

October 22, 2015

Mr. David Abbey  
Director  
Legislative Finance Committee  
325 Don Gaspar, Suite 101  
Santa Fe, NM 87501



Dear Mr. Abbey,

After only two and a half years in operation, the New Mexico Health Insurance Exchange (NMHIX) is delivering on our mission to expand access to high-quality and affordable health insurance to New Mexicans. On behalf of the NMHIX Board of Directors and leadership, we would like to thank the Legislative Finance Committee (LFC) for taking the time to review our program and to provide recommendations on areas where NMHIX can continue to improve.

During our review of the LFC recommendations, we were pleased to see several areas of alignment where NMHIX is already implementing the listed recommendations. While the insight provided by the LFC is important to our mission, the Exchange identified some misunderstandings and incorrect attributions that have significant implications for the observations of the report.

**Establishment of the Exchange: Commitment to New Mexicans**

With the start of the 2016 Open Enrollment Period just around the corner and 44,302 New Mexicans currently covered through the Exchange, the road to arrive at today's success has not been without its challenges.

- The New Mexico Health Insurance Exchange Act, which called for the establishment of the NMHIX as a non-profit public corporation, was passed just 187 days before the start of the first Open Enrollment Period on March 28, 2013.
  - Certainly, we would have appreciated the luxury of the two and a half years that our colleagues in Maryland<sup>1</sup>, or the three years that California<sup>2</sup>, had to get ready to open their doors for the first time.
- Following the passage of the Act, a 13-member Board of Directors convened – and after the first meeting in April 2013 in less than six months, NMHIX successfully put in place a new brand, website, call center, and developed a network of enrollment assisters – allowing beWellnm to open our doors on October 1, 2013 to assist New Mexicans in shopping for health insurance, many for the first time.

This immense effort took place while also ensuring NMHIX met commitments to the Legislature and the constantly evolving federal regulations.

- After the end of the second enrollment period and a few months into our second year of operations, in August 2014, the NMHIX Board concluded a national search for a CEO and brought on new leadership to the organization in August 2014.

<sup>1</sup> <http://kff.org/health-reform/state-profile/state-exchange-profiles-maryland/>

<sup>2</sup> <http://kff.org/health-reform/state-profile/state-exchange-profiles-california/>

- Soon, the new CEO directed important operational and staff changes, continued to build on the governance structure, and used data to inform a targeted outreach and marketing strategy for the second Open Enrollment Period.

### **Building Awareness and Enrollment: NMHIX is working for New Mexicans**

With the first enrollment period technical challenges behind us, the staff focused on building awareness of the Exchange, reaching the uninsured in the state, and enrolling New Mexicans in coverage.

- According to the most current Census data released in September of 2015, between 2013 and 2014 the uninsured rate in our state fell 4.1% to 14.5%<sup>3</sup>.
- This reduction in the uninsured can be attributed in part to the more than 220,000 enrolled in Medicaid<sup>4</sup> since Medicaid expansion, and the 44,302 of individuals enrolled in the Exchange.

As a frontier state with a culturally, linguistically and geographically diverse population, it is paramount that NMHIX be responsive to this environment.

- We have made great strides in raising awareness across a diverse population through our outreach and marketing efforts.
- As the 5<sup>th</sup> largest state geographically with the 13<sup>th</sup> smallest population, the NMHIX requires creative thinking to reach our extremely diverse population and do so economically. NMHIX has been very successful in meeting this challenge in a very short amount of time.
  - For example, awareness levels of the beWellnm brand nearly doubled in the first two months of the second Open Enrollment Period to more than half of New Mexicans – and half of uninsured New Mexicans – aware of the Exchange.
  - Additionally, NMHIX has reduced our marketing, outreach and consumer assistance cost per enrollee by approximately 50% during the second Open Enrollment Period, and we are projected to spend even less in Open Enrollment three.
  - A recent NMHIX survey completed in August 2015 showed that 36% of recent beWellnm enrollees were uninsured prior to getting coverage through the Exchange, and 20% of them had been without coverage for more than five years.
    - Additionally, 57% of enrollees are either very satisfied or satisfied with their health insurance coverage demonstrating the Exchange is working for New Mexicans.

### **Measurement: Meeting Objectives**

The question of how to measure success is one that all State-Based Exchanges are facing. One measure is market penetration of eligible populations.

- A new Kaiser Family Foundation report released on October 13, 2015, found that of approximately 233,000 New Mexicans that are still uninsured, only 13% are eligible for a tax credit.<sup>5</sup>

<sup>3</sup> <http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-253.pdf>

<sup>4</sup> <http://www.nmlegis.gov/lcs/handouts/ALFC%20081915%20Item%2021%20Progress%20Report%20Healthcare%20Workfor ce.pdf>

<sup>5</sup> <http://kff.org/health-reform/issue-brief/new-estimates-of-eligibility-for-aca-coverage-among-the-uninsured/>

- This demonstrates that the Exchange has captured much of its target population: New Mexicans eligible for a tax credit.
- The tax credit is a key to enrolling individuals in coverage and we intend to continue to demonstrate the strength of that credit.
  - For example, in plan year 2015, the average premium of a NMHIX plan with tax credit applied is \$127 a month, and 49% of New Mexicans enrolled through beWellnm selected a plan with a premium under \$100 a month.<sup>6</sup>

**Sustainability Plan: Fulfilling our Mission**

Another key to our success has been the establishment of a sound financial sustainability model for the Exchange.

- While states that allowed the federal government to operate their exchanges are subject to a 3.5% user fee on all plans sold through the Exchange, and many State-Based Exchanges question their ability to sustain their long-term operations, New Mexico’s market-wide assessment on major medical carriers in the state to cover reasonable administrative expenses is being held up by many – including CMS – as a national model for success.
- The model adopted by the Board in December 2014 will allow NMHIX to continue to work towards our mission of expanding access to health insurance at the lowest cost possible to New Mexicans.
- Additionally, because we are a full State-Based Exchange, the federal government was not able to charge New Mexico carriers for the use of the technology for the first three years. This means that New Mexico on-exchange carriers will have saved an estimated \$19 million in user fees<sup>7</sup>.

Included on the pages that follow is additional information specifically addressing the observations that the LFC staff have made following their review of NMHIX. We hope that this information can continue the important discussion that LFC has started on the future of the Exchange.

We look forward to working with all stakeholders in New Mexico, including the Legislature, to build on our successes of beWellnm, New Mexico’s Health Insurance Exchange, in the months and years ahead as we continue to expand access to high-quality, affordable health insurance to all New Mexicans.

Sincerely,



Amy Dowd  
Chief Executive Officer

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<sup>6</sup> [http://aspe.hhs.gov/sites/default/files/pdf/83656/ib\\_2015mar\\_enrollment.pdf](http://aspe.hhs.gov/sites/default/files/pdf/83656/ib_2015mar_enrollment.pdf)

<sup>7</sup> NMHIX estimate based on effectuated enrollment and average monthly premium for all members over the first three plan years.

## **LFC Observation: While Accelerating Medicaid Expansion, New Mexico Health Insurance Exchange Enrollment for Individuals Remains Low**

While the LFC report notes that the Exchange has made strides in providing coverage to New Mexicans, it inconsistently defines baseline values of the uninsured population in New Mexico, inaccurately defines the percentage of uninsured eligible to shop on the Exchange, NMHIX enrollment number targets, as well as the Exchange's impact on Medicaid. These inconsistencies are negatively impacting the report's assessment of enrollment success.

In 2013, the NMHIX Board defined the mission of the organization to enroll all qualified New Mexicans in the New Mexico Health Insurance Exchange thereby improving the collective health and well-being of New Mexicans by facilitating better access to competitive, affordable, high-quality, timely medical care through greater healthcare coverage.

In our two and a half years in operation, NMHIX has been successful in providing access to quality, affordable healthcare to qualified New Mexicans. As referenced previously, U.S. Census data released in September of 2015 notes that the overall uninsured rate in our state fell by 4.1% between 2013 and 2014 to 14.5%<sup>8</sup>, with over 44,000 individuals now insured through the Exchange.

Additionally, a new Kaiser Family Foundation report released on October 13, 2015 found that of the approximately 233,000 New Mexicans that are still uninsured, only 13% are eligible for a tax credit.<sup>9</sup> This means that the Exchange's remaining target population for enrollment with a tax credit is approximately 30,333 individuals – a much lower pool of potential consumers than previous estimates. When compared to our enrollment numbers and reviewing the entire New Mexico insurance landscape, the positive impact of the Exchange is clear.

