

NEW MEXICO INSURANCE NOMINATING COMMITTEE
REGULAR OPEN MEETING

JANUARY 5, 2023

10:00 A.M.

NEW MEXICO OFFICE OF SUPERINTENDENT
OF INSURANCE

6200 UPTOWN BLVD N. SUITE 400
ALBUQUERQUE, NEW MEXICO 87110

TRANSCRIBED BY:

PAUL BACA PROFESSIONAL COURT REPORTERS
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102

A P P E A R A N C E S

Diane Denish, Chair

Russell Toal, Superintendent

Jennifer Catechis, Deputy Superintendent

Mark Hayden, General Counsel

Valerie Joe, Assitant Attorney General

Brian Alexander, Member

Jennifer Ford, Member

Scott Yurcic, Member

Allegra Carpenter, Member

Nora Vazquez, Member

Dale B. Rycraft, Jr., Member

Geoffrey R. Romero, Member

J. Brent Moore

Freya Tschantz, Law Clerk

Jennifer Romero, Paralegal

1 (NOTE: Meeting in session at 10:00 a.m.)

2 CHAIRWOMAN DENISH: Good morning everyone.

3 I'm going to start out everybody
4 introducing ourselves. I'm Diane Denish. I'm Chair
5 of the Superintendent Nominating Committee.

6 MR. YURCIC: Scott Yurcic. I'm an agency
7 owner out of Las Cruces, New Mexico.

8 MS. CARPENTER: I'm Allegra Carpenter.
9 I'm a governor-appointed consumer advocate.

10 MR. RYCRAFT: I'm Dale Rycraft. I'm State
11 Underwriting Counsel for First American Title and
12 I'm the current president of the New Mexico Land
13 Title Association.

14 MS. VASQUEZ: I'm Nora Vasquez. I'm a
15 legislative appointee.

16 SUPERINTENDENT TOAL: I'm Russell Toal.
17 I'm a short-term.

18 CHAIRWOMAN DENISH: A short-timer.

19 SUPERINTENDENT TOAL: Short-timer.

20 MR. ROMERO: Geoffrey Romero. I'm a local
21 attorney specializing in insurance litigation and a
22 governor-appointee.

23 MR. ALEXANDER: Brian Alexander. I'm a
24 State Farm agent in Los Lunas.

25 MS. ROMERO: Jennifer Romero. I'm a

1 paralegal.

2 GENERAL COUNSEL HAYDEN: I'm Mark Hayden,
3 General Counsel for the Office of Superintendent.

4 MS. FORD: Jennifer Ford. I'm a consumer
5 member of the committee.

6 MS. CATECHIS: I'm Jennifer Catechis.
7 I'm the deputy superintendent of insurance.

8 MR. MOORE: I'm Brent Moore. I'm a lawyer
9 at Montgomery & Andrews Law Firm representing a
10 number of insurers and trade associations and love
11 following the superintendent.

12 THE COURT REPORTER: Edwina Castillo,
13 court reporter with Paul Baca Court Reporters.

14 MS. TSCHANTZ: Freya Tschantz, law clerk
15 with OSI.

16 CHAIRWOMAN DENISH: Good morning,
17 everybody.

18 Thank you all for being here. It's kind
19 of close quarters which makes for a shorter meeting
20 most of the time. We're just going to get right
21 into it.

22 The first item on our agenda is the
23 approval of the agenda. Are there any -- we can't
24 really do additions but are there any corrections or
25 question about the agenda? If not, is there a

1 motion?

2 MR. YURCIC: Scott Yurcic makes a motion
3 to accept the agenda.

4 MR. ROMERO: Geoffrey Romero, second.

5 CHAIRWOMAN DENISH: Okay. The next item
6 is the approval of the minutes from our last meeting
7 in August. Are there any additions or corrections
8 to those minutes?

9 MS. CARPENTER: This is just a technical
10 point. The name of Cid Lopez is misspelled in
11 section, the public comment H. Cid is C-I-D.

12 SUPERINTENDENT TOAL: I thought it was
13 C-Y-D.

14 MS. CARPENTER: C-I-D.

15 CHAIRWOMAN DENISH: Okay.

16 MS. CARPENTER: And I'm not sure. I'm not
17 proposing a change to this. Besides that, I'm not
18 proposing a change to this, but these minutes are
19 significantly abbreviated from what we've seen in
20 past minutes.

21 And the public comments section, in
22 particular, is so abbreviated as beyond useful in
23 terms of understanding the discussion that occurred.
24 So I hope that in the future our minutes become a
25 little bit more complete.

1 MR. YURCIC: Our last meeting, they were
2 doing it by shorthand so they were trying to keep up
3 with us that way.

4 MS. CARPENTER: Okay.

5 MR. YURCIC: Rather than having them --

6 MS. CARPENTER: And it may be a technical
7 thing. And that's why I'm just mentioning it,
8 because I do think that the record of what happened
9 in these committee meetings is very important.

10 CHAIRWOMAN DENISH: So I just want to make
11 a -- the public comment section was -- it is
12 abbreviated from what the public comments were.

13 MS. CARPENTER: Uh-hmm.

14 CHAIRWOMAN DENISH: But it was not exactly
15 the place to be making a case. I'm not sure if
16 that's why it was abbreviated, but they did talk for
17 quite some time. You're right about that.

18 MS. CARPENTER: And they might need to
19 understand the methodology for -- what are the rules
20 for creating that? Because I think they should be
21 consistent from section to section to section to
22 section.

23 What is the process that this goes
24 through?

25 CHAIRWOMAN DENISH: Yeah, I'm not sure

1 what the protocol has been for recording public
2 comments, verbatim or not.

3 SUPERINTENDENT TOAL: You know, it was
4 really only in this last meeting that we had public
5 comments.

6 CHAIRWOMAN DENISH: Uh-hmm.

7 SUPERINTENDENT TOAL: As you know in
8 previous meetings, it just didn't happen.

9 CHAIRWOMAN DENISH: It doesn't happen.
10 Yeah.

11 MS. CARPENTER: I disagree. I disagree
12 with that. In fact, before I even joined this
13 committee or when I was researching this committee,
14 I went back to the eight years under the Martinez
15 Administration to look at the public comments. And
16 it gave me an understanding of what was happening in
17 these meetings. And it's recorded history and it
18 needs to be. Every section needs to be discussed.

19 If Patti Williams was here, she would
20 agree. She's the stickler for this, right?

21 CHAIRWOMAN DENISH: Uh-hmm.

22 MS. CARPENTER: Oh my gosh, you know, this
23 didn't happen at this meeting. This didn't get
24 recorded. She's that person.

25 If you go back and look at our meeting

1 minutes, they're ten to twenty pages long. This is
2 two pages.

3 CHAIRWOMAN DENISH: Uh-hmm.

4 SUPERINTENDENT TOAL: Yeah. Part of that
5 I think is, you know, the person who used to keep
6 the minutes and serve the board, left and there's no
7 one do it. And so that's part of the
8 responsibility. We can certainly change it.

9 MS. CARPENTER: What is the process? So
10 is it recorded and somebody is taking the minutes?

11 CHAIRWOMAN DENISH: We did not have that
12 last time. We had a glitch.

13 SUPERINTENDENT TOAL: Right. The reporter
14 didn't show up.

15 CHAIRWOMAN DENISH: Do you remember she
16 had to take hand notes?

17 SUPERINTENDENT TOAL: Right.

18 MS. CARPENTER: Which absolutely could be
19 part of it. But could I please understand the
20 process? So who reviews the proposed minutes?

