

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

**August 13, 2018  
State Capitol, Room 311  
Santa Fe**

The second meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on August 13, 2018 at 9:43 a.m. in Room 311 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Joanne J. Ferrary  
Sen. Sander Rue  
Sen. John Arthur Smith

**Absent**

Rep. Monica Youngblood

**Advisory Members**

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

Rep. Gail Chasey

**Guest Legislator**

Sen. Elizabeth "Liz" Stefanics

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Lenaya Montoya, Bill Drafter, LCS  
Kathleen Dexter, Researcher, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

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

## **Monday, August 13**

### **Minutes Approval**

On a motion duly made and seconded, the committee unanimously approved the minutes from its May 29, 2018 meeting.

### **Department of Health (DOH) Program Updates**

Representatives from the DOH gave updates on four programs that receive funding through the Tobacco Settlement Program Fund.

#### *Infectious Disease Bureau Programs*

Daniel Burke, bureau chief, Infectious Disease Bureau, Harm Reduction and Hepatitis Program, Public Health Division, DOH, reported on bureau activities to reduce the spread of hepatitis and the human immunodeficiency virus (HIV). New Mexico's hepatitis rate is high compared to other states, and the bureau depends on tobacco settlement revenue funding for nearly 10% of its hepatitis testing and vaccination program budget. The bureau's harm reduction program, which addresses HIV infection through testing and a syringe exchange initiative, relies on tobacco settlement revenue funding for 34% of its budget, and this program receives no federal funding, he noted. Mr. Burke cited several accomplishments in the harm reduction program, including a near doubling of the number of clients served in the syringe exchange program since fiscal year (FY) 2013, collection of nearly 95% of the eight million syringes distributed in FY 2017 and hearing reports from nearly 85% of participants that they had not recently shared syringes.

The harm reduction program also includes opioid overdose prevention efforts, Mr. Burke said. The bureau supplied naloxone for distribution in nearly 5,000 overdose prevention educational sessions in FY 2018, and more than 1,600 overdoses were reversed during that period.

Mr. Burke noted that the bureau's tobacco settlement revenue funding request for FY 2020 is \$150,000 higher than its FY 2019 appropriation, with most of the increase intended for the harm reduction program.

#### *Breast and Cervical Cancer Early Detection Program*

Beth Pinkerton, program manager, Breast and Cervical Cancer Early Detection Program, DOH, reported on efforts to reduce the incidence of breast and cervical cancers in the state. The program, which began at the federal Centers for Disease Control and Prevention (CDC) in 1990 and was established in New Mexico a year later, provides breast and cervical cancer screenings at no cost to women who are at least 40 years of age; whose incomes do not exceed 250% of the federal poverty level; who have no health insurance or have insurance with high deductibles or copays; and who do not qualify for Medicare Part B or Medicaid. Approximately 70,000 women in New Mexico currently meet these eligibility criteria.

Tobacco settlement revenue funding — \$128,600 in FY 2018 — is used both to provide mammography services throughout the state through 10 providers, and it is also used as a match for federal funding. In FY 2018, nearly 1,000 women received mammograms under the program, up from nearly 800 women in the prior fiscal year. Program participants who receive a positive cancer diagnosis are eligible for Category 052 Medicaid, which covers their treatment costs, she said.

#### *Tobacco Use Prevention and Control (TUPAC) Program*

Benjamin Jacquez, program manager, TUPAC, DOH, reported to the committee on DOH efforts to reduce tobacco use, especially among minors.

There are more than 2,800 smoking-related deaths in New Mexico each year, and approximately 84,000 people in the state suffer from smoking-related diseases. The combined federal and state tax burden of smoking comes to approximately \$858 per New Mexico household, Mr. Jacquez said, with much of that cost attributable to the Medicaid program, where 27% of enrollees are smokers. Effective interventions for reducing tobacco use include smoke-free policies, tobacco cessation services, prohibition of tobacco access for minors and tobacco product price increases. These interventions have had a measurable effect: since 2003, the smoking rate among high school youth dropped by 65%, and the number of high school youth exposed to secondhand smoke dropped by 44%. Adult smoking rates have dropped as well, with a 23% decrease from 2011 to 2016. These gains, however, have been offset somewhat by the growing use of e-cigarettes and other vapor-based nicotine products. The *2016 New Mexico Youth Risk and Resiliency Survey*, conducted by the DOH and the Public Education Department, showed that 25% of high school youth have used e-cigarettes.