### **NMHIX Enrollment**

The Exchange is aware that various estimates of exchange eligibility and the uninsured rate exist and change over time. However, the LFC report cites inconsistent figures for the same time periods that attempt to point to New Mexico's overall low enrollment compared to other states and the national average. For example, the report notes that that according to U.S. Census American Community Survey (ACS) data, the uninsured baseline for New Mexico was 430,000 individuals, or roughly one in five New Mexicans in 2012 and by 2013, 382,000 individuals were uninsured. On the following page of the report, a Kaiser Family Foundation (KFF) 2013 value of 422,000 uninsured New Mexicans, with 70 percent of those individuals likely eligible for public plans or subsidies is cited – a value widely different than the 382,000 figure previously noted. Additionally, in a table on page 17 of the report, a KFF figure of 153,000 eligible individuals during the first Open Enrollment Period and 156,000 eligible individuals during the second Open Enrollment Period is cited – again changing the baseline number and time period for which the report measures current enrollment.

Diving deeper into the baseline number of 422,000 uninsured individuals that the report utilizes, 70 percent of whom the report cites as eligible for subsidies, the report's estimated pool of subsidy-eligible shoppers would be 92,840 individuals, with an additional 80,180 shoppers eligible to shop on the exchange but not eligible for a tax credit. By this calculation, there would be 173,020 individuals out of the entire pool of the uninsured population eligible to shop on the

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<sup>8</sup> <http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-253.pdf>

<sup>9</sup> <http://kff.org/health-reform/issue-brief/new-estimates-of-eligibility-for-aca-coverage-among-the-uninsured/>

Exchange, either with or without subsidies. Without utilizing consistent data to illustrate the change in the uninsured population over time, the report inaccurately describes the changing health insurance landscape of the state.

The mischaracterization of the pool of uninsured individuals compared to enrollment further impacts the report's inaccurate enrollment assessment. Many individuals included in the report's accounting of the uninsured (for example, the first cited baseline figure of 430,000 uninsured New Mexicans) are in fact are not eligible to shop on the Exchange. The report's estimate does not note that uninsured individuals with incomes below the federal poverty level who would be eligible to enroll in Medicaid are included in the overall uninsured estimates. These individuals are not eligible for financial assistance through the Exchange and are unlikely to have the resources to purchase coverage in the Marketplace. Also included in the report's eligibility figures are individuals and families that are enrolled in off-Exchange coverage – these individuals have selected for one reason or another, to buy their coverage direct from the carriers.

On page 15, the unsubsidized eligible category includes people that, while technically eligible to shop on the Exchange due by various determinants such as income or citizenship, they are actually excluded from shopping on the Exchange because they have the option of affordable employer-based coverage. These individuals erroneously included in the pool of potential exchange customers further incorrectly increases the overall population that Exchange enrollments are compared to, reducing the percentage of enrollment the Exchange is responsible for in this analysis.

NMHIX regularly examines different numbers to measure enrollment success over time, seeks to utilize consistent measures, and has communicated these values to the Board of Directors in public meetings and we adjust as new data becomes available.

The U.S. Census Small Area Health Insurance Estimates (SAHIE) states that the New Mexico population eligible to shop on the Exchange in 2012 was 380,000<sup>10</sup> individuals. Using the U.S. Census American Community Survey (ACS) and SAHIE data inputs, the Kaiser Family Foundation (KFF) determined that the number of New Mexicans eligible to shop with the Exchange in 2014 to be 153,000<sup>11</sup> and in 2015 to be 156,000<sup>12</sup>. This figure does include legally-residing individuals who are uninsured or those that have purchased non-group coverage directly from a carrier, they have incomes above Medicaid/CHIP eligibility levels, and who do not have access to employer-sponsored coverage. As of the latest enrollment data release, the Exchange had enrolled 28% of potential enrollees. KFF is widely known as the most credible source for this kind of information and this methodology level sets enrollment figures against the individuals who are actually able to shop on the Exchange. As noted previously, while the LFC report does cite this number briefly, more often, the report cites other, out-of-date information and does not accurately include it in its overall assessment, thus contradicting previously cited figures that reduce the overall Exchange enrollment impact for the state.

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<sup>10</sup> <http://www.census.gov/did/www/sahie/>

<sup>11</sup> <http://kff.org/health-reform/state-indicator/marketplace-enrollment-as-a-share-of-the-potential-marketplace-population-2014/>

<sup>12</sup> <http://kff.org/health-reform/state-indicator/marketplace-enrollment-as-a-share-of-the-potential-marketplace-population-2015/>

The other information that the LFC report fails to take into consideration is the newly released Census data and also a newly released KFF analysis of the state of health coverage in New Mexico. Available as of October 2015, KFF notes that there are estimated to be only 233,000 uninsured left in New Mexico. Of this number, they estimate that 109,000 are Medicaid eligible and only 31,000 uninsured individuals are eligible for tax credits through the Exchange, illustrating the Exchange has already captured a larger percent of its target population. The Exchange continues to consider new data as it is released in order to make decisions and alter estimates accordingly.

Additionally, comparisons drawn to other states listed in the report do not paint an accurate picture of how New Mexico compares to enrollment elsewhere. The report's comparison of New Mexico to other states appears to be a random comparison as it does not accurately compare New Mexico's enrollment figures to states of similar demographic characteristics. The U.S. Census, a source recognized as being more accurate than the Gallup Well Being Index figure used in the report, recently reported that the uninsured rate in New Mexico had been reduced by 4.1% to a new low of 14.5%. This puts New Mexico ahead of Texas, which has an uninsured rate is 19.1% (and only saw a reduction of 4%), and Florida, which has an uninsured rate of 16.6%. While often promoted as having high enrollment, Florida only saw a reduction in uninsured of 3.4% from 2013 to 2014.

The report also utilizes effectuation and plan selection numbers differently, which misrepresents the penetration rate. The report outlines that NMHIX reported it had enrolled about a third of its targeted pool by February 28, 2015, up from a 21% penetration rate the prior year. After the second enrollment period, there were 44,307 effectuated individuals (individuals actively using and paying for their coverage). According to KFF, utilizing the national effectuation number for the same period, the national average of penetration rate was 34%. By using state and national effectuation numbers, NMHIX is tracking only 6 points behind national averages, compared to the 10 points the report cites on page 18. Combined with the report's various and inaccurate numbers of eligible individuals to shop on the Exchange, these data deficiencies inaccurately describe how the Exchange's enrollment compares to other states and national averages.

Successfully meeting enrollment projections are another part of how the Exchange measures its enrollment success. The report inaccurately states the CEO Amy Dowd was hesitant to set a projection heading into the second enrollment period, which is untrue. Multiple stakeholders are involved in setting enrollment projections including NMHIX CEO Amy Dowd, who worked with carriers to develop the estimated projection of 50,000 - 55,000 individuals enrolled during the second enrollment period. This number was discussed with the Board of Directors and agreed upon at the November 21, 2014 Board meeting and is referenced in the minutes from that meeting.

Furthermore, the Exchange is tasked with ensuring an efficient operations model is in place that keeps costs to enroll New Mexicans as low as possible. The Exchange has also developed a sustainability model that works for New Mexico. New Mexico's plan to issue a market-wide assessment on all carriers to cover the reasonable administrative expenses of the Exchange is being held as a national model. Many costs for the Exchange in 2013, 2014 and 2015 were not directly related to acquisition of 2014 and 2015 enrollees, but rather to start-up costs with starting a new business and building long-term operations. A more fair assessment of the cost per enrollee would be to review the marketing and outreach dollars spent to reach each individual. Using that analysis, NMHIX spent approximately \$424.76 per enrollee in 2014 and

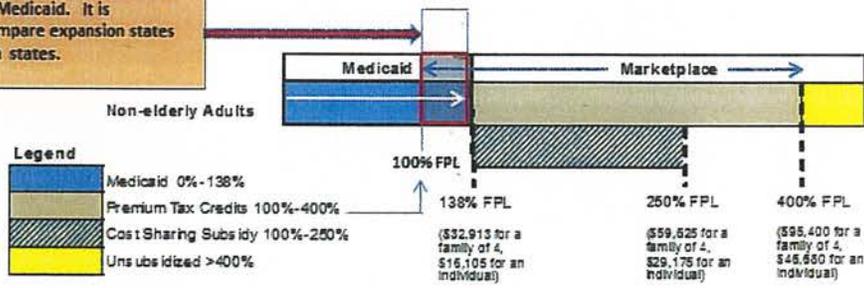
was able to cut that number nearly in half by 2015 with an approximate Marketing and Outreach cost of \$211.12. Overall, the Exchange spent less for the 2015 Open Enrollment and reached more people than the previous year. NMHIX seeks to lower this number even further and the marketing and outreach budget for 2016 is even lower than 2015.

