

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

**September 15, 2020
Video Conference Meeting**

The first meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on September 15, 2020 at 9:43 a.m. by video and audio conference via an online platform.

Present

Sen. Gabriel Ramos, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary

Absent

Sen. Candace Gould
Rep. Gregg Schmedes
Sen. John Arthur Smith

Advisory Members

Rep. Gail Chasey
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Sen. Sander Rue
Rep. Jim R. Trujillo

Staff

Elisabeth Johnson, Staff Attorney, Legislative Council Service (LCS)
Lenaya Montoya, Staff Attorney, LCS
Erin Bond, Research Assistant, LCS
Rebecca Griego, Records Officer, LCS

Handouts

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

Tuesday, September 15

Welcome and Introductions (9:43 a.m.)

Representative Thomson welcomed the committee and introduced the presentations of the day.

Post-Session Update: Tobacco Settlement Permanent and Program Funds (9:44 a.m.)

RubyAnn Esquibel, principal fiscal analyst, Legislative Finance Committee (LFC), and Dawn Iglesias, chief economist, LFC, updated the committee on the status of the tobacco settlement permanent and program funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%201%20Tobacco%20Settlement%20Fund%20Revenue%20FY22.pdf>.

Comments from committee members addressed the following topics:

- protection of the funds from being swept for fiscal year 2022;
- \$17 million of the funds were used for Medicaid;
- clarification on the enabling statute of the tobacco settlement funds and what the funds can be used for;
- directing more money to tobacco use prevention programs;
- the fiscal outlook of Medicaid for fiscal year 2021;
- reviewing other ways of funding the state budget without using the tobacco settlement funds; and
- an estimate of how much the tobacco settlement funds would have now if the funds had not been swept in the past.

Update on Master Settlement Agreement (MSA) (10:25 a.m.)

Tania Maestas, chief deputy attorney general, Civil Affairs, Office of the Attorney General (OAG); Joe Dworak, director, Litigation Division, OAG; and Phillip Bachicha, special projects director, OAG, updated the committee on the MSA.

Mr. Bachicha provided an update regarding the 2004 MSA payment arbitration. He stated that the arbitration would take place in March or April of 2021 and that the OAG is currently working on discovery. Mr. Bachicha stated that this arbitration may affect the fiscal year 2022 MSA payment. He explained that the tobacco companies and the OAG have decided to arbitrate three years, 2005, 2006 and 2007, as one and that they are currently in the process of picking a panel of arbitrators. Mr. Bachicha further explained that there will be a common case arbitration among 10 states involved in the MSA with the tobacco companies and that this may happen before the end of 2021. The state-specific arbitration would take place the following year.

Mr. Dworak provided the committee with general updates on litigation proceedings and stated that the states involved in arbitration have been trying to consolidate payment years to make arbitration easier and to help address the backlog in arbitration. He stated that the 2004 arbitration was only the second time that states had gone to arbitration and that the 2003 payment year was the first time. Mr. Dworak stated that of the 45 states involved in the MSA, approximately one-half of those states receive portions of the funds to help with enforcement of the MSAs in their respective states.

Comments from committee members addressed the following topics:

- the cost to the OAG to handle the tobacco settlement funds; the OAG has three designated staff members for the tobacco settlement and has to pay for experts and outside counsel for arbitration;

- whether the OAG has a line item in its budget for tobacco settlement litigation and whether it receives funding from the legislature; the OAG does not receive funds from the legislature for the litigation, but it has been looking into how it can request funding from the legislature;
- whether arbitrating three years of MSA payments at the same time is beneficial to the state; it is beneficial because it will speed up the arbitration process;
- the interest or penalties on payments that are arbitrated;
- the new tobacco licensing laws that were put into law during the 2020 legislative session and how those laws will affect the OAG;
- enforcement oversight and how this affects MSA arbitration; and
- legislative options to strengthen arbitration efforts, including using New Mexico tobacco settlement funds to help enforce the provisions of the MSA.

University of New Mexico (UNM) Health Sciences Center (HSC) (1:02 p.m.)

Dr. Richard Larson, executive vice chancellor and vice chancellor for research, UNM HSC, updated the committee on what the UNM HSC has done and expects to do with the tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%203%20UNM%20Health%20Sciences%20Center.pdf>.