The TUPAC Program provides statewide resources to promote tobacco cessation, Mr. Jacquez said. In addition to services available to smokers through its QUIT NOW phone line and website, the program provides outreach and training for health care professionals on ways to help patients quit using tobacco products. The program is also working to get e-cigarettes and other vapor-based nicotine products included in smoke-free policies and statutes. Under current New Mexico law, e-cigarette use is not restricted indoors, e-cigarettes are not subject to a tobacco products tax, and no licensure is required for retail sales of e-cigarettes.

The TUPAC Program received \$5.4 million per year in the past three years from tobacco settlement revenue. When combined with other funding, the state allocates \$6.6 million annually to cessation efforts, less than one-third of the funding level recommended by the CDC.

#### *Diabetes Prevention and Control Program*

Christopher Lucero, program manager, Diabetes Prevention and Control Program, DOH, reported on how tobacco settlement revenue is used to prevent and control diabetes in New Mexico.

In 2016, 234,000 New Mexico residents had diabetes and another 538,000 were classified as prediabetic. Smoking is linked to diabetes, with smokers at a 30% to 40% higher risk of developing the disease than nonsmokers. Treatment and management costs for diabetes in the state total approximately \$2 billion per year. The DOH program aims to prevent or delay the onset of diabetes and to prevent complications and disabilities resulting from the disease through interventions such as weight loss services; diabetes and chronic disease self-management programs; and the Kitchen Creations program, which incorporates meal planning and nutrition services. Efforts planned for the next year include implementation of the New Mexico Diabetes Prevention Action Plan; expanded initiatives in tribal communities; expanded education services, including education for health care providers and workers; and further engagement with pharmacists in the state.

On questioning, the presenters and committee members addressed the following topics.

***Infectious Disease Bureau Programs.*** The DOH pays for hepatitis C testing but not for treatment. Incarcerated patients receive treatment through the Corrections Department.

When the Syringe Service Program collects an increased number of syringes, it reflects an increase at existing clinics, not an increase in collection sites.

A member lamented that statistics coming from rural and underserved areas of the state help garner funding for harm reduction programs, but the funding is not subsequently allocated to those underserved areas. The presenters cited staffing limitations in those areas that contribute to the shortage of services.

***Breast and Cervical Cancer Early Detection Program.*** The program provides screening services in all counties except Los Alamos County. The contract clinics that provide screening have sliding-scale fees to improve access for women who do not qualify for free screening. Eligibility for the program was originally restricted to women but now has been expanded to include certain transgender men and women.

***TUPAC Program and Tobacco Use Issues.*** Certain school districts in the state, including the two largest districts, the Albuquerque Public School District and Las Cruces Public School District, have instituted smoke-free policies that apply to everyone on campus — students, faculty, staff and visitors. Youth groups have been advocating for enforcement of and compliance with these policies and for including e-cigarettes under the policies. While high school youth consider smoke-free environments the norm, many high school youth show interest in experimenting with emerging nicotine products, which are heavily marketed to youth.

Tobacco companies spend 90% of their marketing budget, including for e-cigarettes, on displays at the point of sale. Under federal law, states are allowed to regulate e-cigarette marketing.

TUPAC Program contractors are based in urban areas but serve the whole state. They also work with the U.S. Department of Defense and the Department of Veterans Affairs to provide cessation services to active military service members and veterans. Services are available in English, Spanish and 200 additional languages, including Native American languages.

Under the federal Patient Protection and Affordable Care Act, Medicaid and certain health insurers on the New Mexico Health Insurance Exchange provide cessation benefits.

Of all groups, smoking rates are highest among people with behavioral health issues. The TUPAC Program works with behavioral health providers to help patients quit smoking and urges providers not to use smoking as part of a person's recovery process.

Governor Susana Martinez vetoed a bill from the 2017 regular session that would have amended the Dee Johnson Clean Indoor Air Act to include e-cigarettes. E-cigarettes are not yet regulated or defined as a tobacco product.

New Mexico is one of only 13 states without required licensure for tobacco retailers; thus, there is no way to know where tobacco is sold and whether taxes are properly collected.

The TUPAC Program's budget request for FY 2020 includes funding for a return-on-investment study to assess the savings to the state from cessation programs.

***Diabetes Prevention and Control Program.*** Tobacco settlement revenue funding to the program has been flat for the last few years. Approximately one-third of the funding goes to salaries for a tribal outreach coordinator, a nurse consultant and a marketing and communication specialist; the balance is used for contracts in diabetes prevention and self-management services, health care professional development, marketing, promotions and referrals.

The Kitchen Creations program partners with the New Mexico State University Cooperative Extension Service and with various food banks around the state.