### Medicaid Enrollment

As residents of a Medicaid Expansion state, many New Mexicans that previously did not qualify to receive Medicaid now have access to this public health insurance program. The report notes that the Exchange has impacted Medicaid enrollment, when in fact, Medicaid Expansion in New Mexico has had the reverse effect, with Medicaid reducing Exchange enrollment. Although the Exchange acknowledges that the expansion in Medicaid has contributed to a reduction in the overall uninsured population in New Mexico, the Exchange has not intentionally increased the enrollment in Medicaid. Many individuals who believed they would qualify for tax credits through the Exchange actually qualified for Medicaid after the Expansion, thus eliminating them from the eligible pool of Exchange applicants, reducing the ceiling of possible Exchange enrollments. Because of the Affordable Care Act’s “no wrong door” policy for health coverage, with the ultimate goal of increasing health insurance coverage for New Mexicans no matter the source, the Exchange refers applicants who are found to be eligible for Medicaid to the New Mexico Human Services Department (HSD) for further support and visa-versa.

**NMHIX UPDATED CHART:** Figure 1 from the LFC program review only illustrates the scenario if a state has expanded Medicaid, and completely ignores the important market difference in non-expansion states. Because New Mexico is a Medicaid Expansion state, the individuals that fall between 100% and 138% of FPL who otherwise would have qualified for tax credits through the Exchange if Medicaid was not expanded, now qualify for Medicaid. It is misleading to compare expansion states to non-expansion states.

Figure 1. Pathways to Coverage Under the ACA



Source: ASPE (As used in LFC Program Review Report, page 5)

In non-expansion states, Medicaid eligible individuals are well below 138% of Federal Poverty Line (FPL) – and in many states there is a gap between individuals that are eligible for Medicaid and individuals at 100% FPL, where eligibility for the Exchange begins. Individuals eligible for tax credits on the Exchange must fall between 100% and 400% FPL. For Medicaid Expansion

states such as New Mexico, coverage for individuals under 65 years of age with incomes up to 138% of the federal poverty level now qualify for Medicaid as illustrated by the amended LFC

Figure 1 above. Individuals who fall between the 100% and 138% FPL qualify for tax credits through Exchanges in non-expansion states, but qualify for Medicaid in expansion states. As mentioned previously, because New Mexico is a Medicaid Expansion state, this portion of the population both reduces the overall pool of Exchange eligible individuals and, for those whose first stop was the Exchange for health coverage, led them to receive coverage through Medicaid instead. The Exchange agrees with the report that “it is reasonable to assume expansion was the main contributor to increased health insurance coverage for uninsured New Mexicans,” (LFC Program Review Report, page 16) however takes the position that Medicaid expansion, while overall having a positive impact on the uninsured rate, in effect reduced the possible number of individuals who could shop and purchase plans through the Exchange.

Recommendations	NMHIX Response
<ul style="list-style-type: none"> <li>The New Mexico Health Insurance Exchange Board should consider determining the minimum number of enrollees in both the individual and business markets that justify retaining the NMHIX in the present format.</li> </ul>	<p>After a lengthy cost-benefit analysis and multiple rounds of stakeholder input and public comment, NMHIX and its Board of Directors have put a model in place to ensure the long-term financial sustainability of the Exchange. New Mexico's market-wide assessment on carriers in the state to cover the reasonable administrative expenses of the Exchange is being held nationally as an example model. This Financial Sustainability plan spreads costs over time and is predictable. Additionally, NMHIX has been able to utilize the federally facilitated marketplace technology for three Open Enrollment Periods at no cost with significant savings.</p>
<ul style="list-style-type: none"> <li>The New Mexico Health Insurance Exchange Board should use actuarial analysis and other available sources of data and methodologies for modeling.</li> </ul>	<p>The NMHIX currently uses analysis from multiple sources, including actuarial analysis from OSI and the carriers, to inform our enrollment projections process and appropriately plan operations.</p>
<ul style="list-style-type: none"> <li>The New Mexico Health Insurance Exchange Board should continue to investigate the barriers to enrollment and identify those amenable to corrective actions.</li> </ul>	<p>The Exchange agrees with this recommendation. The NMHIX Board of Directors and staff continually research and analyze the enrollment and population landscape to inform decisions. The Exchange also recently selected a vendor to support us with additional behavioral-based research to gain greater insights on why New Mexicans decide to enroll in health insurance or not.</p>
<ul style="list-style-type: none"> <li>The Legislature could consider reviewing operations at key junctures to reassess New Mexico's health insurance exchange structure and amend statute if necessary to adopt the most cost effective and efficient delivery of health insurance options to New Mexico citizens.</li> </ul>	<p>The NMHIX reports regularly to the Legislative Health &amp; Human Services Committee (LHHS). The Exchange most recently reported to LHHS on September 24, 2015. The Exchange also works collaboratively with OSI and HSD, and has the Secretary of HSD and the Superintendent of Insurance represented on the Board of Directors.</p>

## **LFC Observation: Extensive Marketing and Outreach Efforts Were Costly with Mixed Results**

Following a change in leadership at beWellnm, the priorities of how to reach and enroll New Mexicans also changed between the first Open Enrollment Period to the Second Open Enrollment Period, thus impacting the Marketing and Outreach budget. In addition utilizing lessons learned from the first enrollment period and from other states, the new Exchange CEO and new Senior Director of Communications & Outreach shifted how outreach and education strategies were implemented, leading to a successful second enrollment period.

### **First Open Enrollment Period**

The first Open Enrollment Period began just 187 days following the passage of the Exchange's founding legislation. Although New Mexico had a very limited window of time to ramp up its marketing and outreach activities, NMHIX successfully put in place a new brand, website, call center, and developed a network of enrollment assisters, opening for business on October 1, 2013.

Many challenges were faced during this first foray into implementing the ACA. As with every other exchange utilizing the federal platform (and many stand-alone exchange technologies) the first few weeks of Open Enrollment were fraught with technology challenges. What many don't realize is that the Board had the foresight to slow the technology development process and ensure that we had enough time to build a technology that works. Healthcare.gov technology began working effectively for the majority of people by November 30, 2013. For many others in states like Oregon, Hawaii, Nevada, and Massachusetts the technology never worked during that first Open Enrollment Period and many had to go without coverage. However, the loss of nearly two months of the enrollment period and the frustrations of those that were shopping certainly had impact on the first year's enrollment results. In fact, many people continued to have technical difficulties with completing applications well through the end of the first Open Enrollment Period. CMS allowed individuals that had tried to get coverage by the end of the Open Enrollment Period and failed to keep trying until April 15, 2014.

During the first Open Enrollment Period, which ran between October 1, 2013 and March 31, 2014, as demonstrated with NMHIX's own market research, many New Mexicans were generally unaware of the Exchange and how health coverage would work with the new Affordable Care Act in place. In addition, New Mexico's demographics are unique, and tailoring communications to its Native American, Hispanic, rural, and frontier populations was important to encouraging successful enrollment.

For both enrollment periods, when assessing the impact of marketing budgets on enrollment, it is important to understand the structure of media and advertising, and how people are reached by utilizing various media channels and marketing tools. The report notes that enrollment did not correlate to the dollars spent in counties across the state, with some counties that had very little money devoted to them outpacing enrollment in counties that received more marketing dollars. Most of the Exchange's marketing spend was on state-wide advertising (i.e. Albuquerque based TV stations and print publications), which have a reach across the majority of the state. To draw a direct correlation of marketing spend to enrollment by county is not an accurate measurement of spending effectiveness because although media outlets may be based in metro centers, their media reach extends far beyond county lines. The Exchange believes that enrollment in

counties outside of a metro center illustrates the effectiveness of the messages that reached New Mexicans across the state.

## **Second Open Enrollment Period**

Following the close of the first Open Enrollment Period, the Exchange leadership, staff and vendors reviewed their efforts and compiled lessons learned to apply to next Open Enrollment Period. The NMHIX Board of Directors concluded that some of the vendors were not as effective as they could have been and sought to procure new vendors for the second enrollment period.

Following competitive bids for Marketing, Outreach & Communications, Research and Website support the evaluation committee selected new vendors to gain more expertise and insight into New Mexico's unique population characteristics to better inform advertising and marketing. New benchmark surveys were conducted, as the original survey did not address the change in the uninsured population, only the general population. New Exchange leadership made a concerted effort to review the results of the first Open Enrollment with the Board of Directors and stakeholders to find ways to improve the strategy for the next Open Enrollment.

The Exchange also built a large partnership network to leverage the expertise and presence of trusted community organizations. A large part of delivering on our mission is our commitment to consumer assistance. From 2014 to 2015, we saw our consumer assistance network of Enrollment Counselors, agents and brokers grow significantly. For the second enrollment period, beWellnm leadership implemented stronger coordination with agents and brokers through educational webinars, surveys, more regular communication, and hired a Broker Relations Manager to serve as a direct liaison between this community and the Exchange. Doing so provided a more direct dialogue with agents and brokers, informing them at a higher level and helping to improve our outreach strategy over the course of Open Enrollment. More than 500 Enrollment Counselors, agents and brokers were trained and certified through the Exchange.