21 SUPERINTENDENT TOAL: They go to general
22 counsel and then they come to me.

23 MS. CARPENTER: Okay. Well, that's good
24 to know.

25 SUPERINTENDENT TOAL: But I don't think

1 we've sent the draft comments to you. Have we,
2 Diane?

3 CHAIRWOMAN DENISH: I don't think so.

4 SUPERINTENDENT TOAL: We can do that.

5 CHAIRWOMAN DENISH: Yeah, I think I just
6 got them when everybody else got them yesterday.

7 SUPERINTENDENT TOAL: Yesterday, yeah.

8 CHAIRWOMAN DENISH: So we can talk about
9 that in the future and if we want to. And as a
10 result, we now have somebody here recording where
11 it's recorded live and in-person.

12 SUPERINTENDENT TOAL: Right.

13 CHAIRWOMAN DENISH: And we can see if it
14 captures the discussion.

15 MS. CARPENTER: I think it's just
16 extraordinarily important for history and
17 transparency.

18 CHAIRWOMAN DENISH: Okay. There is one --

19 MS. CARPENTER: One edit, Cid.

20 CHAIRWOMAN DENISH: -- correction. The
21 spelling of Cid's name.

22 Are there any other corrections to the
23 minutes?

24 MR. YURCIC: And it's both in public
25 comment and in others present.

1 CHAIRWOMAN DENISH: All right.

2 MR. ROMERO: I'll note that my first name
3 is also misspelled as members present. It's
4 G-E-O-F-F.

5 CHAIRWOMAN DENISH: Whose name?

6 MR. ROMERO: My name.

7 CHAIRWOMAN DENISH: Your name. Oh, yeah,
8 it left out the "O."

9 MR. ROMERO: That's right.

10 CHAIRWOMAN DENISH: Right. So under ...
11 G-E-O.

12 Any other corrections to the minutes?

13 Is there a motion to approve the minutes
14 as corrected?

15 MR. RYCRAFT: I'll move to approve the
16 minutes as corrected.

17 MS. CARPENTER: I second.

18 CHAIRWOMAN DENISH: Dale Rycraft, he will
19 approve.

20 Allegra?

21 MS. CARPENTER: Allegra Carpenter, second.

22 CHAIRWOMAN DENISH: All in favor, say aye.

23 ALL MEMBERS: Aye.

24 (Motion approved.)

25 CHAIRWOMAN DENISH: The next item of

1 business is the adoption of the Open Meeting Act
2 Resolution, which we do every year at this time when
3 the new year begins, right? And has everybody had a
4 chance to -- I think the resolution was in our
5 emails yesterday, if you had a chance to read it.

6 And, Allegra, I think has some questions
7 about this or some ideas. And my question, based on
8 our conversation is, this is the Open Meetings
9 Resolution that choose for all agencies; is that
10 right?

11 SUPERINTENDENT TOAL: Yes.

12 CHAIRWOMAN DENISH: It's across agencies?
13 Okay. All right.

14 SUPERINTENDENT TOAL: It's the one that's
15 provided to us by the AG. It's not in our
16 documents.

17 CHAIRWOMAN DENISH: Okay. There's the AG
18 back there.

19 Okay. Is there a discussion about the
20 Open Meeting Act?

21 MR. HAYDEN: So the AG is not here.

22 CHAIRWOMAN DENISH: Okay.

23 MR. HADEN: I'm the general counsel for
24 the office.

25 CHAIRWOMAN DENISH: Oh, you're the general

1 counsel. Okay.

2 The AG office is supposed to be right
3 there. You know, it is a transition time. What can
4 I say.

5 MS. CARPENTER: May I just ask a question?

6 CHAIRWOMAN DENISH: Yeah. And I don't
7 know who you ask it to if it's about the AG's
8 Office.

9 MS. CARPENTER: Well, I think general
10 counsel, we can ask this -- well, you're right.
11 Okay.

12 So what I had mentioned to the chairwoman
13 is --

14 SUPERINTENDENT TOAL: Here we go. Just in
15 time.

16 (Valerie Joe enters the room.)

17 CHAIRWOMAN DENISH: She's asking you a
18 question this very minute.

19 MS. CARPENTER: You can get comfortable.
20 It's okay. Set your things down, take a deep
21 breath. This is not that complicated.

22 We're discussing the Open Meetings Act and
23 I had asked the Chairwoman before we started the
24 meeting whether it's possible to modify this for our
25 agency?

1 MS. JOE: Absolutely.

2 MS. CARPENTER: In order to create greater
3 transparency for the public to be aware of what's
4 occurring in these meetings by way of letting, at
5 least the public to observe these meeting via Zoom
6 or some other media.

7 MS. JOE: Yeah, I'm aware of some agencies
8 that they do a live stream.

9 MS. CARPENTER: Right.

10 MS. JOE: They'll record it via Zoom but
11 then be live stream and have a delay in case there
12 is some, you know, Zoom bombing or just other
13 technical issues that need to be taken care of. But
14 it does involve technology and making sure that the
15 staff can organize that as well. So I think it
16 doesn't necessarily have to be -- I mean they can be
17 if you want to, you know, memorialize it in that
18 way. So that is, you know, transparent for
19 everybody.

20 It can be a pilot process to see how it
21 goes. What the numbers are like, because I think I
22 have the -- one of the medias, they do it. And then
23 there's like Game and Fish, the Gaming Commission
24 that has lots of people.

25 SUPERINTENDENT TOAL: Right.

1 MS. CARPENTER: Are there any examples of
2 --

3 MS. JOE: I don't think they specifically
4 put it in there.

5 MS. CARPENTER: They don't put it in here.
6 Okay. That's just a technical -- are there examples
7 of agencies having their meetings in a way that
8 allows the public to participate during the meetings
9 remotely?

10 MS. JOE: Yes.

11 SUPERINTENDENT TOAL: HSD certainly does
12 that.

13 MS. CARPENTER: Who does that?

14 SUPERINTENDENT TOAL: HSD, the Human
15 Service Department on the Medicaid Advisory
16 Committee. They've casted thousands of them.

17 MS. CARPENTER: I will just propose that
18 at a future meeting, we, as a committee, discuss the
19 pros and cons of adopting that sort of system. As a
20 consumer advocate on this panel, I feel that we
21 don't have enough participation by the public.

22 CHAIRWOMAN DENISH: So what I would like
23 to do, because we're in this transition period, is
24 to think about asking either the interim or the
25 prominent new superintendent to take a look at them.

1 I've watched some on webinars where the
2 participation, you can watch, but if you want to
3 participate, you have to go to the meeting. You
4 have to show up. Or just what the options are.
5 That's what I'd like to do. And if we can just know
6 that the --

7 Russell, you can direct the staff to do
8 some.

9 SUPERINTENDENT TOAL: Sure.

10 CHAIRWOMAN DENISH: And bring us some
11 options for that.

12 SUPERINTENDENT TOAL: I can. It's
13 possible.

14 CHAIRWOMAN DENISH: For the future.

15 And if our AG representative could maybe
16 highlight one or two. I know during the pandemic
17 there was lot of participation opportunities, but it
18 was mind-boggling some of things that actually
19 happens that you do not want to be happening,
20 especially smaller agencies. So I think if we can
21 just look at the options, will that be okay?

22 MS. JOE: Certainly.

23 CHAIRWOMAN DENISH: Okay. And is there a
24 motion to pass the Open Meetings resolution?

25 MS. CARPENTER: I move the Open Meetings

1 resolution.

