

**REPORT OF THE**  
**LEGISLATIVE COMMITTEE**

**Report B-1**  
**A-16**

Presented by: James Martinez MD, NMMS President

Referred to: Reference Committee B

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1 *Duties of the Committee: The committee shall be appointed by the president. All*  
2 *Council members will serve on the Legislative Committee and shall endeavor to*  
3 *secure and enforce legislation in the interest of public health and medicine.*  
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5 \* \* \* \* \*

6 The 30-day Legislature adjourned on Thursday, February 18. When all was said and  
7 done, the Legislature passed a \$6.2 billion budget and a \$166 million public works  
8 package. Also enacted was driver’s license legislation that places New Mexico in  
9 compliance with the federal REAL ID Act. This ensures New Mexico driver’s  
10 licenses are secure for entering federal installations and boarding commercial flights  
11 while providing a driver’s permit for undocumented immigrants as well for residents  
12 who do not desire a full license.  
13

14 This past session, there were 378 bills introduced in the House and 344 in the Senate.  
15 A total of 101 bills were passed by the Legislature. The Governor signed 92 bills and  
16 vetoed 9.  
17

18 A 30-day session is limited by the state constitution to bills dealing with state budget  
19 issues (appropriations and tax measures), issues that the Governor asks the  
20 Legislature to address, and bills vetoed by the Governor in the previous legislative  
21 session. If a bill is introduced that is not in one of those categories, it will not be  
22 considered “germane” and will not be allowed to move through the legislative  
23 process. However, this limitation does not apply to proposed constitutional  
24 amendments, which can be introduced during any legislative session, require only a  
25 majority vote in both chambers, and are not subject to approval or veto by the  
26 Governor. Memorials and resolutions are also allowed to be introduced in a 30-day  
27 session.  
28

29 Governor Martinez signed a \$6.2 billion state budget (House Bill 2) which, as a  
30 result of persistently low oil and gas prices, reduces spending in the current fiscal  
31 year by \$31 million and reduces the base budgets of most state agencies for  
32 Fiscal Year 2017 by a total of \$53 million. The budget includes \$928.5 million in  
33 state funds for Medicaid which represents a \$20.8 million increase over this year’s  
34 budget. However, the Human Services Department (HSD) had requested an \$85.2

35 million increase to keep up with the growth in Medicaid enrollment and the decrease  
36 in federal matching funds for Medicaid expansion. HSD had also requested \$41  
37 million in state funds for the current fiscal year, but the Legislature appropriated  
38 approximately half of that amount. Consequently, HSD predicts an \$85 million  
39 shortfall for its Medicaid needs in the next 16 months. As the federal government  
40 provides a 3 to 1 match for each dollar New Mexico spends in Medicaid, the potential  
41 state deficit is even greater (\$400+ million). HSD has indicated that Medicaid  
42 enrollment has increased much more rapidly than expected. The state currently has  
43 900,000 people enrolled in Medicaid with a projected 950,000 by June 2017-  
44 approximately half of the state's population will be on Medicaid. To compare, there  
45 were 560,000 Medicaid enrollees in 2013. In the 2016-17 budget, HSD was mandated  
46 by the Legislature to implement cost-cutting measures: The budget language provides:

47

48 *“The human services department shall implement changes in the Medicaid*  
49 *program to reduce projected spending. The department shall reduce*  
50 *reimbursement rates paid to Medicaid providers in Medicaid managed care and*  
51 *fee-for-service programs. These reductions may include but are not limited to*  
52 *rescinding the primary care physician rate increase, first initiated by the federal*  
53 *Patient Protection and Affordable Care Act, and reducing rates paid to hospitals,*  
54 *including safety net care pool hospitals. The department shall reduce spending on*  
55 *managed care administrative costs.*

56

57 *The medical assistance program of the human services department shall pursue*  
58 *necessary federal authority to include additional cost sharing requirements for*  
59 *recipients of Medicaid services, including co-payments for certain services and*  
60 *monthly premiums for certain individuals.*

61

62 *The general fund appropriation to the medical assistance program of the human*  
63 *services department assumes the department may be required to consider changes*  
64 *to the amount, duration and scope of allowable Medicaid services and benefits,*  
65 *including pharmaceuticals, and implement processes to enhance eligibility*  
66 *verification.”*

67

68 HSD will determine the breadth and depth of reimbursement cuts before July 1,  
69 2016. The Medicaid Advisory Committee, on which New Mexico Medical Society  
70 has a representative, has met and will have recommendations on Medicaid  
71 payments for physicians and other health care providers.