For the second enrollment period, the Exchange further engaged communities and embraced the power of in-person assistance in order to continue to build awareness of the Exchange. We took a holistic approach to developing our marketing and outreach strategy. To gain insight into how to best reach people across the state and create messages that would resonate with them, market research was an important tool for laying the foundation of our outreach strategy and tested for a new baseline level of awareness of the Exchange itself that would allow us to track our progress over time. We also launched our walk-in consumer assistance center in Albuquerque with our partner Native American Professional Parent Resources (NAPPR), which offers the face-to-face help New Mexicans prefer.

Some highlights that illustrate the network of partnerships and outreach of our second Open Enrollment include:

- 302 organizations allowed the Exchange to communicate with their members and constituencies and to mobilize them toward a meeting or event.
- 138 elected officials were invited to events and encouraged to send the invite information to their constituencies.
- 122 organizations circulated invite emails to their membership lists.
- Three tele-town hall events consisting of 37,000 postcard and autodial invites resulted in 6,112 participants.
- 74 enrollment and outreach events were held, most of which were a combination of several organizations per event.
- Total enrollment and outreach event participation of more than 5,700 people.

Impacting the second enrollment marketing and outreach strategy was a shift in the budgetary priorities for the Exchange. As the report states, the outreach strategies for the second Open Enrollment Period were more effective than the first as a result of new leadership and utilizing lessons learned the Exchange was actually able to reach more individuals during the second Open Enrollment Period, all the while, spending less money overall.

By utilizing new, more in depth and scheduled research, the Exchange found that levels of Exchange awareness increased significantly from 39% on November 2014 to 54% by January of 2015. Interestingly, awareness of the Exchange by uninsured "young invincibles" ages 18 to 34 increased from 29% to 54% over the same time period, with 62% of the overall uninsured population aware of beWellnm. As with any start up business, as insight is drawn from experience, tactics shifted to reflect new information and meet objectives.

Overall, the LFC report muddles the assessment of outreach success. The report assumes that there is a connection between outreach and the "pace" of enrollment. In reality, there is not a direct correlation between outreach strategies and the pace of enrollment. Page 27 of the report also notes that although outreach strategies improved for the Second Open Enrollment Period, the pace of new enrollments slowed. However, as the LFC report itself outlines on page 19, it is expected that the pace of new enrollments will slow over time. The new leadership that put in place updated strategies for the second enrollment period focused on utilizing market research and hyper-local outreach to target populations that led to the successful enrollment and renewal of plans for more than 44,000 New Mexicans.

Finally, the LFC report attempted to illustrate low enrollment is a result of financial barriers to purchasing Exchange plans. The Exchange acknowledges that cost is a barrier to enrollment for segments of the population, however, the Exchange has no jurisdiction or impact on the cost of premiums or the Advance Premium Tax Credit (APTC) offered to qualifying individuals to help pay for their monthly premiums. Unlike states such as California, New Mexico is not an active purchaser of health plans. Health plans establish their plan rates, the Office of the Superintendent of Insurance approves rate increases or decreases, and the Exchange Board reviews the plans that will be offered on the Exchange. To imply that the cost of premiums is impacted by the Exchange in any way is inaccurate. Per the founding legislation, the Exchange is charged with increasing access to healthcare, and through its outreach and communications strategies works to educate consumers on the value of purchasing health insurance through the Exchange. There are a variety of factors at play that influence the cost of premiums, including

<ul style="list-style-type: none"> <li>Continuing efforts to increase outreach coordination across the state, using key partnerships that cross county lines—such as federally qualified health centers—to establish a wide net of enrollment counselors;</li> </ul>	The Exchange agrees with this recommendation. Federally qualified health centers are part of current Exchange enrollment network.
<ul style="list-style-type: none"> <li>Using longer term contracts for lead enrollment groups so they don't lose staff while contracts are pending;</li> </ul>	The Exchange follows the procurement policy to set appropriate contract terms and per federal grant requirements.
<ul style="list-style-type: none"> <li>Considering working with stakeholders to adopt additional "boots on the ground" activities; Coordinating statewide campaigns leveraging appropriate state agencies, such as the Human Services Department, Department of Indian Affairs, and Department of Health;</li> </ul>	The Exchange agrees with this recommendation and is coordinating with numerous agencies and partners across the state including those named here. In addition, enrollment counselors are dual-trained as Medicaid and Exchange counselors.
<ul style="list-style-type: none"> <li>Establishing a stakeholder presence on the NMHIX website to increase transparency and public participation;</li> </ul>	The Exchange agrees with this recommendation.
<p>The NMHIX should consider allocating additional funding toward outreach and enrollment efforts by:</p>	
<ul style="list-style-type: none"> <li>Adding additional walk-in centers for heightened one-on-one availability;</li> </ul>	<p>The Exchange is aligned on these recommendations, and has implemented these items.</p>
<ul style="list-style-type: none"> <li>Adding longer hours at peak periods such as during evening hours and weekends, especially for Open Enrollment Periods;</li> </ul>	
<ul style="list-style-type: none"> <li>Identifying regional needs and adapting processes accordingly;</li> </ul>	
<ul style="list-style-type: none"> <li>Considering year-round education program to sustain momentum;</li> </ul>	<p>Year-round education and insurance literacy education has not been a grant-allowable activity, but we do have education and information available year round – including efforts to promote the Special Enrollment Period (SEP) throughout the year. New educational content is being added to the beWellnm website for Open Enrollment three. The Exchange agrees with this recommendation.</p>
<ul style="list-style-type: none"> <li>Exploring mobile units deployed to underserved areas;</li> </ul>	<p>Mobile units used by other states proved expensive and ineffective in the first open enrollment period. Therefore, mobile was evaluated and ruled out by NMHIX due to the high-cost and potentially low return. As part of our outreach strategy, we take into consideration regional needs and will be deploying a kiosk program this year for Open Enrollment three.</p>

<ul style="list-style-type: none"> <li>Considering methods to improve retention in qualified health plans, such as implementing consumer education programs on health insurance literacy to maximize benefits;</li> </ul>	<p>Year round education and insurance literacy education has not been a grant allowable activity, but we do have education and information available year round – including efforts to promote SEP throughout the year, and new educational content is continuously being added to the beWellnm website.</p>
<ul style="list-style-type: none"> <li>Improving enrollment by educating consumers on the advanced premium tax credit and cost sharing mechanisms to make silver plans more affordable; and</li> </ul>	<p>The Exchange agrees with this recommendation. The primary focus of the beWellnm advertising campaign is cost savings and affordability.</p>
<ul style="list-style-type: none"> <li>Using less costs methods to raise and sustain awareness.</li> </ul>	<p>The Exchange is constantly evaluating ways to lower cost methods to raise awareness and welcomes discussions on the topic, however, the LFC program review indicates that increased awareness is not a direct cause of enrollment. Survey data suggests awareness of the Exchange, and access to assistance, remain key factors influencing both education and enrollment.</p>

**LFC Observation: After Five Years and Spending Almost \$85 million, New Mexico Has Marginally Met Key Objectives for Implementing Its Individual Exchange That Now Faces Key Uncertainties**

An Exchange is more than the technology system that it uses to enroll individuals, and the technology solution that an exchange uses is irrelevant to State-Based Exchange (SBE) status. The report seems to miss this point and concludes that New Mexico never implemented a State-Based Exchange as envisioned in the New Mexico Health Insurance Exchange Act. This assertion is inaccurate. On a national level, the NMHIX is considered a State-Based Exchange that uses the healthcare.gov technology to enroll individuals. As a State-Based Exchange we have successfully enrolled over 44,000 New Mexicans into coverage, established a robust and data-driven marketing program, and coordinated with partners across the state to provide local outreach and an in-person assistance network of over 300 in-person assisters and brokers.

Further, it should be noted that of the 17 SBEs that are listed in the report that moved to try and build their technology in the first or second year, six of those states (Minnesota, Massachusetts, Nevada, Hawaii, Maryland and Oregon) all experienced significant technology failures. New Mexico, having made the wise decision not to implement its own technology solution in a short period of time, watched these failures, and was able to carefully deliberate the best path forward for New Mexico. After watching the difficulty and complexity of implementing a technology solution and after a lengthy cost-benefit analysis, the Board of Directors voted to continue to operate an SBE while using individual enrollment technology from the federal government. This

approach represented a lower cost and more efficient way of meeting our mission of expanding access to high-quality and affordable insurance to New Mexicans while giving the Exchange more flexibility to focus on outreach and education to reach as many New Mexicans as possible. As New Mexico moves forward with this approach, we are also negotiating with CMS to get additional data and information on enrollees to inform our outreach strategy moving forward.

The LFC report also highlights the risk of the Exchange potentially repaying federal funds. However, NMHIX is actively taking steps to mitigate that risk by cooperating in a second level review process for grant funds conducted by CMS called an IT Restriction Lift. IT Restriction Lifts are additional financial controls established after the initial approval of grant funding to examine proposed IT work and associated costs. If an IT Restriction Lift is approved, funding is then accessible to draw down for a particular project.

