

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

**August 6-9, 2018
University of New Mexico
Domenici Center for Health Sciences Education
North Wing, Room 2720
1001 Stanford Drive NE
Albuquerque**

The joint meeting of the Courts, Corrections and Justice Committee (CCJ) and Legislative Health and Human Services Committee (LHHS) was called to order on August 6, 2018 by Representative Gail Chasey, co-chair, CCJ, at 9:26 a.m. in the Domenici Center for Health Sciences Education of the University of New Mexico (UNM).

Present

Rep. Deborah A. Armstrong, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Gail Armstrong
Rep. Rebecca Dow (8/6, 8/7)
Sen. Mark Moores (8/8, 8/9)
Sen. Bill B. O'Neill (8/6, 8/7, 8/9)
Rep. Elizabeth "Liz" Thomson

Absent

Sen. Cliff R. Pirtle

Advisory Members

Rep. Joanne J. Ferrary
Rep. Miguel P. Garcia
Sen. Linda M. Lopez
Rep. Rodolpho "Rudy" S. Martinez (8/7, 8/8, 8/9)
Sen. Cisco McSorley (8/6, 8/7, 8/9)
Sen. Howie C. Morales (8/6, 8/8)
Sen. Mary Kay Papen (8/6, 8/7, 8/8)
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero (8/6, 8/7)
Rep. Gregg Schmedes (8/8, 8/9)
Sen. Elizabeth "Liz" Stefanics
Sen. Bill Tallman (8/7, 8/8, 8/9)
Rep. Christine Trujillo

Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Angelica Rubio
Rep. Nick L. Salazar
Sen. William P. Soules

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

Staff

Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Chris Pommier, Bill Drafter, LCS
Karen Wells, Contract Staff, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, August 6 — Joint Meeting with the CCJ**Call to Order and Introductions**

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

Update on Changes to Guardianship and Conservatorship Laws

The Honorable C. Shannon Bacon, district judge, Second Judicial District Court, and chair, Guardianship Reform Implementation Steering Committee (GRISC); and the Honorable Nancy J. Franchini, district judge, Second Judicial District Court, and vice chair, GRISC, addressed the committees.

Judge Bacon summarized Senate Bill (SB) 19, which began as a Uniform Law Commission (ULC) bill and was substantially amended during the 2018 legislative session before passing the legislature and being signed into law. The GRISC was formed to address implementation issues. Statutory changes include requiring all hearings regarding guardianship and conservatorship to be open, improving access to court records related to proceedings and inviting more people to participate in the hearings. Other changes involve financial aspects of guardianship and conservatorship, including requiring and setting parameters for bonding of guardians and conservators, as appropriate.

Judge Franchini addressed the issue of increased access for family members. Judge Bacon described modifications to annual required reporting forms, which provide significant additional information and allow for fewer hearings to obtain needed information.

The new law also contains auditor requirements that clarify who conducts, and the frequency of, audits. The court has established a memorandum of understanding with the Office of the State Auditor to accomplish this enhanced oversight.

Case review and cleanup are funded by a one-time appropriation, and these tasks have been a large part of the work the GRISC has been engaged in since the law's passage. Significant training has been necessary to educate judges and others on the new requirements of the law.

The judges emphasized that the process has been under way for approximately one month, with many more months of work ahead.

Committee members had questions and comments in the following areas:

- clarification of elements of the ULC draft that were not adopted: the role of the guardian ad litem was eliminated in the ULC draft but was preserved in SB 19. Additionally, SB 19 added significant training for individuals (particularly family members) as guardians and conservators;
- whether more changes are anticipated in the future: only minimal changes are anticipated;
- whether both guardians and conservators are subject to audits: SB 19 deals with audits of conservators only; however, the electronic capability to review required reports allows auditing of guardians as well;
- whether any on-site oversight visits of guardianships will be conducted: yes, it is possible;
- clarification regarding the number of reviewed cases that have been closed in the Second Judicial District Court: at present, an estimated 120 cases have closed;
- clarification regarding the engagement of families in the process: input was actively sought and received during public hearings conducted by the GRISC;
- acknowledgment that many family members have concerns about the changes;
- clarification regarding the process for educating family members about compliance with new reporting requirements: letters will be sent notifying guardians about the reports and offering help;
- whether New Mexico's law will be difficult to comply with in other states because it amends the ULC draft: New Mexico is a leader in implementing this new law, so other states are looking to this state;
- recognition of regional differences within the state in the process of emergency appointments of guardianships and conservatorships: statewide training to ensure greater consistency will be critical;
- clarification regarding actions to mitigate harm to individuals that has already occurred: where identified, these cases are being referred to the Office of the Attorney General and law enforcement;
- clarification regarding improving the process of petitioning for guardianship: the court cannot initiate a petition; it can only respond to requests. However, the new law identifies more people who may participate in the petition process;
- whether there is any avenue to resolve differences between family members and professional guardians ad litem: yes, family members can send a letter to the judge, who will hold a hearing on the issue. Judges have greater latitude to call upon a larger number of participants in such a hearing;
- whether the Adult Protective Services Division (APS) of the Aging and Long-Term Services Department is contributing in a valuable way to identifying individuals in need of protection: currently, the APS is only conducting cursory reviews;

- recognition of the importance of incorporating language and cultural factors, especially in the process of appointing guardians ad litem;
- recognition of unique issues that arise with people in extreme poverty who are in need of guardianship; and
- acknowledgment of the myriad situations that can arise in making these crucial determinations.

Approval of Minutes

Representative Chasey requested a vote to approve the minutes of the July 16-17, 2018 CCJ meeting. A motion was made and seconded, and the motion passed without objection.

Public Comment

Jacque Mader, director of guardianship, The Arc of New Mexico, told the committees that having the courts more involved will ensure more appropriate decisions.

Jim Jackson, Disability Rights New Mexico, presented four recommendations for further guardianship reforms: (1) authorizing alternatives to guardianship or conservatorships; (2) ensuring avenues for adequate legal representation, especially in the process of appointing guardians ad litem; (3) requiring "neutral" appointment of qualified court visitors; and (4) clarifying the scope of a guardian's authority. He said that there is a need for adequate funding going forward, especially to fund checks on whether guardians are functioning appropriately.

Ann Edenfield Sweet, executive director, Wings for LIFE International, requested consideration of funding for family day services for children of parents incarcerated in New Mexico prisons. She asserted that quarterly family visits to incarcerated persons have been shown to greatly reduce recidivism rates.

Child Protective Services: New Opportunities to Finance Programs for Prevention of Child Abuse and Neglect and Plans to Prevent Child Abuse Fatalities

The following panel of presenters addressed the committees: Nina Williams-Mbengue, director, Children and Families Program, National Conference of State Legislatures (NCSL); Susan Robison, director, state relations, Casey Family Programs; Charles Sallee, deputy director, Legislative Finance Committee (LFC); Annamarie Luna, deputy director, children's programs, Protective Services Division, Children, Youth and Families Department (CYFD); and Bryce Pittenger, director of behavioral health services, CYFD.

Ms. Robison, referring to her handout "Family First Prevention Services Act Summary", provided an overview of the federal Family First Prevention Services Act of 2017 (FFPSA), which is comprehensive federal legislation intended to guide states in tracking and preventing child abuse and in setting standards for foster care. Referring to her handout "Family First Prevention Services Act Implementation Timeline", she emphasized that the FFPSA requires states to develop and submit plans to track and prevent child abuse by April 1, 2019. Referring to her handout "Safe, Strong, Supportive: The Families First Prevention Services Act", she

highlighted several major provisions of the FFPSA, which include provisions for children in, or imminently at risk of entering, foster care and for those moving to adoption. New federal funding is available for prevention services for not only the child, but for the child's parents and caregivers. Income requirements for accessing the funding have been eliminated. Federal funding will be limited to those environments that meet safety standards and will require state matching funds. Programs must be evidence-based and include mental health services, substance abuse prevention and in-home parenting skills training. New requirements are established for determining who is a candidate for foster care, and states have flexibility in how they define this. "Group foster care" is defined as no more than six children, including foster children, in a home. Requirements for qualified residential treatment programs (QRTPs) are now specified in law. Additional provisions are intended to promote safety, permanency and well-being.

