convene in a closed, nonpublic meeting if the commission must discuss:

(a) noncompliance of a party state with its obligations under this compact;

(b) the employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(c) current, threatened or reasonably anticipated litigation;

(d) negotiation of contracts for the

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purchase or sale of goods, services or real estate;

(e) accusing any person of a crime or formally censuring any person;

(f) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(g) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(h) disclosure of investigatory records compiled for law enforcement purposes;

(i) disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or

(j) matters specifically exempted from disclosure by federal or state statute.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be

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identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including but not limited to:

(1) establishing the fiscal year of the commission;

(2) providing reasonable standards and procedures:

(a) for the establishment and meetings of other committees; and

(b) governing any general or specific delegation of any authority or function of the commission;

(3) providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators

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vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

(4) establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(5) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission; and

(6) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

D. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

E. The commission shall maintain its financial records in accordance with the bylaws.

F. The commission shall meet and take such actions as are consistent with the provisions of this compact and the

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bylaws.

G. The commission shall have the following powers:

(1) to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states;

(2) to bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

(3) to purchase and maintain insurance and bonds;

(4) to borrow, accept or contract for services of personnel, including but not limited to employees of a party state or nonprofit organizations;

(5) to cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space or other resources;

(6) to hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel

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matters;

(7) to accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(8) to lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(9) to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;

(10) to establish a budget and make expenditures;

(11) to borrow money;

(12) to appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other such interested persons;

(13) to provide and receive information from, and to cooperate with, law enforcement agencies;

(14) to adopt and use an official seal; and

(15) to perform such other functions as may be

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necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

H. Financing of the Commission

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

(2) The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.

(3) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed

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public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

I. Qualified Immunity, Defense and Indemnification

(1) The administrators, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

(2) The commission shall defend any administrator, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment,

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duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person's intentional, willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.

ARTICLE 8 - Rulemaking

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this compact.

B. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

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C. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(1) on the website of the commission; and

(2) on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

D. The notice of proposed rulemaking shall include:

(1) the proposed time, date and location of the meeting in which the rule will be considered and voted upon;

(2) the text of the proposed rule or amendment, and the reason for the proposed rule;

(3) a request for comments on the proposed rule from any interested person; and

(4) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

E. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

F. The commission shall grant an opportunity for a

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public hearing before it adopts a rule or amendment.

G. The commission shall publish the place, time and date of the scheduled public hearing.

(1) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(2) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

H. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that

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the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) meet an imminent threat to public health, safety or welfare;

(2) prevent a loss of commission or party state funds; or

(3) meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

L. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

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ARTICLE 9 - Oversight, Dispute Resolution and Enforcement

A. Oversight

(1) Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

(2) The commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

B. Default, Technical Assistance and Termination

(1) If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(a) provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission; and

(b) provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state's membership in this compact may

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be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

(4) A state whose membership in this compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The commission shall not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the United States district

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court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

C. Dispute Resolution

(1) Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and non-party states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(3) In the event the commission cannot resolve disputes among party states arising under this compact:

(a) the party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(b) the decision of a majority of the arbitrators shall be final and binding.

D. Enforcement

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of

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this compact.

(2) By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE 10 - Effective Date, Withdrawal and Amendment

A. This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six states or December 31, 2018. All party states to this compact that were parties to the prior compact shall be deemed to have withdrawn from the prior compact within six months after the effective date of this compact.

B. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact

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until such party state has withdrawn from the prior compact.

C. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six months after enactment of the repealing statute.

D. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

E. Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this compact.

F. This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

G. Representatives of non-party states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

ARTICLE 11 - Construction and Severability

This compact shall be liberally construed so as to

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effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held to be contrary to the constitution of any party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters."."

SECTION 2. Section 61-3-29.1 NMSA 1978 (being Laws 1987, Chapter 285, Section 1, as amended) is amended to read:

"61-3-29.1. DIVERSION PROGRAM CREATED--ADVISORY COMMITTEE--RENEWAL FEE--REQUIREMENTS--IMMUNITY FROM CIVIL ACTIONS.--

A. The board shall establish a diversion program to rehabilitate nurses whose competencies may be impaired because of the abuse of drugs or alcohol so that nurses can be treated and returned to or continue the practice of nursing in a manner that will benefit the public. The intent of the diversion program is to develop a voluntary alternative to traditional disciplinary actions and an alternative to lengthy and costly

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investigations and administrative proceedings against such nurses, at the same time providing adequate safeguards for the public.