The limitation with the LFC program review as written is that the review was conducted when negotiations were still underway with CMS for how NMHIX could use its remaining grant funds. Since the program evaluation has completed, CMS has lifted any restrictions on IT spend up to and beyond the period of time that LFC has reviewed.

Recommendation	NMHIX Response
<p>The New Mexico Health Insurance Exchange Board should:</p> <ul style="list-style-type: none"> <li>• Base operating budgets on confirmed revenue sources; we based our operating budget on being as low cost as possible. The benefit of having a sustainability plan is the ability to raise funds as needed.</li> <li>• Continue working with CMS to define allowable and non-allowable costs and revise the 2015 remaining expenditures accordingly;</li> <li>• Prioritize key outlays in outreach and education for targeted groups;</li> <li>• Augment the current Goals and Objectives with a robust array of outcome performance measures and a monitoring plan based on available data, adjusted as more data becomes available;</li> <li>• Continue developing relevant data sources through completed negotiations with CMS and funded research studies as well as developing a data warehouse;</li> <li>• Perform risk assessments and mitigation strategies more consistently and effectively;</li> <li>• Consider conducting a SWOT analysis (Strengths, Weaknesses, Threats and Opportunities);</li> <li>• Monitor NMHIX performance more often than once a year; and</li> <li>• Post results to the website for heightened transparency.</li> </ul>	<p>The Exchange is generally aligned with the majority of the recommendations in this section, and many of these items are underway or implemented.</p>

## **LFC Observation: Despite an Investment of Over \$48 million, NMHIX Abandoned Implementing the Individual Exchange and Small Business Enrollment Remains Low**

### **Individual Exchange Technology**

An Exchange is more than the technology where people enroll. As it related to the technology, NMHIX did not abandon its individual exchange technology as stated in the LFC report. The NMHIX staff and Board of Directors made a strategic and fiscally responsible decision following a careful cost-benefit analysis and input from multiple stakeholders to not incur additional costs and take on additional risk of implementing a state-specific technology solution for the individual market. After in-depth discussions beginning in January of 2015 and additional review during the March 31, 2015 Board meeting, the Exchange Board decided that it wanted to devote funds and resources to bringing people to the Exchange and utilize the federal platform that was already working for New Mexicans. Following that decision, the Board and staff evaluated all Exchange contracts for necessary changes to reflect the decision on the individual technology solution and present a modified budget for 2015 and sets priorities for the future. To classify this deliberate decision to change course as an abandonment misrepresents the time and multiple rounds of stakeholder input that was devoted to coming to this decision. The New Mexico model is now recognized as a viable alternative, and a model under consideration by other states for running their exchanges.

The LFC report also incorrectly states that NMHIX will spend \$6 million winding down the effort for the individual exchange and there are \$11 million in maintenance costs. As reported at the August 2015 Board meeting, the final wind down costs have been reduced to \$2.6 million, and will be paid for by federal grants. The maintenance costs will be reduced to a much lower rate based on our change in direction to the lease model. Therefore, this statement represents a point in time before the Exchange had finalized the longer-term costs for the Maintenance & Operations for GetInsured based on our change in direction to the lease model. The GetInsured Maintenance & Operations costs approved by the Board of Directors for 2016 and 2017 are \$1.5 million per year. This information was presented in the September Board meeting.

On page 39 of the report, LFC notes that delays in NMHIX contracting project management office (PMO) services and hiring an IT director likely contributed to the lag in implementation of the individual exchange. The Exchange believes that it could not have acted in a faster manner. Per the timeline listed below, the first action undertaken by the Alliance was to issue procurement and only by June 2013, a few short months after the enabling legislation passed, which is when the Alliance was approved to work on behalf of the Exchange, the Exchange approved the selection of PCG as its PMO vendor.

- November 2, 2012 – NMHIA issued procurement, under Alliance for service to be delivered to the Exchange

- January 2, 2013 – NMHIA contract award (per NMHIA report to NMHIX Board on May 17)
- March 28, 2013 – enabling legislation passed
  - Section 13: The Board of the Alliance ceases to exist and the Exchange Board will govern the Alliance
- May 16/17, 2013
  - Appointed Interim CEO of NMHIX on 17<sup>th</sup>
  - NMHIX discussed and approved the selection of PCG as PMO vendor
- June 19/20, 2013
  - PCG contract signed by Chairman Damron and Interim CEO Nunez
- September 2013
  - Contract schedule as provided to incoming CFO in September 2013 documented the total value of PCG contract as \$4,698,000
- January 20, 2015
  - Amendment reviewed by legal counsel and did not require Board approval because it did not increase the total contract amount.

In fact, the LFC report on page 39 notes, “Initially, Nevada and Oregon implemented a State-Based exchange but due to issues with IT vendor performance the federal exchange became more viable.” NMHIX believes this is precisely what supports our efforts to make deliberate decisions as circumstances change over time with regard to the technology, operations and management of the Exchange to ensure that we continue to function efficiently to meet our mission and provide an exchange at the lowest cost possible to New Mexicans. The LFC implies that other states moved faster, however, moving faster, as illustrated by this same point, does not ensure success. As the report highlights, “Four other states – Minnesota, Maryland, Massachusetts, and Vermont – have experienced massive problems with their health exchange websites, ranging from balky features to less than expected enrollment numbers. Eventually, it is expected that most of those sites will be folded into the Healthcare.gov website, resulting in almost a billion dollars in taxpayer funds wasted.” New Mexico is proud that our deliberate approach to developing our Exchange has precluded us from this list.

Further contributing to the inaccurate description of New Mexico’s individual exchange success, is LFC’s criticism of Exchange vendors. For example, page 40 of the report negatively characterizes the fact that Get Insured (GI), NMHIX’s technology vendor, was working on other states while working on New Mexico’s platform. NMHIX disagrees that this was a detriment to the individual exchange. To the contrary of the report’s analysis, CMS encourages states to re-use technology in order to leverage experience and lessons learned from other states to improve the overall functionality of exchange technology platforms. Also contrary to the point made on the pages 39 and 40, the NMHIX was not aware of any resources constraints that had any negative impact on our technology development. NMHIX’s CEO, who was previously the Executive Director of the Idaho Health Insurance Exchange, can verify that different teams were deployed to both exchanges, and there was no resource contention between the two operations.

The report also notes that the Exchange did not follow best practices for independent verification and validation (IV&V), thereby increasing project risk and leading to an ineffective project. NMHIX had regular meetings with IV&V to discuss areas of improvement. We have provided evidence that IV&V areas were acted on in a document to the LFC that outlines this

process. Retroactively, LFC also notes that the Exchange did not initially have an IV&V vendor from the outset of operations. However, following CMS guidance, the Exchange performed in-house IV&V activities at the beginning of the Exchange's existence. Even though these actions were approved by CMS, prior to the second enrollment period, NMHIX brought on external IV&V services in the spring of 2014 to ensure that protocols and objectives were being met.

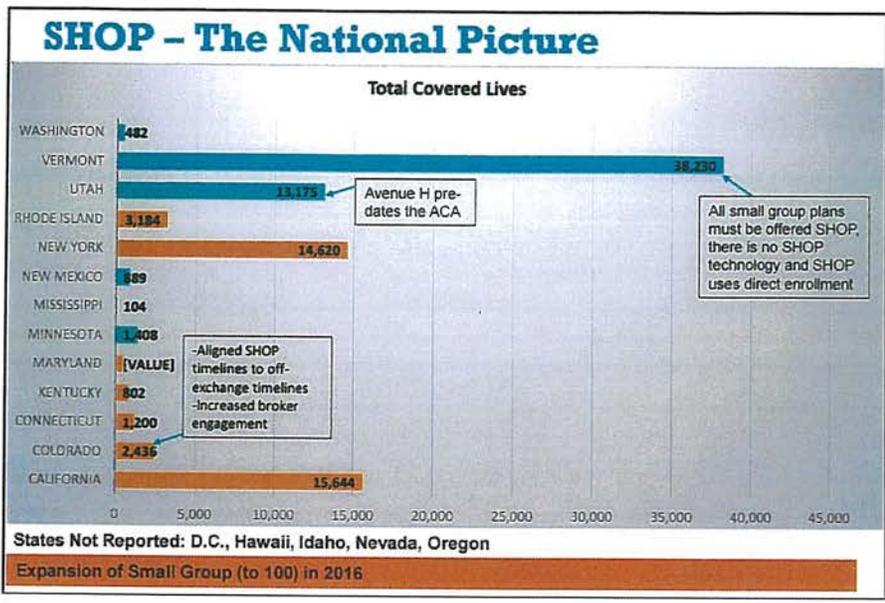
### **Small Business Enrollment**

The LFC review also criticizes the NMHIX small business health options program (SHOP) enrollment level. However, they do so without appropriate context. The New Mexico Exchange, like all other exchanges, saw that SHOP enrollment across the board was lower than expected. It is important to remember it is a requirement of the ACA that State Based Exchanges have a SHOP as part of their exchange operations. The US Government Accountability Office (GAO) published a report in November of 2014<sup>13</sup>, regarding SHOP implementation and addressed several challenges that SHOP exchanges faced across the country, including low awareness and complexity of the tax credit. This report and its observations are cited by the LFC report, however does not provide a level of context to describe NMHIX's small business program.