Janet Garcia, who is a Casey Family Programs consultant to New Mexico, addressed some of the work already under way in the state. She highlighted the issue of child fatalities and emphasized the multi-agency collaboration and responsibility to work on this issue. She has been working with the CYFD to meet deadlines and address concerns.

Ms. Williams-Mbengue, referring to her handout "The Family First Prevention Services Act: Opportunities for Legislatures", identified the support available to states through the NCSL. The NCSL has identified deadlines and actions that will be required of states to be in compliance with this new federal law. The role of legislators was highlighted, including planning, implementation and oversight in collaboration with state agencies charged with implementation of the act. The NCSL has convened a legislative work group to address policy, budget and communication needs related to implementation of the FFPSA.

Mr. Sallee, referring to his handout "Cost-Benefit Analysis of Child Welfare Programs", provided some current New Mexico statistics dealing with the effectiveness of child maltreatment prevention and early intervention programs. He noted that most children who come into contact with the state system of child protective services are already known to the state, having been previously reported. He believes that the FFPSA offers the state a new chance to emphasize prevention services, and he highlighted opportunities to provide child protective services through Medicaid and models in other states that could be implemented in New Mexico.

Ms. Luna assured the committees that the CYFD is in alignment with the goals of the FFPSA and that its strategic plan already includes many of the required elements of the act. She emphasized that the department strongly supports the goal of placing children in need in the least restrictive environment. She identified several requirements and described the ways in which the CYFD is implementing the FFPSA, as well as acknowledging the challenges of implementation. The CYFD has been looking very closely at the law and is working with its partners to ensure that they meet the statutory implementation time lines.

Ms. Pittenger described specific next steps to coordinate with Medicaid with regard to QRTPs and other opportunities.

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

- clarification regarding the October 1 deadline: a plan will be submitted for tracking and preventing child abuse;
- clarification regarding the staff vacancy rate in the CYFD in child protective services: currently, it is 13%;
- clarification regarding the necessary state match needed to receive the 50% federal matching funds for implementation of the FFPSA: the state does not have a plan at this time that can predict that budget need. Mr. Sallee suggested greater involvement from the legislative body to address decision points;
- whether a task force is needed to identify this budget requirement: Mr. Sallee noted that the LFC is already working with the CYFD to develop this information;
- an observation by Ms. Williams-Mbengue that one option is to free up congregate care dollars and shift them to prevention programs;
- an observation that the effectiveness of some programs has not been researched yet to determine whether the program meets the standard of being evidence-based;
- whether a contingency fund could be established to give the CYFD the funds needed for the implementation work: yes, language can be put in the budget to do that;
- what percent of calls to the Sky Center of the New Mexico Suicide Intervention Project results in a referral to the CYFD's Protective Services Division: about 50%;
- clarification of why New Mexico is low in preventive spending for children: primarily, it is because the state has relied on federal funds that are capped;
- clarification regarding why 125 children were placed out of state for residential treatment: these were individual cases with special needs;
- a request for a publication, "Our Kids Aren't Safe", to be shared with both committees as it addresses many of the issues discussed;
- clarification regarding kinship navigator programs: they are evidence-based programs that help communities with all issues of kinship caregiving, including grandparents raising grandchildren; and
- whether the CYFD is tracking child deaths: yes, there is a committee that is meeting quarterly to look at this, but so far, no follow-up action has been taken.

By consensus, the committees requested the New Mexico Legislative Council to create a subcommittee of the LHHS and CCJ to work with the CYFD to meet the October 19, 2019 deadline for implementation of the FFPSA.

Notice

Senator Ortiz y Pino announced that the early September LHHS meeting has been rescheduled for September 26 through 28.

Juvenile Justice Update

Nick Costales, deputy director of field services, CYFD; Gerri Bachicha, administrator, Juvenile Detention Alternatives Initiative (JDAI), Bernalillo County Youth Services Center;

Tamera Marcantel, deputy director of juvenile justice facilities, CYFD; five members of the youth board of La Plazita Institute; and Ms. Pittenger addressed the committees.

Mr. Costales highlighted some approaches to juvenile justice in detention centers in New Mexico. The CYFD is focusing on support services rather than supervision. It is implementing wrap-around services using community providers rather than probation officers. Since the need for probation officers is declining, the CYFD is reclassifying those workers into new positions. The CYFD is working on implementing some best practices from Bernalillo County in other parts of the state.

Ms. Marcantel emphasized that the mission of the CYFD's Juvenile Justice Division is to keep youth safe and prepare them to reenter society. New programming has focused on preparation for a successful life in the community upon release from detention. Excellent results are being seen, with much lower rates of recidivism.

Ms. Pittenger described her role in the Juvenile Justice Division. She works on support services for those between the ages of 12 and 21 to prevent and treat substance abuse disorders. The program has been developed with youth input. Mental health issues are also addressed.

The youth from La Plazita introduced themselves: Davina, Chuy and Antonio were joined by Erik Rivera and Albino Garcia, who work at La Plazita. La Plazita offers a general equivalency diploma program, healthy food, young men's and women's groups and a weekly youth support group. All La Plazita youth addressing the committees said that they have been subjected to strip searches, and they advocate the use of less humiliating and traumatic alternatives. Mr. Rivera described his role and experience in working with the youth, affirming that the goal is to get them what they need to be successful once they are released from the center.

In response to a request for feedback from the youth and their leaders for suggestions on what is missing in the system, answers included better communication within and outside of the institution and elimination of stereotyping.

Ms. Bachicha reviewed her handout "NM Juvenile Crime Stats". She talked about the efforts of counties, beginning in 2007, to fight for funds to build best practices in juvenile justice. The Juvenile Continuum Grant Fund, created in 2007, was the result of their efforts and has had extraordinary results, with significant decreases in juvenile crime as well as the costs attached to that. Continuum boards support the Annie E. Casey Foundation's JDAI and described the JDAI as key to their success. She emphasized that many challenges remain, including rising substance abuse rates. The core principles of the JDAI are embedded in the Children's Code. The continuum boards ask for reinvestment of funds in rural areas, training to implement best practice programs and consultation and involvement with board representatives regarding funding and legislative proposals.

Committee members had questions and comments in the following areas:

- clarification from the youth presenters regarding what they meant by communication as something that needed to change;
- whether screening devices could be installed in lieu of strip searches: this is being pursued through the capital outlay process;
- whether the CYFD has data on the percentage of children who have been released from a juvenile facility and later entered an adult correctional facility: the rate was 9% last year;
- whether the percentage of non-citizen youth who commit crimes in New Mexico is known and what percentage of them are MS-13 gang members: that information can be found;
- an observation that the primary gateway drug in America is alcohol;
- clarification regarding the number of psychiatrists employed by the CYFD for juveniles: there is one for prescribing; other mental health professionals are available for counseling;
- whether the youth present are satisfied with the proposed solution of electronic screening in lieu of strip searches: generally, yes;
- a suggestion that alternate approaches to strip searches be proposed as legislation;
- whether data regarding recidivism can be routinely collected and reported: the CYFD is working to identify the best way to collect and report this data;
- clarification regarding how the juvenile justice continuum is funded: it is funded primarily through the General Fund, with a small amount coming from federal funds;
- an observation that despite the decline in youth commitment, detention and referrals, constituents still report not feeling safe in their neighborhoods;
- clarification regarding the number of young people involved in the criminal justice system: the data is part of the CYFD annual report, and the department will provide it;
- whether it is known what percentage of youth involved in the criminal justice system are also parents;
- clarification regarding the concept of "race equity": race equity means treating everyone as an individual who is entitled to culturally appropriate services;
- recognition of the link between the lack of postnatal home-visiting services and involvement in the juvenile corrections system at a later age;
- clarification regarding the 10 counties that are not served by the juvenile justice continuum: it is difficult to serve some frontier counties, but the CYFD is hopeful that it can remedy that situation in the future. The difficulty in putting together a board is a factor; and
- an observation that disparate caseloads and challenges for juvenile probation officers in various settings are difficult problems to overcome.