B. The board shall appoint one or more evaluation committees, hereinafter called "regional advisory committees", each of which shall be composed of members with expertise in chemical dependency. At least one member shall be a registered nurse. No current member of the board shall be appointed to a regional advisory committee. The executive officer of the board or [~~his~~] the executive officer's designee shall be the liaison between each regional advisory committee and the board.

C. Each regional advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to a regional advisory committee to:

(1) establish criteria for continuance in the program;

(2) develop a written diversion program contract to be approved by the board that sets forth the requirements that shall be met by the nurse and the conditions under which the diversion program may be successfully completed or terminated;

(3) recommend to the board in favor of or against each nurse's discharge from the diversion program;

(4) evaluate each nurse's progress in recovery

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and compliance with [~~his~~] the nurse's diversion program contract;

(5) report violations to the board;

(6) submit an annual report to the board; and

(7) coordinate educational programs and research related to chemically dependent nurses.

D. The board may increase the renewal fee for each nurse in the state not to exceed twenty dollars ($20.00) for the purpose of implementing and maintaining the diversion program.

E. Files of nurses in the diversion program shall be maintained in the board office and shall be confidential except as required to be disclosed pursuant to the Nurse Licensure Compact, when used to make a report to the board concerning a nurse who is not cooperating and complying with the diversion program contract or, with written consent of a nurse, when used for research purposes as long as the nurse is not specifically identified. However, [~~such~~] the files shall be subject to discovery or subpoena. The confidential provisions of this subsection are of no effect if the nurse admitted to the diversion program leaves the state prior to the completion of the program.

F. [~~Any~~] A person making a report to the board or to a regional advisory committee regarding a nurse suspected of practicing nursing while habitually intemperate or addicted to

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the use of habit-forming drugs or making a report of a nurse's progress or lack of progress in rehabilitation shall be immune from civil action for defamation or other cause of action resulting from such reports if the reports are made in good faith and with some reasonable basis in fact.

G. [~~Any~~] A person admitted to the diversion program for chemically dependent nurses who fails to comply with the provisions of this section or with the rules and regulations adopted by the board pursuant to this section or with the written diversion program contract or with any amendments to the written diversion program contract may be subject to disciplinary action in accordance with Section 61-3-28 NMSA 1978."

SECTION 3. REPEAL.--Section 61-3-24.2 NMSA 1978 (being Laws 2003, Chapter 307, Section 2) is repealed.

SECTION 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE; ENACTING A NEW SECTION OF THE PUBLIC HEALTH ACT TO ESTABLISH CERTAIN REQUIREMENTS FOR RENAL DIALYSIS FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public Health Act is enacted to read:

"[NEW MATERIAL] RENAL DIALYSIS FACILITY--COUNSELING REQUIREMENT.--The secretary of health shall require any facility that provides renal dialysis in an inpatient or ambulatory setting to provide to patients who receive renal dialysis in that facility counseling on current evidence-based practices, including kidney transplant, that may maximize the patient's health outcomes."

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SENATE JOINT MEMORIAL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

A JOINT MEMORIAL

REQUESTING THE SECRETARY OF FINANCE AND ADMINISTRATION TO CONDUCT A STUDY THAT INVESTIGATES THE PROPOSAL OF THE ENHANCED 911 (E911) DIRECTORS AFFILIATE THAT A SINGLE, STATEWIDE 911 PROGRAM OVERSIGHT BOARD MADE UP OF A MAJORITY OF 911 PROFESSIONALS BE CREATED AND CHARGED WITH ADMINISTRATION OF THE 911 PROGRAMS THROUGHOUT THE STATE.

WHEREAS, essential emergency reporting and dispatch services accessible by calling nine-one-one, known as the "911 program", are administered by the local government division of the department of finance and administration, while these emergency reporting and dispatch services are actually provided through forty-seven disparately funded public safety answer points, or "911 centers", located throughout the state; and

WHEREAS, the New Mexico association of counties' New

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Mexico E911 directors affiliate, made up of the directors of these 911 centers, has requested that the New Mexico state government consider establishing a statewide 911 program oversight board; and

WHEREAS, the New Mexico E911 directors affiliate reports that there is currently a lack of resources to adequately serve the forty-seven public 911 centers; and

WHEREAS, under the local government division of the department of finance and administration, there is reportedly only one 911 program employee responsible for overseeing all of the forty-seven public 911 centers statewide; and