As the table below illustrates, as of June 2014, national enrollment in SHOP was low, with the largest enrollment in Vermont. However, Vermont required that all small group plans in the state be offered only through the SHOP, thus creating an artificial market for their small business program. In Utah, another outlier in SHOP enrollment, the SHOP Exchange pre-dates the ACA. The Utah exchange was established in 2010 and has grown over 5 years, whereas the other SHOP exchanges have only been in place for 2 years. The GAO report also identified opportunities for growing enrollment SHOP including additional coordination and training with brokers, expanding employee choice, and increasing marketing efforts to small businesses which exchanges including NMHIX are having ongoing discussions about.

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<sup>13</sup> <http://www.gao.gov/products/GAO-15-58>



Since this May 15, 2015 budget was issued, and following the grant re-budget submitted to CMS, NMHIX has shifted its priorities and does not plan to spend this dollar amount on the small business program. The NMHIX is still evaluating whether there would be future investment in the Small Business technology. The Board recently approved \$500,000 in enhancements – and is still yet to be determined if and what it would be spent on. NMHIX continues to make a concerted effort to make SHOP, now called beWellnm for Small Business, more attractive to small business owners across the state by exploring new policies, enrollment tools and engagement of agents and brokers to help increase awareness of the benefits of the Small Business Program.

Recommendation	NMHIX Response
New Mexico Health Insurance Exchange should ensure final project documents are located in the project repository to ensure the project artifacts are accurate and complete to provide a documented audit trail.	The Exchange agrees with this recommendation. NMHIX has a new Project Management Services vendor in place, and any IT projects will follow this process and best practices.

**LFC Observation: NMHIX Information Security Processes Need Improvement to Ensure Systems Security and Compliance with Federal Requirements and Industry Best Practices**

The LFC Program Review alleges that the Exchange is not compliant with Federal Requirements, however this is not accurate. A comprehensive site visit by the Centers from Medicare and Medicaid Services (CMS) in September, which is a tool used to evaluate all phases of State-Based Exchange operations, validated our compliance with Privacy & Security procedures. During this site visit, as a matter of recommendation, CMS suggested two items that the Exchange adopt moving forward. First, that the NMHIX hire a Privacy & Security Officer and second, that a risk assessment be conducted annually. In light of this communication, the

Exchange is adding these items to its overall work-plan. However, it is notable that neither of these items constitute a lack of compliance with Federal Regulations, and such a statement is erroneous. Furthermore, all recommendations but one that are beneficial in their usefulness to the Exchange were in the process of implementation before the LFC's observations were communicated. The one exception has been noted and will be implemented.

The LFC's IT Consultant alleged that the Exchange was lacking in four areas of concern. The first item identified was "defined formal information security program policies and procedures." The Exchange is aware of the value of robust and evolving Internal IT Security Policies, which is evidenced by the fact that such policies have in fact been implemented. To date, nine are in use.

- IT-0001 Acceptable Use
  - Origination Date: 12/2014
  - Latest Review: 06/2015
- IT-0002 Data Encryption
  - Origination Date: 09/2014
  - Latest Review: 06/2015
- IT-0003 Asset Management
  - Origination Date: 03/2015
  - Latest Review: 06/2015
- IT-0004 Password Policy
  - Origination Date: 04/2015
- IT-0005 Information System Access
  - Origination Date: 04/2015
- IT-0006 Incident Response and Reporting
  - Origination Date: 08/2014
  - Latest Review: 06/2015
- IT-0007 Physical Environment Protection
  - Origination Date: 09/2014
  - Latest Review: 06/2015
- IT-0008 Granting Obtaining Revoking User Access Acceptable Use
  - Origination Date: 09/2014
  - Latest Review: 06/2015
- IT-0009 Systems & Applications Change Notification Policy
  - Origination Date: 08/2014
  - Latest Review: 08/2015

Later in the document, the IT Consultant states that the Exchange is "without a defined and approved information security program framework and governance structure." However, as noted above, policy IT-0007 is specifically regarding Physical Environment Protection. This document, drafted in accordance with CMS SSP and ACA guidance, is "responsible for physical and environment protection in conjunction with other legally binding contractual obligations as determined by NMHIX." This policy, initially adopted in September of 2014, contradicts the aforementioned allegation.

The second area of concern is that the Exchange has no "IT risk assessment." While true, CMS has no requirement for a Risk Assessment to be compliant. Despite this, the Exchange agrees that there is value in such an analysis, and has already begun the process to obtain an assessment. The third area of concern states that the Exchange lacks an "IT disaster recovery plan." Per CMS Regulation, the NMHIX has established a Disaster Recovery Plan over its Exchange products, specifically the Small Business Health Options Program (SHOP). In doing this, it has satisfied its compliance requirements and secured that technology. However, the Exchange is also in the process of acquiring an Enterprise-wide Disaster Recovery Plan. This is not a requirement, but has been pursued as part of good business practice. The fourth and final recommendation is that the Exchange should establish controls over removable media, such as USB Memory Drives. NMHIX agrees with the value of a policy, and will be implementing it moving forward.

The LFC IT Consultant also observed that, "ABBA Technology review server event logs every four to six weeks; event logs should be reviewed more frequently." The Exchange is compliant with CMS requirements in evaluating event logs. However, it seems that the consultant is referencing National Institute of Standards and Technology (NIST) best practice guidance when referencing event log review frequency. NIST appears to give no specific guidance on how often an organization the size and structure of the Exchange should be reviewing logs beyond "regularly," nor has any such guidance been provided by the LFC IT Consultant. Given that the NMHIX is well within CMS requirements and continues to regularly check event logs, clear documentation for best practice would be requested to pre-empt any further action.

Recommendation	NMHIX Response
<ul style="list-style-type: none"> <li>• Perform a risk assessment to determine what logs should be reviewed and the frequency of review;</li> <li>• Develop and document detailed audit and log monitoring procedures for the various systems and applications;</li> <li>• Implement restrictive security controls on logs to prevent unauthorized access, deletion or modification of the logs;</li> </ul>	<p>The Exchange currently regularly reviews and documents its logs. If an IT Risk Assessment (which will be conducted) recommends changes to frequency or content, action will be taken.</p>

<ul style="list-style-type: none"> <li>• Develop a formal disaster recovery plan policy;</li> <li>• Conduct a business impact analysis and risk assessment to determine the requirements for the disaster recovery plan;</li> <li>• Reference the risk assessment in the disaster recovery plan and document any high risk areas along with mitigation strategies;</li> <li>• Develop a formal disaster recovery testing plan and conducts training and periodic testing at least annually;</li> <li>• Review, update and distribute the disaster recovery and business continuity plan at least annually;</li> </ul>	<p>NMHIX currently has a Disaster Recovery Plan for all of its Technology. However, a process to implement an enterprise-wide Disaster Recovery Plan is currently underway.</p>
<ul style="list-style-type: none"> <li>• Document the plan revision history, ensuring personnel receiving the plan have the current version;</li> </ul>	<p>As noted above, the Exchange currently has multiple IT Privacy &amp; Security Policies with clear tracking of their origination, review, and anticipated review. These policies are available to all personnel and distributed as they are reviewed.</p>
<ul style="list-style-type: none"> <li>• Document and implement policy and procedures specifically addressing portable media protection; and</li> <li>• Implement automated preventive controls configured to block the use of USB flash drives or automatically encrypt them if they are not encrypted.</li> </ul>	<p>The Exchange agrees with this recommendation, and will be implementing this recommendation within its IT Privacy &amp; Security Policies.</p>

**LFC Observation: The Current Governance Structure Lacks Oversight, and Transparency Could Be Improved**

Throughout this section, the author’s opinion of the best practices for an Exchange lead to inaccurate conclusions that do not match the reality that NMHIX is operating in compliance with the New Mexico Health Insurance Exchange Act and federal law and regulations, and is making significant efforts to be as transparent as possible.

The report acknowledges that the current composition of the NMHIX Board of Directors is in compliance with federal regulations and state law. The NMHIX agrees with this conclusion.

The report expresses concern, however, that the Board of Directors includes members who are representatives of health insurance issuers, and that New Mexico law “might harbor” members from a stringent interpretation of interest conflicts. In fact, the New Mexico Health Insurance Exchange Act *requires* that at least two members shall be representatives of health insurance issuers, and expressly exempts industry representatives from certain conflict of interest provisions that may otherwise apply: “directors who are representatives of health insurance issuers shall not be considered to have a conflict of interest with respect to those directors’ association with their respective health insurance issuers.” Section 59A-23F-3(G)(4). Federal

regulation also recognizes that the governing body of a state based exchange may benefit from the expertise of individuals associated with the health insurance industry. 45 CFR 155.210 says that a state must ensure that consumer interests are represented by, among other things, ensuring that the exchange governing body "is not made up of a majority of voting representatives with a conflict of interest, including representatives of health insurance issuers or agents or brokers, or any other individual licensed to sell health insurance."

