



NEW MEXICO LEGISLATURE

# TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

2016 INTERIM FINAL REPORT

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# TABLE OF CONTENTS

INTERIM SUMMARY

WORK PLAN AND MEETING SCHEDULE

AGENDAS AND MINUTES

APPENDICES



## INTERIM SUMMARY



## **Tobacco Settlement Revenue Oversight Committee 2016 Interim Summary**

The Tobacco Settlement Revenue Oversight Committee (TSROC) is charged with monitoring the use of tobacco settlement revenue by evaluating programs receiving funding from tobacco settlement revenue and making recommendations to the Legislative Finance Committee for program funding levels for the next fiscal year. The Tobacco Settlement Permanent Fund receives annual payments of approximately \$25 million to \$30 million, which by statute are used primarily for health and education purposes

In the 2016 interim, the TSROC initiated new procedures that ensure greater oversight and accountability of all programs receiving funding from tobacco settlement revenues. The committee now requires current awardees to justify their requests for continuing funding, and prospective awardees to justify their initial requests, by completing a tobacco settlement revenue funding request.

### **The Tobacco Settlement Revenues**

In 1994, the attorneys general of 46 states, including New Mexico, filed suit against major tobacco companies for deceptive and fraudulent marketing, targeting children and conspiracy to conceal the health effects of smoking, arguing that the states incur costs for treating health conditions caused by use of the tobacco companies' products. The states sought recovery of Medicaid and other public health expenses for treatment of smoking-related diseases and conditions such as lung cancer, heart disease, emphysema and low-birth-weight babies. In November 1998, the states resolved the lawsuit with the tobacco companies, which are referred to as the "participating manufacturers", or PMs. The PMs were the largest tobacco companies in the country, but there are smaller tobacco companies that did not participate in the settlement; these companies are referred to as "nonparticipating manufacturers", or NPMs.

The document that sets out the agreement resolving the lawsuit is called the "Master Settlement Agreement", or MSA. The MSA requires PMs to stop deceptive marketing of cigarettes, particularly to children, and to make payments to settling states in perpetuity to compensate for the increased costs to the states because of the use of the tobacco companies' products. In exchange, states gave up any future claims against the PMs based on the tobacco companies' actions at issue in the settled lawsuits.

The PMs were concerned that, because of the payments they had to make to the settling states, the NPMs would gain an unfair advantage in sales, leading to an increased market share for the NPMs and, therefore, a loss of market share to the PMs, as an unintended result of the settlement. To level the playing field between PMs and NPMs, the MSA provided that the annual payment amounts could be reduced if it could be shown that the PMs had lost market share to NPMs as a result of the settlement; these reductions are called "NPM adjustments".

The MSA allowed states to avoid NPM adjustments by passing model escrow statutes that neutralize the cost disadvantages that the PMs experience. The model escrow statutes require NPMs operating in the state to either join the MSA and comply with its terms or to

establish an escrow account and make regular payments into that account, and require the state to enforce the escrow statutes. In the 1999 session, almost immediately after the MSA was signed, the New Mexico Legislature enacted the model escrow statutes.

The annual calculation of the settlement payment to be made by each PM and the amount to be received by each settling state, including any NPM adjustments, are very complex, and the parties can dispute the calculations. Disputes are resolved by arbitration, and the arbitration decisions may be challenged in state court. The Attorney General's Office (AGO) manages enforcement of and compliance with the MSA and represents the state in any disputes.

In 2006, the PMs and the states began disputing the 2003 settlement payment, with the PMs alleging that New Mexico had not adequately enforced the escrow statutes. In September 2013, an arbitration panel issued a decision in favor of the PMs, and the attorney general appealed the arbitrators' decision in the district court in Santa Fe. In September 2016, the district court decided in the state's favor. The court's decision will result in an additional payment to New Mexico of approximately \$9 million to \$12 million. The additional payment is due to be received in April 2017 at the same time as the regular annual payment; the total 2017 payment is expected to be approximately \$48 million or more.

The AGO expects the PMs to challenge the settlement payments in every year, which may result in adjustments to the payment calculation, which will unpredictably impact the payments in years when an arbitration decision is issued and resolved. The PMs' challenge to the 2004 payment is just getting under way in the arbitration process.

### **2016 Interim Funding Requests**

For fiscal year 2018, all of the programs currently funded by tobacco settlement revenues requested an essentially flat budget, except for Medicaid, which requested the amount it actually received from the Tobacco Settlement Program Fund in the current fiscal year. Current funding recipients are the University of New Mexico Health Sciences Center, the Department of Health, the Indian Affairs Department and the Human Services Department (Medicaid).

The committee also received three new requests for funding: one from New Mexico State University for eight research projects; and one each for operating expenses for the New Mexico Primary Care Training Consortium and Southwest Center for Health Innovation (SWCHI). The SWCHI request was to replace funding previously provided by the Department of Health and cut this fiscal year.

During the 2016 interim, the committee heard presentations on all of the funding requests. Over the last several years, the committee has visited most of the program sites. The funding requests for each item are posted on the TSROC's page on the legislature's website, linked to the agenda for the November 21 meeting. Each of the projects was also explained in more detail during the interim meetings; handouts and minutes for all the presentations are linked to the agenda items.

AGENCY AND PROGRAM	FY2017 Program Funded	FY2018 Program Requests	2018 TSROC Recommendations
<b>(609) Indian Affairs Department</b>			
Tobacco cessation and prevention programs	\$249.3	\$249.3	\$249.3
<b>Total Indian Affairs Department</b>	<b>\$249.3</b>	<b>\$249.3</b>	<b>\$249.3</b>
<b>(630) Human Services Department</b>			
Medicaid -- Breast & cervical cancer treatment program	1,255.4		
Medicaid	\$26,063.9	\$27,819.0	\$27,819.0
<b>Total Human Services Department</b>	<b>\$27,319.3</b>	<b>\$27,819.0</b>	<b>\$27,819.0</b>
<b>(665) Department of Health</b>			
Breast and Cervical Cancer (BCC) screening program	\$128.6	\$128.6	\$128.6
HIV/STD and Hepatitis prevention services and medicine	\$293.0	\$443.0	\$443.0
Tobacco Use Prevention and Control Program (TUPAC)	\$5,435.2	\$6,435.2	\$6,435.2
Diabetes prevention and control program	\$715.5	\$748.5	\$748.5
<b>Total Department of Health</b>	<b>\$6,572.3</b>	<b>\$7,755.3</b>	<b>\$7,755.3</b>
<b>(952) University of New Mexico</b>			
Instruction and general purposes	\$581.5	\$581.6	\$581.6
Poison control center	\$590.2	\$590.3	\$590.3
Pediatric oncology program	\$250.0	\$250.0	\$250.0
Genomics and environmental health research	\$937.2	\$937.2	\$937.2
Specialty education in pediatrics	\$250.0	\$250.0	\$250.0
Specialty education in trauma	\$250.0	\$250.0	\$250.0
<b>Total University of New Mexico</b>	<b>\$2,858.9</b>	<b>\$2,859.1</b>	<b>\$2,859.1</b>
<b>(954) New Mexico State University</b>			
Geomapping		\$133.5	\$133.5
Mosquito-borne viruses research		\$636.8	\$636.8
NM HeART		\$153.1	\$153.1
WAVE		\$46.5	\$46.5
Protective nicotine treatment		\$306.5	\$306.5
Genomics research		\$466.6	\$466.6
Motorized mobility device development		\$100.0	\$100.0
Asthma map		\$350.0	\$350.0
<b>Total New Mexico State University</b>	<b>\$0.0</b>	<b>\$2,193.0</b>	<b>\$2,193.0</b>
<b>Other Requests</b>			
New Mexico Primary Care Training Consortium		\$250.0	\$250.0
Southwest Center for Health Innovation		\$259.1	\$259.1
<b>Total Other Requests</b>	<b>\$0.0</b>	<b>\$509.1</b>	<b>\$509.1</b>



## WORK PLAN AND MEETING SCHEDULE



**2016 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**Members**

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

Sen. John C. Ryan  
Sen. John Arthur Smith  
Rep. Monica Youngblood

**Advisory Members**

Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
Rep. Patricio Ruiloba

Rep. Don L. Tripp  
Rep. Jim R. Trujillo

**Work Plan**

The Tobacco Settlement Revenue Oversight Committee (TSROC) was established pursuant to Section 2-19-1 NMSA 1978. The committee will continue its statutory oversight duties for the programs that request and receive funding through the Tobacco Settlement Program Fund. The committee will also receive testimony regarding the balances in and projected revenues for both the Tobacco Settlement Program Fund and the Tobacco Settlement Permanent Fund.

During the 2016 interim, the TSROC proposes to:

- (1) monitor the status of the revenue for current and future fiscal years and reserves for the Tobacco Settlement Permanent Fund and the use of the Tobacco Settlement Program Fund through committee oversight and evaluation of those programs recommended by the committee and funded by the legislature; review the enforcement requirements under the Master Settlement Agreement; and compare recommended funding levels by the federal Centers for Disease Control and Prevention with those funded in New Mexico;
- (2) receive testimony regarding tobacco settlement-related issues, litigation and legislation and prepare recommendations of program funding levels for fiscal year 2018, based on the committee's program evaluation process;
- (3) make recommendations to the Legislative Finance Committee on the use of the tobacco settlement revenue; and
- (4) make findings and recommendations, including proposed legislation, available to the legislature as part of the TSROC's final report.

**Tobacco Settlement Revenue Oversight Committee  
2016 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
May 24	Santa Fe, Room 321 State Capitol
July 1	Albuquerque
August 5	Las Cruces
September 26	Mescalero
October 26*	Santa Fe
November 21	Santa Fe, Room 321 State Capitol

\*Joint meeting with the Legislative Health and Human Services Committee

## AGENDAS AND MINUTES



**TENTATIVE AGENDA  
for the  
FIRST MEETING IN 2016  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**May 24, 2016  
Room 321, State Capitol  
Santa Fe**

**Tuesday, May 24**

- 10:30 a.m.           **Welcome and Introductions**  
                          —Senator Cisco McSorley, Co-Chair  
                          —Representative John L. Zimmerman, Co-Chair
- 10:45 a.m.       (1)    [History of the Master Settlement Agreement in New Mexico](#)  
                          —Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
- 11:00 a.m.       (2)    [Post-Session Update: Tobacco Settlement Permanent and Program Funds](#)  
                          —Christine Boerner, Senior Fiscal Analyst, Legislative Finance Committee
- 11:30 a.m.       (3)    [Update on Master Settlement Agreement Litigation](#)  
                          —Ari Biernoff, Assistant Attorney General, Office of the Attorney General
- 12:00 noon           Lunch
- 1:30 p.m.        (4)    [Review and Adoption of 2016 Interim Work Plan and Meeting Schedule](#)  
                          —Celia Ludi, Staff Attorney, LCS
- 2:00 p.m.        (5)    [Tobacco Settlement Permanent Fund Asset Allocation](#)  
                          —Steve Moise, State Investment Officer, State Investment Council (SIC)  
                          —Vince Smith, Deputy State Investment Officer, SIC
- 2:45 p.m.           **Adjourn**



**MINUTES  
of the  
FIRST MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**May 24, 2016  
Room 321, State Capitol  
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative John L. Zimmerman, co-chair, on May 24, 2016 at 10:46 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Sen. John C. Ryan  
Sen. John Arthur Smith

**Absent**

Rep. Gail Chasey  
Rep. Monica Youngblood

**Advisory Members**

Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
Rep. Jim R. Trujillo

Rep. Patricio Ruiloba  
Rep. Don L. Tripp

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Jeff Eaton, Research and Fiscal Policy Analyst, LCS  
Diego Jimenez, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are on the New Mexico Legislature website and in the meeting file.