WHEREAS, the New Mexico E911 directors affiliate has expressed its concern that decisions regarding 911 program equipment, funding and training in the state's 911 centers are being made without the input of New Mexico 911 professionals; and

WHEREAS, E911 directors have expressed the need for updated 911 program equipment to keep pace with "next generation 911" — a plan for acquiring and implementing up-to-date technology that is not currently available but will be demanded by the public, including features such as text to 911, streaming images and video; and

WHEREAS, according to the New Mexico E911 directors affiliate, New Mexico is one of only five states in the United States that does not have a plan in place for implementing next

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generation 911; and

WHEREAS, according to the New Mexico E911 directors affiliate, the federal government has allocated one hundred fifteen million dollars ($115,000,000) in grant money specifically for next generation 911; and

WHEREAS, states, such as New Mexico, that do not have an implementation plan are ineligible to receive any federal funding to implement next generation 911; and

WHEREAS, there are several states in the United States that have established and implemented a statewide 911 program oversight board to administer and manage the 911 programs in those states; and

WHEREAS, statewide 911 program oversight boards are mostly composed of 911 professionals, as well as other residents appointed by their state governments; and

WHEREAS, statewide 911 program oversight boards provide oversight of the statewide 911 programs, ensuring that the interests of the 911 community are represented and that decisions made regarding statewide 911 program operations and funding are made with the input of 911 professionals;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the secretary of finance and administration be requested to conduct a study that investigates the proposal of the E911 directors affiliate that a single, statewide 911 program oversight board made up of a

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majority of 911 professionals be created and charged with administration of the 911 programs throughout the state; and

BE IT FURTHER RESOLVED that the secretary of finance and administration be requested to report the findings of the statewide 911 program oversight board study to the legislative health and human services committee by November 1, 2018; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the secretary of finance and administration, the executive director of the New Mexico association of counties and to the legislative health and human services committee.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH COVERAGE; ENACTING SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE PUBLIC ASSISTANCE ACT, THE NEW MEXICO INSURANCE CODE, THE HEALTH MAINTENANCE ORGANIZATION LAW AND THE NONPROFIT HEALTH CARE PLAN LAW TO ESTABLISH A LIMITATION ON RECOUPMENT OR RETROACTIVE DENIAL OF PROVIDER CLAIMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Health Care Purchasing Act is enacted to read:

"[NEW MATERIAL] CLAIM RECOUPMENT--RETROACTIVE DENIAL OF CLAIM--LIMITATION ON ACTION.--Except in cases of fraud, a group health plan shall only seek to recoup payment from a provider of a claim submitted by the provider, or retroactively deny reimbursement to a provider for a claim submitted by the provider, during the twelve-month period after the date the

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group health plan paid the claim in question."

SECTION 2. A new section of the Public Assistance Act is enacted to read:

"[NEW MATERIAL] MEDICAID CLAIM RECOUPMENT--RETROACTIVE DENIAL OF MEDICAID CLAIM--LIMITATION ON ACTION.--Except in cases of fraud, a plan that provides medical assistance coverage shall only seek to recoup payment from a provider of a claim submitted by the provider, or retroactively deny reimbursement to a provider for a claim submitted by the provider, during the twelve-month period after the date the medical assistance plan paid the claim in question."

SECTION 3. A new section of Chapter 59A, Article 22 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CLAIM RECOUPMENT--RETROACTIVE DENIAL OF CLAIM--LIMITATION ON ACTION.--Except in cases of fraud, an insurer shall only seek to recoup payment from a provider of a claim submitted by the provider, or retroactively deny reimbursement to a provider for a claim submitted by the provider, during the twelve-month period after the date the insurer paid the claim in question."

SECTION 4. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CLAIM RECOUPMENT--RETROACTIVE DENIAL OF CLAIM--LIMITATION ON ACTION.--Except in cases of fraud, an insurer shall only seek to recoup payment from a provider of a

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claim submitted by the provider, or retroactively deny reimbursement to a provider for a claim submitted by the provider, during the twelve-month period after the date the insurer paid the claim in question."

SECTION 5. A new section of the Health Maintenance Organization Law is enacted to read:

"[NEW MATERIAL] CLAIM RECOUPMENT--RETROACTIVE DENIAL OF CLAIM--LIMITATION ON ACTION.--Except in cases of fraud, a carrier shall only seek to recoup payment from a provider of a claim submitted by the provider, or retroactively deny reimbursement to a provider for a claim submitted by the provider, during the twelve-month period after the date the carrier paid the claim in question."