72

73 HEALTH CARE- RELATED LEGISLATION ENACTED BY THE  
74 LEGISLATURE AND SIGNED INTO LAW BY THE GOVERNOR:

75 **HB 270: Medical Malpractice Litigation - Access to Out-of-State Providers**  
76 **(McMillan)**. The bill was introduced in response to litigation which arose in Texas  
77 that jeopardized New Mexico patients gaining access to out of state health care. In  
78 essence, the bill provides that exclusive forum selection clauses and choice of law  
79 provisions between a New Mexico patient and out-of-state health care provider will  
80 be enforced by New Mexico courts. The law will be repealed on July 1, 2019, three  
81 years from the effective date of the act.  
82

83 The litigation that led to the introduction of HB 270 was Montaño V. Frezza, MD,  
84 2015-NMCA-069 (cert. granted). A New Mexico resident received care in Texas  
85 over a period of approximately six years from Dr. Eldo Frezza at Texas Tech  
86 University Health Sciences Center in Lubbock to whom she was referred by  
87 Lovelace Insurance Co. The New Mexico resident filed suit against Lovelace and  
88 the Texas doctor in New Mexico.  
89

90 At issue in the case is whether Dr. Frezza is entitled to immunity granted by the  
91 Texas Tort Claims Act when he is sued by a New Mexico resident in a New Mexico  
92 court. The secondary issue of whether New Mexico courts can assert personal  
93 jurisdiction is pending. The New Mexico Court of Appeals determined that the  
94 doctor is entitled to immunity consistent only with the New Mexico Tort Claims  
95 Act. In reaching its decision, the Court considered whether the Texas Tort Claims  
96 Act should apply, taking into consideration New Mexico's own public policies. The  
97 Court compared the Texas Tort Claims Act to the New Mexico Tort Claims Act and  
98 found some stark differences in their provisions. A close examination of the  
99 differences led the Court to conclude that New Mexico's public policy would be  
100 violated if the Texas Act were to apply because that Act provided a narrower waiver  
101 of immunity, prohibited suits against individuals, and imposed more restrictive  
102 notice requirements. The case is now pending before the New Mexico Supreme  
103 Court on appeal.  
104

105 An amicus brief was filed in the Supreme Court case by a wide range of medical  
106 societies and hospital groups, including the New Mexico Medical Society, several  
107 New Mexico county medical associations, the New Mexico Hospital Association,  
108 the Texas Medical Association and the Texas Hospital Association. The brief  
109 emphasizes that New Mexico has a long standing public policy of expanding access  
110 for New Mexico's citizens. The primary concern raised in the brief is that Texas  
111 health care providers will be less willing to provide care to New Mexicans if they  
112 are subjected to suits in New Mexico and not afforded protection under the Texas  
113 law. They noted that eastern New Mexico depends on the health care of neighboring  
114 Texas providers. In this case, Lovelace could not offer the necessary bariatric care  
115 from an in-state provider, and for that reason the plaintiff was referred to a physician

116 in Texas. The brief submits that Texas providers will be less willing to provide care  
117 to New Mexicans because of the increased litigation risk in New Mexico, which  
118 includes more frequent lawsuits, and increased awards and settlements due in part to  
119 higher caps on awards and more lenient statutes of limitations. If Texas providers  
120 are subject to higher risks, their insurance premiums are likely to increase, and they  
121 may be unwilling to provide elective care, and even trauma care, to New Mexicans.  
122 The New Mexico Supreme Court is likely to decide the Frezza case this year. The  
123 bill was signed by the Governor.

124  
125 Addendums B-1, B-2, and B-3 on pages 85-88(b) provide a summary of HB 270 and  
126 sample forms for physicians to use in Texas (or other states) when accepting patients  
127 from New Mexico. The patient forms clarify that the health care and any dispute or  
128 action are governed by the state in which the care is received. HB 270 provides that  
129 exclusive forum selection and choice of law provisions shall be enforced by the courts  
130 of New Mexico.

