

New Mexico Health Insurance Exchange Work Group Minutes

Work Group	Legislative	Date	10/30/2012
Facilitator	Milton Sanchez	Time	9:00am
Location	Conference Call/ In-Person	Scribe	Cicero Group

Agenda Item

Discussion Item

Conclusion

Action Item

Attendees			
No.	Name	No.	Name
1.	Milton Sanchez	7.	Senator Feldman
2.	Jonni Pool (<i>Human Services Department</i>)	8.	Senator Beffort
3.	Kathryn Toone (<i>Leavitt Partners</i>)	9.	Representative O'Neill
4.	Senator Lopez	10.	Andrew Vallejo (<i>Assistant General Counsel</i>)
5.	Mike Nuñez		
6.	Robin Hunn (<i>Nurse Advice NM</i>)		
7.	Connie Fiorenzio (<i>Nurse Advice New Mexico</i>)		

Agenda Item 1: Introduction and Review

Name: Milton Sanchez

DISCUSSION ITEM 1 Introduction and Presentation of Agenda

Mr. Sanchez opened the meeting with a presentation of the agenda. Because there was not a quorum present, approval of minutes was postponed. The outlined agenda was as follows:

- 1) Questions from prior meeting to be addressed
- 2) Discussion of Senator Feldman's report, previously presented to Task Force, and discussion of last week's planning review session held with federal government representatives
- 3) Patient Responsibility and Affordable Care Act (PPACA or ACA) requirements and oversight of the Health Insurance Alliance (HIA) Board of Directors
- 4) Presentation by Robin Hunt, Nurse Advice New Mexico

Ms. Toone was then invited to give a presentation reviewing topics from the prior meeting and addressing previously submitted questions.

DISCUSSION ITEM 2 Catastrophic Coverage Defined

Ms. Toone began with a question asking for discussion on catastrophic coverage plans. She explained that these plans are similar to others with high-deductibles, but are marketed to those under the age of 30 and consumers without any other available or affordable avenue of insurance coverage. Senator Feldman asked about the definition of "affordable" in this context and was informed that the federal standard is a premium totaling less than 9.5% of annual income. The

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justification for the “under 30” rule was enquired about but not known.

Ms. Toone explained that catastrophic plans cover 3 primary care visits and preventive care; and once the deductible/out-of-pocket limits are met, coverage of other Essential Health Benefits (EHBs) begins. Ms. Toone discussed briefly the percentages, caps, premiums and other rules for catastrophic plans. She mentioned the difference between lower metal tier plans, which require reimbursement at a certain percentage of medical costs, and catastrophic plans, which do not have this requirement. The main difference between catastrophic and other types of coverage was defined as lying in the actuarial value and cost-sharing structures.

Representative O’Neill asked for clarification on the deductible and out-of-pocket limits. The question pertained to whether catastrophic coverage was similar to that under other plans, and Ms. Toone confirmed that this was the case.

DISCUSSION ITEM 3 High Deductible Plans in Conjunction with Employee Health Savings Accounts (HSAs)

Ms. Toone reviewed her own experience as a consumer of a high-deductible plan who also participates in an employer-sponsored Health Savings Account (HSA) for reimbursement of out-of-pocket expenses. She indicated that this sort of arrangement will be an option in the Exchange, and may impact the way coverage is defined within a tier. Health and Human Services (HHS) has indicated that it intends to provide guidelines in the near future that will facilitate the inclusion of this benefit under the ACA.

Mr. Sanchez suggested that the high-deductible plan/HSA scenario is available only under the SHOP version of the Exchange. Senator Feldman asked whether this arrangement was an option for a company consisting of a sole proprietor, and Mr. Sanchez responded that eligibility will extend to any business of 1-50 individuals.

DISCUSSION ITEM 4 Essential Health Benefit Standards

In response to prior enquiries, Ms. Toone explained that standards for Essential Health Benefits will be equivalent for any plan in the state, whether for Small Group or Individual coverage, and for plans both inside of and outside of the Exchange. She indicated that ensuring quality coverage in all venues was important to prevent adverse selection and other problems. The uniform application of this standard with few exceptions is mandated to ensure equality of coverage.