**Tuesday, May 24**

**Welcome and Introductions**

Representative Zimmerman welcomed everyone and asked members and staff to introduce themselves.

## **History of the Master Settlement Agreement in New Mexico**

Ms. Ludi, referring to a handout at Item 1, presented a brief history of the tobacco litigation Master Settlement Agreement in New Mexico.

In 1994, the attorney general of the State of Mississippi filed suit against major tobacco companies for deceptive and fraudulent marketing, targeting children and conspiracy to conceal the health effects of smoking, arguing that Mississippi should not be forced to pay the costs of treating smoking-related diseases and conditions such as lung cancer, heart disease, emphysema and low-birth-weight babies. Eventually, 45 other states, including New Mexico, filed similar lawsuits against the same defendants, seeking recovery of Medicaid and other public health expenses incurred by the states in the treatment of smoking-related diseases and conditions.

In November 1998, the New Mexico attorney general joined 45 other states' attorneys general in settling the lawsuit with the tobacco companies, which are referred to as the participating manufacturers (PMs). The document that sets out the settlement is called the "Master Settlement Agreement", or MSA.

The MSA requires the PMs to stop deceptive marketing of cigarettes, particularly to children, and to make payments to settling states in perpetuity to compensate for the increased costs to the states because of the use of the tobacco companies' products. In exchange, states gave up any future claims against the PMs based on the tobacco companies' actions at issue in the settled lawsuits.

The PMs were the largest tobacco companies in the country at the time of settlement, but there are smaller tobacco companies that did not participate in the settlement. These companies are referred to as nonparticipating manufacturers (NPMs). The PMs were concerned that, because of the payments they had to make to the settling states, the NPMs would gain an unfair advantage in sales, leading to an increased market share for the NPMs and, therefore, a loss of market share to the PMs as an unintended result of the settlement.

To level the playing field between the PMs and the NPMs, the MSA provided that the annual payment amounts to the settling states could be reduced if it could be shown that the PMs had lost market share to the NPMs as a result of the settlement; these reductions are called "NPM adjustments".

The MSA allowed settling states to avoid reductions in payments because of NPM adjustments by:

(1) passing model escrow statutes that neutralize the cost disadvantages that the PMs experience by requiring NPMs operating in the settling states to either join the MSA and comply with its terms or to establish an escrow account and make regular payments into that account; and

(2) enforcing the escrow legislation.

In the 1999 legislative session, almost immediately after the MSA was signed, the legislature enacted the model escrow statutes.

The annual calculation of the settlement payment to be made by each PM and the amount to be received by each settling state, including any NPM adjustments, is very complex, and the parties can dispute the calculations. Disputes are resolved by arbitration, and the arbitration decisions may be challenged in state court. The calculation of the payments and whether the state has enforced the escrow statutes have been disputed by the PMs, beginning in 2003.

The Attorney General's Office (AGO) manages enforcement of and compliance with the MSA and represents the state in any disputes.

Ms. Ludi concluded her presentation, noting that Ari Biernoff, assistant attorney general, AGO, would later provide an update on the litigation.

#### **Post-Session Update: Tobacco Settlement Permanent and Program Funds**

Christine Boerner, senior fiscal analyst, Legislative Finance Committee (LFC), referred to a handout at Item 2, "Tobacco Settlement Fund Revenue and Appropriations", which reviewed the last three fiscal years. She particularly noted the additional transfers from the Tobacco Settlement Permanent Fund (Permanent Fund) to the Tobacco Settlement Program Fund (Program Fund) in fiscal years 2016 and 2017 to cover increases in Medicaid costs.

A committee member asked if the state borrowed money from the Permanent Fund during the great recession. Ms. Boerner responded in the affirmative. The member asked if the money had been repaid, and Ms. Boerner replied that it has not, and she agreed with the member's supposition that the absence of the borrowed money has negatively affected the Permanent Fund's earnings.

Another committee member pointed out that the Permanent Fund, which receives the annual payment from the MSA, was set up with an annual 50% distribution to the Program Fund and opined that the Permanent Fund was not sustainable at that level of distribution.

Another committee member commented that research indicates that \$21 million to \$22 million should be spent annually on smoking cessation efforts, yet only \$5.4 million is currently allocated for smoking cessation. The member pointed out that when not enough is spent on smoking cessation, state Medicaid costs go up and insurance costs go up. By cutting smoking cessation programs, "we are cutting off our nose to spite our face", the member noted. Another member pointed out that actual tobacco usage continues to decrease.

Another committee member expressed concern about whether the current annual appropriations are authorized by statute [Section 6-4-10 NMSA 1978]. The member also

wondered if there is a sunset on any of the current uses of the appropriations and if some of the current uses are real needs.

A member asked Christina Keyes, economist, LFC, to explain where the distributions received from the MSA are coming from, e.g., are the companies making payments from their sales revenues or did they set up their own escrow funds to make the payments from returns on the escrow funds; and what is the LFC seeing in terms of the long-run forecast of investment returns. Ms. Keyes said that the LFC uses the services of a reputable macroeconomic forecasting firm, Global Insight. The firm is taking a more conservative stance with regard to long-run rates of return for institutional investment funds and sovereign wealth funds, she said. The returns for the State Investment Council (SIC) were flat last year, only posting a 0.4% return. Current assumptions are that institutional investment funds will, in the long run, have investment returns of 7.75%. Ms. Keyes said that the SIC is revisiting this assumption and that Global Insight is forecasting institutional returns at around 4% for this fiscal year. She noted that the state retirement agencies (the Public Employees Retirement Association and the Educational Retirement Board) are reviewing their long-run return assumptions this year as well. In response to the committee member's question as to where the money was coming from (tobacco sales, an escrow fund, etc.), Ms. Keyes said that she was unsure and would refer that question to Mr. Biernoff. The member commented that if the settlement payments come from some kind of tobacco escrow fund, the settlement payments might be in danger because of the risk of poor investment performance. Ms. Keyes responded that the Consensus Revenue Estimating Group [a state fiscal advisory group consisting of representatives from the Department of Finance and Administration, the Taxation and Revenue Department, the Department of Transportation and the LFC] sees the Permanent Fund as a declining revenue source because of the overall decline in the use of tobacco products. She observed that last year's forecast settlement payment was \$42 million, but the actual payment was \$37 million.

A member added that another concern is that the state's operating reserve of 5% includes the Permanent Fund.

A discussion ensued about the current state of general fund revenue collections, revealing that gross receipts tax, compensating tax, corporate income tax and personal income tax revenues are all currently well below prior year collections. A member pointed out that volumes of oil and gas extracted are flat, and oil and gas wells using hydraulic fracturing are good producers early but quickly decline in productivity. Another member noted that the production in the Permian Basin is still very good and that the price can fall to \$28.00 to \$32.00 per barrel and New Mexico producers will still pump, but if revenues are off and stay off as they have recently, the Permanent Fund is at risk of being liquidated to balance the state budget.

### **Update on MSA Litigation**

Mr. Biernoff first introduced the attorney general's "tobacco team", Special Projects Coordinator Phil Bachicha, paralegal Jennifer Van Wiel and the new Civil Litigation Division director, Regina Ryanczak, and then he provided the update.

Basically, he said, a ruling by the district court in the state's appeal of the arbitrator's final award concerning the distribution of the NPM adjustment of the settlement payment for 2003 is still pending; the case has been before the judge for almost two years. A member asked which court and the name of the judge; Mr. Biernoff replied that it is the First Judicial District Court and Judge Raymond Ortiz.

Mr. Biernoff refreshed the committee's recollection that, in 2006, the PMs and the states began disputing the 2003 settlement payment, with the PMs alleging that New Mexico had not adequately enforced the escrow statutes. In September 2013, an arbitration panel issued a decision that New Mexico had not diligently enforced its escrow statute in calendar year 2003. The attorney general appealed the arbitrators' decision by filing a motion to vacate the final award in December 2013 in the district court in Santa Fe. The attorney general also filed a motion to vacate the arbitration panel's "partial award" (which had adopted the term "sheet settlement", a side agreement between certain states and the PMs). Prevailing on that motion could ultimately increase New Mexico's payment distribution by up to \$12 million. Both motions are awaiting a decision by the district court.

A committee member asked if the state can appeal if the district court rules against the state. Mr. Biernoff replied affirmatively. He added that the tobacco companies would also be able to appeal the lower court's ruling if the district court rules against them. The appeal would be to the New Mexico Court of Appeals. Mr. Biernoff informed the committee that the PMs had challenged payments to Maryland and Pennsylvania on similar issues, the arbitrator's decisions were appealed to their trial courts, and the trial court decisions were appealed to their state appeals courts and then their state supreme courts. The Maryland and Pennsylvania supreme courts have recently issued rulings favorable to the states; the PMs have applied to the United States Supreme Court for writs of certiorari in one of those cases, and the applications are pending. Mr. Biernoff noted that it had taken approximately two and one-half years for the Maryland and Pennsylvania appeals to progress from their district courts through their supreme courts, in contrast to New Mexico, where the district court has still not issued a decision, almost two years after the hearing. He declined to predict how long it would be before the 2003 payment dispute is finally resolved.

Mr. Biernoff informed the committee that the PMs' challenge to the 2004 payment is just getting under way in the arbitration process. He is concerned that, as time goes on, it will become more difficult to resolve disputes over diligent enforcement because of the lag time between the time of challenge and the time of resolution; witnesses will retire or otherwise become unavailable.

In response to a question by a committee member, Mr. Biernoff explained that if a state's diligent enforcement is challenged by the PMs and the arbitrator finds for the PMs, money will be debited from the next year's payment; the state never has to return money that has already been paid. So, the 2014 payment was reduced in accordance with the arbitrator's decision rendered in late 2013 in the 2003 case; if the state wins the appeal of the arbitrator's decision, the PMs will

have to pay the amount of the reduction, in addition to the current amount due in whatever year the final decision is issued. Mr. Biernoff warned that the attorney general expects the PMs to challenge New Mexico's and many other states' diligent enforcement in every year, which may result in adjustments to the payment calculation, which will unpredictably affect the payments in years when an arbitration decision is issued and resolved.

A member asked what costs the state has accumulated for the litigation. Mr. Biernoff replied that the state has spent well over \$100,000 for its share of the 2003 arbitration proceeding, which is the most expensive phase; as to the exact amount, Mr. Biernoff said he did not know but would provide the committee with that information. The member opined that it would be important to do a cost-benefit analysis of the litigation, including the cost to the AGO for staff to defend the litigation, to determine if the state will get back more money than it cost to get it, and Mr. Biernoff agreed, adding that New Mexico and all states have a very strong incentive to defend their settlement payments.

A member noted that the "Tobacco Settlement Fund Revenue and Appropriations" handout provided by Ms. Boerner listed an appropriation to the Indian Affairs Department for tobacco cessation programs, yet tribal sales are not included in the settlement payment calculation and are also a source of dispute that is costing the state money to defend. Mr. Biernoff corrected that perception by explaining that anyone who buys cigarettes on or off tribal land contributes to nationwide PM sales. As a result, total tobacco sales go up and that increases the payments to the states; it is just that there is no state cigarette tax on tribal sales.

Mr. Biernoff further explained that one of the issues New Mexico faces in the current case is the sale of tobacco on tribal lands. He said that the MSA does not specifically require regulation of tribal sales, but it does require regulation of sales of cigarettes subject to the imposition of the cigarette excise tax; in New Mexico, tribal sales are not subject to the cigarette excise tax. New Mexico maintains that the tribes are sovereign, and New Mexico has never imposed a state cigarette excise tax on tobacco sales made on tribal land. The arbitrator in the challenge to the 2003 payment agreed with New Mexico that the state does not have to require escrow deposits for NPM tribal sales. However, 23 states have agreed in a side settlement with the PMs to heightened enforcement beyond the requirements of the MSA, including enforcement of the escrow statutes on tribal sales.