131  
132 **HB 277 (SB 262): Administration of Opioid Antagonists (McMillan/Martinez).**  
133 The duplicate bills amend sections of the Public Health Act and the Pharmacy Act  
134 authorizing the possession, storage, distribution, prescribing and administration of  
135 opioid antagonists, and provides for immunity from civil and criminal liability. The  
136 bill would allow: for possession of an opioid antagonist under a standing order;  
137 pharmacists to dispense the medication; individuals to administer opioid antagonists  
138 to a person reasonably believed to be exhibiting symptoms of overdose; a licensed  
139 prescriber to prescribe, dispense or distribute an opioid antagonist to a person  
140 reasonably believed to be having symptoms of overdose, or to a family member, an  
141 employee, or a first responder. The bill also relieves these individuals from civil  
142 liability. The bills were signed by the Governor.

143  
144 **SB 113: Outpatient Treatment (Papen).** The bill is modeled after Kendra’s Law in  
145 New York State and creates the authority for a district court judge in New Mexico to  
146 order people diagnosed with mental illnesses who meet certain criteria into mandatory  
147 assisted outpatient treatment programs for up to one year. “Assisted outpatient  
148 treatment” is defined as categories of outpatient treatment ordered by a district court  
149 which include: case management or assertive community treatment services;  
150 medication; periodic blood tests or urinalysis; individual or group therapy; and day or  
151 partial day programming activities.

152  
153 The bill develops criteria for when a person may be ordered by a court to participate  
154 in assisted outpatient treatment. Criteria include: having a primary diagnosis of  
155 mental disorder, and unwilling or unlikely to participate voluntarily in outpatient  
156 treatment. The bill allows for a petition for assisted outpatient treatment by relatives

157 and others, criteria for the petition to be filed, and requirements for a qualified  
158 professional to examine the patient. The bill allows for a party or the respondent's  
159 surrogate to apply to stay, vacate, modify, or enforce an order. The bill provides for  
160 treatment proceedings, sequestration, and confidentiality of records. It provides  
161 criteria for a hearing and when the hearing can be held after an examination by a  
162 qualified professional. The bill requires a written treatment plan be developed by a  
163 qualified professional. The plan will accompany the petition and will state all  
164 treatment services recommended for the respondent with specifications regarding who  
165 will provide each service. The bill provides for additional treatment plan  
166 requirements such as case management services or an assertive community treatment  
167 team to provide care coordination and assisted outpatient treatment services. The  
168 court order is required to: not exceed one year, specify the services respondent is to  
169 receive, and direct service providers to provide or arrange for all assisted outpatient  
170 treatment throughout the period of the order. Municipalities and counties would have  
171 to opt into the program to participate under the Act. The bill was signed by the  
172 Governor.

173  
174 **SB 137: Student Athlete Brain Injury Protocols (M. Sanchez).** The bill amends  
175 the Public School Code pertaining to brain injury protocols used by coaches for  
176 brain injuries received by students while participating in athletic activities. The  
177 amount of time a coach may prohibit a student athlete from returning to play is  
178 increased from one week after the injury to 240 hours (10 days) from the hour in  
179 which the student received the brain injury. The bill adds a new section detailing  
180 brain injury education and the training of coaches. The bill was signed by the  
181 Governor.

182  
183 **SB 234: Health Care Provider Credentialing (Pirtle).** The bill requires the  
184 Department of Insurance to adopt a regulation to allow for two credentialing forms.  
185 It also allows providers to be credentialed for a one-year provisional period for  
186 providers without experience with a plan or with licensure issues. The bill also  
187 insures eligible providers receive prompt payment for clean claims pursuant to the  
188 Clean Claims Act and be paid interest at 1.5% per month on unpaid claims after 45  
189 days. The bill was signed by the Governor.