2 MEMBER FORD: Second, Jennifer Ford.

3 CHAIRWOMAN DENISH: Did somebody second
4 it?

5 SUPERINTENDENT TOAL: Yes.

6 CHAIRWOMAN DENISH: Oh, Jennifer. Okay.

7 So the motion is proposed by Allegra
8 Carpenter and seconded by Jennifer Ford.

9 All in favor say, aye.

10 ALL MEMBERS: Aye.

11 CHAIRWOMAN DENISH: Opposed?

12 (Motion approved.)

13 CHAIRWOMAN DENISH: Okay, thank you.

14 Thank you for that.

15 All right. On to the next part, which is
16 the Superintendent's.

17 SUPERINTENDENT TOAL: All right. Thank
18 you. Good to see you all again.

19 So the first item there, and you have a
20 copy of this in your folder. It's also on our
21 website, by the way, is the annual report. We are
22 required by statute to issue an annual report no
23 later than December 1 every year for the prior
24 fiscal year. So this is the report that was
25 prepared this year. This gets shared with the

1 office of the governor and with members of the
2 legislature. And as I said, it's on our website
3 too.

4 I think last year we got a grand total of
5 two comments. But, you know, this is a busy time
6 for the legislature so I don't really expect them to
7 read it in detail.

8 And, Geoff, I do want to note that on page
9 27, we spelled your name correctly.

10 MR. ROMERO: Thank you, very much. I
11 appreciate that.

12 SUPERINTENDENT TOAL: But we're happy to
13 take any questions you may have after the fact. We
14 thought you should have this basic information.

15 The second item, we've spared you. We've
16 not sent you all 70 some-odd pages. But you do have
17 three pages from the Jaramillo Accounting Group.
18 And I'm pleased to tell you that for the second year
19 running, we, as you'll notice on the last page,
20 there were no findings whatsoever.

21 For those of you who are new to the OSI or
22 this committee, this is a long way from the way
23 things used to be. The audit that I got in my first
24 year, it was for 2019, I guess, I had 16 findings.
25 And we really got beat up at the legislature, and

1 appropriately so. I mean, fortunately I can point
2 my finger at Mr. Franchini. But we made a pledge to
3 clean it up and we have done that.

4 We had one year -- we had one finding the
5 first year and we've had no findings, now two years.
6 We're going to post the audit report when we're
7 allowed to post on the website also, so you can read
8 all 70 some-odd pages, if you would like to there.
9 But we're very proud of this and I want to give a
10 shout out to our CFO Bersabe Rodriguez. She does an
11 awesome job.

12 Any questions?

13 CHAIRWOMAN DENISH: Congratulations on
14 that. No findings.

15 Are there any questions about the audit?

16 MS. CARPENTER: In the past years, you've
17 had a second auditor come in to sort of audit the
18 audit.

19 Does anybody have any thoughts on that?

20 SUPERINTENDENT TOAL: Once they make no
21 findings, we haven't found a reason to do that. The
22 first year we did that, you're right, because we
23 wanted to know exactly what the problems were. They
24 were identified. We addressed them. So no we
25 haven't.

1 MS. CARPENTER: Which exemplifies the
2 possibility that the auditors can sometimes mask
3 problems.

4 SUPERINTENDENT TOAL: Well, as a reminder
5 that this audit, from them, goes to the state
6 auditor where they do a review. So again, the state
7 auditor has not pointed out any problems.

8 MS. CARPENTER: Okay.

9 SUPERINTENDENT TOAL: Now, as you know, we
10 have a separate audit from the Patient Compensation
11 Department but it's a different matter.

12 MS. CARPENTER: Right. And how did that
13 audit come out?

14 SUPERINTENDENT TOAL: Well, it's an
15 actuarial audit, which is different. And they made
16 recommendations as to what needed to be done.

17 They identified the deficit was close to
18 100 million; close. And they made a series of
19 recommendations. They serve the Patient
20 Compensation Fund Advisory Board, and then they make
21 a recommendation to the superintendent, or
22 technically to the custodian, which is the hat I
23 wear in the PCF.

24 MS. CARPENTER: And it's my understanding
25 you're not obligated to follow anything that the

1 advisory board advices?

2 SUPERINTENDENT TOAL: That's true.

3 This year I filed most of it except for
4 their surcharge recommendation on physicians. In
5 fact, this is the second year running where the
6 actuarial report resulted in a 30-plus percent
7 increase in the premium surcharge for physicians. I
8 felt that would drag physicians out of the state or
9 would cause them to drop their malpractice coverage
10 all together. So we asked for money from the
11 legislature last year, as you recall, and we got
12 that 30 million.

13 MS. CARPENTER: Right.

14 SUPERINTENDENT TOAL: And this year, we're
15 asking for 32.5. I have no idea what's going to
16 happen.

17 MS. CARPENTER: And my concern is that the
18 counter-balance that's happening with the agency to
19 deal with the fact that you're not willing to
20 increase the necessary surcharge to keep the PCF
21 solvent, is that you're withholding funds of
22 patients who harmed by malpractice.

23 SUPERINTENDENT TOAL: No. We are not.
24 Because the money from the legislature makes up for
25 that.

1 MS. CARPENTER: But it's not, because the
2 policies of the PCF are preventing patients from
3 receiving compensation and settlements that they
4 should be able to receive.

5 SUPERINTENDENT TOAL: We can have that
6 discussion.

7 MS. CARPENTER: And the justification is
8 based on the solvency of the PCF. It's a conundrum.
9 And I bring this up because I'm here as a consumer
10 advocate. And as a consumer advocate, patients
11 harmed by malpractice are consumers.

12 CHAIRWOMAN DENISH: I think that, as
13 Russell said, you can have that discussion.

14 MS. CARPENTER: Okay.

15 CHAIRWOMAN DENISH: I think you need to --
16 it's a trial lawyer discussion as well as the
17 consumer advocate discussion.

18 SUPERINTENDENT TOAL: Well, you know --

19 CHAIRWOMAN DENISH: But if we are covering
20 what Allegra --

21 What I would like to know is the amount
22 that you get from the legislature is the same amount
23 that you would get if you put that surcharge on
24 doctors?

25 SUPERINTENDENT TOAL: Correct.

1 CHAIRWOMAN DENISH: Okay.

2 SUPERINTENDENT TOAL: I have no idea,
3 honestly. I have no idea what the governor is going
4 to recommend.

5 MS. CARPENTER: And my point simply is, if
6 you're getting the money from the legislature, tax
7 payers are paying for this. The policies should be
8 fair to the consumers. Those funds should not be
9 withheld from the consumers by the PCF, which is
10 overseeing --

11 SUPERINTENDENT TOAL: The PCF is not
12 withholding funds.

13 MS. CARPENTER: We'll have that
14 conversation.

15 SUPERINTENDENT TOAL: Now, I take my
16 responsibility as a consumer representative quite
17 seriously. And to do that, we have to balance the
18 makeup of the delivery system as well as the needs
19 of the patients. But we have regularly entered into
20 settlement agreements on behalf of the patients.

21 MS. CARPENTER: But you're not. You're
22 withholding future lump sum payments.

23 CHAIRWOMAN DENISH: You know, I don't
24 think that is the place for this discussion. It's a
25 negotiation that's going to go on.

1 MS. CARPENTER: Well, if I may, it is and
2 it is not.

3 CHAIRWOMAN DENISH: It is not the place
4 for this discussion. If you all want to discuss
5 that at a later time, I think you should do that.
6 And if it's a negotiation between entities, that
7 should happen.