Recess

The meeting recessed at 5:38 p.m.

Tuesday, August 7 — Joint Meeting with the CCJ

Reconvene and Introductions

The joint meeting of the CCJ and the LHHS was reconvened at 9:31 a.m. by Representative Chasey. New attending members introduced themselves.

Inmate Health Care

Theresa Edwards, fiscal analyst, LFC, reviewed her handout "Overview of Inmate Health Care Contracts", which compares budgeted costs to actual costs. She reviewed the frequency and tools used to audit continuous quality improvement and management, noting that the cost of treating hepatitis C has declined over the last three years. Some unique financial details were discussed, including fines assessed against Centurion, a prison health care provider, and a program to purchase HIV drugs using the 340B federal discount drug pricing program.

Committee members had questions and comments in the following areas:

- whether results are available regarding a prison health care contract with HealthInsight New Mexico: David Selvage, health services administrator, Corrections Department (CD), will provide the results;
- clarification regarding the status of 17 lawsuits against Centurion filed by inmates alleging neglect and lack of timely and appropriate care; and
- a suggestion to conduct a cost comparison using the 340B drug purchasing program to purchase drugs.

Jerry Roark, deputy secretary, CD, commented briefly on improvements seen in inmate health care management. Mr. Selvage highlighted accomplishments that include audits on diabetes, infection control and readiness. The department has hired a nurse practitioner and an infection control professional. Mr. Selvage highlighted partnerships with CHRISTUS St. Vincent Regional Medical Center, the Department of Health (DOH), Project ECHO and telehealth providers. The CD has purchased and is distributing Narcan to inmates with opioid addiction in overdose situations. The CD is cooperating with the DOH on a request for proposals to acquire a new electronic health record system.

Wendy Price, Psy.D., bureau chief, Behavioral Health Bureau, CD, highlighted the results of projects designed to address mental health and substance abuse issues. There are weekly meetings with psychiatrists to ensure appropriate administration of medications. She reported on program compliance improvements and improvements to women's health.

Grace Philips, general counsel, New Mexico Counties, presented information on county jails and facilities. This data reflects a reduction in the number of inmates and length of stay in facilities. The Bernalillo County Metropolitan Detention Center population alone accounted for 42% of the reductions. She noted that there are nine contracts with entities providing health care services to county inmates. The needs, as well as the ability to identify contractors, vary greatly

from county to county. As with the state, contractors and jails have great difficulty hiring clinicians. Counties are distributing Narcan to inmates and also to family members of inmates. Counties are working with the Human Services Department (HSD) to facilitate enrollment in Medicaid upon release from jail.

Maria Martinez Sanchez, staff attorney, American Civil Liberties Union (ACLU) of New Mexico said that she primarily focuses on inmate rights, noting that about one-third of all inmate complaints are in reference to health care services. She provided several examples, including lack of timeliness of treatment, failure to transfer to other levels of care, lack of access to specialists and untreated conditions. The ACLU encourages pursuit of a different model for the provision of inmate health care, with close monitoring of delivery issues in the meantime. Accountability is critical.

Matthew Coyte, Esq., Coyte Law, P.C., described his history of working in New Mexico on inmate health care issues. He identified barriers to quality care that are inherent in privatized health care services for this population. Oversight tends to be based on contractor accountability rather than recognizing individual complaints or issues with inmates.

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

- clarification regarding payment to contractors with county providers: there is a flat rate to provide whatever health care needs arise;
- whether HIV is being prevented or merely treated: there is a very low incidence of HIV in the prisons. The contract with Centurion covers both preventive and treatment drugs;
- whether the state's constitutional obligation to provide health care services to incarcerated individuals is for treatment or health promotion: Ms. Sanchez believes the obligation is for medically adequate care;
- clarification regarding how long New Mexico prison health care has been privately provided: since 1991;
- an exhortation to treat incarcerated people with compassion and appropriate care, especially when they are terminally ill;
- clarification regarding the nature of the health assessment upon an inmate's entry into jail or prison;
- whether there is data regarding the number of inmates with terminal illnesses: the state system at present classifies chronic illnesses, many of which are terminal;
- whether sharing the hiring for providers for counties would be better than each jail acting independently: it is an idea worth exploring;
- whether there has been any thought to applying for a Medicaid waiver to cover incarcerated individuals: the CD is not aware of what would be required to do this. Research should probably be done to explore this potential;

- clarification regarding circumstances in which county jails are able to obtain Medicaid coverage for inmates: counties are working with the HSD to make this happen more consistently;
- clarification regarding efforts of the state to ensure that people released from prison are enrolled in Medicaid: state law requires that inmates obtain pre-release assessments and an opportunity to connect with managed care organizations prior to release;
- whether the budget for mental health care for male inmates is equal to that of females: no, increases for females reflect increases in facility costs;
- a suggestion that the state should actively pursue moving to a public versus a private delivery of inmate health care;
- clarification regarding what the CD has done to improve the system: progress was reviewed. Program enhancements are overshadowed by the massive opioid and addiction crisis;
- outrage that female inmates are asked to purchase feminine hygiene products: some are provided for free, but if inmates wish to purchase larger quantities or more expensive products, they are given this opportunity;
- clarification regarding the transition of Corizon to Centurion: some employees moved from one contractor to the other, but the full extent of this is not known;
- recognition regarding the special, and expensive, housing needs for geriatric inmates;
- encouragement for greater availability for compassionate release;
- clarification regarding conditions when inmates qualify for Medicaid coverage;
- acknowledgment that rural hospitals might be able to serve the hospital needs of some inmates;
- an observation that local law enforcement needs to be adequately funded for authorized transportation of inmates;
- clarification regarding the portion of mental health inmate services that are subject to the Audit Act: all of them;
- whether there has been a financial analysis in the last four years to compare the cost of operating a public versus a privately contracted prison system: no;
- an observation that a very specific plan, including costs, is necessary before the state can make an informed decision about public versus private provision of prison health care services;
- a request for the LFC to identify the cost and time to conduct such a study: the LFC will look into this. In the last session, \$200,000 was appropriated for the CD to develop a comprehensive plan. A memorial was also passed to look at this topic;
- clarification regarding details of contract requirements, terms and the certification status of Centurion;
- clarification regarding the extent and frequency of quality audits of clinical care: accreditation of all facilities by the American Correctional Association is in progress;
- whether the number of CD employees is adequate to ensure appropriate oversight of all contracts: no; however, it will become appropriate at such time as an electronic health record system is established;

- an observation that many of the facilities housing inmates are in terrible condition and need to be replaced;
- whether the amount budgeted for hepatitis C treatment is adequate: there has been a reduction in the cost for treatment, so the CD feels the current budgeted amount is enough;
- clarification regarding the number of private prisons in New Mexico: there are five;
- clarification regarding who provides the care in private prison facilities: various contractors are paid by the CD;
- whether county indigent funds can pay for health care in jail: this is not known; and
- clarification regarding the number of lawsuits against Centurion: there were 28 or 29 lawsuits since the beginning of the contract period. Nine have been closed.

Public Comment

Don Johnson, Health Ministries, stated that he was jailed for 14 years. He said that while incarcerated, he experienced many unnecessary health emergencies due to poor food preparation and other situations.

Maggie Kiel, National Association of Social Workers, said that the availability of feminine hygiene products is critical. She also provided a personal story of her brother, who has bipolar disorder but whose mental illness went unrecognized and untreated while he was incarcerated.

