

REPORT OF THE
LEGISLATIVE COMMITTEE

**Report B-1
A-16**

Presented by: James Martinez MD, NMMS President

Referred to: Reference Committee B

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.*
4

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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.

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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:
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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.

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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.