SECTION 6. A new section of the Nonprofit Health Care Plan Law is enacted to read:

"[NEW MATERIAL] CLAIM RECOUPMENT--RETROACTIVE DENIAL OF CLAIM--LIMITATION ON ACTION.--Except in cases of fraud, a health care plan shall only seek to recoup payment from a provider of a claim submitted by the provider, or retroactively deny reimbursement to a provider for a claim submitted by the provider, during the twelve-month period after the date the health care plan paid the claim in question."

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTIONS OF THE HEALTH PROFESSIONAL LOAN REPAYMENT ACT, THE MEDICAL PRACTICE ACT AND THE OSTEOPATHIC MEDICINE ACT TO ESTABLISH DESIGNATED HEALTH PROFESSIONAL LOAN REPAYMENT FUNDING TO ASSIST ALLOPATHIC AND OSTEOPATHIC PRIMARY CARE PHYSICIANS WORKING IN DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREAS; ESTABLISHING PHYSICIAN LICENSING FEES FOR THE HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM; ENACTING NEW SECTIONS OF THE HEALTH PROFESSIONAL LOAN REPAYMENT ACT TO ESTABLISH THE PHYSICIAN EXCELLENCE FUND; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 21-22D-3 NMSA 1978 (being Laws 1995, Chapter 144, Section 18, as amended) is amended to read:

"21-22D-3. DEFINITIONS.--As used in the Health

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Professional Loan Repayment Act:

A. "department" means the higher education department;

B. "health professional" means a primary care physician, optometrist, podiatrist, physician's assistant, dentist, nurse, member of an allied health profession as defined in the Allied Health Student Loan for Service Act or a licensed or certified health professional as determined by the department;

C. "loan" means a grant of money to defray the costs incidental to a health education, under a contract between the federal government or a commercial lender and a health professional, requiring either repayment of principal and interest or repayment in services; [~~and~~]

D. "nurse in advanced practice" means a registered nurse, including a:

(1) certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, authorized pursuant to the Nursing Practice Act to function beyond the scope of practice of professional registered nursing; or

(2) certified nurse-midwife licensed by the department of health; and

E. "primary care physician" means a physician licensed pursuant to the Medical Practice Act or the

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Osteopathic Medicine Act with specialty training in family medicine, general internal medicine or general pediatrics."

SECTION 2. A new section of the Health Professional Loan Repayment Act is enacted to read:

"[NEW MATERIAL] PHYSICIAN EXCELLENCE FUND.--The department shall apply funds appropriated to the department from the physician excellence fund established pursuant to Section 3 of this 2018 act exclusively for health professional loan repayment assistance for primary care physicians who are licensed pursuant to the Medical Practice Act or the Osteopathic Medicine Act and who practice in areas of New Mexico that the department has designated as underserved."

SECTION 3. A new section of the Health Professional Loan Repayment Act is enacted to read:

"[NEW MATERIAL] PHYSICIAN EXCELLENCE FUND--CREATION--ADMINISTRATION--APPROPRIATION.--The "physician excellence fund" is created in the state treasury to support awards established through the Health Professional Loan Repayment Act to primary care physicians who practice in areas of New Mexico that the department has designated as underserved. The fund consists of license application and renewal surcharges pursuant to Sections 61-6-19 and 61-10-6.1 NMSA 1978, appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end

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of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to make awards established through the Health Professional Loan Repayment Act to primary care physicians who practice in areas of New Mexico that the department has designated as underserved. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative."

SECTION 4. Section 61-6-19 NMSA 1978 (being Laws 1989, Chapter 269, Section 15, as amended) is amended to read:

"61-6-19. FEES.--

A. The board shall impose the following fees:

(1) an application fee not to exceed four hundred dollars ($400) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;

(2) an application fee not to exceed four hundred dollars ($400) for licensure by examination as provided in Section 61-6-11 NMSA 1978;

(3) a triennial renewal fee not to exceed four hundred fifty dollars ($450);

(4) a fee of twenty-five dollars ($25.00) for placing a physician's license or a physician assistant's license on inactive status;

(5) a late fee not to exceed one hundred

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dollars ($100) for physicians who renew their license within forty-five days after the required renewal date;

(6) a late fee not to exceed two hundred dollars ($200) for physicians who renew their licenses between forty-six and ninety days after the required renewal date;

(7) a reinstatement fee not to exceed six hundred dollars ($600) for reinstatement of a revoked, suspended or inactive license;