8 Russell's made the agency's position clear
9 that he's asking for the money from the legislature.

10 SUPERINTENDENT TOAL: Right.

11 CHAIRWOMAN DENISH: He has not taken the
12 advisory position of charging doctors 30 percent.

13 SUPERINTENDENT TOAL: -- all of the
14 recommendations we adopted.

15 CHAIRWOMAN DENISH: Right. But I don't
16 think that we can hash it out here. And it is
17 frankly not our responsibility to hash it out. That
18 is not under the --

19 SUPERINTENDENT TOAL: Purview of the
20 Nominating ...

21 CHAIRWOMAN DENISH: The purview of this
22 committee.

23 MS. CARPENTER: It relates to whom we
24 select as the future superintendent.

25 CHAIRWOMAN DENISH: Well, then we can

1 bring it up as we're in that process if you want to
2 grill the next person about what they know about it
3 and what their positions are. But it is not under
4 our purview to settle that dispute, whatever it is.

5 MS. CARPENTER: I yield.

6 SUPERINTENDENT TOAL: So any other
7 questions on --

8 CHAIRWOMAN DENISH: I should say, I'm not
9 a lawyer.

10 SUPERINTENDENT TOAL: Neither am I. Well,
11 I had the good sense to marry one.

12 So the next item, it's just a one-pager,
13 pending rulemaking. It's just a one-page sheet we
14 should have it in there. Does everybody have it?
15 Okay. So at the last meeting we gave you a listing
16 of the rulemaking that we had done in both '21 and
17 '22.

18 And by the way, this is another thing that
19 was not being done when I got here. In fact, you
20 may remember back when those of you who were on this
21 selection committee, I made a note of the fact that
22 the legislature would pass laws and then the OSI
23 would do nothing to implement them. So we've
24 reversed that. We do lots of rulemaking now. And
25 this is what's tentatively scheduled for the current

1 calendar year.

2 Now, since this list was prepared just in
3 the last few days, there's another item that's going
4 to go on here. And some of you are probably aware
5 of this, speaking of consumers. The Texas Federal
6 Courts, where else, I know, has issued a ruling
7 against the coverage of preventive health services
8 under the ACA plan. It's God-awful.

9 But we and two other states are working on
10 adopting rules to put in place to protect this
11 should the Supreme Court uphold the Texas decision.
12 We're fortunate that the legislature in 2019 passed
13 House Bill 236, which takes a lot of the provisions
14 that are in the ACA, in terms of coverage of
15 contraception services and preventative health
16 services, and all of the rest of that.

17 It's a law and we have regulations, but
18 those regulations don't say definitively, we will
19 require all health plans that we approve for the
20 exchange to include all those preventive health
21 services as recommended by such and such. It's in
22 the U.S. Public Health Services Preventive Task
23 Force. So we're going do that to try to protect the
24 state should we get a bad decision.

25 MS. CARPENTER: Thank you.

1 SUPERINTENDENT TOAL: It's politics. We
2 have bad decisions from the Supreme Court.

3 You know, I'm pleased to tell you that we
4 have high utilization with those preventive health
5 services. Thank God.

6 So there will be a regulation which you
7 will see. We will do a Notice of Proposed
8 Rulemaking on that. I told our staff to work with
9 those folks in Oregon and Washington, and I think
10 Colorado is going to do the same to put that into
11 position. And we should be able to get those
12 adopted before the courts do anything. So I'm not
13 terribly worried about it. I'll save my other
14 comment about health insurance coverage.

15 Any questions on the rulemaking?

16 CHAIRWOMAN DENISH: So did they sit or
17 decide the rulemaking, is that when you have to it
18 completed by?

19 SUPERINTENDENT TOAL: Those are the
20 effective dates.

21 CHAIRWOMAN DENISH: Effective dates.

22 SUPERINTENDENT TOAL: They'll have to be
23 completed in '23.

24 CHAIRWOMAN DENISH: Okay.

25 MS. CARPENTER: Just a comment. I've been

1 impressed with the volume of rulemaking out of the
2 agency.

3 SUPERINTENDENT TOAL: Thanks.

4 Another thing that we have done, which
5 Brent can testify to, is that before we issue rules,
6 we have what we call a roundtable and we invite all
7 the interested parties: The advocates, the provider
8 the insurance companies, whomever. We sit around
9 the table and we tell them what we're thinking about
10 and we get feedback. It's been very useful.

11 On some things like our rules to the
12 multiple employer welfare associations, there were
13 three roundtables. And we finally said we're going
14 out for rule. So last comment on the rule is that
15 you understand, I know, that if the legislature, I
16 mean depending on what they do, this list could
17 grow.

18 CHAIRWOMAN DENISH: Right.

19 SUPERINTENDENT TOAL: And nearly every
20 year we get something.

21 CHAIRWOMAN DENISH: So this one down here,
22 what is the SB in front of the Qualified Health,
23 that QHP, the Qualified Health Plan?

24 SUPERINTENDENT TOAL: State Based
25 Exchange.

1 CHAIRWOMAN DENISH: What is that one?

2 SUPERINTENDENT TOAL: State Based
3 Exchange.

4 CHAIRWOMAN DENISH: I don't need to know
5 it.

6 SUPERINTENDENT TOAL: No.

7 CHAIRWOMAN DENISH: I'll never think about
8 it one more minute but I ...

9 SUPERINTENDENT TOAL: This is a plan
10 offered on Be Well New Mexico. The New Mexico
11 Health Insurance Plan.

12 CHAIRWOMAN DENISH: Oh, okay.

13 All right. Any other questions about
14 rulemaking?

15 SUPERINTENDENT TOAL: Okay. You have a
16 two-pager on budget. You know, I'd love to give you
17 more on this, but I don't know what's in the
18 Governor's budget recommendations. Nobody does yet.

19 As you know, we have also a new secretary
20 for the Department of Finance Administration. And
21 he's just not talking. So we'll have to wait for
22 another two weeks to find out what's in the
23 Governor's recommendation. But what you have here
24 is our request for '24.

25 And, Allegra, this money on PCF that you

1 see here is the normal amount that we request, just
2 to keep the fund at its current level. It's
3 actually just a transfer of funds.

4 MS. CARPENTER: Okay.

5 SUPERINTENDENT TOAL: We never had any
6 issues.

7 So you see most of the increases that are
8 on the first page for '23 to '24 are pretty minor.

9 We have several special appropriation
10 requests on page two. One, we've already talked
11 about. This is the Patient Compensation Fund. And
12 I am certain this will be the subject of much
13 discussion. And then the way the legislature
14 created the Health Care Affordability Fund, we have
15 to go back to them every year even though it's a
16 dedicated revenue. We have to go back to them every
17 year for appropriation of the monies for the
18 subsequent year.

19 And you'll recall that there are three
20 components to this fund. We've touched on these at
21 the last meeting. The first one is underwriting
22 premiums and out-of-pocket cost for people on the
23 exchange who are purchasing health plans. We, this
24 year, offered what's called the Turquoise Plans and
25 they're incredible deals.

1 If you have an income below two hundred
2 percent, the premium is zero. And then it racks up
3 to four hundred percent. Out of pocket costs
4 reduced from 7 to 8,000 a year to a thousand
5 dollars, so they're a great deal.