DISCUSSION ITEM 5 Small Businesses in New Mexico

Ms. Toone explained that there were 28,000 small businesses with 50 or fewer employees in New Mexico, and only 10,000 large businesses. She explained that among these small businesses only 30% offer insurance to employees. While most New Mexico workers are employed by the larger companies, due to the number of small businesses in the state, the Exchange will allow many more people to gain insurance benefits.

Senator Feldman asked for clarification on whether the employees of large companies (more than 50

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employees) will be eligible for participation in the Exchange. Mr. Sanchez explained that the target market for the SHOP Exchange will initially be these employees of small companies, until the definition of “small employer” is expanded to include companies of 100 or less.

Senator Feldman enquired further into the typical small business employee, and whether any research had been conducted on health patterns within this demographic. Ms. Toone responded that she was not aware of studies in this regard, but her general understanding was that while there is likely to be a difference among the general health of the insured vs. the uninsured, there was not likely to be a significant difference between those employed full-time in large vs. small companies. Senator Feldman felt there was room for doubt on the subject, and Mr. Sanchez agreed to provide follow-up data on the issue at the next meeting, if available.

Agenda Item 2: Discussion of Task Force Report and Meeting with Federal Representatives

Name: Milton Sanchez

DISCUSSION ITEM 1	Transition of the Health Insurance Alliance into the Exchange
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Mr. Sanchez referenced the addendum to the minutes of the last meeting, and indicated the recent meeting with the Advisory Task Force had included relevant discussion of these topics. He indicated Senator Feldman had assembled a report and list of questions for this meeting, and said this had been presented as requested. He also informed the group that these issues had been discussed at a planning review meeting with federal government representatives and the Center for Consumer Information and Insurance Oversight (CCIIO).

One question addressed by these groups was whether the HIA has sufficient authority to assume the role of the Exchange administration. After hearing from Mr. Nuñez about the current HIA function and purpose, both groups were satisfied that there is sufficient legislation in place and adequate legal authority housed within the current structure of the HIA to accomplish this transition. Representatives at the meeting did, however, request supporting legal documentation from General Counsel. The question was asked as to whether the attendees at these meetings would have expressed doubt in that context, or whether they were actually withholding final opinion on the matter pending the production and review of the requested legal documents. Mr. Sanchez explained that while decisions will be issued after the finalization of the Exchange Blueprint on November 16th, groups at both meetings had expressed confidence in the proposed transition of the HIA into the Exchange.

Mr. Sanchez asked Senator Feldman if this reassured her regarding this authority, and she recommended that General Counsel or the Attorney General still certify that the state is qualified to effect this change. She asked whether a statement had been solicited from these offices, and if Mr. Sanchez was aware of the preliminary opinion provided to the HHS, and of the fact that it may conflict with the General Counsel’s opinion. Mr. Sanchez indicated that he was aware of this opinion,

and referred the question to Mr. Vallejo.

Mr. Vallejo explained that this response had been carefully examined, and, as a former Assistant AG with responsibility for advisory opinions, he explained the process of response in these cases. He told Senator Feldman that sometimes, as in this case, the opinion is in the form of a letter and not a full Advisory Opinion. In this case, Michael Hely had sent a letter on behalf of the legislature to Mark Reynolds, who used to be with HSD, and his response was a letter, and not an opinion, and was described as very preliminary.

Mr. Vallejo continued that the letter from Mr. Hely had asked the Attorney General's Office whether legislation would be necessary in this case, and Mr. Reynolds had stated that, not having seen an executive order, his response was abstract and not specific to this case, but a quote of law; and that in general, when creating a new governmental agency, it requires legislative approval signed by the governor.