### **Human Services Department (HSD) Program Update**

Megan Pfeffer, R.N., bureau chief, Quality Bureau, Medical Assistance Division, Breast and Cervical Cancer Treatment Program, HSD, reported to the committee on appropriations from the Tobacco Settlement Program Fund to Centennial Care, the state's Medicaid program.

In FY 2018, Centennial Care received just over \$26.8 million from the Tobacco Settlement Program Fund, of which approximately \$1.5 million went to breast and cervical cancer treatment. In FY 2019, just over \$8.3 million was appropriated to Centennial Care from the fund, with approximately \$1.3 million allocated to breast and cervical cancer treatment. Individuals who receive treatment first enroll with the DOH, which determines eligibility, and

then work with the HSD's Income Support Division if treatment is necessary. As of May 2018, 145 individuals were receiving treatment under the program.

Tobacco Settlement Program Fund money is also used for tobacco prevention and cessation services, ranging from a quit line and counseling services to patches and chewing gum. As reported by the managed care organizations (MCOs) that administer Medicaid services, the number of Medicaid recipients who received cessation products and services increased from 7,615 in calendar year 2016 (at a cost of \$1.1 million) to 8,108 in calendar year 2017 (at a cost of \$1.4 million). MCO contracts require that MCOs educate recipients on the risks associated with the use of alcohol, tobacco and other substances, and tobacco cessation information is included in comprehensive needs assessments and prenatal assessments.

On questioning, Ms. Pfeffer noted that:

- (1) MCOs advertise their cessation services to both Medicaid recipients and Medicaid providers; and
- (2) the Medicaid program has received appropriations from the Tobacco Settlement Program Fund since the fund was first created.

### **Winnable Battles**

Abinash Achrekar, M.D., M.P.H., Division of Cardiology, University of New Mexico, Department of Internal Medicine; Sandra Adondakis, M.S., director, New Mexico Government Relations, American Cancer Society Action Network; and Dona Upson, M.D., M.A., New Mexico Veterans Health Care Services, reported on policy solutions to decrease the use of tobacco through cigarettes and electronic nicotine delivery products, or e-cigarettes.

Evidence shows that certain policies are effective for reducing tobacco use, including tobacco cessation coverage in Medicaid programs, increased tobacco taxes, smoke-free laws and fully funded tobacco prevention and cessation programs. New Mexico falls short in its Medicaid prevention and cessation benefits, despite the fact that 15% of Medicaid expenditures go to tobacco-related diseases. A recent study in Massachusetts showed that every \$1.00 spent on cessation treatment in its Medicaid program saved \$3.12 in cardiovascular medical treatments alone. The presenters urged the committee to strengthen Medicaid prevention and cessation services for all Medicaid enrollees and to maximize all federal match funding available. Sustaining the state's investment is also critical. The presenters cited research in other states showing that when cessation program funding is cut, smoking rates stop declining and even rise.

New Mexico also falls short in its tobacco tax, which is lower than the national average. The presenters cited a Legislative Finance Committee fiscal impact report for a 2017 bill that would have increased the cigarette tax by \$1.50 per pack. Combined with an equivalent tax on all other tobacco products, the report projected \$86.9 million in new recurring revenue to the state from such an increase.

The National Academies of Sciences, Engineering and Medicine recently released a study on the public health consequences of e-cigarettes. While these products have the potential to help smokers quit their combustible cigarette habits, they also increasingly serve as a "gateway" product in the other direction, with e-cigarette users moving to combustible cigarettes. Juul, a new e-cigarette on the market, has become especially popular among young adults because it is small and can pass as a computer flash drive. Because Juul is relatively new, the long-term health effects of using such electronic nicotine delivery products is unknown; however, nicotine in any form has known adverse health effects. The study projects that if e-cigarettes do, in fact, reduce combustible cigarette usage, there may be a public health benefit in the short term; however, the long-term effect is potentially negative.

On questioning, the presenters and committee members addressed the following topics.

***Tobacco Retail Licensure.*** A preemption clause in the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act prohibits local governments from requiring tobacco retailers to be licensed.

***Medicaid Cessation Services.*** Cessation services are not consistent across all MCOs in Medicaid. Each MCO determines what services it will offer in its plan.

***E-cigarettes.*** Federal regulations prohibit the sale of e-cigarettes to minors and also prohibit free samples. Studies have shown that cigarette price increases reduce smoking rates; however, there is not yet evidence that the same is true for e-cigarettes.

### **Adjournment**

There being no further business before the committee, the second meeting of the TSROC adjourned at 1:50 p.m.