6 And we also beefed up, through some
7 actuarial -- we started a game plan, an actuarial
8 maneuvering, let's use that word. I'll find a
9 better word in a minute. So that the gold plans,
10 and you'll remember on the exchange there are four
11 tiers. There's bronze, which offers the least
12 coverage at the highest cost. And there's silver,
13 which steps it up a bit. And then there's gold,
14 which offers significantly better coverage at a
15 lower cost. And then there's platinum. And none of
16 the health carriers offer a platinum plan anymore
17 because nobody buys them.

18 But what we did was make the gold plan
19 more attractive than the silver. In other words, we
20 lowered the prices on the gold plans and lowered the
21 out-of-pocket cost on the gold plans. So many of
22 the people who are signing up on the exchange are
23 getting better coverage at lower costs.

24 Now, I want to be quick to note, because
25 as I said to the director of the health exchange

1 yesterday, you know, they've got to rethink how they
2 do their advertising and marketing and outreach,
3 because there's just -- I mean enrollment is up,
4 which is good. But it's nowhere near what it ought
5 be. Not with these plans at these prices and these
6 low out-of-pocket costs. So I'm hoping that's going
7 to be changed in the future. But it looks like
8 we're going to be right at 40,000 enrollment, which
9 is certainly an improvement from 32 or whatever it
10 was last year. So that's the first program.

11 The second program is the ten percent
12 reduction on insurance for small business groups.
13 This is business groups of 50 employees or less.
14 That has had tremendous take up. And we've gotten a
15 lot of positive feedback. More importantly, so has
16 the legislature. And they would like to do more to
17 lower the premiums more but it's expensive. So that
18 program costs an excess of 20 million a year just to
19 lower the ten percent.

20 And then the third program is a program
21 that's supposed to rule out next year, according to
22 the law, that's specific for people who cannot --
23 who don't qualify for either the exchange or for
24 Medicaid. These are basically --

25 MS. CARPENTER: Uninsurables.

1 SUPERINTENDENT TOAL: Uninsurables or
2 they're not residents. They're residents but
3 they're not citizens.

4 There's a small amount of those people,
5 very small, who are covered through the New Mexico
6 insurance pool. These are the people who tend to
7 have really catastrophic health problems, but we've
8 made a proposal for the legislature for beginning
9 that in State Fiscal Year '24.

10 I don't know what the reception is going
11 to be. The initial reception from the finance
12 committee was not terribly positive, even though we
13 a budget surplus of 4 billion. You know, we were
14 told, "This is not the time for program expansion."
15 These are people who really cannot get coverage
16 anywhere else. They're incurring costs in hospitals
17 and doctors' offices, and they need some kind of
18 coverage. So we'll see what happens with that.

19 CHAIRWOMAN DENISH: So did you have a
20 specific request for an amount for that?

21 SUPERINTENDENT TOAL: It's part of the 92
22 million.

23 CHAIRWOMAN DENISH: Part of the 92.

24 SUPERINTENDENT TOAL: It's close to 20
25 million.

1 CHAIRWOMAN DENISH: Out of 4 billion?

2 SUPERINTENDENT TOAL: Yes.

3 CHAIRWOMAN DENISH: Can't possibly afford
4 that.

5 SUPERINTENDENT TOAL: The next item is a
6 small item. The New Mexico Medical Insurance Pool,
7 which as you know was created back in the 80s by the
8 legislature. Before, there was the ACA. People
9 forget that the pool used to have as many as 12,000
10 people in it. It's now down to like 3,400. Most of
11 those people can buy on the exchange.

12 But when we put our COVID provisions,
13 which said you can't terminate anybody for failure
14 to pay premiums, a bunch of the people in the pool
15 just quit paying premiums. And so they lost about a
16 million-and-a-half dollars on revenue. 1,400 people
17 of the 3,400 quit paying. So this is to help make
18 up that balance.

19 And then the Auto Theft Prevention
20 Authority, which is under the OSI has asked for
21 375,000 to do a match with local law enforcement on
22 auto theft. And we made this request last year. It
23 didn't go anywhere. But hopefully it will be in the
24 Governor's recommendation again. We just don't know
25 yet.

1 And then the small business health
2 insurance premium relief, as I've said, has been
3 very popular. And because of the higher takeup than
4 we expected, we got an additional \$2.3 million cost
5 this year that I think will get approved. But this
6 is kind of a summary of where we are and what we
7 will be asking for.

8 The legislature will start having hearings
9 the week of the 17th. The 17th is the first day of
10 the session. And, of course, when the governor gets
11 her say at the State Address. Hopefully she will
12 have recovered by then. And I haven't heard, but I
13 hope her knee surgery went well yesterday or the day
14 before, I forget when. And then they'll immediately
15 start on budget hearings.

16 So any questions on the budget items?

17 Okay. And then the last page on my report
18 is a listing of the bills that the agency is pushing
19 this session. These are not governor's bills per
20 say; however, the governor is very supportive of the
21 first two and has made that clear to all.

22 Right now the Board of Pharmacy licensed
23 wholesalers, drug wholesalers, to do business in the
24 state, but they do not require the wholesalers to
25 disclose prices. And there were two study

1 committees over the interim who said this is a
2 serious transparency problem. We need to know about
3 these prices.

4 The second bill is one we've drafted.
5 I've got to contradict myself a little because this
6 is based on a very good law passed in Texas.

7 MS. CARPENTER: Out of all places.

8 SUPERINTENDENT TOAL: That's right. Which
9 requires the PBMs to do additional reporting to us.
10 And also clarifies two practices, which many of them
11 indulge in, which we want classified as unfair
12 business practices. And this is bill that we worked
13 with the AG on, by the way.

14 One is the spread pricing. This is where
15 they get the drug at a certain price and they up it
16 to the people who are doing the purchasing. And the
17 large PBMs who try to transfer prescriptions from
18 local pharmacy to their chain pharmacy because they
19 want people in there.

20 We hear about this problem all the time.
21 We've taken enforcement action when we can. But a
22 good example of this has just occurred up in the Los
23 Alamos area where CVS dropped some of the local
24 pharmacies. And so now everybody has to go to a CVS
25 pharmacy. Guess how many CVS pharmacies there are

1 in Los Alamos?

2 MR. YURCIC: One?

3 MS. CARPENTER: One?

4 SUPERINTENDENT TOAL: Zero.

5 MR. RYCRAFT: Zero?

6 SUPERINTENDENT TOAL: Zero.

7 So we have been working with both CVS and
8 the Lab to try to address this problem. But that
9 kind of practice is really, I think, an unfair
10 business practice. And talk about harming
11 consumers.

12 MS. CARPENTER: Yeah.

13 SUPERINTENDENT TOAL: So there will be a
14 lot of discussion about that.

15 From the wildfire experience -- and Scott,
16 we talked about it at the last meeting, we want to
17 update the New Mexico Fair Plan because their limits
18 on what they cover are just too low. And also from
19 my perspective, there's problem with the board.
20 Because the board is made up of all property and
21 casualty insurers. There needs to be consumer and
22 OSI representatives on that board. We need to make
23 that that's in that draft. But it's in statute so
24 it's going to have to go through the legislature for
25 change.

1 The legislature, again, in the pressure to
2 move on their part, several years ago passed a
3 Surprise Bill and Protection Act. So it has been
4 very successful. And we frequently intervene on
5 these where people get hit with bills they didn't
6 expect or from out-of-network providers. And if it
7 weren't for the Surprise Bill and Protection Act,
8 they'd be stuck with those bills.