Following up on the discussion and recommendations regarding the FFPSA, it was moved and seconded, and the motion was adopted without objection, to send a letter from the CCJ and the LHHS to the New Mexico Legislative Council requesting the creation of a subcommittee to be composed of four LHHS members and four CCJ members to provide oversight of the state's implementation of the federal FFPSA program for the prevention of child abuse and neglect. It was proposed that the subcommittee would meet one day per month in September, October and November and would take testimony from personnel from the CYFD and the courts on the progress of planning for this program. The subcommittee would be tasked with providing the LHHS and CCJ with a report at each committee's final meeting.

Gun Violence as a Public Health Issue: Background Checks; Extreme Risk Orders of Protection; Domestic Violence

Senator Martinez presented a discussion draft of a bill, file number 211083.1, that he intends to introduce in the 2019 legislative session that would require a background check for the purchase of firearms. He identified a loophole in the current New Mexico statutes that permits online purchases of firearms without a background check. He introduced Harold Medina, deputy chief, Albuquerque Police Department; Emilie De Angelis, president, New Mexico Moms Demand Action; and Michaela Ewing, member, March for Our Lives, all of whom spoke in support of the draft bill.

Deputy Chief Medina testified that the proposed legislation is geared toward ensuring community protection, and it does not interfere with the right to bear arms in New Mexico. It will protect the community and protect law enforcement officers.

Ms. De Angelis said that her organization works to establish evidence-based approaches to gun safety. She described an incident in which a person with unfettered access to purchasing firearms went on to engage in a mass murder with his collection of guns. Due to the loophole in New Mexico's laws, he was able to purchase guns in the state by purchasing from an unlicensed seller and avoiding a background check. She reviewed the elements of the proposed draft legislation.

Ms. Ewing provided personal testimony that, as a teenager, she fears for her life every day in school as a result of the loophole that allows teens to buy guns online. Additionally, easy access to guns increases the opportunity for teens to commit suicide. She noted that teens do not have fully developed brains, and they should not have such easy access to gun purchasing.

Committee members had questions and made comments as follows:

- clarification about how the law would be enforced, particularly in rural New Mexico and in counties where most of the population carries guns;
- clarification regarding pricing for the background check: the market should control that;
- whether opportunities exist for enforcement at the local level versus statewide: it would become too variable in its implementation;
- an observation that instant federal background checks are flawed in their effectiveness;
- a request that the bill be discussed at a later date for more thorough consideration; and
- a suggestion that future consideration be given to 3D-printed guns.

Representative Deborah A. Armstrong introduced Sheila Lewis, member, New Mexico Coalition Against Domestic Violence, and Jennifer Padgett, chief deputy, First Judicial District Attorney's Office. Representative Deborah A. Armstrong presented a draft bill, file number .211034.1, which provides that a person who is convicted of domestic violence loses the right to possess firearms. She referred to research showing that the presence of a gun in a domestic violence situation makes it five times more likely that the victim will die from a gunshot. This draft allows state judges to protect victims who are not covered by the federal law.

Ms. Lewis spoke of the importance of restricting guns in domestic violence situations. She compared the draft bill to previous iterations, asserting that the current draft is much stronger than previous versions. The bill establishes two ways of incurring a felony conviction, it addresses enforcement and it provides a mechanism to allow a person to turn over a gun to law enforcement. This approach has been adopted in 27 other states.

Committee members had questions and made comments as follows:

- an observation that questions will arise in reference to states that have already passed this bill and whether they have seen results: there have been some studies showing results;
- whether threats to pets are or could be included as "threats to property of a household member": it is a good idea and should be added;
- whether this bill is considered a "red flag" bill: no, it is limited to firearms in situations of domestic violence;
- whether a document can be created to reflect the differences and similarities of this law in the 27 other states that have enacted it: yes; and
- clarification regarding issues in which the person wielding the gun is not the rightful owner of the gun.

Representative Daymon Ely presented a draft bill, file number .210975.1, which he described as a "red flag" bill that seeks to protect both gun owners and law enforcement. The bill institutes an "extreme risk protection order" (ERPO), which would allow law enforcement to remove a gun from someone who has already been identified as a potential threat. So far, 11 states have enacted similar bills. He introduced Hannah Shearer, staff attorney and Second Amendment litigation director, The Giffords Law Center to Prevent Gun Violence. Ms. Shearer briefly reviewed the other 11 versions of the bill and the due process safeguards contained in the bill.

Committee members had questions and made comments on this bill as follows:

- concern regarding where a petition will be filed for maximum impact and minimum confusion;
- a suggestion that notification to local law enforcement of rejected background checks be required;
- a statement of the importance of funding checks on gun sellers;
- a request for the names of the states that have already passed ERPO legislation: the 11 states were identified;
- whether the law allows parents who fear that their child is a suicide risk to petition the court to require the relinquishment of a gun in their child's possession: yes;
- whether this provision would also extend to guardians: the sponsors will consider adding this to the bill;
- clarification regarding documentation that is provided if someone has successfully undergone a background check: separate transactions require separate background checks; and
- clarification on whether the approval is gun-specific: yes.

Miranda Viscoli, New Mexicans to Prevent Gun Violence, introduced two young women interested in knowing more about gun laws in New Mexico.

Julia Mazal desires a bill to limit children's access to guns. She is motivated by such acts of violence as the mass shooting at Columbine High School. She described some other individual events in which youth obtained firearms to commit acts of violence. Referring to her handout, she said that guns in homes where there are children create a specific threat. Parents should be required to store their guns safely. A child access prevention (CAP) law makes it a crime to carelessly allow access to guns when there are children in the home. Ms. Mazal cited a particularly effective CAP law in Florida. Such laws, according to research, greatly reduce the incidence of youth suicide. She reminded the committees of incidents of gun violence by youth in New Mexico. She asserted that CAP laws do not prohibit lawful access to gun ownership; they simply require responsible ownership.

Sophia Lassiez provided statistics in New Mexico of gun violence and asserted that current laws in the state do not protect children sufficiently. In just one year, 85 children in New Mexico were killed through unintentional use or reckless storage of guns.

Committee members had questions and made comments as follows:

- an expressed appreciation for the testimony and advocacy expressed by the youth;
- whether the bills presented during the day address their concerns: there are some similarities; however, those bills do not specifically address responsible storage of guns;
- whether the youth are willing to work with a sponsor to create a bill: yes;
- recognition that the students have researched approaches to gun laws, and on their own, they chose the CAP law as the focus;
- whether it is known whether the legislation in other states passed in a bipartisan manner: this was not specifically known, but it is likely that the Florida legislation was bipartisan; and
- recognition that as a nation, the United States has safety standards for automobiles but not for handguns.

Public Comment

Mike Heal, chief, Aztec Police Department, recounted the shooting at Aztec High School in December 2017 that resulted in the death of two students. He is the vice president of the New Mexico Association of Chiefs of Police, which hopes to present a resolution concerning enhanced safety in public schools. He identified gun control issues that the association intends to support during the next legislative session, including ERPO. He also wants to make it a felony to bring a gun to school. The association is working hard to identify multiple ways to keep children safe. He hopes to gain the support of the legislature for these measures.

Dale Perkins, a concealed carry instructor, remarked that all of the day's presentations suggest an intention to take away his guns. He has been threatened with violence in many circumstances and would not feel safe if he did not have the ability to carry a weapon. He was the victim of a false 911 call alleging he was beating his wife, which resulted in him being

arrested and placed in handcuffs. He believes that there are already adequate laws to protect society, but they are not being enforced. He worries about New Mexico becoming a police state.

James Frasier Page is a public information officer of Gun Owners of New Mexico. He was previously in law enforcement in California and also was a seller of guns. He asserts that the gun laws in California were followed, but they failed in accomplishing their goals. He is a strong supporter of the Second Amendment of the United States Constitution. He believes that passage of laws that are not enforced simply leads to the belief that laws do not matter.

Rosa Valencia, a member of Moms Demand Action, said that she is a grandmother and a strong supporter of gun control. She noted that the Second Amendment was passed in 1791, but the country is now in a different time. She believes that the United States Constitution is a living document and should reflect the challenges the country faces now. The Sandy Hook Elementary School shootings touched her heart deeply. She exhorted the committees to get ahead of this problem and think of all children, both now and in the future.