In response to questions from the committee, Mr. Biernoff summarized the legislative history of escrow deposits on tribal sales: the 2009 legislature permitted the state to require escrow deposits on tribal sales even in the absence of the cigarette excise tax, but in 2010, it appeared to have reverted to the status quo, i.e., not requiring escrow deposits on tribal sales. The attorney general is currently involved in pending litigation with some NPMs on the issue of whether the NPMs are required to make escrow deposits on tribal sales for 2010. In 2011 and 2012, the legislature passed bills that would have required NPMs to deposit escrow payments for tribal sales, and both bills were vetoed. The same bill was introduced in 2013 but did not pass both houses.

Mr. Biernoff related that another issue in the challenge to the 2003 payment was the state's recordkeeping. A member asked if recordkeeping is better today than it was in 2003. Mr. Biernoff said yes. He noted that in 2003, state government had not yet computerized much of its recordkeeping and email usage in New Mexico was not as ubiquitous as it is today. State agency recordkeeping is much better now for retaining and retrieving information.

A member asked if the concept of the MSA was, if New Mexico reduces smoking more, more money is distributed. Mr. Biernoff replied no — the opposite is true. As tobacco sales go down, settlement payments go down because the payments are calculated based on the total amount of sales. On the other hand, the enforcement of the MSA on NPMs can make states' distributions go up. In 2003, more than 90% of sales were from the PMs. Today, that has dropped to 75% to 83% in some years. The other thing to remember, Mr. Biernoff said, is that state enforcement against NPMs basically offers the NPMs two choices: they can either join the MSA and become PMs, or they can pay money into an escrow fund to offset what they would have paid if they were PMs. A member asked if all arbitration and subsequent appeal litigation is about enforcement of the escrow statute against the NPMs, and Mr. Biernoff replied that it is.

A member asked precisely how the PMs finance their settlement payments — sales or an escrow fund of their own. Mr. Biernoff said that he did not know, but he would look into it and try to find out if that information is publicly available. The member asked whether, if they came from an investment fund, the manufacturers could go to court and ask for the payments to be reduced. Mr. Biernoff said that was not contemplated under the MSA. He stated that the tobacco companies could not claim a financial hardship and request a lower payment, but if a company goes out of business, it will no longer be making payments.

A member recalled that the previous attorney general had proposed legislation to require escrow deposits on NPM tribal sales, and the member asked if the current attorney general was considering proposing similar legislation. Mr. Biernoff said that staff has not been directed to draft any proposed legislation.

### **Review and Adoption of 2016 Interim Work Plan and Meeting Schedule**

Ms. Ludi presented the committee's proposed work plan and meeting schedule. She noted that this committee is one of the few statutory committees, and its responsibilities are set out in the establishing statute, so the items that come before the committee from year to year do not change very much; the recipients of appropriations from the Program Fund review what they have done with the money.

After discussion, it was decided that the three meetings outside of Santa Fe would be in Albuquerque at the University of New Mexico (July 1), in Las Cruces at New Mexico State University (August 5) and in Mescalero (September 26). A motion was made by Senator McSorley and seconded by Representative Zimmerman to approve that schedule, subject to approval by the New Mexico Legislative Council. The motion was adopted unanimously.

Ms. Ludi also proposed a "Tobacco Settlement Revenue (TSR) Funding Request" form for recipients of funds to complete and then provide to the committee for review when the committee considers its recommendations to the legislature. After discussion, the committee directed that the proposed form be amended to include statements of goals and objectives for the programs for which funding was requested.

### **Permanent Fund Asset Allocation**

Steve Moise, state investment officer, SIC, and Charles Wollmann, director of communications and legislative affairs, SIC, referring to a handout at Item 5, presented an update of the investment performance of the Permanent Fund.

Mr. Moise began by noting that the Permanent Fund has approximately \$256.4 million in assets. The one-year return on investment was flat at negative 0.38%. The 10-year return average was 5.3%. Mr. Wollmann explained that the Permanent Fund, as part of the state operating reserve, needs to have more liquid assets relative to the other state investment funds. Mr. Moise added that periodically, and particularly over the last two fiscal years, the legislature has re-allocated statutory distributions to the Permanent Fund; in other words, all settlement payments received by the Permanent Fund were appropriated instead of 50% remaining in the Permanent Fund.

Referring to Slide 4 of the handout, Mr. Wollmann explained that the Permanent Fund is not invested in long-term assets because they are not liquid. The Permanent Fund is the only non-constitutional permanent fund, and, if necessary, its corpus may be transferred to the general fund to avoid an unconstitutional deficit. Because it must be readily available, the Permanent Fund has to be invested in liquid assets.

A committee member asked how the Permanent Fund returns compare with the retirement funds' returns. Mr. Wollmann said that it is hard to compare them because the retirement funds have different approaches to investing because they have different requirements. He said that, in general, the Educational Retirement Board invests its funds in fixed-rate instruments, and the Public Employees Retirement Association invests primarily in equities, while the SIC, because of its expectation of muted economic growth, invests in private equities as well as stocks and bonds.

Mr. Wollmann informed the committee that United States stocks and bonds are valued more highly today than at almost any time in history, which is unusual because, usually, when one is higher, the other is lower. He expects a correction in either or both.

Mr. Wollmann advised that if there were legislative action to remove the "reserve" status of the Permanent Fund [Subsection F of Section 6-4-9 NMSA 1978: "The tobacco settlement permanent fund shall be considered a reserve fund of the state and, as a reserve fund, may be expended in the event that general fund balances ... will not meet the level of appropriations authorized from the general fund for a fiscal year. ..."] and maintain the 50% investment policy

[Subsection B of Section 6-4-9 NMSA 1978: "In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year ..."], it would allow for better fund growth and longer-term investment strategies that have better yields and less volatility. Mr. Moise acknowledged that in the current budget environment, these recommendations may not be feasible.

A member asked if the SIC had considered bifurcating the Permanent Fund, that is, protecting part of the Permanent Fund but not all of it, and if it could be done incrementally, protecting more of it over a period of several years. Mr. Wollmann said that the SIC can and will look at that possibility. He mentioned that the SIC was reassured that the legislature did not appropriate the Permanent Fund corpus even during the financial crises in 2009 and 2010. Mr. Moise informed the committee that New Mexico has the third-largest sovereign wealth fund, composed of the Severance Tax Permanent Fund and the Land Grant Permanent Fund, in the country; there are 11 others. He said that if the Permanent Fund were similarly protected, it could grow slowly over time. The member suggested considering protecting the Permanent Fund by amending the state constitution as well as statutes, and another committee member strongly agreed with that suggestion. A discussion followed regarding possible approaches to protect the Permanent Fund, including requiring a supermajority vote to sweep the Permanent Fund to cover general fund shortfalls; increasing the tobacco tax and directing the revenue to the Permanent Fund; and instituting a new tax on vapor products and directing revenues to the Permanent Fund.

A member commented that other state revenues coming in are falling short of forecasts, and, because it is part of the reserve, the Permanent Fund is at risk of having to transfer balances to make up the difference in general fund expenditures and revenues collected because of the state constitutional requirement of having a balanced budget.

A member commented that the legislature is the biggest threat to the funds: it has expanded utilization of money from the Land Grant Permanent Fund, Severance Tax Permanent Fund and Tobacco Settlement Permanent Fund at the same time as the revenues of those funds are declining. The current permanent fund distributions provide 16% of general fund appropriations. The member said that, on the course the state is on, the revenue streams are being eliminated.

A member observed that the current statute [Section 6-4-10 NMSA 1978] is very flexible on what constitutes appropriate uses of the Program Fund. The member added that when a fund is small, the legislature views it as acceptable to put protections on the fund, but when the fund grows and becomes large, the appetite to "raid" the fund is greater. The member noted that because of the protections put on the Land Grant Permanent Fund and Severance Tax Permanent Fund, the annual distribution from those funds has grown to over 14% of the general fund revenue stream and is a very stabilizing force.

**Adjournment**

There being no further business before the committee, the first meeting of the Tobacco Settlement Revenue Oversight Committee for the 2016 interim adjourned at 2:49 p.m.

Revised: June 30, 2016

**TENTATIVE AGENDA  
for the  
SECOND MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**July 1, 2016  
UNM Comprehensive Cancer Center  
Albuquerque**

**Friday, July 1**

- 9:30 a.m.           **Welcome and Introductions**  
                          —Senator Cisco McSorley, Co-Chair  
                          —Representative John L. Zimmerman, Co-Chair
- 9:45 a.m.       (1)    [University of New Mexico \(UNM\) Comprehensive Cancer Center Update](#)  
                          —Cheryl Willman, M.D., Director and Chief Executive Officer, UNM Comprehensive Cancer Center
- 10:00 a.m.       (2)    [Welcome; UNM Health Sciences Center Tobacco Settlement Revenue Program Overview; Research, Genomics, Biocomputing and Environmental Health](#)  
                          —Richard S. Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM Health Sciences Center
- 11:00 a.m.       (3)    [Specialty Education in Trauma; Specialty Education in Pediatrics; Instruction and General Purposes](#)  
                          —Richard S. Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM Health Sciences Center
- 11:30 a.m.       (4)    [Pediatric Oncology Program](#)  
                          —John Kuttesch, M.D., Ph.D., Division Chief, Pediatric Hematology/Oncology, UNM

*Action Item: Approval of Minutes of May 24, 2016 Meeting*

12:00 noon       **Lunch**

- 1:00 p.m. (5) [New Mexico Poison and Drug Information Center; E-Cigarette Research](#)  
—Susan Smolinske, Pharm.D., Diplomat of the American Board of Applied Toxicology, Director, New Mexico Poison and Drug Information Center
- 2:00 p.m. (6) [Biotech Update](#)  
—Richard S. Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM Health Sciences Center
- 2:30 p.m. (7) [UNM Funding/Budget Requests](#)  
—Richard S. Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM Health Sciences Center
- 3:00 p.m. (8) [E-Cigarette Accident Experience](#)  
—Virginia Trujillo
- 3:15 p.m. (9) [Indoor Media Information](#)  
—Ruben Garcia
- 3:30 p.m. **Public Comment**
- 3:45 p.m. **Adjourn**

**MINUTES  
of the  
SECOND MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**July 1, 2016  
UNM Comprehensive Cancer Center  
Albuquerque**

The second meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative John L. Zimmerman, co-chair, on July 1, 2016 at 9:36 a.m. at the University of New Mexico Comprehensive Cancer Center (UNMCCC) in Albuquerque.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Rep. Gail Chasey  
Sen. John C. Ryan

**Absent**

Sen. John Arthur Smith  
Rep. Monica Youngblood

**Advisory Members**

Sen. Linda M. Lopez  
Rep. Jim R. Trujillo

Sen. Mary Kay Papen  
Rep. Patricio Ruiloba  
Rep. Don L. Tripp

**Staff**

Celia A. Ludi, Staff Attorney, Legislative Council Service (LCS)  
Jeff Eaton, Research and Fiscal Policy Analyst, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

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

**Friday, July 1**

**Welcome and Introductions**

Representative Zimmerman welcomed everyone and asked members and staff to introduce themselves.

**UNMCCC Update**

Dr. Cheryl Willman, director and chief executive officer, UNMCCC, referring to a handout at Item 1, presented a review of the work at the UNMCCC. She reminded the

committee that, in 2015, the UNMCCC was designated as a comprehensive cancer center, one of only 45, or the top three percent, in the nation. She explained that "comprehensive cancer center" is a designation by the National Cancer Institute (NCI) for institutions that do outstanding cancer research and provide treatment services directly to cancer patients. [The 69 NCI-designated cancer centers in 2015 include 45 comprehensive cancer centers and 24 cancer centers, located in 35 states and the District of Columbia.] Scientists and doctors at these centers perform laboratory research studying the patterns, causes and control of cancer in groups of people and participate in multicenter clinical trials that enroll patients from many parts of the country. The UNMCCC also provides specialized training to physicians and other health care professionals and provides cancer information to the public. The designation as a comprehensive cancer center supports the recruitment of ever better physicians and scientists.