9 Now the problem is that the current
10 statute has a date in it, that the existing
11 mechanism for determining fair prices is going to go
12 away July 1. They did that in anticipation of the
13 Department of Health having their all payer claims
14 database set up by then. They're a year behind so
15 we have to amend that date.

16 If we don't amend the date, then the feds
17 take over the process. And the feds recently
18 reported they have 90,000 appeals. And they expect
19 to take four years to resolve this. So we need to
20 keep this local. I'm hoping there won't be any
21 issue on this. This bill originally was handled by
22 Representatives Nathan Small and Linda Lopez in the
23 Senate, and they've both agreed to be supportive.

24 Adjustive bonds. All right. This is your
25 baby, Jennifer. I'm going to let you speak to it.

1 MS. FORD: We are certainly the only state
2 that requires an adjustor to have this bond. No
3 other state requires it. It's administratively a
4 lot of work, but it keeps the adjustor bonds from
5 doing it. It's pointless at this point for us to
6 continue to require something that doesn't have any
7 effect because they are already under the insurer.
8 And the insurer already covers liability for that
9 adjustor. So this is literally getting rid of
10 language that is no longer relevant at this time.

11 SUPERINTENDENT TOAL: And the carriers
12 that have rightly come to us and said, we need to be
13 able to get these adjustors in there if there's a
14 catastrophe.

15 MS. CARPENTER: And my question is just --
16 and I think you've answered it, but I just want to
17 make sure I understand. The adjustors already have
18 a mandatory liability insurance?

19 MS. FORD: Yes. And coverage under the --

20 MS. CARPENTER: So this is just
21 duplication that we're getting rid of?

22 MS. FORD: Yeah.

23 MS. CARPENTER: In order to make it easier
24 for more people to become adjustors.

25 MS. FORD: And honestly a \$10,000 bond is

1 not even going to cover replacing your driveway.

2 MS. CARPENTER: Right.

3 CHAIRWOMAN DENISH: Yeah.

4 SUPERINTENDENT TOAL: Yeah. Okay. We
5 tried to do one bill every year that Brent can stand
6 up and support so ...

7 MR. MOORE: I like the first one.

8 SUPERINTENDENT TOAL: The insurance fee
9 schedule modification, well, the explanation is
10 pretty straightforward there. We need to raise
11 these fees in these categories.

12 Motor vehicle theft and embezzlement
13 penalties. Right now, the way I've been made to
14 understand, there are four different penalties. Is
15 penalties the right word? I turn to you attorneys.
16 There are four different crimes, I guess, that can
17 be charged related to auto theft. But the way the
18 law is written, you can't make mention of those
19 prior penalties if you're charging somebody with one
20 of the others, even though they may have been
21 convicted.

22 Now the logic of that escapes me, I can
23 tell you.

24 MR. RYCRAFT: Prior acts aren't proof of a
25 current act. It's a prior act. It has nothing to

1 do with the current act. Just because they didn't
2 report it doesn't mean that's why they did it again.

3 SUPERINTENDENT TOAL: Okay.

4 MR. RYCRAFT: You make that argument, it's
5 not --

6 MS. CARPENTER: Right. But the best
7 predicator of future conduct is not --

8 MR. RYCRAFT: Right. That's the rule of
9 evidence that we were talking about.

10 SUPERINTENDENT TOAL: Well, this may not
11 get past Joseph Cervantes in the Senate, the Chair
12 of the Judiciary Committee. He's the one who
13 insisted on the law being written the way it was.
14 But the District Attorneys Association came to us
15 about this and so that's why we put it on the list.

16 CHAIRWOMAN DENISH: So he's putting --
17 we're supporting the bill. You're supporting the
18 bill but it's somebody else's bill.

19 SUPERINTENDENT TOAL: Well, someone will
20 sponsor for us.

21 CHAIRWOMAN DENISH: Yeah.

22 SUPERINTENDENT TOAL: Yeah. And last
23 year, we were able to get the chop shop bill passed.

24 CHAIRWOMAN DENISH: Yeah.

25 SUPERINTENDENT TOAL: I think because it

1 went into the Omnibus Bill. I think if it had been
2 handled as a standalone, it probably wouldn't have
3 made it. But it did get into the Omnibus Bill and
4 I'm hoping that they'll do something similar this
5 year.

6 And then finally, right now, a health care
7 plan for provider credentialing has 45 days from the
8 time they receive a complete application to do the
9 credentialing. There's nothing in the statute about
10 how long they then take to load the doctor or a
11 nurse practitioner or whomever into their systems.
12 Now this is particularly problematic for a new
13 doctor trying to set up a practice. Until their
14 credentialed, until they're loaded into the system,
15 they can't submit claims. They can't request prior
16 approval. They're really hamstrung.

17 Now with technology being what it is, we
18 have said and we have talked to the health insurers,
19 we've given them a heads-up about this, that we
20 think 45 days ought to be changed to 30. You know,
21 they can do either one. And once they do the
22 credentialing, it shouldn't take so long to load
23 them into our system. So this bill has been
24 encouraged. It's been recommended to us by the
25 Medical Society. We've been talking about this

1 problem for over a year now.

2 Most of the insurers I think will have no
3 trouble meeting this. There's probably one who is
4 going to object, but they object to everything. So
5 we'll deal with that when we have to. But I'm
6 hoping this bill will go through. This bill will be
7 have bipartisan support.

8 Okay. Any questions on the legislation?

9 CHAIRWOMAN DENISH: This is not on your
10 list and it may be totally irrelevant, but the
11 governor has proposed creating a health care
12 authority. And so would that be part of your list
13 as we go forward?

14 SUPERINTENDENT TOAL: I'm certain we'll be
15 involved.

16 CHAIRWOMAN DENISH: Involved in that in
17 some method.

18 SUPERINTENDENT TOAL: I helped push that
19 idea with the governor's office. And we did
20 something similar when I was a Commissioner of the
21 Georgia Department of Community Health. We had in
22 there all the public health purchasing, rural
23 health, women's health, the cancer program. And we
24 also had the State Employees Health Plan and the
25 University System Health Plan. So when we did

1 direct contracting with hospitals, were talking to
2 them about the millions that were in the Medicaid
3 Program. The other million in the State Employees
4 and public schools systems and university systems.

5 The State in that situation has tremendous
6 bargaining power. And this state does the complete
7 opposite. The purchasing is diffused everywhere.
8 So I think the Governor's recent appointment of the
9 new secretary of health, who came from the Oregon
10 Health Authority was not accidental. I think it's a
11 very good appointment. And I think you'll, I don't
12 know, but I think you'll see a conceptual bill,
13 because it's going to take time to put this
14 together.

15 But there is a lot of frustration in the
16 legislature over the state employees health benefit
17 plan, which is running a \$100 million deficit. And
18 they feel like it's not being well-managed by the
19 General Services Department. The General Services
20 Department is not in the health care business, you
21 know. So I think they'll be some real interest in
22 it. The question will be what else goes.

23 I don't think we, the OSI, will go up to
24 separate constitutional office, and we're not in the
25 purchasing business. But I think parts of DOH,

1 perhaps the Medicaid program, maybe the health
2 insurance exchange. I would hope not the medical
3 insurance because I think it's unique. But I think
4 there will be a lot of discussion. It's a good
5 question. We expect to be involved in it, but it
6 shouldn't directly impact us.

7 CHAIRWOMAN DENISH: Okay. Any other
8 questions about legislative stuff?

9 MR. YURCIC: I just want to follow up if I
10 could because you mentioned the fair plan and
11 discussing that last time.