Herbert Hoffman, a clinical psychologist, advocated for smart triggers for all firearms. These are triggers that only respond to a particular fingerprint. He does not believe this would be an infringement on gun ownership.

Elizabeth Mullaney, a member of Moms Demand Action, shared a personal story about a home invasion by a man with a gun when she was three. As an emergency room nurse, she has cared for many children with gunshot wounds. Because of her experience with violence in her life, she is committed to protecting the lives of children from gun violence. She believes there is more agreement among people with opposing views than people often realize.

Recess

The meeting recessed at 5:30 p.m.

Wednesday, August 8

Welcome and Introductions

Senator Ortiz y Pino reconvened the meeting at 9:20 a.m. Members introduced themselves.

Welcome and UNM Health Sciences Center (HSC) Update

Paul Roth, M.D., chancellor for health sciences, UNM HSC, was invited to address the committee. He noted that the Domenici Center for Health Sciences Education in which the committee is meeting is newly opened and contains features that are eco-friendly. Dr. Roth provided an overview of the UNM HSC, beginning with a reminder of its mission, vision and values. Outreach efforts of the UNM HSC include 59 activities in 246 communities around the state, providing education, patient care, research and telehealth sites. He introduced Dr. Kate Becker, chief executive officer, UNM Hospital; Dr. Donald Godwin, dean, College of Pharmacy,

UNM; and Dr. Christine Kasper, dean, College of Nursing, UNM. Dr. Roth described the campus of the UNM HSC in Albuquerque and its campus in Rio Rancho, which provides education and mental health services. He also discussed the plans for a modern replacement facility for the hospital. Strategic initiatives include 20 behavioral health and substance abuse programs, 18 child well-being programs and three successful aging programs.

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

- clarification regarding the adequacy of facilities for psychiatric services: the current facility is old, but improvements are part of the capital plan;
- clarification regarding the potential for using the deeply discounted pharmaceutical pricing under the federal 340B program through the UNM HSC to lower pharmaceutical costs at the state prison system;
- a statement regarding the importance of the UNM HSC's involvement with the residential reentry center to facilitate application for Medicaid for inmates upon release from jail;
- clarification regarding anticipated requests for funding that will come before the legislature for programs within the previously described strategic initiatives;
- notification of a bill that will be introduced to require safe staffing ratios of nurses in hospitals statewide and a request for help from the UNM HSC: Dr. Roth is willing to work with the sponsor;
- clarification regarding the purpose and activity of the UNM College of Population Health: Dr. Karen Armitage stated that the goal of the college is to train practitioners of the future in this public health-oriented field;
- an observation that the infant evaluation program for autism spectrum disorder has been discontinued due to lack of funding and that the wait list for an evaluation is now 18 to 24 months;
- recognition that more than 100 children with disabilities are being placed out of state for care due to lack of care settings in New Mexico;
- recognition that *U.S. News and World Report* recently ranked the UNM School of Medicine as one of the best in the nation for rural health;
- clarification regarding the plan to co-locate primary care and behavioral health services on the Rio Rancho campus: the UNM Department of Psychiatry and Behavioral Health Services was aware of this model in other states and recommended it;
- a statement of appreciation for the UNM HSC's service to veterans and a desire to see even more collaboration between the UNM HSC and the Veterans Administration hospital in Albuquerque;
- whether the UNM HSC has any way to address the serious problem of nurse shortages in New Mexico: the issue is complicated and one that the UNM HSC continually seeks to address;
- a request for an update regarding financial assistance policies, which were problematic in the past: policies have been updated;

- acknowledgment of the importance of work being done to create a movement disorders center: the UNM HSC will be making a legislative request for funding to continue developing the center; and
- whether the UNM HSC is working with Bernalillo County on establishing a behavioral health triage center: yes; the hope is to have the triage center housed within the planned psychiatric hospital.

A New Child Well-Being Collaborative

Andrew Hsi, M.D., professor, Department of Pediatrics, UNM School of Medicine, addressed the committee about a new child well-being initiative at the UNM HSC intended to protect children from the effects of adverse childhood experiences (ACEs) and from abuse and neglect. Dr. Hsi noted that New Mexico is fiftieth in the nation in child well-being, with a significantly higher rate and more types of ACEs than other states. Vulnerability indicators for ACEs were described. He highlighted measures, approaches and desired outcomes for this new program, which include better diagnosis, collaboration with critical partners, expansion of existing programs and utilization of the Project ECHO model. Specific measures of success were identified, and justification for the urgent need for this program was discussed.

Committee members had questions and made comments as follows:

- clarification regarding how the UNM HSC intends to collaborate with the identified partners: it will start with existing programs and expand those that work best;
- a request for identification of top approaches to expand funding to address child maltreatment: better diagnosis and treatment, including incorporation of the needs of the families; and identifying the risk of child neglect early in life through education; identifying and addressing substance abuse in pregnancy; and consistency of care coordination for those served by Medicaid;
- identification of how some children who have experienced ACEs overcome them in adult life: the keys are resiliency and survivor-friendly education and services;
- whether Medicaid should require ACEs screening: there are models for screening and best practices that could be implemented;
- whether primary care providers should screen for ACEs: yes; however, many primary care providers do not know what to do when findings indicate ACEs;
- whether screening would increase costs to Medicaid: the screening tool is free; however, the response to adverse findings could add costs in the short run;
- whether a child who, on screening, has a score indicating the presence of ACEs should be automatically enrolled in the Family, Infant, Toddler (FIT) program: the child should be referred to the best and most appropriate array of services for that particular child;
- an observation that the general public needs education regarding ACEs;
- recognition that genetic components may affect the occurrence of ACEs across generations and that techniques to reprogram brain patterns may halt the generational progression;

- a suggestion that promotion and development of community schools be considered as part of the approach to addressing ACEs; and
- whether a home-visiting program can serve as part of an approach to identifying and treating ACEs: yes.

Public Comment

Danny Palma testified that the cost of the Medicaid Developmental Disabilities Supports and Services Waiver (DD waiver) program has decreased over the years. He provided a written report regarding medical and other therapies.

Dan Medrano, an occupational therapist for the DD waiver, educated the committee about the broad areas of intervention with which he is involved. He is opposed to proposed cuts to therapy services.

Carlos Bustamante is a speech-language pathologist (SLP) who works with children on the DD waiver. He told the committee that the nature of the rehabilitative therapy services are long-term in nature. Often SLPs are the only voice for these children. He is opposed to proposed cuts to therapy services.

Robert Kegel provided the history of a bill introduced in 2018 to provide an additional \$25 million for the DD waiver. He also spoke to responsibilities of the Developmental Disabilities Planning Council (DDPC), which he contends have not been met. He provided the committee with a copy of the Human Rights Act, which lays out the requirements for planning for community services for persons with disabilities. Although he believes that the LFC program evaluation report on the DD waiver is well done, he contends that the state has misrepresented the costs and other findings and has consistently failed to implement the statutory requirements of the Human Rights Act. In order to fix the problems with the DD waiver, the law needs to be enforced, he said. He requested that the LHHS hold a hearing on this issue.

Frank Brady, physical therapist (PT), read a letter from one of his DD waiver clients who relies on the services of a PT.

Erlinda Saavedra introduced her brother Ralph and her brother's caregiver, Josh DuBarry. She testified to the critical importance of therapy services in her brother's life. Any consideration of removing coverage for these essential therapies would be harmful to his well-being. Mr. DuBarry described the nature of the services he provides.

Ms. Mader testified regarding the dangers faced by caregivers, especially as a result of guns in the home.

Lois Painter provided personal testimony regarding her daughter who was on the waiting list for the DD waiver for 11 years and was told that while she waited, she qualified for community benefit services; however, the services did not materialize.