Mr. Vallejo then referenced the case of *Taylor v. Johnson*, a separation of powers case decided under Governor Gary Johnson, in which case the PRWORA (Personal Responsibility and Work Reconciliation Opportunity Act) added a work component to the receipt of federal benefits. Gov. Johnson vetoed this, and ordered HSD to implement his version of work requirements, which was then brought to the Supreme Court and overturned. Mr. Vallejo referenced other cases, and summarized, saying the Governor had assured her intention to establish a state-based Exchange, and the PPACA ruling states that executive order is necessary only when a state's efforts to establish an Exchange do not meet federal statute.

He indicated that the HIA had been established under a 1994 statute with the same intent of an Exchange; and that currently the HIA appears legally PPACA-compliant. He felt that while actuarial work remains to be done to assure qualification of included plans, and did not dispute that future legislative intervention may be needed in some regard, the scope of the HIA does not seem unjustified. The question was also asked whether the 1994 statute was discussed at the meeting with federal representatives, and Mr. Sanchez responded that it had been.

Senator Feldman then restated her understanding of the response, that there would be no executive order forthcoming, and that the document issued by General Counsel would be relied upon for legal authority, and requested a copy of this document. Mr. Vallejo responded that they believe an executive order would not be required, as there was already sufficient legislation and statutory authority in place. Mr. Sanchez agreed upon request to provide a copy to Ms. Feldman of the document from General Counsel following completion of the Exchange blueprint.

Agenda Item 3: Exchange Advisory Board Composition

Name: Milton Sanchez

DISCUSSION ITEM 1

Requirements for the Governing Structure of the Exchange

Mr. Sanchez reviewed the following ACA requirements for Exchange Board composition, and passed a list of these requirements to the group. He indicated the requirements had been reviewed in the prior week's meeting with federal representatives, and examined in the context of the HIA transition to the Exchange.

- 1) *The board must be administered under a formal publicly adopted operating charter or bylaws.* Mr. Sanchez indicated the HIA will adopt a Plan of Operations and Bylaws in January. Mr. Nuñez added that the current bylaws of the HIA appear to suffice for compliance, but that this was being examined to ensure compliance. Mr. Vallejo explained that in New Mexico, Bylaws/Plan of Operations must be noted in a public hearing before adoption.
- 2) *Holds regular public governing board meetings announced in advance.* Mr. Sanchez explained that the HIA already operates under the Open Meetings Act and is compliant in this regard.
- 3) *Represents consumer interests by ensuring that all overall governing membership includes at least one member that is a consumer representative.* Mr. Sanchez explained that current HIA board composition may suffice, but that one additional consumer representative is being solicited for membership.

Senator Feldman expressed a desire for oversight in the selection of the consumer representatives, to properly balance the board and avoid conflict of interest. Questions followed regarding particular board members, and examining possible affiliations. Senator Feldman was reassured that the issue of conflict of interest and disclosure was being guided by the policies of other states and under the guidance of the Leavitt Group. Senator Feldman reconfirmed that financial interests and other possible conflicts of interest must be fully disclosed under New Mexico law, and expressed her concern that the four vacancies on the board be properly and promptly filled. Mr. Nuñez noted that one employer director and three employee director vacancies exist.

Senator Feldman asked whether including 5 industry representatives on the board did not constitute a waiver of the conflict of interest rule. Mr. Sanchez clarified that insurance industry representation was mandated only to not constitute a majority of the 14-member board, and so up to 6 members could be involved in the insurance industry. The affiliation of the nonprofit member, from the New Mexico Tax Research Institute, was discussed, and Mr. Nuñez was asked for the criteria in selecting a nonprofit representative. He responded that the skill set in this case was relevant, as this member was also a CPA. Senator Feldman

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inquired about current employer members and was informed that one of the employers owned a dental company and one was a retired physician with a realty company. She asked if the vacancies on this board were due to reluctance to serve, and Mr. Nuñez answered that was the case, as well as an apparent lack of proposed appointees from the Governor. The process of nomination and acceptance was reviewed, and the Governor was credited with 3 appointments since taking office. Oversight to avoid conflicts of interest and proper financial disclosure for the initial composition of the board were indicated as the responsibility of the Task Force.