12 SUPERINTENDENT TOAL: Right.

13 MR. YURCIC: And in the last meeting, we
14 also had the discussion of replacement costs for
15 roofs and the fact that there is no statute of
16 limitation on that.

17 Technology has created a loophole that is,
18 in my opinion, hurting consumers. When a
19 homeowner's claim is paid -- and this pretty much
20 industry-wide. When a homeowner's claim is paid on
21 a roof, there is depreciation taken out initially,
22 and then when the roof is repaired, your recoverable
23 depreciation is paid at that time. You're given a
24 year to exercise that option to receive your
25 recoverable depreciation.

1 SUPERINTENDENT TOAL: Right.

2 MR. YURCIC: In the past, when problems
3 had been realized on a roof, we used date of
4 discovery as date of loss. Now with technology, the
5 insurance claims offices can go back through weather
6 reports, satellites, and figure out exactly what the
7 date of that hailstorm came through and damaged that
8 roof. That could be as far as back as a year ago,
9 in which, the date of loss will be changed.

10 If it does go back a year ago, it's
11 impossible for the client to recover their
12 recoverable depreciation. So it's just something
13 that I feel technology has created this problem
14 because we're utilizing it. You can't blame it.
15 It's something they should do. But I would
16 recommend rather than using your recoverable
17 depreciation to be one year from date of loss, it
18 should be one year from date of settlement. And
19 that would give the consumer a full year to fix
20 what's been done.

21 SUPERINTENDENT TOAL: The other issue
22 related to this, Scott, is that we are a state that
23 requires replacement cost. You might be a
24 homeowner, but for whatever reason, doesn't want to
25 pay for full replacement cost.

1 You own a mobile home, do you really want
2 to put a new roof on that mobile home? You own a
3 barn, you own whatever. But when the insurance
4 company, as you know, is quoting, they have to quote
5 you full replacement cost.

6 Now, we told the property and casualty
7 people who came to us that we felt like this was a
8 matter for the legislature to decide. That we
9 couldn't do it by rule. And that, you know, if they
10 wanted to take a bill, we would not oppose it. And
11 that's kind of where it stands.

12 So we haven't drafted up anything on this
13 specific point you're talking about or on the larger
14 replacement cost.

15 MR. YURCIC: Well, you see replacement
16 cost is mandatory. Some policies that are being
17 issued out there do not include replacement cost.
18 You can ensure 80 percent to value and still qualify
19 for a policy and that's not going to get you a
20 brand new roof.

21 If I have a home that has damage and I've
22 been paid, if I choose to go to Cancun with the
23 money instead of replacing my roof, I'm not going
24 get my recoverable depreciation anyway. But it's
25 the clients that are put under a constricted time

1 constraint because of the change of the effective
2 date. And then as of late, just between supply
3 chain and availability of workers --

4 SUPERINTENDENT TOAL: Right.

5 MR. YURCIC: -- they don't have the
6 opportunity to get their replacement cost back which
7 is state statute if it was available.

8 SUPERINTENDENT TOAL: That's a good point.

9 MR. YURCIC: So ...

10 MS. CARPENTER: It's a great point.

11 SUPERINTENDENT TOAL: We certainly can
12 look at that.

13 Do you know from your client whether
14 they're bringing the bill?

15 MR. MOORE: Mr. Superintendent and Madam
16 Chair, at this time, I'm not aware of any insurance
17 company or trade association that's bringing a bill
18 related to changing the requirement that's currently
19 in the statute.

20 MR. YURCIC: I wouldn't be optimistic in
21 seeing the industry coming to change this bill.
22 This bill is saving them a ton of money.

23 SUPERINTENDENT TOAL: By the one year.

24 MR. YURCIC: Right. Just in the
25 recoverable depreciation that they're not paying out

1 due to the loophole that's created from technology.

2 MS. CARPENTER: It's a windfall.

3 MR. YURCIC: They're not going to change
4 that.

5 MS. FORD: Yeah.

6 MR. YURCIC: They don't even want it to be
7 disclosed. I'm probably committing heresy by doing
8 that.

9 SUPERINTENDENT TOAL: You want to look at
10 drawing something up?

11 MR. YURCIC: I think it's a legitimate
12 concern. And I've had personal experience with it
13 in my agency. I don't know if the other PNC people
14 have had that kind of thing going on.

15 SUPERINTENDENT TOAL: I know the Chair
16 has.

17 MS. CARPENTER: I've heard about this.
18 And I also heard about this. I also practiced in
19 Vermont and I've heard about this being an issue in
20 Vermont. It's a very big issue there.

21 SUPERINTENDENT TOAL: Brian, I saw you
22 nodding.

23 MR. ALEXANDER: I've seen it happen as
24 well.

25 CHAIRWOMAN DENISH: So the replacement

1 value issue causes people not to --

2 MR. YURCIC: It's the recoverable
3 depreciation that the insurance companies only give
4 you a year to make your repairs in order to file for
5 that recoverable depreciation. And if they backdate
6 back the effective date, then they've erased part of
7 that window of opportunity for you, as a consumer,
8 to fix your roof.

9 Yeah, I had one client, he had 30 days to
10 fix his roof.

11 CHAIRWOMAN DENISH: And there wasn't
12 anybody available to do it.

13 MR. YURCIC: There was nobody available to
14 do it under the current economic situation. So it
15 creates a unnecessary hardship through technology
16 that I think we could probably shore up in just a
17 couple of words.

18 CHAIRWOMAN DENISH: Right.

19 MR. YURCIC: Date of settlement rather
20 than date of loss.

21 CHAIRWOMAN DENISH: Will you take a look
22 at it?

23 SUPERINTENDENT TOAL: Sure.

24 CHAIRWOMAN DENISH: Or ask the staff to
25 take a look at it?

1 Okay. Are there questions similar about
2 legislation or the legislative session?

3 I guess we assume that this list also
4 could grow.

5 SUPERINTENDENT TOAL: Well, that's the
6 list that we're --

7 CHAIRWOMAN DENISH: That you're --

8 SUPERINTENDENT TOAL: There won't be a lot
9 of things on impacts.

10 CHAIRWOMAN DENISH: Yeah.

11 SUPERINTENDENT TOAL: They may our bills.

12 CHAIRWOMAN DENISH: There may be other
13 things which come forward that people ask you to
14 support?

15 SUPERINTENDENT TOAL: Yeah. For example,
16 there's already a bill been prefiled to do away with
17 any cost sharing on mammograms. There's a bill
18 coming that we know about on diabetic supplies. You
19 know, those kinds of things are going to come.
20 We'll get asked to testify.

21 MS. CARPENTER: May I ask a question?

22 CHAIRWOMAN DENISH: Yeah.

23 MS. CARPENTER: What is the OSI's position
24 on when it will testify on behalf of the bill?

25 SUPERINTENDENT TOAL: Whether it's

1 something we think we can support.

2 Typically, somebody calls and asks us to
3 testify. Now, the other thing that we do that's
4 sort of behind the scenes -- well, not us, all
5 agencies. Somebody introduces a bill, like the
6 mammogram bill, for example. And then we get a
7 request from the legislative finance committee to do
8 what's call a fiscal impact report. So we do our
9 best estimate and say what is this going to cost?
10 And we submit that. And the turnaround on those is
11 insane. It's like 24 hours. It's not always easy
12 to estimate.

13 MS. CARPENTER: Is that something that you
14 could be put on your website whenever the OSI is
15 going to be testifying related to legislation?