Further, the report states that the Governmental Conduct Act "does not speak to this unique circumstance of a board member potentially acting on behalf of his or her employer to its benefit but to the disservice of the NMHIX." The NMHIX disagrees, and believes that such action by a Board member contrary to the interest of the Exchange is prohibited.

The NMHIX has found the presence of health insurance industry representatives on the Board of Directors to be productive and any potential conflict of interest issues arising from their presence to be manageable. All Directors are subject to the Governmental Conduct Act and the numerous ethical provisions in the Act prohibiting official acts for personal or familial gain, nepotism, and inappropriate influence on contracting, to name a few. All Directors are required to act in the public interest, and not for private gain. All Directors have a duty to act in the best interests of the Exchange. These principles are found in law and apply to all Directors, including health insurance representatives. NMHIX internal policy restates and reinforces these principles.

The LFC authors may disagree with the decision of the legislature and federal regulators to permit and encourage participation by health insurance issuers on the NMHIX Board of Directors. The authors are entitled to this opinion, and it may be a point for further discussion with the New Mexico Legislature.

Furthermore, the report cites that six states have outright prohibited issuer participation on members with affiliation with health insurance issuers. However, it should be noted that five of the six states that do not allow issuers on the Board (Nevada, Minnesota, Maryland, Hawaii and Massachusetts) were nationally recognized for their experiences with significant failures in operations. Additionally, 42 CFR Part 155.110(c) (4) stipulates that a state should ensure that an Exchange has a governing board that has individuals with experience that in some cases is only gained through affiliation with a health insurance issuer and "ensures that a majority of the voting members on its governing board have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured."

The author's opinion of what constitutes best practices for an Exchange also lead to conclusions that do not match the reality that NMHIX is operating in compliance with federal statute and the provisions of the New Mexico Health Insurance Exchange Act. This opinion driven approach leads the author to conclude that because under the New Mexico Health Insurance Exchange Act the NMHIX is not subject to oversight from several state agencies that the oversight and transparency is limited and that financial audits are not sufficient. If the legislature decides to change reporting or oversight requirements in the future, the NMHIX will comply, however it is not expected the NMHIX will adhere to standards that are not required by federal regulation nor defined by the New Mexico Health Insurance Exchange Act.

The reality is that whether the NMHIX is subject oversight by various state agencies or not, the external financial audit and the audits that the NMHIX is subject to by the federal government each year are, in fact, more stringent and thorough than typical practice of state audits. Further, it is untrue that federal audits will cease once NMHIX no longer receives federal grants and these will continue moving forward. In fact, on the top of page 51, the LFC report states that the annual financial audit will become the primary external means to catch waste fraud and abuse and the financial audit is limited in scope. What the LFC report neglects to highlight is that CMS has ongoing oversight responsibilities of the Exchange and requires that the Exchange conduct a SMART program audit in addition to the financial audit. These two audits working in tandem ensure both the operational and financial health of the organization, and are ongoing.

In the financial review section of the report, as well as in Appendix O and Q, LFC quoted sections of the NMHIX 2013 Single Audit Report findings as validation for why the NMHIX should not have transferred the financial operations from the Human Services Department to the NMHIX. The LFC also makes several observations regarding the system of financial policies and procedures at the Exchange. However, these observations are made following state accounting rules, whereas the Exchange is obligated to follow CMS and federal grant requirements.

The following are several examples of observations where the LFC team has misinterpreted the data they reviewed without consulting the Exchange or seeking clarification on the conclusions they were forming.

- The authors assert that the Exchange should have recorded 2013 audit fees as prepaid expenses in 2013, and then concludes that 2013 expenses may have been understated because the Exchange did not record the 2013 audit fees in 2013. It appears the author does not understand the accounting for this type of transaction. Since the 2013 Audit was conducted in 2014, the audit fees were expenses of 2014, and there would be no prepaid expense in this scenario.
- A conclusion that the NMHIX was not following a modified accrual basis, which is hypothetical or academic. The NMHIX is not a state agency and would not follow the state government accounting methodology. NMHIX correctly followed the basis of accounting that was recommended by their independent external audit firm, as described in the Notes to their Audited Financial Statements for December 31, 2014 and 2013.
- A statement that "NMHIX uses accruals that are processed by journal entries. Journal entries do not have ID." Accruals are typically posted to the general ledger through the use of journals which is generally how accounting systems work. The statement that NMHIX journal entries do not have IDs is inaccurate. All journals posted in the NMHIX accounting system are sequentially numbered.
- A statement that "Payments for vendors should aggregate as much as possible under the unique ID in the AP system." This conclusion is incorrect. A vendor ID is a mandatory field in NMHIX's Accounts Payable system. There is no way to overwrite this control.
- Also in Appendix Q the LFC states, "Youth Development, Inc, for example, has transactions posted for both enrollment and outreach activities although the entity did not respond to the Education and Outreach RFP." This is misleading given that YDI responded to and was awarded a contract under the Enrollment Entity RFP, which included outreach activities as part of the services they provided.

Unfortunately, the aforementioned instances are representative of many errors held by the authors regarding the Exchange's financial system. The Exchange is proud that the 2014 Audit Report was a clean audit report, and the NMHIX financial statements were found to be prepared in accordance with Generally Accepted Accounting Principles (GAAP). There were no new Single Audit findings and corrective action had been taken on all findings from 2013.

In addition, the NMHIX is committed to transparency and has developed robust policies and governance structures to comply with the Inspection of Public Records Act, the Government Conduct Act, and the Open Meetings Act as required in the New Mexico Health Insurance Exchange Act to ensure transparency and accountability. The policies in place that support transparency and oversight are available to the public on the NMHIX website (<http://www.nmhix.com/nmhix-board/board-policies/>) and the NMHIX is operating in accordance with these policies and procedures.

New Mexico State Law	NMHIX Policy to Comply
Inspection of Public Records Act	The New Mexico Health Insurance Exchange has a designated public records custodian and clear instructions on how to submit written requests for public information available on its website. <sup>14</sup> The NMHIX Notice of Right to Inspect Public Records is also publicly available at the NMHIX offices.
The Government Accountability Act	The Code of Conduct: Governing Principles and Conflict of Interest policy amended in May 2015 <sup>15</sup> addresses the requirements to operate in accordance with this act for both employees and directors.
The Open Meetings Act	In 2013, 2014 and 2015, the New Mexico Health Insurance Exchange Act passed an Open Meetings Act resolution to establish policies and procedures for NMHIX to operate in accordance with the open meetings act. The most current resolution is available on the website. <sup>16</sup>

With these robust policies in place, we agree with the assessment that there are always more opportunities for transparency even if these items are not required by statute. While the primary focus of attention in our first two years has been developing web content and tools to help consumers get enrolled in coverage, this year the NMHIX is allocating resources to make information on the activities of the Board more easily accessible and available. This process is already underway. For example, since the new CEO started in the late summer of 2014, the presentation used at each Board meeting between September 2014 and September 2015 has been posted online to increase transparency, and includes quarterly financial and annual budget reporting.

Additionally, tracking and using data to inform our operations are both very important to ensure that NMHIX is operating as efficiently as possible to meet the needs of New Mexicans. As such,

<sup>14</sup> <http://www.nmhix.com/wp-content/uploads/2013/01/07-14-14-IPRA-Notice-of-Right-to-Inspect-Public-Records.pdf>

<sup>15</sup> <http://www.nmhix.com/wp-content/uploads/2015/05/Signed-Code-of-Conduct.pdf>

<sup>16</sup> <http://www.nmhix.com/wp-content/uploads/2015/04/NMHIX-Resolution-No-2015-1.pdf>

the NMHIX is also allocating resources from our federal grant to commission a vendor to implement a data reporting system that will also be used to support reporting at Board meetings.