The necessity for haste in creating a full HIA Board was stressed, and the possibility of legislative intervention, was discussed. Mr. Sanchez referenced a document that addresses this, included in the Memorandum of Understanding, and that in this document the deadline for ACA compliance for by-laws and board composition was anticipated in the January to mid-February timeframe. He asked Mr. Nuñez if he could commit to a February deadline.

Mr. Nuñez clarified the procedures in place as a part of current HIA policy to ensure compliance, and the steps and departments involved; and invited Work Group members to the 11/9 board meeting. He assured the group of the desire to comply with all ACA requirements. The Work Group members pressed Mr. Nuñez to assemble the board as quickly as possible during this process so that upcoming decisions regarding the Exchange blueprint may properly represent the opinions that are currently under-represented due to board vacancies. Concern was expressed about the perception of instituting board compliance after the fact, and Mr. Nuñez described his efforts to fill the board properly. Mr. Sanchez and Mr. Vallejo expressed their desire to address this as well.

Agenda Item 4: Presentation from Robin Hunt, Nurse Advice New Mexico

Name: Robin Hunn

DISCUSSION ITEM 1	Upcoming Schedule of Work Group Meetings
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Ms. Hunn described the role of Nurse Advice New Mexico (NANM), a call center offering medical advice, and its affiliation with other major medical providers in the state. Ms. Hunn expressed the hope that NANM would be relied up on as the main nurse advice line for Qualified Health Plans in the Exchange. She reminded the group that establishing them as such keeps healthcare dollars within the state, and provides a trained nursing staff familiar with the New Mexico market, and significant IT structure. She also promoted the idea of NANM serving as a main call center for the Exchange, and suggested that NANM nursing staff might serve as Navigators within the Exchange. She also described the advantage of merging the nurse line, Navigator and call center functions. She then turned the time over to another NANM representative, Connie Fiorenzio.

Ms. Fiorenzio gave a brief history of NAMN:

- 1) 7 years old
- 2) Public/private cooperative model
- 3) 20 private contracts
- 4) Assistance from the Department of Health to allow calls from uninsured
- 5) Data analysis to allow identification of public emergencies
- 6) Close association with Department of Epidemiology
- 7) 45 nurses
- 8) 25%-30% of staff is bilingual
- 9) Services for hearing impaired
- 10) 98% overall patient satisfaction rate
- 11) Could feasibly expand to state-wide coverage
- 12) Will be prepared to respond to Request for Proposal (RFP) when issued

Senator Feldman enquired into the details of Ms. Hunn's proposal regarding the call center. Ms. Hunn explained that the 1-800 Exchange number would be a catch-all for first point of contact information and FAQs. Senator Feldman asked about enrollment issues, and Mr. Nuñez addressed how enrollments might be assisted by the call center. He explained how Exchange call center questions could easily lead to Navigator questions and how these could be answered or referred to local Navigators as required.

Senator Feldman had questions regarding Medicaid, and it was clarified that the call center would establish different trainings levels, the first level for general questions and subsequent levels of training for more complicated topics, such as Medicaid, subsidy eligibility and tax credits. Mr. Sanchez explained that there would be cooperation between federal government departments, the Exchange, and the call center. The need for liability safeguards, data security, and employee screening was stressed. Possible legislative involvement to assist in the securing of consumer privacy was discussed. The NANM representative indicated that there was already a fair amount of existing infrastructure and policy designed to safeguard privacy, and NANM is already subject to audits in this regard.

Mr. Nuñez reassured the group that background checks for Navigators are planned, and that the HIA is aware of both the technological challenges and the supervisory responsibility of the board. He advised Senator Feldman that the RFP would outline these infrastructure and security requirements. He advised the group that they were welcome to attend planning meetings in the future. The timeline for release of the project management and infrastructure RFPs were discussed.

Conclusion

Mr. Sanchez adjourned the meeting and dismissed the Work Group with a reminder of the location and time of the next meeting on November 9th, 9:00 a.m., at Plaza San Miguel.

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