Referring to Slide 2, Dr. Willman noted that New Mexico has the only state tumor registry that tracks 98 percent of cancers in women and girls; the registry is considered a national model.

Referring to Slides 7 and 8, Dr. Willman informed the committee that the 2015 NCI critique of the UNMCCC strengths include the assessment that the "UNMCCC is a superb model for addressing the cancer health care delivery research and cancer disparities in underserved populations", one reason that the UNMCCC was recently recruited to U.S. Vice President Joe Biden's Cancer Moonshot Task Force team. The NCI reviewers also put strong emphasis on the state's support for the UNMCCC (Slide 8).

Dr. Willman outlined the strategic goals of the UNMCCC (Slides 9-12, 15 and 23), which include addressing the disparities in screening, incidence and outcomes of various cancers; developing a Total Cancer Care protocol that would allow consenting cancer patient cohorts to be followed from diagnosis through their lifetime; and continuing to focus on New Mexico's tribal communities, addressing the unique genetic ancestry factors of New Mexico's Native American population and developing novel therapeutic opportunities for this population. Dr. Willman noted that only four percent of the Native American population in New Mexico has been screened for colorectal cancer; the UNMCCC has recently received new federal grants to increase screening efforts in tribal communities (Slide 10).

Referring to Slide 11, Dr. Willman said that the UNMCCC has received a \$250,000 appropriation for 3D mammography that it had not asked for but that some community organizations had worked for, and the UNMCCC was happy to receive it. She said that 3D mammography may improve cancer detection rates and reduce call-backs. Often, women, especially in rural areas, cannot return for a call-back because of a lack of transportation and the expense, so cancers may grow instead of being treated early. Early treatment is easier on the patient and has a higher likelihood of a positive outcome, and it is less expensive. She also commented that 3D is slightly more expensive than 2D imaging. She said that there are no large national studies comparing and quantifying the efficacy of 2D and 3D imaging, so the UNMCCC instituted a clinical trial called the "New Mexico LOVE Study" to do that. She said that the

UNMCCC used the money appropriated and added \$250,000 out of its clinical budget to set up a clinical trial with 1,000 medically underserved, income-eligible women; 842 women have been screened to date, and the UNMCCC will complete the trial and then do the data analysis.

Dr. Willman said that the UNMCCC has a human papillomavirus (HPV) patient registry that began in 1970. Currently, 98 percent of New Mexico women are tracked in this database. This rate is among the best in the nation and is a model for other states. Dr. Willman said that the UNMCCC would like to translate the successes of the database to other cancers, liver cancer in particular, and would like the legislature to consider expanding authority of the UNMCCC to do that.

Dr. Willman informed the committee that the UNMCCC may need additional legislative support to qualify for federal matching funds to achieve the strategic goals described in Slide 12. She said that the UNMCCC would work with the University of New Mexico's (UNM's) attorneys and the LCS to develop proposed legislation, and it would have legislation ready to present at the November 21 meeting.

Referring to Slide 13, Dr. Willman informed the committee that the UNMCCC is a member of the Oncology Research Information Exchange Network (ORIEN), a research partnership among North America's top cancer centers that recognizes that collaboration and access to data are the keys to cancer discovery. The ORIEN allows partners to share and access data sources from all partners and match patients to targeted treatments. ORIEN partners share a common protocol, called "Total Cancer Care". Total Cancer Care provides a standard system for tracking patient molecular, clinical and epidemiological data and follows the patient throughout his or her lifetime. ORIEN partners have access to one of the world's largest clinically annotated cancer-tissue repositories and data from more than 100,000 patients who have consented to the donation for research. Building the database is one of the most important features of the ORIEN. Dr. Willman is working on having the U.S. Department of Veterans Affairs (VA) Hospital in Albuquerque enrolled as one of five VA hospitals nationwide that are ORIEN partners. Dr. Richard Larson, executive vice chancellor and vice chancellor for research, UNM Health Sciences Center (HSC), commented that the VA has a network of clinics throughout the state that would be a unique asset to the ORIEN project because it would provide access to medically underserved, particularly Hispanic and Native American, populations. In response to a question from a committee member, Dr. Willman said that she would very much appreciate a letter of support from the committee to be provided to the ORIEN. It was moved and seconded that the committee will provide Dr. Willman with a letter of support for the VA application.

Dr. Willman further informed the committee that the UNMCCC was selected in 2015 to oversee the NCI's Geographic Management of Cancer Health Disparities Program for Region 3 (Slide 14).

Dr. Willman stated that the UNMCCC is working with tribal communities to identify and address concerns about environmental toxins that cause cancer (Slides 15 and 16).

The UNMCCC continues to work with Los Alamos National Laboratory on a "big data" project on gene sequencing (Slides 17-22).

Finally, Dr. Willman showed a video clip of an NBC News program on the Cancer Moonshot Task Force, which highlighted work done at the UNMCCC. A link to the video is at Item 1.

In response to a question from a committee member, Dr. Willman said that the UNMCCC would be very enthusiastic about partnering with New Mexico State University (NMSU) on cancer research; Dr. Larson added that UNM was disappointed when NMSU partnered with Washington State University on clinical research instead of with the UNMCCC. Dr. Willman said she has reached out to the new Burrell College of Osteopathic Medicine (BCOM) and noted that the BCOM is just opening this year and that its research capacity is not developed yet.

**UNMHSC Tobacco Settlement Revenue Program Overview; Research, Genomics, Biocomputing and Environmental Health; Specialty Education in Trauma; Specialty Education in Pediatrics; Instruction and General Purposes**

Dr. Larson, referring to his handout at Item 2, Slide 1, commented that the UNMHSC is a major contributor to New Mexico's economy, employing more than 10,000 people who deliver health care services and train health care professionals in 246 communities across the state. He explained, referring to Slide 2, that the UNMHSC is a hybrid organization, an academic health center that is neither a purely academic institution nor health care provider but that provides patient care, education and research.

Referring to Slides 7-15, Dr. Larson summarized the UNMHSC's use of tobacco settlement funds. He said that the tobacco settlement distribution to UNM supports tobacco-related research and clinical care programs across all of the UNMHSC. Dr. Larson reported that the amount to be distributed in fiscal year (FY) 2017 is \$2,859,100. Among the uses is to provide funding for pilot programs, which is the primary mechanism for obtaining federal support; Dr. Larson asserted that funding pilot projects returns between \$8.00 and \$20.00 for every \$1.00 invested. Referring to Slide 11, Dr. Larson reported that the core projects at the UNMHSC supported by the tobacco settlement revenue distribution are the New Mexico Poison and Drug Information Center (NMPDIC); the pediatric oncology program; biomedical research in genomics; biocomputing; and environmental health research. The distribution is also used for specialty education in trauma and pediatrics and instruction and general purposes. He noted that there will be separate presentations on the pediatric oncology program and the NMPDIC.

A committee member recounted testimony from a recent Revenue Stabilization and Tax Policy Committee meeting in which it was mentioned that the Tobacco Settlement Permanent Fund (TSPF) is at risk of being "swept" because it is part of the state operating reserve to address general fund deficiencies in the current budget year appropriations. The committee then engaged

in a short discussion regarding the status of the TSPF. In response to a question by a committee member, Mr. Eaton stated that he had discussed the matter with LCS Director Raúl E. Burciaga and understood that "tapping" the fund would require legislation and that it would be necessary for the governor or the legislature to call a special legislative session and enact a bill authorizing an appropriation from the TSPF.

Dr. Larson noted that much of the research done at the UNMHSC is in the form of clinical trials, which provide both research and patient treatment and offer an additional benefit to patients because all drugs administered in treatment through a clinical trial are provided free of charge. Other research programs — for example, research in pediatric diabetes; obesity; and mortality rates and interventions for prescription narcotic overdoses — are based in the various colleges at UNM.

Research is also being performed on the effect of vitamin D on immunity. He said that Australia has had a public sun awareness campaign for 30 years that encourages the use of sunscreen, but the apparent impact in the incidence of melanoma is zero, leading to a hypothesis that the use of sunscreen also reduces formation of vitamin D in the body, which negatively affects immunity. He observed that most kidney cancer and melanoma treatment includes supplementation with vitamin D to enhance immunity. He noted that vitamin D could be considered a hormone as much as a vitamin, as it regulates and affects immunity, bone density and even cognition, among others things.

In response to a committee member's question about whether there is a connection between posttraumatic stress disorder (PTSD) and cancer, Dr. Larson observed that there is a documented relationship between PTSD and substance abuse and addiction, including tobacco addiction, but it is not necessarily a cause-and-effect relationship. He noted that chronic marijuana users do not show an increase in lung cancer rates similar to tobacco smokers, although chronic marijuana users are more likely to have PTSD. There is also a relationship between cancer and other illnesses with environmental toxins, such as Agent Orange and asbestos used for insulation on ships, and often people with illnesses resulting from those causes also have PTSD. For PTSD alone, there is no apparent cancer link.

Dr. Larson stated that marijuana is one of the most genetically modified plant crops in the world, and federally funded and approved research does not reflect the current products because all marijuana used for federally sanctioned research and clinical studies comes from the same 20-year-old strain, which is all grown on one farm in Mississippi and which is very different from today's street supplies and crops being raised for use in states that allow sale of marijuana products for medical and recreational purposes. He said that there are at least 13 different cannabinoids, which are not well understood. He said that new marijuana-related diseases, including psychosis, are being seen in emergency rooms, but there is no doubt that there are medical benefits to controlled marijuana use; for instance, in pain reduction and to address movement disorders. He added that studies using non-federal marijuana crops are limited, but they are slowly growing.

A member asked if there would be a reduction in cancer deaths if the smoking age were raised from 18 years old to 21 years old. Dr. Larson replied that the medical community does not know for certain.

### **Pediatric Oncology Program**

Dr. John Kuttesch, division chief, Pediatric Hematology/Oncology, UNM, informed the committee that tobacco settlement funding (\$250,000 in FY 2017) is used to deliver care, support access to available therapies and support survivorship, education and outreach. He reported that cancer is the leading cause of nonaccidental death in children, and that 80 percent to 85 percent of pediatric oncology patients survive cancer. He explained that UNM, as New Mexico's only tertiary care provider of comprehensive oncology services for children, conducts research and provides direct patient treatment and care. ["Tertiary care" is specialized consultative care, usually on referral from primary or secondary medical care personnel, by specialists working in a center that has personnel and facilities for special investigation and treatment.] Dr. Kuttesch reported that in the last fiscal year, UNM's Pediatric Oncology Division had received referrals from all parts of the state and had more than 450 active patients and 4,900 clinic and inpatient visits. Referring to his handout at Item 4, Slide 6, he summarized the clinical services provided by the Pediatric Hematology/Oncology Division of the UNMHSC, highlighting the biweekly tumor board review meetings where multidisciplinary staff review and discuss unusual cases and the groundbreaking work performed by Dr. Jodi Mayfield and Dr. Stuart Winter in treating childhood leukemia and discovering new identification techniques and treatment therapies using genomic sequencing analysis. The UNMCCC is one of only a few institutions in the country with access to focused clinical trial treatments for children.