Recommendation	NMHIX Response
The Legislature should consider improving the transparency and oversight of the NMHIX by amending the New Mexico Health Insurance Exchange Act to:	
<ul style="list-style-type: none"> <li>Require oversight by the Office of the State Auditor</li> </ul>	NMHIX is audited by external auditors and by the federal government. The NMHIX is required by statute to perform an annual audit.
<ul style="list-style-type: none"> <li>Increase reporting requirements to the Legislature and Office of the Governor, including performance reporting associated with the Accountability in Government Act</li> </ul>	The NMHIX is subject to and complies with a number of reporting requirements: (1) reports to the legislature, the governor, and the Office of the Superintendent of Insurance; (2) submit information accounting for all activities, receipts, and expenditures of the NMHIX to the Superintendent of Insurance; (3) obtain an annual audit by an independent auditor; and (4) publish the administrative costs of the exchange.
<ul style="list-style-type: none"> <li>Outline financial reporting requirements to the public</li> </ul>	NMHIX presents detailed budget information at Board meetings.
The NMHIX should improve transparency and accountability by considering posting a broader array of information on the website, including the following items:	
<ul style="list-style-type: none"> <li>Committee agendas, minutes, and calendar;</li> </ul>	The Exchange appreciates these recommendations from LFC staff and will take this under advisement.
<ul style="list-style-type: none"> <li>Financial information as recommended in Appendix Q</li> </ul>	
<ul style="list-style-type: none"> <li>Contracts;</li> </ul>	
<ul style="list-style-type: none"> <li>Stakeholder sections;</li> </ul>	
<ul style="list-style-type: none"> <li>Published reports, including customer satisfaction surveys;</li> </ul>	
<ul style="list-style-type: none"> <li>Dashboards, including performance metrics regarding enrollment; and</li> </ul>	
<ul style="list-style-type: none"> <li>Keeping the website current, with key documents appropriately archived for retrieval.</li> </ul>	

**LFC Observation: NMHIX Faces Potential Operating Issues in the Absence of Robust Policies and Procedures to Supplant State Law and Administrative Code**

The NMHIX has made prudent choices thus far to maintain the efficacy of its operations. Further, the Exchange has been responsive when potential improvements have been proposed by numerous sources. This was especially important given the haste by which operations had to be established, as noted previously, 187 days before Open Enrollment. However, some issues detailed by the LFC as ongoing which could interfere with operations are not accurate to the most recent documentation.

The LFC states, "2013 A-133 Audit lists 6 significant deficiencies." While this is valid, it is insufficient to provide a current appraisal of the NMHIX operations. Consistent with the Exchange's effort to be responsive and optimize efficacy, the 2014 A-133 Audit identified no

new findings and that all previously identified items were successfully addressed. The timeframe for this annual audit's completion did not allow for LFC review, however, it is incredibly important to note as part of the current state of operations.

The LFC also alleges that there are issues with the Exchange utilizing Alliance procurement policy in the early stages. Senate Bill 221 of 2013, the New Mexico Health Insurance Exchange Act, established that all Alliance contracts were binding to the Exchange. To establish consistency, the NMHIX Board quickly and judiciously assumed the Alliance contracts and procurement policy. While operations continued, updated procurement policies were concurrently developed that would be entirely under the Exchange's umbrella. However it is important to note that the utilization of the Alliance procurement policy and procedures was not only compliant with the statutory authority, but also sensible given the timeframe.

Later the LFC states, "NMHIX processed a \$450 thousand amendment for the PCG project management contract, without Board approval. NMHIX March 31, 2015, contract reporting to the Board shows an increase in PCG's contract from \$4.7 million to \$5.1 million... it appears payments to PCG exceeded the contract scope of work by \$140 thousand." The entire contract, including all scopes of work with PCG totals \$4,698,000. With regards to the Program Review allegation, it is important to note that this amount has not changed since the new CEO joined the Exchange, nor with the January 20<sup>th</sup> amendment. The amendment referenced shifted money from one scope of work to another without increasing the amount, and therefore did not require Board approval. However, in inquiring upon the statement above, the LFC did identify a typing error in the Board meeting contract reporting. At the March 31<sup>st</sup> meeting a contract schedule was provided to Board members and the LFC Program Review representative which did reflect the additional money applied to one scope, per the amendment, but without a reduction to the other scope. This error was rectified in the May 15<sup>th</sup> Board meeting contract schedule, which was also provided to the LFC. With all of this in mind, ultimately the amendment did not increase the total contract amount, nor breach the Exchange's procurement policy.

The LFC states, "Lack of post-award oversight meant NMHIX was non-compliant with federal rules." However, during the recent A-133 audit, the Exchange's external auditors evaluated the controls in place and did take note of the system for procurement, monitoring of contracts, and vendor performance. In their evaluation, along with CMS oversight and communication, it was determined that the current policies and procedures continue to be compliant with federal requirements.

Later within this section the LFC alleges, "In addition, the NMHIX reimbursed its project management vendor \$256 thousand for 2,048 hours billed at \$125 per hour. NMHIX time-and-materials contract with PCG included billing rates by labor category but the \$125 billing rate was not included in the contract." Upon reviewing this observation, it is important that the Exchange point out the history of the \$125 per hour bill rate. When reviewing work performed in the PCG contract, it was determined that certain Time & Material deliverables could be fulfilled by a lower cost resource. This was agreed upon by both parties and subsequently saved taxpayer dollars. The Exchange recognizes the value of amending the contract to reflect this cost-savings, but it is important to note that no overpayment occurred nor was work paid for that did not occur. Further, had such overpayment occurred, the external auditors would have identified such an incidence. This did not happen, nor did any such overpayment occur, which was integral to the Exchange receiving a "clean" 2014 A-133 audit. The Exchange did not overpay this contract. In addition, the NMHIX did not exhaust the full contract value before the contract termed.

Later within the same paragraph the LFC states, "In addition, while NMHIX IT director requested a specific PCG individual to stop work on December 5, 2014, the individual continued to work, resulting in an additional overpayment of \$15,000. By using T&M contracts that are not properly monitored, NMHIX increased its risk of higher project costs and noncompliance with federal procurement requirements." The Exchange did not put a stop work order on a specific employee but rather requested that work stop on a specific project. Further, the work referenced here was approved to continue. If a stop work order had gone into effect, the continued practice of the Exchange is to send a letter notifying the vendor of such development. This is evidenced by other stop work orders that have been executed, including the BVK contract. Finally, the controls are in place for the Exchange to leave invoices unpaid if a vendor continues work after having received a stop-work order.

Recommendations	NMHIX Response
<ul style="list-style-type: none"> <li>• Develop stronger procurement Policies and Procedures detailing the procurement process, selection process by type, documentation and record keeping, contract development, and post-selection process including vendor oversight, with detailed administrative procedures to ensure compliance;</li> <li>• Require NMHIX staff assigned in a vendor manager role complete the one and three-day trainings offered by the State Purchasing Division;</li> </ul>	<p>The procurement process has been codified and is subject to regular review. Given that the Exchange is subject to Federal grant requirements, it is important to note that all procurement policies must be compliant with those regulations. The NMHIX has a process in place which includes all of the recommended items in this bullet.</p> <p>The Exchange will assess the value of having staff complete trainings offered by the State Purchasing Division as it relates to the ongoing operations and evolution of the organization.</p>
<ul style="list-style-type: none"> <li>• Clarify thresholds, including gross receipt tax, and align them consistently throughout all documents;</li> </ul>	<p>The Exchange already clarifies these matters in contracts.</p>
<ul style="list-style-type: none"> <li>• Consider centralizing procurement oversight under a Chief Procurement Officer who has undergone the State Procurement Officer training and has relevant experience (if appropriate for procurement volume);</li> </ul>	<p>The Exchange will assess the value of assuming the additional expense of a C-suite staff salary and expertise as it relates to ongoing operations, evolution of the organization, and appropriateness to the amount of procurements.</p>
<ul style="list-style-type: none"> <li>• Review opportunities to reduce costs, such as partnering with HSD for call center activities rather than maintaining a separate facility;</li> </ul>	<p>A clearly defined call center is a federal requirement of all State-Based Exchanges, and has been fulfilled successfully. However, the NMHIX will continue to identify partnership opportunities while fulfilling the requirements to CMS oversight.</p>
<ul style="list-style-type: none"> <li>• Use the State Purchasing Division website for statewide pricing and notices of vendor suspension or debarment;</li> </ul>	<p>The Exchange regularly references this website, and has a process in place by which it evaluates vendor suspensions and disbarments.</p>

<ul style="list-style-type: none"> <li>• Implement the Records Policy by designating a records custodian; and</li> <li>• Archive historical procurement information as sufficiently as possible.</li> </ul>	<p>A records custodian existed at the time of LFC review, and other individuals have been cross-trained to ensure redundancies are in place. Further, policies to archive historical information exist and continue to be refined.</p>
<ul style="list-style-type: none"> <li>• A formal Communication Policy per Section 59A-23F-3(S)(2) and (5) addressing communications with stakeholder groups that includes:</li> <li>• A delineated method and format for stakeholder groups to submit input for key decisions as well as Board procedures to “duly consider recommendations” in addition to public comment periods, including Board committee interactions.</li> </ul>	<p>A formal communication policy currently exists, and has since before the time of the Program Review. A format for stakeholder input is in place through a variety of mediums. Public comment, the Stakeholder Advisory group, and consistent meetings have established strong communication. Notably, the Stakeholder Advisory Group provides recommendations directly to Board members, staff, and vendors. Further, the Exchange continues to embrace all formats of stakeholder communication, whether codified or not, given that every New Mexican is a stakeholder.</p>