(8) a reasonable administrative fee for verification and duplication of license or registration and copying of records;

(9) a reasonable publication fee for the purchase of a publication containing the names of all practitioners licensed under the Medical Practice Act;

(10) an impaired physician fee not to exceed one hundred fifty dollars ($150) for a three-year period;

(11) an interim license fee not to exceed one hundred dollars ($100);

(12) a temporary license fee not to exceed one hundred dollars ($100);

(13) a postgraduate training license fee not to exceed fifty dollars ($50.00) annually;

(14) an application fee not to exceed one hundred fifty dollars ($150) for physician assistants applying for initial licensure;

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(15) a licensure fee not to exceed one hundred fifty dollars ($150) for physician assistants biennial license renewal and registration of supervising or collaborating licensed physician;

(16) a late fee not to exceed fifty dollars ($50.00) for physician assistants who renew their licensure within forty-five days after the required renewal date;

(17) a late fee not to exceed seventy-five dollars ($75.00) for physician assistants who renew their licensure between forty-six and ninety days after the required renewal date;

(18) a reinstatement fee not to exceed one hundred dollars ($100) for physician assistants who reinstate an expired license;

(19) a fee not to exceed three hundred dollars ($300) annually for a physician supervising a clinical pharmacist;

(20) an application and renewal fee for a telemedicine license not to exceed four hundred dollars ($400);

(21) a reasonable administrative fee, not to exceed the current cost of application for a license, that may be charged for reprocessing applications and renewals that include minor but significant errors and that would otherwise be subject to investigation and possible disciplinary action; [~~and~~]

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(22) a reasonable fee as established by the department of public safety for nationwide and statewide criminal history screening of applicants and licensees; and

(23) a fee of one hundred dollars ($100) to accompany fees for application for a renewal of physician licensure for deposit in the physician excellence fund pursuant to Section 3 of this 2018 act.

B. All fees are nonrefundable and shall be used by the board to carry out its duties efficiently."

SECTION 5. Section 61-6-31 NMSA 1978 (being Laws 1989, Chapter 269, Section 27, as amended) is amended to read:

"61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL BOARD FUND CREATED--METHOD OF PAYMENTS.--

A. There is created the "New Mexico medical board fund".

B. Except for funds collected pursuant to Paragraph (23) of Subsection A of Section 61-6-19 NMSA 1978, all funds received by the board and money collected under the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act shall be deposited with the state treasurer who shall place the same to the credit of the New Mexico medical board fund.

C. All payments out of the fund shall be made on

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vouchers issued and signed by the secretary-treasurer of the board or the designee of the secretary-treasurer upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the New Mexico medical board fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act and the duties and powers imposed by those acts;

(2) the promotion of medical education and standards in this state within the budgetary limits; and

(3) efforts to recruit and retain medical doctors for practice in New Mexico.

E. All funds that may have accumulated to the credit of the board under any previous law shall be transferred to the New Mexico medical board fund and shall continue to be available for use by the board in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act. All

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money unused at the end of the fiscal year shall not revert, but shall remain in the fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act."

SECTION 6. Section 61-10-6.1 NMSA 1978 (being Laws 2016, Chapter 90, Section 7) is amended to read:

"61-10-6.1. FEES.--The board [~~may~~] shall charge the following fees; provided that all fees are nonrefundable and, except for those fees collected pursuant to Paragraph (10) of Subsection A of this section, shall be used by the board to carry out its duties:

A. pertaining to osteopathic physicians:

(1) an application fee not to exceed one thousand dollars ($1,000) for triennial licensure of an osteopathic physician pursuant to Section 61-10-12 NMSA 1978;

(2) a triennial osteopathic physician licensure renewal fee not to exceed one thousand dollars ($1,000);

(3) a fee not to exceed seventy-five dollars ($75.00) for placing an osteopathic physician license on inactive status;

(4) a late fee not to exceed:

(a) two hundred dollars ($200) for

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osteopathic physicians who fail to renew their licenses on or before July 1 of the year in which their triennial licenses are due for renewal but who renew on or before September 29 of that year; and

(b) four hundred dollars ($400) for osteopathic physicians who renew their licenses after September 29;

(5) a reinstatement fee not to exceed five hundred dollars ($500) for reinstatement of a revoked, suspended or inactive osteopathic physician license;

(6) a temporary license fee not to exceed one hundred dollars ($100);

(7) a [~~post-graduate~~] postgraduate osteopathic physician training license fee not to exceed fifty dollars ($50.00);