Dr. Kuttesch noted that accessing care is a challenge for children, and poor children in particular. In answer to questions by committee members, Dr. Kuttesch said that UNM had never turned away a child who needed oncology treatment, but distances in New Mexico are a constant problem because UNM cannot provide telemedicine support to health care providers in rural areas for all patients, so some patients who live outside the Albuquerque area must be treated in Albuquerque, which often strains family resources. He added that there are some nonprofit organizations that provide monetary and other support to families that have children being treated for cancer and other illnesses at the UNMHSC. He also noted that UNM does not provide some kinds of treatment; for example, bone marrow transplants, so patients who need that kind of treatment must go out of state, usually to Colorado. Some other out-of-state institutions do not do the work that UNM does; for example, blood work and genetic sequencing, so those institutions rely on UNM. He said that UNM has cooperative relationships with Colorado and with other institutions to support and supplement patient treatment and care. Dr. Kuttesch informed the committee that over 90 percent of pediatric oncology patients treated at UNM are enrolled in clinical trials, so all treatment provided for those patients is free of charge. He summarized UNM's 65 current clinical trials in his handout at Slide 10.

A member asked if the work done by the UNMCCC and Dr. Mayfield has had an impact in the field. Dr. Willman responded that the collaboration across institutions and science

laboratories nationally and internationally shows the medical world that genetic sequencing and gene therapies being developed at the UNMCCC make it possible to fix "broken" genes. The UNMCCC leads the world in this type of gene therapy and research.

A member asked how an institution decides whether to be "well-rounded" or "specialized". Dr. Kuttesch responded that there is a balance in the clinical area but that the UNMCCC leads in several clinical areas as well. Collaboration and clinical trial development are ways to access expertise that is greater than within the UNMCCC. The member commented that one then just needs to know which institution is strong in which area, to which Dr. Kuttesch agreed.

Dr. Kuttesch described several ongoing research programs, including one addressing promising ways to successfully treat Native American and Hispanic children with childhood leukemia; Native Americans and Hispanics often have a genetic marker that makes treatment less successful. Dr. Kuttesch related that UNM shares information and resources with other research and treatment institutions worldwide, which benefits everyone. In addition to research and treatment of pediatric cancer, UNM provides education and outreach programs. Dr. Kuttesch concluded his presentation with Slide 18, where he noted that the UNMCCC wants to develop a pediatric brain tumor program and will have a pediatric neurosurgeon on the faculty beginning in August 2016.

Dr. Kuttesch's handout is at Item 4.

#### **NMPDIC; E-Cigarette Research**

Dr. Susan Smolinske, director, NMPDIC, explained that the NMPDIC is part of the UNM College of Pharmacy and has teaching responsibilities in addition to providing poison and drug information to the general public and to emergency and medical personnel. Working through her handout at Item 5, Dr. Smolinske provided itemized information about the life- and cost-saving impacts of the NMPDIC. She reported that in FY 2017 the tobacco settlement funds contributed \$590,300 to the NMPDIC's budget of \$2.2 million, providing direct support to approximately 6,700 callers in FY 2016; providing education and outreach to an estimated 630,000 New Mexicans; and reducing health care expenses. She added that it is hard to quantify the total amount of Medicaid dollars saved by the NMPDIC, but she noted that because half the state's population is covered by Medicaid, there is an estimated savings of \$12 million, primarily in Medicaid, statewide. The NMPDIC also consults with health care teams on admitted patients, with 5,212 consults in FY 2015. The NMPDIC estimates that these consults reduce the average hospital stay by 3.2 days, translating into a savings of \$36 million in FY 2014. Dr. Smolinske said that 100 percent of calls to the poison and drug information hotline (1-800-222-1222) are handled within five minutes by a pharmacist certified in poison information, and most calls are completed in less time. The center also does follow-up calls to at-home cases, resulting in a savings of about \$13.5 million in emergency room visits rendered unnecessary because of the availability of the NMPDIC.

In response to a question from a committee member, Dr. Smolinske replied that federal funding received by all poison and drug information centers is distributed based on the populations served by each center, but the federal funding has decreased because a senator from Montana thought that there should be one national poison center instead of 55. She said that federal funds have decreased so much that 10 poison and drug information centers have closed. Dr. Smolinske reported that each state does not necessarily have a center, and some have more than one. For instance, one center in Colorado also serves Montana and Wyoming. Cost analysis has shown that no cost savings are achieved by consolidation. In any case, she said, federal funds only pay for a small portion of the total calls received by the NMPDIC. Dr. Smolinske advised the committee that if the NMPDIC closed, the closest place for the 62 pharmacy students at the UNM College of Pharmacy to get the training provided by the NMPDIC is in Denver. She added that the top snakebite expert in the country is at the NMPDIC, and he consults nationwide.

In response to the committee's prior request, Dr. Smolinske provided information about e-cigarettes, particularly regarding incidents of poisoning by the liquid nicotine used in them and injuries caused by exploding delivery systems, such as e-cigarettes. She reported that poison centers across the country are reporting an increase in calls about exposures to e-cigarettes and the liquid nicotine used in delivery devices, and calls to the NMPDIC regarding e-cigarettes have increased by 25 percent overall since 2014, even though the number of calls decreased after the passage of legislation in 2015 requiring child-resistant packaging of e-cigarette delivery. She commented that most of the calls were because children had been exposed to the liquid nicotine in vaping devices, resulting in moderate (requiring hospitalization) or major (life-threatening) effects because nicotine is highly toxic, particularly when ingested by a child. She noted that nicotine is a very effective pesticide and herbicide.

In response to a question by a committee member, Dr. Smolinske said that she is not aware of any credible studies regarding the health effects of secondhand vapors, but the tobacco company R.J. Reynolds has initiated an "enhanced data collection project" (Slide 13) regarding e-cigarettes in which the NMPDIC is participating, and she expects some information to come out of that. Dr. Smolinske said that research is still in the very early stages because of the relative newness of the products and because the federal Food and Drug Administration (FDA) has only in the past several weeks had the authority to regulate the products, adding that even if the FDA is able to control the contents of products manufactured in the United States, it has no authority over products made in other countries.

In response to a question by a committee member about whether there is evidence that use of e-cigarettes helps people quit smoking, Dr. Larson said that a survey of studies produced no evidence that use of vapor products is effective for that purpose.

A committee member asked if use of vaping devices is prohibited on airplanes, and Dr. Smolinske answered that there are no federal laws prohibiting it, so individual airlines have the discretion to permit it.

Dr. Smolinske, referring to Slides 19-41, provided a detailed explanation of the ways various vaping devices work, including e-cigarettes, e-hookahs, vaping pens, e-cigars, e-pipes and other personal vaporizers. She observed that there is no federal regulation of terminology or content, so standardized information is nonexistent. On Slide 42, she listed many constituents of e-cigarette liquids, and she summarized the health concerns presented by some of them, referring to Slides 43-49. She also described a new vapor delivery system, direct dripping, referring to Slides 51-53.

Dr. Smolinske reported that, in addition to injuries from nicotine poisoning, there have been a number of injuries caused when e-cigarettes exploded, and she described one such incident seen at the UNM Hospital Emergency Department (Slide 54).

Dr. Smolinske advised the committee that more research is needed to assess the effects of vaping devices and the risks of secondhand and thirdhand exposure to the vapors. Dr. Larson provided copies of two recent academic journal articles: "Pediatric Exposure to E-Cigarettes, Nicotine, and Tobacco Products in the United States", published in *Pediatrics* in June 2016; and "Electronic Cigarettes for Smoking Cessation: A Systematic Review", published by Oxford University Press on behalf of the Society for Research on Nicotine and Tobacco in May 2016. These articles are available at Item 5.

### **Biotech Update**

Dr. Larson summarized the economic challenges currently facing the U.S. economy as decreased manufacturing and increased global competition result in insecurity of job growth and insecurity of health care and social support systems. Referring to his handout at Item 6, he asserted that the bioscience industry, which is growing at a faster rate and pays wages 80 percent greater than the overall private sector, holds great promise of positive contributions to New Mexico's economic picture. Referring to Slides 4-8, Dr. Larson explained that the bioscience economic model starts with government-funded academic research that produces viable products and services that can be developed and marketed by the private sector. He mentioned some of the 38 new private companies that were either spun off from UNM or used UNM technology to start up, the latest of which is IntelliCyt, which was recently purchased by a German firm for a record \$90 million. On Slide 9, Dr. Larson listed the six industries that make up the bioscience sector. He highlighted the dramatic increase (650 percent) in extramural research funding brought in by the UNMHSC since 1993, and on Slide 13, he compared the patents awarded in New Mexico across five industries, including bioscience-related patents. Dr. Larson asserted that although New Mexico is growing a strong workforce in business and science, most New Mexico graduates do not stay in the state after graduating because of a lack of jobs in their fields. Slides 12-18 provide employment and revenue data for bioscience in New Mexico.

Dr. Larson recommended that the state focus on recruitment of out-of-state companies and top-level executives to start or transfer operations to New Mexico to employ the state's bioscience graduates and to enhance the science, technology, engineering and mathematics (STEM) pipeline programs in New Mexico high schools and community colleges. In addition,

he strongly recommended designating one or more funds tied to the State Investment Council to invest in bioscience companies originating in New Mexico in the middle of the "valley of death" stage of product development (Slide 5). His recommendations are on Slides 21 and 22.

### **UNM Funding/Budget Requests**

Dr. Larson presented UNM's tobacco funding request form. He explained the different sources of funding for the various UNMHSC programs; funds are used primarily for research, outreach and faculty physician education, which helps the hospital recruit and retain faculty physicians. The discussion included the importance of job opportunities in the health sciences and economic development. A member asked if Dr. Larson has presented to the Jobs Council or Economic and Rural Development Committee. Dr. Larson said that he would welcome the opportunity to present to either entity, adding that he had been told that the Jobs Council did not have time for his presentation.

### **E-Cigarette Accident Experience**

Virginia Trujillo described how e-cigarette batteries in her son's pocket spontaneously ignited while he was driving and caused severe third-degree burns over the lower half of his body. She noted that there are no laws governing e-cigarettes and asked the committee to increase regulation of e-cigarettes to make them safer so other people do not have similar accidents. She also spoke in support of increasing funding to UNM Hospital, asserting that the Emergency Department is too small to serve the population since it is the only Level 1 trauma center in the state. [A Level 1 trauma center is a comprehensive regional resource that is a tertiary care facility central to the trauma system. A Level 1 trauma center is capable of providing total care for every aspect of injury — from prevention through rehabilitation.]

### **Indoor Media Information**

Ruben Garcia, owner of JohnnyBoards LLC, a small local business providing advertising boards located in public restrooms, informed the committee that 60 percent of his business is public health awareness campaigns, such as anti-DWI. Committee members suggested contacting the Department of Health, Children, Youth and Families Department, Human Services Department and schools to partner with them in providing outreach for their various information campaigns.

### **Public Comment**

Paul Sanchez, executive director, New Mexico Cancer Center Foundation, noted that smoking puts a heavy burden on the state's Medicaid program. He said that one-third of Medicaid recipients smoke, but only 10 percent of smokers on Medicaid get treatment for smoking. He stressed that, in addition to increasing tobacco use cessation efforts, prevention is key, especially among young people.

### **Adjournment**

There being no further business before the committee, the second meeting of the Tobacco Settlement Revenue Oversight Committee for the 2016 interim adjourned at 3:31 p.m.