Gay Finlayson stated that she works with people with autism and is disturbed that the program at the UNM HSC is closing. She is concerned that there are no other options for people with autism and is also concerned that people with autism are not eligible for the DD waiver.

Yvette Griego introduced herself and Pamela Jaramillo and identified herself as Ms. Jaramillo's caregiver. Ms. Jaramillo is enrolled in the DD waiver, said Yvette Griego, who provided a positive report on the benefits of the DD waiver and the difference it has made in Ms. Jaramillo's life. New Mexico should be very proud of the waiver and what is being done to care for disabled individuals, she said.

Chrissy Fazio introduced her brother Lenny Fazio, who is enrolled in the DD waiver with Ms. Fazio as his caregiver. She told a very similar story to Yvette Griego's, saying that the DD waiver has made a huge difference in Mr. Fazio's ability to live a fulfilling life.

DD Waiver Update

Brian Hoffmeister, team leader and program evaluator, LFC, introduced Maria Griego, program evaluator, LFC, who presented the LFC evaluation of the DD waiver and the Mi Via Self-Directed Waiver (Mi Via waiver). The process for entering the waiver programs and funding for them were described. Charts in the evaluation reflect the costs and enrollment of the two programs. Total costs for disability programs increased by 28% from fiscal year (FY) 2009 to FY 2017. A summary of key findings addressed increases in costs, cost drivers, other states' experiences, a lack of standardization in the assessment process, the need for greater oversight, the need for better data collection and progress on resolution of the *Jackson* lawsuit. A comparison of similar programs in other states shows that some states cover more medical services for people with disabilities under their state plans, thereby reducing the need to cover these services through the waiver. Home- and community-based care represent the highest costs by far for both waivers.

DOH management of the DD waiver wait list was also addressed. There are still many people on the wait list whose needs are not yet being met. The LFC estimates that it would take \$130 million from the General Fund to take 4,000 people off the wait list. Provider and capacity issues will also remain a challenge.

Mr. Hoffmeister reported that the DOH was using a validated, evidence-based assessment tool, the Supports Intensity Scale, but not in the way that it was intended to be used. This misuse led to the *Waldrop et al. vs. New Mexico Human Services Department et al.* lawsuit. Currently, the DOH lacks a valid and reliable assessment and budget allocation process, which has led to higher than necessary costs. The LFC also looked at oversight of services. The DOH's Developmental Disabilities Supports Division (DDSD) and Division of Health Improvement (DHI) oversee different elements of the program. Incidents of abuse, neglect and exploitation are declining; however, the percentage of clients who are victims is on the rise. Oversight of services in the Mi Via waiver program was looked at separately.

Mr. Hoffmeister covered additional data and performance management issues. The LFC evaluation suggests that expanded outcome and quality measures could aid in legislative oversight of the DD waiver programs, he said.

An update on the *Jackson* lawsuit shows that, although the last institution was closed in 1997, New Mexico continues to operate under a series of court orders requiring compliance with more than 300 obligations. The *Jackson* lawsuit has cost the state an estimated \$40 million from FY 2013 to FY 2018. If these costs were able to be redirected to client services, an estimated 141 additional clients could have been served in FY 2017. Key recommendations include the creation of a five-year plan to reduce the waiting list by up to 50% and that the DOH should analyze the highest-cost clients and how their needs and costs could be changed over time.

Gabrielle Sanchez-Sandoval, deputy secretary, DOH, began by thanking the people who participated in public comment and shared their individual stories. They serve as a reminder of the care and diligence with which the DOH must approach administration of these programs, she said.

Jim Copeland, director, DDS, DOH, presented information regarding the current state of the DD waiver, services outside the waiver and allocations for the waiver. He provided a comparison showing the differences between the traditional DD waiver and the Mi Via waiver. The Medically Fragile Waiver and the FIT Program were briefly described.

Deputy Secretary Sanchez-Sandoval provided input on the status of the *Jackson* lawsuit. She is concerned with how long it has gone on; however, she is confident that the DOH can continue to move forward toward resolution. She reviewed the DOH response to the LFC evaluation, indicating that it presents an opportunity to improve and work more collaboratively with the LFC in the future. She identified important stakeholders with whom the DOH is working to address concerns, particularly around autism needs. She noted that both the traditional DD waiver and the Mi Via waiver will be up for renewal soon, and the DOH and DDS have started to work on this.

Barbara Ibanez, interim director, DDPC, noted that the mission of the DDPC is focused on advocacy, capacity building and system change. It is the only DDPC in the nation that operates the guardianship program for its state. She drew attention to the statutes that created the DDPC and the role of the federal government. She explained that the DDPC cooperates with both the DOH and the HSD in its mission and program responsibilities. The DDPC has a joint powers agreement with the HSD for Medicaid reimbursement. A comprehensive needs assessment process conducted in 2015 and 2016 led to development of a five-year plan that is currently being implemented. A summary of the five-year goals was distributed to committee members.

Peter Cubra, Esq., an attorney for individuals with disabilities, noted that by law, the DOH has the obligation to investigate incidents of abuse and neglect of disabled individuals.

Currently, the department has more than 700 open cases. The legal obligation to complete these investigations is overwhelming and cannot be solved without money, he said. With regard to the DD waiver, Mr. Cubra agreed that the DOH needs to identify an evaluation process that is accurate, predictive and easy to use. With regard to the Mi Via waiver, there are many people in that program with complex medical needs beyond what the program was designed to serve. He contends that the DD waiver system of care needs an overhaul; it was not set up for people with severe disabilities and is therefore bound for failure. He asked that, in addition to funding the DHI, the legislature agree to fund the ability to improve and run a program to serve severely disabled people.

Veronica Chavez Neuman, chief executive officer, The Arc of New Mexico, believes comprehensive data collection and analysis are absolutely necessary to understand the needs of the DD and Mi Via waiver programs. A letter was distributed to the committee with eight recommendations for action, which Ms. Chavez Neuman reviewed. She told her personal story as a mother of a developmentally disabled child who has been a recipient of waiver services for most of her life. She is now on the Mi Via waiver, which has worked very well for her, and she is now independent at the age of 30.

Charlie Marquez, Association of Developmental Disabilities Community Providers, spoke of behalf of the association, which desires a long-term agreement regarding the pay of community-based providers.

Mark Johnson, a developmental disabilities community-based provider, said that community-based providers represent about 80% of the providers for the DD waiver. He testified that their reimbursement has been declining and is no longer sustainable. Rate reductions have averaged about 6.8%. The DD waiver program serves people with extremely high needs, including aggressive behaviors. Other states, while serving less complex populations, have access to residential and inpatient service options, while New Mexico is solely a community-based system. Without substantial, collaborative planning for the system of care, these problems will not be resolved.

Comments and questions by committee members covered the following areas:

- an observation that the DOH strategic plan does not address a reduction of the DD waiver central registry, or wait list, of those seeking allocation of DD waiver supports and services. The DOH, it was observed, has not asked the legislature for money to reduce the wait list;
- how the 2018 appropriation of \$2 million by the legislature will be used: the DOH believes that 80 people will be served;
- clarification regarding plans to change the DD waiver needs assessment process: a new approach must be developed with input from stakeholders;
- clarification regarding the position of the DDPC on adherence to the statute requiring cooperation among the DDPC, DOH and HSD to support the DD waiver: the DDPC