Comments from committee members addressed the following topics:

- a clarification on the device that a person blows into to test if that person is taking medications, which device was originally designed to test for drugs to treat tuberculosis;
- the difficulty receiving medications through the mail due to postal delays because of the COVID-19 pandemic;
- the commercialization of services developed by UNM and potential reimbursement for research;
- the patent process at UNM and how proceeds are disbursed by UNM;
- discussions with the LFC to increase the tobacco settlement fund disbursement to UNM;
- encouragement of start-up companies to stay in New Mexico and investment in those companies;
- an update on multiple sclerosis research at UNM;
- appreciation of the UNM hospitals and all that they do for the entire state; and
- appointment times at the UNM dental clinic that serves patients with special needs.

Department of Health (DOH) (1:41 p.m)

Cathy Rocke, deputy director of programs, Public Health Division, DOH; Beth Pinkerton, program manager, Breast and Cervical Cancer Early Detection Program, DOH; Josh Swatek, program manager, Adult Viral Hepatitis, Harm Reduction Program, DOH; David Tompkins, manager, Community Health Initiatives, Tobacco Use Prevention and Control (TUPAC)

Program, DOH; and Judith Gabriele, deputy bureau chief, Population and Community Health Bureau, and acting program manager, Diabetes Prevention and Control Program, DOH, updated the committee on DOH programs that receive tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%204%20DOH%20Combined%20FY22%20TSROC%20Funding%20Request.pdf>.

Comments from committee members addressed the following topics:

- the statistics on breast cancer occurrence in men and women under 50 years of age;
- the eligibility of patients whose incomes are 250% above the federal poverty level to enroll in Medicaid or other health insurance plans to access cancer treatment resources;
- hepatitis C treatment costs and the difference in prices from previous years;
- the statistics on incarcerated individuals with hepatitis C in New Mexico;
- the decision behind providing clean syringes through the syringe exchange program;
- the barriers for the one-third of people trying to access substance use treatment;
- the targeted tobacco use and prevention programs for minority populations;
- the opportunities for involvement in the tobacco use and prevention programs;
- banning tobacco use in racinos and casinos;
- smoke-free multi-unit housing;
- tracking quit line users; whether those users are traditional smokers or whether they vape;
- vaping companies submitting products to the United States Food and Drug Administration to be approved as tobacco cessation products;
- the use by managed care organizations (MCOs) of the state quit line for their patients;
- the statistics on diabetes footcare during telehealth;
- research on whether vaping also increases the risk of diabetes, as traditional smoking does;
- whether DOH programs are using the NM ECHO program or other telehealth programs;
- whether DOH programs will continue using online platforms to help rural patients after the COVID-19 pandemic;
- partners to the TUPAC program; whether there are TUPAC programs in southern New Mexico;
- media outreach for TUPAC programs in southern New Mexico;
- the funding needed to campaign to raise awareness about the new tobacco laws in the state;
- educational health standards and whether tobacco prevention education is mandated in schools; and
- legislative considerations for the 2021 legislative session.

Human Services Department (HSD) (3:22 p.m.)

Loretta Cordova, bureau chief, Quality Bureau, Medical Assistance Division, HSD, updated the committee on HSD programs that receive tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%205%20Centennial%20Care%202.0%20Tobacco%20prevention%20and%20cessation%20services.pdf>

Comments from committee members addressed the following topics:

- the increase in Medicaid expansion;
- MCOs that receive funding from counseling and whether those MCOs use their own quit line or the state's TUPAC program quit line;
- the ratio of the provision of services by MCOs to the provision of services by the state and whether funds should be allocated to organizations that provide more services; and
- tracking MCOs and the services they provide and potential cost shifting to the state.

Indian Affairs Department (IAD) (3:54 p.m.)

Drew Roybal-Chavez, chief financial officer, Administrative Services Division, IAD, updated the committee on IAD programs that receive tobacco settlement funds. The presentation can be found here:

<https://www.nmlegis.gov/handouts/TSROC%20091520%20Item%206%20IAD%20Tobacco%20Cessation%20and%20Prevention%20Programs.pdf>

Comments from committee members addressed the following topics:

- the rate of e-cigarette use among Native American youth and whether it is similar to that of non-Native American youth;
- the reversion of some of the funding that was given to projects through the IAD; and
- the IAD's plan to allow programs to continue operating virtually.

Public Comment

There was no public comment.

Adjournment

There being no further business before the committee, the meeting adjourned at 4:06 p.m.