**TENTATIVE AGENDA  
for the  
THIRD MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 5, 2016  
Barbara Hubbard Room  
New Mexico State University  
Las Cruces**

## Friday, August 5

9:00 a.m. **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative John L. Zimmerman, Co-Chair

9:10 a.m. (1) [Welcoming Remarks](#)  
—Dr. Garrey Carruthers, Chancellor, New Mexico State University  
(NMSU)

9:30 a.m. (2) **NMSU Health Care Programs for Prevention or Treatment of Disease or Illness**  
—Dr. Donna Wagner, Dean, College of Health and Social Services,  
NMSU

10:15 a.m. (3) [NMSU Research to Improve the Health and Wellness of New Mexicans](#)  
—Dr. Vimal Chaitanya, Vice President for Research, NMSU

10:45 a.m. (4) **NMSU Academic and Public Service Programs That Address Health and Prevention of Disease and Illness**  
—Dr. Dan Howard, Provost, NMSU

11:45 a.m. (5) **Update on Dona Ana Community College Nursing Program and Addressing Health Care Workforce Needs**  
—Tracy Lopez, M.S.N., R.N., Director, Nursing Program, New Mexico State University Dona Ana Community College

*Action item: Approval of minutes of the second meeting*

12:30 p.m.      **Lunch**

- 1:15 p.m.      (6)    **Comprehensive Health Workforce Development in New Mexico;  
Funding/Budget Requests**  
—Charles Alfero, Executive Director, Southwest Center for Health  
Innovation and the New Mexico Primary Care Training Consortium
- 2:15 p.m.      (7)    **Update on the Burrell College of Osteopathic Medicine**  
—George Mychaskiw, II, D.O., F.A.A.P., F.A.C.O.P., Chief Academic  
Officer and Founding Dean, Burrell College of Osteopathic Medicine
- 3:00 p.m.            **Public Comment**
- 3:15 p.m.            **Adjourn**
- 3:15 p.m.            *Optional Tour of the Burrell College of Osteopathic Medicine*

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

**August 5, 2016  
Barbara Hubbard Room  
New Mexico State University  
Las Cruces**

The third meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative John L. Zimmerman, co-chair, on August 5, 2016 at 9:15 a.m. at the Barbara Hubbard Room at New Mexico State University (NMSU) in Las Cruces.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Sen. John C. Ryan  
Sen. John Arthur Smith

**Absent**

Rep. Gail Chasey  
Rep. Monica Youngblood

**Advisory Members**

Sen. Mary Kay Papen  
Rep. Patricio Ruiloba  
Rep. Jim R. Trujillo

Sen. Linda M. Lopez  
Rep. Don L. Tripp

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Jeff Eaton, Research and Fiscal Policy Analyst, LCS  
Anna Martin, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

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

**Friday, August 5**

**Welcome and Introductions**

Representative Zimmerman welcomed everyone and asked members and staff to introduce themselves.

## **Welcoming Remarks**

Dr. Garrey Carruthers, chancellor, NMSU, referring to his handout at Item (1), summarized the current issues facing NMSU:

- the national trend in college enrollment is down;
- the population of New Mexico is declining;
- New Mexico high school graduation rates are declining;
- oil and gas and other state revenues are substantially lower than in previous years; and
- legislative appropriations to higher education have been cut.

In light of this, NMSU contracted with Deloitte Consulting Services to undertake a comprehensive review of its operations and make recommendations to increase quality and efficiency, reduce costs and increase and diversify revenues. Dr. Carruthers said Deloitte's primary finding was that NMSU was not necessarily overstaffed, but was poorly organized, with many administrative functions overlapping, creating confusing and sometimes conflicting redundancy. In response, NMSU sought wide input from members of the campus and community and has restructured its administrative organization across all colleges to better integrate administrative functions and reduce staff, primarily by attrition but also by eliminating positions.

NMSU is also reviewing facility operations across all colleges to eliminate unnecessary expenses; actions taken include formulating a multiphase vehicle-reduction plan and closing two of 12 agricultural experiment stations.

NMSU has also developed a strategic enrollment initiative targeting student recruitment and retention and the expansion of online and distance learning offerings and apprenticeship and internship programs.

The final initiative, Dr. Carruthers said, is development of the university's real estate and water assets for commercial use to provide an ongoing revenue stream. A highlighted development project is the planned construction of a Courtyard Marriott hotel west of the convention center located on the northwest corner of campus. The university is planning to partner with the hotel to provide internship opportunities for students enrolled in the hospitality and tourism program.

In response to the current fiscal crisis in the state, NMSU has cut \$12.1 million from its budget to date, and it is working on additional cuts. In response to questions from committee members, Dr. Carruthers said that NMSU is willing to keep any sports program that raises its own money, as the equestrian team did when faced with elimination of funding.

## **Approval of Minutes**

The committee approved the minutes of the July 1, 2016 meeting with no amendments.

## **NMSU Health Care Programs for Prevention or Treatment of Disease or Illness**

Dr. Donna Wagner, dean, College of Health and Social Services (CHSS), NMSU, informed the committee that the CHSS has 230 faculty and staff and 1,445 students (1,100 undergraduate and 345 graduate students) enrolled. The CHSS has three schools: the School of Nursing, the School of Social Work and the Department of Public Health Sciences; all schools are accredited by independent accrediting bodies.

The School of Social Work offers bachelor of arts and master of social work degrees, with classes in Las Cruces and Albuquerque; it is starting an online program as well. Dr. Wagner commented that social work is an important part of integrative health and there are not enough social workers in New Mexico to address the need.

Public health is another area facing a workforce shortage. NMSU is trying to address the need through its educational programs, but half of the professors in the Department of Public Health Sciences will retire in the next five years; the school is developing a plan to ensure continuation of the program, but it is impacted by the current fiscal situation.

Dr. Wagner said that Kathleen Huttlinger, Ph.D., R.N., professor and interim associate dean and director, School of Nursing, NMSU, will speak about the School of Nursing in more detail.

Dr. Wagner noted that all three departments require internships, which have an imputed economic value in the Las Cruces area of \$720,000 in the spring 2016 semester alone.

Next, Dr. Huttlinger observed that because of the shortage of health care providers, especially in rural areas, many patients are very sick when they present at a hospital and their cases are more complex, which require health care providers with a higher level of training. She said that the School of Nursing has 399 students starting the fall 2016 semester, and there are an estimated 800 to 900 pre-nursing students enrolled at NMSU. The School of Nursing only admits about 100 students per year to its four-year bachelor of science in nursing (B.S.N.) program, and retention once admitted is high because of the careful admission process. She referred to her handout at Item (2) for more details on enrollment and retention.

Dr. Huttlinger noted that many nursing graduates stay in New Mexico, especially if they are from New Mexico or become licensed in New Mexico. Salary is an issue for nursing graduates because they can often make substantially more money in surrounding states than in New Mexico. In addition, the availability of good jobs for spouses of nurses impacts nurses' decisions of whether to stay in New Mexico or relocate. New Mexico belongs to the Nurse Licensure Compact, which allows reciprocity between member states. In response to a committee member's question, Dr. Huttlinger said annual salary ranges for nurse practitioners and doctorate-level nurses is approximately \$90,000 to \$120,000; B.S.N./registered nurse (R.N.) salaries range from \$55,000 to \$80,000 depending on the facility; and licensed practical nurse (L.P.N.) salaries are just above minimum wage. She noted that Banner Health is moving into El

Paso, Texas, and is offering a \$20,000 signing bonus to nurses, as well as excellent salaries; the School of Nursing just lost a faculty member to Banner Health.

Scholarships that require staying in New Mexico for three years after graduation help with retention but are not sufficient to address the long-term need. She said there is a critical need for nurse practitioners with psychiatric/mental health and family specializations, and the School of Nursing offers programs for both, but there are, at present, only four faculty for those programs; the school needs two to four more faculty. Answering a committee member's question, Dr. Huttlinger said that an associate degree, which is required for L.P.N.s, is offered by Dona Ana Community College (DACC). She added that DACC graduates often apply for the B.S.N./R.N. program at the School of Nursing at NMSU.

### **NMSU Research to Improve the Health and Wellness of New Mexicans**

Dr. Vimal Chaitanya, vice president for research, NMSU, introduced four members of the NMSU faculty who are conducting research on health-related issues.

Brook Milligan, Ph.D., professor, Department of Biology, NMSU, referring to his handout at Item (3), observed that New Mexico has many health disparities; current trends in precision medicine depend on massive economies of scale that are not available in New Mexico, creating barriers to health care access. The lack of access to precisely targeted treatment only increases health disparities. He described his project to develop genomic diagnostic technology that is low-cost to operate, requires little clinical investment, demands little technical expertise and is accessible throughout the state. Dr. Milligan's solution is a hand-held machine that provides validated DNA sequencing and that can be used by people who do not have extensive and expensive training. The machine also has much broader implications for applications; in addition to precision targeting of treatment for health conditions, for instance, he said, it could be used to screen incoming produce at borders of countries. He said that this project will reduce the disparities in health outcomes and also contribute to economic growth in the state.

Giancarlo Lopez-Martinez, Ph.D., assistant professor, Department of Biology, NMSU, referring to his handout at Item (3), explained his research on using nicotine to improve cancer patient outcomes by reducing the side effects of radiotherapy.

Son Coa Tran, Ph.D., professor, Computer Science Department, NMSU, and Jay Misra, Ph.D., associate professor, Computer Science Department, NMSU, referring to their handout at Item (3), explained their team's development of a protocol for asthma management assistance and prediction using a small sensor that can be attached to clothing. The sensor monitors the environment for asthma triggers, such as smoke and air pollution, and uses the collected information to predict the user's individual asthma response.

Immo Hansen, Ph.D., associate professor, Department of Biology, NMSU, referring to his team's handout at Item (3), described his team's development of a technique to render mosquitoes sterile to prevent the spread of mosquito-borne viruses. Sterilizing mosquitoes is better than

using insecticide because the mosquitoes do not develop resistance to the sterilization technique as they do to the insecticide and, because over time, the mosquito population decreases through this technique. He noted that the team's principal investigator, Kathryn A. Hanley, Ph.D., professor, Department of Biology, and director of the Hanley Laboratory (The Emerging RNA Viruses Laboratory) at NMSU, is a world-renowned authority on mosquito-borne viruses who is currently consulting on responses to the Zika virus.

### **NMSU Academic and Public Service Programs That Address Health and Prevention of Disease and Illness**

Dr. Dan Howard, provost, NMSU, introduced four NMSU faculty members with proposals for limited-duration research projects in public health.

Debra Darmata, operations manager, Wellness, Alcohol and Violence Education (WAVE) program, NMSU, referring to her handout at Item (4), described the WAVE program to reduce the initiation of tobacco use by providing social norming and awareness education campaigns.

Christopher Brown, Ph.D., associate professor, Department of Geography, NMSU, referring to his handout at Item (4), presented a proposal to encourage people to get active to build a healthier lifestyle by creating a mobility capability network for Dona Ana County.

Sonja Koukel, Ph.D., community and environmental health specialist, Cooperative Extension Service, NMSU, referring to her handout at Item (4), described the NM HEART (Health Extension Ambassadors in Rural Towns) Program to increase the quality of life for all New Mexicans through a volunteer program that enhances the Cooperative Extension Service's capacity to deliver health-related educational programming in rural areas.

Young Ho Park, Ph.D., associate professor, Department of Mechanical and Aerospace Engineering, NMSU, referring to his handout at Item (4), described the development of a portable assisted mobility device that helps increase the activity level of patients with chronic obstructive pulmonary disease and acts as an effective management strategy for long-term health improvement.

### **Update on DACC Nursing Program and Addressing Health Care Workforce Needs**

Tracy Lopez, M.S.N., R.N., director, Nursing Program, NMSU DACC, referring to her handout at Item (5), provided an update on the DACC nursing program and health care workforce needs. The DACC nursing program offers an associate degree that is the basic qualification for L.P.N. and R.N. certifications. In 2012, the DACC nursing program lost its accreditation, in large part due to faculty issues, particularly the mix of full-time and part-time faculty and inadequate faculty credentialing. The program has now regained its accreditation. Since 2012, the mix of full-time and part-time faculty has been reversed, and now 73 to 75 percent of the faculty is full-time. In addition, 100 percent of the faculty has been retained for two years or more, and the faculty is now fully compliant with credentialing requirements. After

accreditation was lost, enrollment dropped from 102 students to 22. Enrollment is currently at 54, which is the maximum capacity for the number of current faculty. The school will offer 16 student seats each in fall 2016 and spring 2017. Applications have increased, and the quality of students applying is higher.