- is just becoming aware of the statute and its responsibility and is identifying how to proceed;
- Shari Roanhorse-Aguilar, bureau chief, Exempt Services and Programs Bureau, HSD, stated that the HSD has responsibility for all aspects of resubmission of the DD and Mi Via waivers;
 - clarification regarding how a decision would be made to apply for a support services waiver: it would probably begin with the DOH;
 - clarification regarding why no slots were filled in FY 2018: filling vacant slots would have placed the DOH in a deficit position;
 - clarification regarding the number of people added to the wait list every year: 300; the LFC noted that data on this is in its program evaluation;
 - clarification regarding where the money is coming from for a rate increase: Debbie Vering, deputy director of finance, DDSD, stated that the money is part of a supplemental budget request for FY 2018 and that the budget request for FY 2019 includes money for a rate increase;
 - an observation that there is a difference between rehabilitation and habilitation in therapy services;
 - clarification regarding why New Mexico is not accessing the Community First Choice Option authorized in the federal Patient Protection and Affordable Care Act: the majority of services are available through the Centennial Care community benefit; additionally, there are numerous requirements that would have to be developed; the LFC asserted that there is still an opportunity to explore the benefits of this approach;
 - whether the DOH will commit to providing the statutorily required data to the DDPC by December 1, 2018: the DOH will definitely look into its ability to comply with that requirement;
 - a request for a flow chart that identifies in specific terms the eligibility requirements for the DD waiver: the DOH stated that it will provide this flow chart;
 - whether there are LFC performance requirements in quarterly reports for the DDSD: there are, but they are quite minimal;
 - a strong opinion that arbitrary decisions to cut pay rates for families or providers should not be made;
 - an observation that the state's inability to provide waiver services has invisible costs due to family caregivers' lost income possibilities;
 - whether any efforts are aimed at addressing the stigma that disabled people are somehow people of less worth: the DDPC and DOH have several initiatives in this area, including elementary school education;
 - general agreement that responsibility for the proper function of such an important program as the DD waiver requires working together in trust with a very representative group to create a plan that will serve needs in the best possible way; and
 - recognition that people are not statistics, nor are their families: over the 12 years that some people have spent on the wait list, what changes have occurred and what personal costs have been incurred, in addition to medical costs, that could have been

avoided by timely placement on the waiver: the LFC is thinking along these lines and is looking for a way to at least reflect progressions and changes over time when people are left unserved.

Recess

The committee recessed at 5:58 p.m.

Thursday, August 9

Welcome and Introductions

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

State Medicaid Alternative Reimbursement and Purchasing Test for High-Cost Drugs (SMART-D); Drug Effectiveness Review Project (DERP)

Rhonda Anderson, R.Ph., Center for Evidence-Based Policy, Oregon Health and Science University, began with a description of the history and work done at the center. The center's mission is to address policy challenges through evidence and collaboration. One of its largest programs is the DERP, which examines research, evidence and comparative effectiveness for Medicaid pharmacy coverage in 14 states. The DERP is a self-governing collaboration of organizations that obtains and synthesizes global evidence and supports policymakers in using evidence to inform policymaking. All reports and materials it develops are proprietary. She identified the types of drugs about which reports are produced.

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

- whether, if New Mexico joined the DERP, the state would be able to access all proprietary reports: yes; going back to 2003;
- whether the DERP conducts research or gathers information about research conducted elsewhere: it is a combination of both;
- whether Medicaid matches dollars to participate in the DERP: yes;
- whether work is being done to address diabetes: yes, in part in response to the rapidly increasing cost of insulin;
- clarification regarding drugs studied in other recently completed reports;
- clarification regarding policy advice available through the DERP: the DERP conducts research on a topic and provides evidence; it does not identify barriers to use in policy decisions;
- clarification regarding how decisions on what to study are made and how studies would be relevant to New Mexico: two study topics are chosen each year by vote; additionally, each member state has \$10,000 per year to use for a state-specific research report;
- whether the any of the studies have been used to help patients make informed choices about drug uses: the DERP was used in Missouri to get information to providers;

- providers are then better able to inform their patients and make information available to them; and
- clarification regarding the process of conducting research: research is always "key question" oriented, then follows a prescribed format; the research methods for the DERP are public, systematic and credentialed.

Ms. Anderson then presented a project overview of the SMART-D project. This project focuses on the challenges of states in providing new, high-cost therapies within finite state budgets. The SMART-D project objectives include strengthening the ability of Medicaid programs to manage prescription drugs through alternative payment models (APMs).

Ms. Anderson identified two APMs: financial-based and health outcome-based. Financial-based models rely on caps or discounts to provide predictability and limit financial risk. Health outcome-based models tie payments to predetermined outcomes or measures. These models can require significant data collection but have the ability to increase value. The SMART-D project has focused primarily on the health outcome-based model, with five states engaged in APMs to test initial research findings. Accomplishments of the SMART-D project to date were described, among which are the development of a health outcome-based supplemental rebate contract for state use, which is approved by the federal Centers for Medicare and Medicaid Services (CMS) and gives states that use it a tool for negotiating drug prices with manufacturers. Four manufacturers are involved, and others are showing interest in this model. A benefit of the SMART-D is technical assistance, including assistance with APM development, Medicaid 1115 waiver strategies and leveraging of 340B prices in a care management model. She identified eight legal pathways for developing APMs and for which technical assistance is available through the SMART-D project.

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

- clarification regarding compliance and other as yet undeveloped issues of implementing APMs: these are all issues on which the DERP focuses;
- Dr. Wanicha Burapa, medical director, HSD, asked whether states involved in the collaborative are permitted to share findings with Medicaid: yes; states that are enrolled make the decision of what to share with managed care organizations (MCOs) and Medicaid;
- whether SMART-D participants are testing the same approach: no; the four participating states are all testing different approaches, which are 340B, waiver, fee-for-service and a supplemental rebate approach with MCOs;
- a statement that a grant is being pursued for a continuation of the project: New Mexico could have the ability to participate; technical assistance could be used for development of a state-specific model; and four to 10 states will be chosen for involvement;

- clarification regarding the appropriate entity to send a letter of interest to participate: the Center for Evidence-Based Policy is looking for commitment, whatever that looks like in New Mexico;
- a suggestion that it might be helpful for the LHHS to send a letter to the current secretary of human services about interest in the DERP: yes; the center wants to know what states are seriously interested in moving forward;
- an observation that New Mexico would need to identify areas of interest from the five areas that the center has prioritized; this would be followed by an on-site evaluation by the center and final determination of participation; several references were made to Project ECHO, suggesting that incorporation of the ECHO model into the proposal might be of interest to the center;
- whether the use of an 1115 waiver to use 340B pricing in Medicaid might be possible: the CMS has reservations about this; however, it has expressed interest in SMART-D evidence of how this could work; a challenge is that the drugs covered through 340B would not be paid for in a rebate program; the state would have to figure out how to pay for the drugs in the absence of a rebate program; and
- a proposal that a letter be sent to the secretary of human services, copying the medical director and the center to urge them to write a letter of interest: the center has written a draft letter that could be used, but there is a deadline of August 15 to send it in.

Public Comment

Dr. Ernest Dole, clinical pharmacist, Pain Consultation and Treatment Center, UNM HSC, testified that the center has a wait list of 800 people, which means a wait of at least six to eight months for an appointment. The Pain Consultation and Treatment Center, which has a multidisciplinary approach, is recognized by the National Institutes of Health as a center of excellence for pain control. Dr. Dole asked for funding for an additional provider for the center and stressed that he is not authorized to make the request on behalf of UNM.

Anna Otero Hatanaka testified to the importance of patient access to brand name drugs when generic drug use has failed. She also supported the need for increased funding for the Pain Consultation and Treatment Center.

Senator McSorley spoke about a new HSD initiative called HHS 2020 that will potentially consolidate all Medicaid patient information in one place. He would like to have the initiative placed as a topic on a future agenda and is concerned about privacy issues and use of this data without legal approval. The project is a joint initiative of the HSD, DOH and CYFD. Ruby Ann Esquibel, LFC, offered additional information about this proposal. The anchor of the project is the Medicaid Management Information System (MMIS) claims system. The funding is 90% federal and 10% state. The MMIS has six component projects, of which HHS 2020 is one. It is the largest information technology project in the history of the state, with a multiyear cost of \$200 million.

Senator Ortiz y Pino made a motion, seconded by Representative Thomson, that the LHHS send its own letter to the Center for Evidence-Based Policy regarding the committee's interest in participating in the DERP and in SMART-D. The motion passed without objection.