190  
191 **SB 263: Opioid Prescription Monitoring (Martinez).** The bill provides that  
192 before a practitioner prescribes or dispenses an opioid for the first time to a patient,  
193 the practitioner must obtain and review a report from the state's prescription  
194 monitoring program for that patient for the previous twelve calendar months. If the  
195 practitioner has access to a similar report from an adjacent state for the patient, the  
196 practitioner must also obtain and review that report. This does not apply to a  
197 prescription for an opioid for a supply of four days or less. A practitioner must obtain

198 and review a report from the state's prescription monitoring program and similar  
199 reports from an adjacent state, if any, no less than once every three months for  
200 each established patient for whom the practitioner continuously prescribes or  
201 dispenses opioids. A practitioner must document the receipt and review of reports  
202 in the patient's medical record. The bill was signed by the Governor.  
203

204 HEALTH CARE-RELATED LEGISLATION NOT ENACTED BY THE  
205 LEGISLATURE:  
206

207 **HB 102: Scope of Practice Act (McMillan).** The bill would have created a Scope  
208 of Practice Committee charged with reviewing proposed changes to an existing  
209 scope of practice of allied health care providers, regulation of unregulated health  
210 professions, or establishment of licensing health care related boards. The committee  
211 would be composed of eight members, four appointed by the Speaker of the House  
212 of Representatives and four appointed by the Senate Committees' Committee.  
213

214 Appointments from each House would give the two major political parties  
215 proportional representation as prevails in each house and no party would have less  
216 than one member on the committee. If a committee member is licensed in the  
217 health profession of a proposed statutory change in scope of practice, they would  
218 be recused from the committee's review, findings, recommendations, or report.  
219 Staff for the committee would be provided by the Legislative Council Service.  
220

221 The committee would: collect data, including information from the proponent and all  
222 other appropriate persons necessary to review the proposed change; ensure  
223 appropriate public notice of the committee's proceedings; invite testimony from  
224 persons with special knowledge in the field; assess the potential harm or benefit to  
225 consumers; assess the impact on overall health care costs; assess the impact on  
226 access and quality of health care, and summarize its assessment, analysis, and  
227 recommendation in a final report to the standing committees to which legislation  
228 regarding the proposal is referred.  
229

230 **HB 274: Gross Receipts Tax - Copays and Deductibles (J. Trujillo).** The bill  
231 provided that receipts from a copayment or deductible paid by an insured or enrollee  
232 to a physician, an osteopathic physician or a podiatrist for commercial contract  
233 services pursuant to the terms of the insured's health insurance plan or the enrollee's  
234 managed care health plan may be deducted from gross by the provider.

235 **SB 267: Physician Assistants (M. Sanchez)**. The bill amended the Medical  
236 Practice Act to include a definition of “collaboration,” or the process by which a  
237 physician and physician assistant jointly contribute to the health care and medical  
238 treatment of patients. The bill authorized physician assistants collaborating with  
239 physicians to perform procedures within their scope of practice without requiring the  
240 physical presence of the physician at the time and place services were rendered.  
241 Additionally, the bill defines collaboration between a physician and physician  
242 assistants as continuous and removes instances relating or referring to supervising  
243 licensed physicians.

244 \_\_\_\_\_  
245  
246 In closing, it is important to emphasize the tremendous benefit that Representative  
247 Terry McMillan MD (R- Las Cruces) brings to Medicine in New Mexico. He is the  
248 only physician serving in the legislature and holds key positions as Chair of the  
249 House Health Committee and as member of House Judiciary. Dr. McMillan runs  
250 for re-election in November of this year and it is vital to retain him – we hope all  
251 members are able to support Dr. McMillan in this effort.

252  
253 In appreciation for their efforts advancing and protecting health care for providers  
254 and their patients, New Mexico Medical Society will recognize both Rep.  
255 McMillan and Senator Stuart Ingle (R – Portales) with the 2016 Legislative  
256 Achievement Award at the first House of Delegates meeting on May 13. Their  
257 most recent achievements of note – SB-325 Non-Competes in Physician Contracts  
258 [Ingle, 2015] and HB 270 Out-of-State Health Care [McMillan, 2016] – were of  
259 highest priority for NMMS and their passing will positively impact Medicine for  
260 many years to come. NMMS expresses gratitude to Sen. Ingle and Rep. McMillan  
261 MD for their exceptional leadership, tenacity, and integrity.