Ms. Lopez noted that forecasted growth for L.P.N.s is somewhat higher than for R.N.s. L.P.N.s have a narrower scope of practice than R.N.s, practicing primarily in community settings and, especially, in home health care and patient education. Answering a committee member's question, she said that although social workers can also provide some kinds of patient education, nurses are more versatile because they can also administer medication, change dressings and provide other similar medical care. There is an expected shortage of at least 86,000 R.N.s nationwide by 2025, and this number may double or even triple because of the increased access to health care under the federal Patient Protection and Affordable Care Act.

In response to a committee member's question, Ms. Lopez said that the University of Texas at El Paso (UTEP) and El Paso Community College (EPCC) also have nursing programs, but there is not much crossover of students between the New Mexico and Texas programs; the El Paso programs are serving the El Paso area, and the DACC program is serving Las Cruces and the surrounding area. She added that there are approximately 75 to 80 students in attendance at EPCC and 75 to 80 at UTEP. Some Mexican citizens also apply for admission to both the Texas and New Mexico schools, but most of them do not meet the minimum qualifications.

### **Comprehensive Health Workforce Development in New Mexico**

Charles Alfero, executive director, Southwest Center for Health Innovation (SWCHI), and director, New Mexico Primary Care Training Consortium (NMPCTC), introduced John Andazola, M.D., board chair, NMPCTC, and program director, Memorial Medical Center Southern New Mexico Family Medicine Residency, and Miriam Kellerman, director, FORWARD New Mexico program.

Mr. Alfero briefly recounted the history of SWCHI, starting with the establishment in 1995 of Hidalgo Medical Services (HMS) in Lordsburg. At the time, Hidalgo County was the only county in New Mexico that lacked access to basic health care services. HMS now serves more than 70 percent of the residents of Hidalgo and Grant counties, New Mexico's two southwestern-most counties with one of the state's most isolated, frontier and traditionally underrepresented majority/minority populations. HMS's growth required expanding, adapting and developing programs and policies to create the environment necessary for services to thrive and for people to be served. In 2011, HMS created the Center for Health Innovation (CHI), a non-clinical division of HMS to provide planning, resource, program and policy development, which was, at the time, a very unusual step for a community health services provider. In 2015, the center was spun off as a stand-alone, nonprofit organization and renamed "Southwest Center for Health Innovation" to reflect its local, regional and national approach to creating innovative strategies to improve health care in rural communities.

Mr. Alfero reported that health care currently represents around 17 percent of the national economy, and by 2025, one out of five total dollars in the national economy will be spent on health care, which means, among other things, that health care is already and will continue to be a major employer. The impact of health care revenues on rural economies is even greater, often representing the major nongovernmental employer and resources; as such, health care is a fundamental part of rural infrastructure, providing both well-paying jobs and health care for members of the community. Economic development efforts may be ineffective in the absence of a good health care system in the community because, along with schools, availability of health care is one of the most important components of a decision to start, relocate or expand a business in a particular community. Not only is there a current shortage of between 200 to 400 family practice physicians in New Mexico, 30 percent of family practice physicians currently practicing in the state are over 60 years old, which is the oldest state physician-cohort in the country. The medical school at the University of New Mexico does not graduate enough physicians to alleviate the shortage, even if all of the 120 yearly graduates stayed in the state. As a result, New Mexico has to recruit physicians from outside the state, competing with other states and communities with much greater resources. Mr. Alfero noted that 80 percent of all physicians in the United States are trained in schools located between Washington, D.C., and Boston; studies show that more than 60 percent of physicians practice within 180 miles of where they got their training. According to Mr. Alfero, studies also show that rural, poor and minority students are more likely to enter into primary care practice and are more likely to serve in communities and populations similar to their own. At present, only 10 percent to 20 percent of doctors are training as primary care or family practice physicians.

Referring to his handout at Item (7), *FWD-PCTC Workforce Development Summer 2016*, Mr. Alfero described the SWCHI's workforce development strategy to address access to and the shortage of health care providers, particularly in rural areas. A core program developed by HMS/CHI and now operated by the SWCHI is FORWARD New Mexico Pathways to Health Careers, which is tasked with enhancing access to quality health care, particularly primary and preventive care, by improving the supply and distribution of health care professionals through community and academic educational partnerships. FORWARD New Mexico has created a variety of health care workforce development programs that create a "pipeline" beginning in middle and high school and continuing through family practice residency programs in southwestern New Mexico to help rural New Mexico communities to "grow their own" health care providers, allowing rural children the opportunity to live and serve in the communities in which they were raised. FORWARD New Mexico's Stage 3 program (expanding graduate and resident experiences for many health career disciplines in rural and underserved areas) has generated great interest in family practice residency opportunities among medical students; last year, there were 1,100 applicants for two positions. HMS only has capacity to train two to four residents a year, but FORWARD New Mexico shares the process with other residency programs in New Mexico to capture as many qualified applicants as possible. Currently, 10 HMS health care providers, including one certified nurse practitioner, one family nurse practitioner, three physician assistants and five physicians, have passed through the FORWARD New Mexico pipeline.

Ms. Kellerman began as an intern in the program, she said. She briefly described her intern experience. In response to committee members' questions, she said that academies were started five years ago to support local children in training for health care careers. It takes 11 years to go through high school, college and medical school, with crucial support needed at each step. She expressed appreciation for Western New Mexico University, which underwrites the academies, providing housing and meals for attendees and classroom space.

Mr. Alfero said that the FORWARD New Mexico program provides a scalable model for health care workforce development across the state, but it is in danger of being discontinued because the Department of Health abruptly withdrew its funding halfway through fiscal year 2016. The department determined that FORWARD New Mexico is not a "core program" because it does not serve the entire state, Ms. Kellerman said. If the funding is not restored, the academies cannot continue next year. Answering questions from committee members, Mr. Alfero referred to his handout at Item (7), *FORWARD NM Legislative Budget 5-1--16*, and explained that the total budget is \$259,098, \$200,000 of which was funded by the Department of Health and the remainder funded by small private grants and federal funds. He asserted that the revenue generated by one physician in one year would more than pay the cost of the program.

Mr. Alfero explained that FORWARD New Mexico's experience in its Stage 3 program, as well as studies that show that training and experience in primary care settings and primary care residency programs located in rural areas impact a person's decision to practice in rural areas, eventually led to the creation of the NMPCTC. One of the reasons for the shortage of health care providers in rural areas is the lack of training experiences available outside urban areas. The NMPCTC partners with the University of New Mexico Family Medicine Residency Program and health care providers in Albuquerque, Farmington, Las Cruces, Roswell, Santa Fe and Silver City to provide family practice residencies to increase the number of health care professionals working in New Mexico. The NMPCTC is also working with the new Burrell College of Osteopathic Medicine (BCOM) to provide residency opportunities in New Mexico for its graduates.

Dr. Andazola told the committee that it is important to understand that primary care residency programs directly address the shortage of primary care physicians in New Mexico. Providing residency opportunities in New Mexico increases the likelihood that a health care professional will stay and practice in New Mexico after completing residency, so it is urgent to continue to expand the NMPCTC's efforts, which are working. For example, in the case of the Memorial Medical Center Family Medicine Residency Program in Las Cruces, 67 percent of residents over the last 20 years have stayed in New Mexico. Mr. Alfero added that studies show that when there is a shortage of family practice physicians in an area, there are more referrals by lower-level health care providers such as nurse practitioners to physicians with other sub-specialties, increasing overall costs to the system and often resulting in a lack of care because of transportation and expense issues. Many rural patients do not have transportation to access specialists in urban areas, and it is expensive for them to travel, he said. Dr. Andazola said that modern health care is provided by teams with behavioral health care specialists and social

workers working alongside physicians and nurses. The team model is more efficient, making sure that all of the patient's needs are addressed by the person best trained to do so. Patient education for optimal health and prevention of illness is a vital component of the model, and most patient education is provided by non-physicians.

Answering questions by the committee, Mr. Alfero explained that expanding the number of residency opportunities is a long process because each program must be accredited before it can recruit and accept applicants, and part of the accreditation process is meeting the supervision requirements. Because the process is so involved, the NMPCTC is applying for accreditation so that participating medical practices do not have to undergo the process individually. Dr. Andazola said that the NMPCTC does not work much with the Texas Tech University's School of Medicine in El Paso despite the school's proximity to southern New Mexico because of cross-state licensing issues. Physicians from New Mexico can do their residencies in Texas, he said, but the relationship is not reciprocal, although the NMPCTC is working on reciprocity.

Mr. Alfero affirmed that the NMPCTC is also supporting dental students because dental care is an essential component of overall health. There is a looming shortage of dentists in rural areas, Mr. Alfero said, because, 30 years ago, the number of dental school admissions was reduced to lessen competition, and now those dentists are retiring with not enough new dentists to replace them.

#### **Update on the BCOM**

George Mychaskiw, II, D.O., F.A.A.P., F.A.C.O.P., chief academic officer and founding dean, BCOM, informed the committee that the BCOM, which will welcome its first class of 162 students the following week, is the newest and most technologically advanced medical school in the country. It opened on time and under budget, and it will eventually offer 108 new residency programs, including family practice and orthopedic surgery. Dr. Mychaskiw said that the school received more than 5,000 applications for its inaugural class, and it has already received more than 2,000 applications for the class entering in 2017. He said the school carefully selected its students, giving particular preference to students who express a commitment to public service. Twenty-three percent of the inaugural class is Native American, he said. The BCOM's partnership with NMSU includes an osteopathic medicine pathway that allows a high school student to apply concurrently to NMSU and the BCOM; if accepted, the student will complete a pre-med program at NMSU and then move to the BCOM after graduation from the pre-med program. There are 10 students in the NMSU/BCOM pathway program now, and the capacity is 25. Dr. Mychaskiw described the education of a doctor of osteopathy as essentially similar to that of a medical doctor, with additional training on osteopathic manipulation. He said that the majority of osteopathic doctors practice in primary care in areas with underserved populations and in the military, but they can specialize; for example, he is a doctor of osteopathy who is also a board-certified pediatric anesthesiologist. Although it is a private school, the BCOM is not a for-profit school, and its tuition is within \$100 of tuition for the University of New Mexico School of Medicine. Dr. Mychaskiw welcomed the committee to tour the school after the meeting.

**Public Comment**

Natalie Pena, director of programs, American Lung Association in New Mexico, briefly informed the committee about the association's multi-use housing non-smoking initiative. The association is working with the largest property management company in New Mexico to transition all of its properties to certified smoke-free housing, which will begin in Farmington, Las Cruces, Clovis and Albuquerque.

Javier Garcia, tobacco prevention specialist, Families and Youth Inc. and SHOUT (Students Helping Others Understand Tobacco), advocated increasing the tax on cigarettes. He was joined by Roman Garcia, Lupita Torres, Diego Perez and Jose Martinez, who are members of SHOUT, and asked the committee and the legislature to keep the funding for tobacco cessation programs in place.

**Adjournment**

There being no further business before the committee, the third meeting of the Tobacco Settlement Revenue Oversight Committee for the 2016 interim adjourned at 3:06 p.m.