New Mexico Pharmacies: Access and Viability

Ashley Seyfarth, Pharm.D., Kare Drug, Aztec and Bloomfield; Brian Hunt, Pharm.D., Del Norte Pharmacy, Santa Fe, Las Vegas and Eldorado; Minda McGonagle, lobbyist, New Mexico Pharmacy Business Council; and R. Dale Tinker, F.F.S.M.B., executive director, New Mexico Pharmacists Association, were invited to address the committee.

Mr. Tinker emphasized the importance of local pharmacies, noting that in many rural communities, pharmacies are the only health care providers. He described the impact of pharmacy benefit managers (PBMs), which has resulted in restricted pharmacy networks, inadequate reimbursement for services and controls over drug formularies to maximize PBM profit. Medicaid was notified by the New Mexico Pharmacists Association that many rural pharmacies will be unable to serve the Medicaid population due to inadequate reimbursement. The association recommended that Medicaid reimburse national average drug acquisition cost (NADAC) pricing plus a dispensing fee. Medicaid adopted the recommendation for NADAC pricing but without the dispensing fee, which provided no margin for the pharmacies, as NADAC funding is, by definition, cost neutral.

Ms. McGonagle discussed finding the balance between patient pharmacy access and costs to insurers or other payers. There are three areas of concern with PBMs: network contract issues, mail order issues and formulary issues. Problems with each of these areas were described. There are multiple barriers and hidden costs to being a preferred pharmacy.

Ms. McGonagle noted that PBMs own retail and mail order pharmacies, making it advantageous to them to deal with their own companies. The PBM business model was described, which has evolved from being a claims processor to impacting all aspects of pharmacy benefit transactions. PBMs are able to manipulate revenue streams through a variety of techniques, and they have gained more control over access to necessary prescriptions than the MCOs. PBMs have the ability to conduct retroactive audits and recoup payments from up to two previous years. Patients have reported being harassed by PBMs and feeling intimidated into changing pharmacies.

According to Mr. Tinker, New Mexico's independent pharmacists assert that the current pharmacy reimbursement model is not working. Requiring full transparency would prompt reforms that would lead to a more functional and sustainable system. The pharmacists requested legislative support for their efforts to retool the system into one that is more fair, balanced and equitable to all.

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

- clarification regarding pharmacy education opportunities in New Mexico: New Mexico has a class of pharmacists called clinical pharmacists that are licensed to provide patient care almost at the level of primary care; currently, about 10% of pharmacists are clinical pharmacists;
- clarification regarding gag laws: there is a prohibition in statute against telling a patient that the drugs would cost less if the patient pays cash;
- a suggestion that the law restricting gag orders be extended to include PBMs;
- clarification regarding who makes a decision on divided drug doses: PBMs manage the benefit, so they would be the entities to make that decision;
- a reminder that legislation has been proposed for several sessions to expand the rural health care practitioner tax credit program to pharmacists;
- whether the association will have specific legislative recommendations: yes; however, those recommendations cannot be specifically determined until the legislative committee meets and makes its recommendations;
- an invitation from Representative Schmedes to work together with the association to develop a legislative proposal to deal with the audit burdens; and
- an observation regarding the inequity of PBMs being both the competitor and the regulator of independent pharmacies.

Movement Disorders Task Force (Senate Memorial 4, 2018)

Michael Richards, M.D., M.P.A., vice chancellor for clinical affairs, UNM HSC; Christopher Calder, M.D., Ph.D., interim chair, Department of Neurology, UNM HSC; Dr. Sarah Pirio Richardson; and Dr. Amanda Deligtisch were introduced.

Dr. Richards observed that the development of a movement disorders center is part of the UNM strategic initiative around successful aging; it recognizes growing need for access to specialty care for patients with movement disorders. Dr. Calder highlighted the fact that demand for these services is currently exceeding capacity in New Mexico. Dr. Richardson described elements of movement disorders and the problems that ensue. Community and team supportive therapy is critical for ongoing care needs. UNM intends to develop a center that will provide the specialized care these patients need and also conduct research, provide education and conduct outreach. The current staff is multidisciplinary but small and only able to address approximately 30% of the identified need in the state.

Dr. Calder presented a legislative request for \$3.5 million to complete the program. The amount requested is one-half of the anticipated capital outlay needed to build the facility.

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

- clarification regarding funding for ongoing operational costs: the UNM Board of Regents will need to consider the full range of operational needs; however, it is anticipated that this will be part of the funding request to the legislature;

- whether children will be included in the service array: it will be largely focused on adults, but this will depend somewhat on the training and expertise of the staff;
- clarification of movement disorders: essential tremors, Tourette syndrome, Parkinson's disease, balance difficulty and more;
- whether all of the physicians are neurologists: primarily, yes;
- clarification regarding the timing for building the facility: UNM has been working on this issue for a decade, so some of the treatment and access goals will immediately be met once the facility is built;
- clarification regarding other funding opportunities: these are already being pursued; and
- an observation that both the house and senate memorials calling for this development passed unanimously.

Grief Counseling (House Memorial 97, 2018)

Kurt Nolte, M.D., professor and chief medical investigator, Office of the Medical Investigator (OMI), UNM School of Medicine, and D.F. "Duffy" Swan, chair, board of directors, Grief Resource Center, were invited to present an update on progress in response to House Memorial 97. A written report will be forthcoming.

Dr. Nolte provided information regarding the purpose and function of the OMI, which is to investigate deaths in order to serve the living, including providing services to the bereaved. He noted that in recent years, due to funding cuts, the number of grief counselors at the OMI has been cut from five to one. It is important to know that the nature of the deaths the OMI investigates are violent and traumatic, exaggerating the grief response not only for the immediate family but also for the extended family. He provided statistics on the nature and number of deaths. Survivors of murder victims are at risk of developing psychological grief. One-third of people who experience psychological trauma develop substance abuse problems.

Nancy Mance, M.A., L.P.C.C, grief counselor, OMI, and Dr. Linda Phelps, executive director, Grief Resource Center, were introduced.

Mr. Swan spoke to the history of the Grief Resource Center, which was started to address the many situations described by Dr. Nolte. Since the passage of House Memorial 97, a steering committee has been conducting research and working to establish the center. A comprehensive survey was conducted that will potentially allow the establishment of evidence-based and responsive programming at the center.

Questions and comments from committee members covered the following areas:

- whether the Grief Resource Center will have any programming that will address the needs of people of color: it is working to establish a coalition of providers that have expertise and represent all parts of the state;

- whether there will be a report on the memorial: yes; it will be provided by November 1;
- whether there is collaborative work with other organizations familiar with grief counseling: at present, the OMI is focusing on those populations affected by sudden, unexplained deaths that the OMI is charged with investigating;
- whether there is any thought of being able to bill for services in the future: it is too soon to know;
- a suggestion that the OMI consider including a medical social worker among the staff who has familiarity with Medicare, Medicaid and other social programs;
- whether the economic effect of a sudden, unexpected death is known and whether that would help to make the argument for state funding: the OMI has been looking at the cost of traumatic grief that is experienced by survivors;
- whether any information is known about the funding for the Children's Grief Center of New Mexico: it is largely funded by grants; Dr. Phelps writes a letter of recommendation at least quarterly to support grant applications;
- whether the OMI does any billing: no;
- a suggestion that the steering committee try to identify entities that do bill to whom they could refer clients and that it build this into its plan;
- acknowledgment that the OMI is leading the way nationally in this work to establish a grief center;
- whether there are any limitations on who will be served at the center: no; whoever needs support and requests support is served; and
- a suggestion that the community benefits funds of the MCOs might be a source of funding for ongoing staffing and service costs.

Dr. Nolte asked if a representative from the OMI could come back to the committee before the end of the interim. Representative Deborah A. Armstrong noted that the work plan for the LHHS is pretty full but that the committee will look forward to the final report. If the report contains legislative recommendations, the OMI will be considered at the last meeting of the LHHS.

Adjournment

The meeting was adjourned at 4:28 p.m.