(8) an osteopathic physician telemedicine triennial license fee not to exceed four hundred dollars ($400); [~~and~~]

(9) an impaired physician fee not to exceed one hundred dollars ($100); and

(10) a fee of one hundred dollars ($100) to accompany fees for application for and renewal of osteopathic physician licensure for deposit in the physician excellence fund pursuant to Section 3 of this 2018 act;

B. pertaining to osteopathic physician assistants:

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(1) a biennial license fee not to exceed four hundred fifty dollars ($450);

(2) a registration of new supervision fee that is equal to one-half of the biennial license fee for osteopathic physician assistants;

(3) a late fee not to exceed twenty-five dollars ($25.00) for osteopathic physician assistants who fail to renew their licenses on or before July 1 of the year in which their biennial licenses are due for renewal;

(4) an impaired osteopathic physician assistant fee not to exceed one hundred dollars ($100); and

(5) a fee for an osteopathic physician assistant license on inactive status not to exceed seventy-five dollars ($75.00); and

C. pertaining to osteopathic physician and osteopathic physician assistant licensees or applicants:

(1) a fee not to exceed five hundred dollars ($500) for reprocessing an application or renewal that includes errors that would otherwise be subject to investigation and possible disciplinary action; and

(2) a reasonable administrative fee that the board establishes by rule for verification of license, publications and copying charges."

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF HEALTH TO FUND SUPPORTS AND SERVICES UNDER THE MEDICAID DEVELOPMENTAL DISABILITIES WAIVER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--Twenty-five million dollars ($25,000,000) is appropriated from the general fund to the department of health for expenditure in fiscal year 2019 to fund direct-care supports and services to recipients of medicaid developmental disabilities waiver supports and services; provided that the department of health shall not use the funds to provide for the allocation or enrollment into medicaid developmental disabilities waiver supports and services of additional eligible individuals listed on the department of health's central registry. Any unexpended or

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unencumbered balance remaining at the end of fiscal year 2019 shall revert to the general fund.

SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PUBLIC ASSISTANCE; ESTABLISHING CHILD CARE ASSISTANCE TO PROVIDE CHILD CARE AND RESPITE CARE FOR KINSHIP CAREGIVERS WITHOUT CONSIDERATION OF KINSHIP CAREGIVERS' INCOMES OR RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] KINSHIP CAREGIVERS--CHILD CARE ASSISTANCE--CHILD CARE--RESPITE CARE.--

A. The department shall establish and implement a program for providing child care assistance to kinship caregivers:

(1) while working or attending a job-training or educational program, as those terms are defined in department rules; or

(2) as respite care.

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B. The department shall not consider a kinship caregiver's income or resources in determining the kinship caregiver's need for child care assistance.

C. The department shall use state or federal funds available pursuant to the New Mexico Works Act, or any other resources it deems available, to fund child care assistance to kinship caregivers pursuant to this section.

D. As used in this section:

(1) "child" means an individual who is a minor;

(2) "child care assistance" means a program for providing child care, which program the department administers and for which it provides payment to child care providers;

(3) "department" means the children, youth and families department;

(4) "kinship caregiver" means an adult, who is a relative and not a parent of a child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child;

(5) "parent" means a biological or adoptive parent of a child whose parental rights have not been terminated; and

(6) "relative" means an individual related to

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a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, any person denoted by the prefix "grand" or "great" or the spouse or former spouse of the persons specified.

SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR LAW-ENFORCEMENT-ASSISTED DIVERSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--

A. Four hundred fifty thousand dollars ($450,000) is appropriated from the general fund to the local government division of the department of finance and administration for expenditure in fiscal year 2019 for:

(1) general support for law-enforcement-assisted diversion in the city of Santa Fe; and

(2) the establishment and operation of law-enforcement-assisted diversion in Bernalillo and Dona Ana counties.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2019 shall revert to the general

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fund.

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF HEALTH TO FUND COUNTY AND TRIBAL HEALTH COUNCILS' EFFORTS TO IDENTIFY AND ADDRESS LOCAL COMMUNITIES' HEALTH NEEDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--Seven hundred thousand dollars ($700,000) is appropriated from the general fund to the department of health for expenditure in fiscal year 2019 to fund county and tribal health councils' identification of local communities' health needs and development of strategies to address those needs pursuant to the Maternal and Child Health Plan Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2019 shall revert to the general fund.

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Legislative Council Service
Santa Fe, New Mexico