Revised: October 27, 2016

**TENTATIVE AGENDA  
for the  
FOURTH MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 26, 2016  
Room 307, State Capitol  
Santa Fe**

**Wednesday, October 26: Joint Meeting with the Legislative Health and Human Services Committee (LHHS)**

- 8:30 a.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair, Tobacco Settlement Revenue Oversight Committee (TSROC)  
—Representative John L. Zimmerman, Co-Chair, TSROC  
—Senator Gerald Ortiz y Pino, Chair, LHHS  
—Representative Nora Espinoza, Vice Chair, LHHS
- 8:45 a.m.           (1)   **Tobacco Settlement Revenue Expenditures in New Mexico and in Other States**  
—Ari Biernoff, Assistant Attorney General, Office of the Attorney General
- 9:15 a.m.           (2)   **Winnable Battles: Tobacco Use Prevention and Control Program (TUPAC) and Other Department of Health (DOH) Programs Funded from Tobacco Settlement Revenues**  
—Benjamin Jacquez, TUPAC Program Manager, DOH  
—Daniel Burke, Infectious Disease Bureau Chief, DOH  
—Beth Pinkerton, Breast and Cervical Cancer Early Detection Program Manager, DOH  
—Judith Gabriele, Diabetes Prevention and Control Program Manager, DOH  
—Cathy Rocke, Deputy Director, Public Health Division, DOH
- 10:00 a.m.           (3)   **Centennial Care Tobacco Prevention and Cessation Services**  
—Megan Pfeffer, Quality Bureau Chief, Medical Assistance Division (MAD), Human Services Department (HSD)
- 11:00 a.m.           (4)   **Tobacco Prevention, Cessation and Regulation Legislation**  
—Representative Deborah A. Armstrong

*Action Item: Approval of Minutes of Third Meeting*

- 12:00 noon            **Lunch**
- 1:30 p.m.            (5)    **NM Allied Council on Tobacco (ACT) — Tobacco Prevention Coalition**  
—Laurel McCloskey, M.P.H., C.P.H., Executive Director, Chronic Disease Prevention Council  
—Janna Vallo, Commercial Tobacco Control and Prevention Coordinator, Albuquerque Area Southwest Tribal Epidemiology Center  
—Lacey Daniell, M.P.A., New Mexico Grassroots Manager, American Cancer Society Cancer Action Network
- 2:30 p.m.            (6)    **Update on Tobacco Cessation Programs Funded Through the Indian Affairs Department (IAD)**  
—Suzette Shije, Deputy Secretary, IAD  
—Allie Moore, Project Manager, IAD  
—Willymae Smith-McNeal, Program Coordinator, Mescalero Apache Tribal Tobacco Cessation and Prevention Program
- 3:30 p.m.            (7)    **Public Comment**
- 4:00 p.m.            (8)    **Long-Term Leveraging Medicaid Subcommittee (LTLMS) Recommendations**  
—Carol Luna-Anderson, Executive Director, The LifeLink; Chair, LTLMS  
—Angela Medrano, Deputy Director, MAD, HSD  
—Nick Estes, Health Action New Mexico; Member, LTLMS
- 5:00 p.m.            **Adjourn**

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

**October 26, 2016  
Room 307, State Capitol  
Santa Fe**

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

**Present**

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

**Absent**

Rep. Monica Youngblood

**Advisory Members**

Sen. Linda M. Lopez

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

**Staff**

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

**Guest**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, October 26**

**Welcome and Introductions**

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

## **Tobacco Settlement Revenue Expenditures in New Mexico and in Other States**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Centennial Care Tobacco Prevention and Cessation Services**

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

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

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

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

### **Tobacco Prevention, Cessation and Regulation Legislation**

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

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

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

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

Members discussed the penalties for underage smoking and enforcement.

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

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

Members generally expressed support for both measures.

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

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

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

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

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

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

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

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

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

## **Approval of TSROC Minutes**

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

## **Public Comment**

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

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

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

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

### **Long-Term Leveraging Medicaid Subcommittee (LTLMS) Recommendations**

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

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

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

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

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

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

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

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

**Adjournment**

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



Revised: November 16, 2016

**TENTATIVE AGENDA  
for the  
FIFTH MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 21, 2016  
Room 321, State Capitol**

**Monday, November 21**

- 10:00 a.m.        **Welcome and Introductions**  
                      —Senator Cisco McSorley, Co-Chair  
                      —Representative John L. Zimmerman, Co-Chair
- Action Item: Approval of Minutes of Fourth Meeting*
- 10:10 a.m.        (1)    **Update: Status of Tobacco Settlement Permanent and Program Funds**  
                      —Christine Boerner, Senior Fiscal Analyst, Legislative Finance Committee
- 10:30 a.m.        (2)    **Review of Funding Requests and Recommendations to the Legislature for Fiscal Year 2018**  
                      —Celia Ludi, Staff Attorney, Legislative Council Service
- University of New Mexico Health Sciences Center
- Instruction and General Purposes
  - New Mexico Poison and Drug Information Center
  - Pediatric Oncology Program
  - Research in Genomics and Environmental Health
  - Specialty Education in Pediatrics
  - Specialty Education in Trauma
- New Mexico State University
- Brown Geomapping
  - Hanley Mosquito-Borne Viruses
  - Koukel NM HeART (Health Extension Ambassadors in Rural Towns)
  - Long WAVE (Wellness Alcohol Education)
  - Lopez-Martinez Protective Nicotine Treatment
  - Milligan Genomics to Reduce Health Disparities
  - Park Motorized Mobility Device
  - Tran Asthma Map

—New Mexico Primary Care Training Consortium  
—Southwest Center for Health Innovation/FORWARD New Mexico

—Department of Health

- Public Health Division HIV, STD and Hepatitis Section
- Tobacco Use Prevention and Control Program
- Breast and Cervical Cancer Early Detection Program
- Public Health Division Diabetes Prevention and Control Program

—Indian Affairs Department

- Tobacco Cessation and Prevention Program

—Human Services Department

- Medicaid Program

12:30 p.m.      **Lunch**

1:00 p.m.      (3) [Review of Proposed Legislation](#)  
— .205121, Cigarette and Tobacco Tax Increases

1:30 p.m.      **Public Comment**

1:45 p.m.      **Adjourn**

**MINUTES  
of the  
FIFTH MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 21, 2016  
Room 321, State Capitol  
Santa Fe**

The fifth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative John L. Zimmerman, co-chair, on November 21, 2016 at 10:13 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

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

**Absent**

Sen. John C. Ryan

**Advisory Members**

Rep. Jim R. Trujillo

Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
Rep. Patricio Ruiloba  
Rep. Don L. Tripp

**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**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Jeff Eaton, Fiscal Analyst, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

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

**Monday, November 21**

**Welcome and Introductions**

Representative Zimmerman welcomed everyone and asked members and staff to introduce themselves.

**Review of Funding Requests and Recommendations to the Legislature for Fiscal Year 2018**

Ms. Ludi reviewed the new procedures initiated in the 2016 interim to ensure greater oversight and accountability of all programs receiving funding from tobacco settlement revenues (TSRs). Current awardees are now required to justify their requests for continued funding, and prospective awardees to justify their initial requests, by completing a TSR Funding Request, Ms. Ludi said.

The committee reviewed the funding requests, which are posted on the TSROC page of the legislature's website, linked to the agenda for the November 21 meeting. Each of the projects was also explained in more detail during the interim meetings; handouts and minutes for all of the presentations are linked to the agenda items.

For fiscal year 2018, all of the programs currently funded by TSRs requested an essentially flat budget, except for Medicaid, which requested the amount it actually received from the Tobacco Settlement Program Fund in the current fiscal year. Current funding recipients are the University of New Mexico (UNM) Health Sciences Center (HSC), the Department of Health (DOH), the Indian Affairs Department (IAD) and the Human Services Department (HSD) (Medicaid).

The committee also received three new requests for funding: one from New Mexico State University (NMSU) for eight research projects; and one each for operating expenses for the New Mexico Primary Care Training Consortium (NMPCTC) and the Southwest Center for Health Innovation (SWCHI). The SWCHI request was to replace funding previously provided by the DOH that was cut this fiscal year.

Desiree Gathings, budgets administrator, UNM HSC, responded to questions from the committee regarding UNM's funding requests. A committee member asked whether the New Mexico Poison and Drug Information Center would be able to continue its operations without the TSR appropriation. Ms. Gathings responded that the center is the HSC's most fragile budget, and it is unlikely it would be able to continue the same level of services without the TSR appropriation. The committee discussed how TSR funds are leveraged by HSC programs to create jobs. Ms. Gathings commented that 38 new private companies have spun out of research funded with TSR money in the last five years; the genomics program alone brings in \$18.00 to \$20.00 for every TSR dollar it receives.

Lori Ann Loera, program manager, NMPCTC, responded to questions from the committee regarding the NMPCTC's funding request, and Miriam Kellerman, program manager,

FORWARD New Mexico SWCHI (FNM/SWCHI), responded to questions from the committee regarding FNM/SWCHI's funding request. They confirmed that neither organization has received TSR funding in the past, although FNM/SWCHI had received funding from the DOH that was suddenly eliminated in 2016.

Vicente Vargas, Office of Government Affairs, NMSU, expressed, on behalf of the university, appreciation for the opportunity to be considered for funding.

Lynn Carroll, director, Public Health Division, DOH, and Cathy Rocke, deputy director for programs, Public Health Division, DOH, responded to questions from the committee regarding the DOH funding requests. Ms. Rocke confirmed that two funding requests, for the Tobacco Use Prevention and Control (TUPAC) Program and the Hepatitis and Harm Reduction (HHR) Program, are both DOH "superpriorities", and the funding requests for those programs represent a total \$350,000 increase from the previous year's appropriation (\$150,000 for the HHR Program and \$200,000 for the TUPAC Program). She added that if the budget is flat, the programs would continue but would not be able to expand.

The committee had no questions of Allie Moore, program manager, IAD, regarding the IAD's funding request.

Jason Sanchez, HSD, said the HSD's request represented a \$500,000 increase from last year.

The committee voted, with no objections, to adopt all of the funding requests as presented and forward them to the Legislative Finance Committee.

### **Approval of Minutes**

The committee approved the minutes from the October 26, 2016 meeting with no amendments or objections.

### **Review of Proposed Legislation — .205121, Cigarette and Tobacco Tax Increases**

Senator McSorley explained that the proposed legislation will be sponsored by Senator Howie C. Morales, who was unable to attend the meeting. Senator McSorley told the committee that no endorsement was being requested, as the bill may still undergo some revision. He said the bill would increase the cigarette tax by \$1.50 per pack and would broaden the definition of "tobacco products" to include e-cigarettes and nicotine liquid containers. According to Senator McSorley, enactment of the bill would raise \$41.3 million per year, which would be distributed to the Children, Youth and Families Department for early childhood programs; it would not change the current distribution of cigarette tax revenue. Sandra Adondakis, New Mexico government relations director, American Cancer Society Action Network, added that it is also expected that a 17% decline in youth smoking will result from increasing the cost of cigarettes. Senator McSorley noted that California had recently increased its cigarette tax by \$2.50 per pack.

A committee member asked if the increase would apply to tribal sales, and Senator McSorley responded that such a revision to the bill is being considered.

A committee member related that a recent article about a study on the impact of a cigarette tax increase in New York State on the incidence of smoking showed that the increased cost did not affect smokers who live in poverty, so the increased tax makes low-income populations poorer without decreasing the number of low-income smokers. The member commented that since 26% of people in poverty in New Mexico smoke, the tax will have a disproportionate effect on them and suggested that continued support of cessation and prevention programs is more effective in decreasing the numbers of people who smoke than increasing the cigarette tax. Ms. Adondakis agreed that prevention and cessation programs are essential, but remarked that studies show that low-income people are more price sensitive and therefore more likely to not start smoking or to quit smoking when the cost of cigarettes increases.

A committee member asked how the tax compares to surrounding states. Ms. Adondakis responded that it is lower than Arizona's tax and higher than Texas's tax.

#### **Public Comment**

There was no public comment.

#### **Adjournment**

There being no further business before the committee, the third meeting of the TSROC for the 2016 interim adjourned at 11:41 a.m.





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