16 SUPERINTENDENT TOAL: You know, I don't
17 know. We get so little notice a lot of times. I
18 mean, like seriously, we have somebody who called
19 and say --

20 MS. FORD: In an hour.

21 SUPERINTENDENT TOAL: You need to be at
22 this meeting in an hour. So and so Senator wants
23 you to be there or the Chair wants you available to
24 answer questions. That happens a lot.

25 MS. CARPENTER: So is the determination of

1 whether or not you're going to show up entirely in
2 the discretion of the superintendent?

3 SUPERINTENDENT TOAL: No.

4 MS. CARPENTER: So who is making that
5 decision?

6 SUPERINTENDENT TOAL: Well, the
7 determining one is the governor's office.

8 MS. CARPENTER: Okay. All right.

9 Does the OSI always involve the governor's
10 office?

11 SUPERINTENDENT TOAL: Not always. It
12 depends on the matter.

13 MS. CARPENTER: Whose decision is that?

14 SUPERINTENDENT TOAL: In that case, it's
15 the superintendent's.

16 MS. CARPENTER: Okay.

17 SUPERINTENDENT TOAL: But as you may
18 recall, the battle on the House Bill 75, I didn't
19 testify. I did not testify at all and that was per
20 the request of the governor's office. So it just
21 depends entirely on what the bill is.

22 We have free reign on appropriations
23 matters. We share our FIRs with Govenor's Office so
24 if there's something they have a concern about, we
25 hear from them, as we should.

1 CHAIRWOMAN DENISH: Any other questions?

2 Okay. Thank you, Mr. Superintendent.

3 I said to the Superintendent when he
4 walked in today, he looked way too happy, having one
5 foot out the door.

6 So the next item we'll take some time with
7 this to think about. In your packet, I believe you
8 have the Superintendent's letter notifying of his
9 retirement.

10 You also have the Legislation House Bill
11 234 that now that we refined, that we redid.

12 SUPERINTENDENT TOAL: Yeah, 2020. The OSI
13 has handled that and was very supportive. There was
14 a memorable discussion on the Senate floor, passed
15 easily on the Senate floor. We have, oh my gosh, a
16 senator who is no longer there, who is the retired
17 military guy.

18 MR. MOORE: Bill Payne.

19 SUPERINTENDENT TOAL: Bill Payne did a
20 great job. He got asked by a member of the Senate,
21 "What was the salary of the superintendent?" And I
22 remember it without missing a beat, he said, "I
23 believe it's about \$775,000."

24 MR. RYCRAFT: And you said, "I wish."

25 CHAIRWOMAN DENISH: I hope nobody sees

1 that testimony and wants to apply for your job
2 because they will be sorely disappointed.

3 SUPERINTENDENT TOAL: But there were two
4 main provisions in the bill and why it was
5 necessary. The governor did not want the
6 requirement in the law that an applicant had to be a
7 New Mexico resident at the time of application. She
8 quite rightly, of course, wants them to be a
9 resident if they become a superintendent but not at
10 the time of application. So that was one change.

11 And the other change was giving the Chair
12 the ability to point an interim superintendent while
13 the process proceeds for the selection of permanent
14 superintendent. So that's what the bill in front of
15 you has, if you turn back to page four.

16 CHAIRWOMAN DENISH: Yeah. I think they
17 highlighted it for us.

18 SUPERINTENDENT TOAL: E, F, and G.

19 CHAIRWOMAN DENISH: E, F, and G. Yeah.

20 SUPERINTENDENT TOAL: Correct.

21 CHAIRWOMAN DENISH: So we have -- we need
22 to convene, which we're doing today, within 90 days
23 of notification of the superintendent's retirement
24 or resignation. And so we're meeting that deadline
25 today.

1 Mr. Superintendent, we don't have a 90-day
2 requirement to fill the job, though? No.

3 MS. JOE: Those were removed.

4 CHAIRWOMAN DENISH: So we do a 90-day, we
5 have to -- no.

6 MS. JOE: You appoint the interim and then
7 you can set the timeline you would all like to see
8 to select the next one.

9 CHAIRWOMAN DENISH: Okay. So those are
10 things that are up for discussion today, the
11 timeline. My personal preference is not to drag it
12 out for a long time. But I am today going to
13 appoint the Deputy Jennifer Catechis be the interim
14 superintendent effective the date of your
15 resignation, which is January 20th.

16 So the superintendent, he swears he's not
17 taking vacation time or anything else between now
18 and January 20th.

19 SUPERINTENDENT TOAL: I am taking vacation
20 time next week.

21 CHAIRWOMAN DENISH: But not a lot.

22 SUPERINTENDENT TOAL: No. And I'm staying
23 connected.

24 CHAIRWOMAN DENISH: Yes. So he will be --
25 and this will provide for some continuity in the

1 transition between now and January 20th.

2 SUPERINTENDENT TOAL: Correct.

3 CHAIRWOMAN DENISH: So having said that,
4 and having provided his letter of retirement or
5 resignation, we need to think about the process.
6 And one of the things with the bill, the
7 legislation, when we changed it, and we did not
8 require, New Mexico allows us to cast a broader
9 search outside of New Mexico.

10 Last time, I was not the Chair when it
11 first started, but we actually just advertised in
12 the Albuquerque Journal so we didn't really cast a
13 very wide net to capture.

14 MR. YURCIC: It was a new process and we
15 didn't have any budgets.

16 CHAIRWOMAN DENISH: Yeah, we didn't have a
17 budget.

18 MR. YURCIC: So the Thrifty Nickel and the
19 Albuquerque Journal.

20 CHAIRWOMAN DENISH: I think the deputy and
21 the superintendent have been talking about a
22 possible budget and we should talk about the
23 timeline here today. And we'll probably have
24 several meetings between now and the time we select
25 the superintendent in a fairly short order so that

1 we can get the process underway.

2 SUPERINTENDENT TOAL: Yeah. One thing
3 that Jennifer and I have mentioned to the Chair is
4 that with removal of the you have be a New Mexico
5 resident at the time of application, it now means we
6 can use organizations like the National Association
7 of Insurance Commissioners, the National Conference
8 of Insurance Legislators. There's three or four
9 national organizations, and make it known to those
10 groups too.

11 As I also pointed out to the Chair, you
12 know, with new governors and such, there are
13 insurance commissioners leaving. Some of them I
14 wouldn't touch with a ten-foot pole, personally.
15 But there are some others who are really quite good
16 that the committee may want to consider.

17 Of course, I also have tremendous
18 confidence in Jennifer when I picked her. She's
19 done an outstanding job as a deputy. And I'm very
20 happy she will be the interim to keep things moving
21 forward.

22 And if you'll indulge me for a second.
23 You know, (A) I really appreciate the support you
24 all have given me over the past four years. It
25 meant a lot. And, secondly, I don't think we have

1 effectively conveyed to you how bad things were. I
2 mean, we not only are going to do new regulations.
3 Virtually nothing was done on time. I mean, we were
4 behind on everything.

5 There were consumer cases that had been
6 sitting for three years or longer. That's not
7 service. So I'm really pleased to be able to tell
8 you, that has all changed. We are responsive. We
9 are aggressive. I sit in on all the meetings of the
10 staff related to consumer complaints and child care
11 complaints, and we get a zillion of those, and
12 potential cases. And that's the way it should work.

13 So I guess part of what I'm urging is that
14 you go through this process. You know, what you're
15 really looking for is not somebody just too smart
16 and savvy. You're looking for somebody who stays
17 engaged on a daily basis, because that's really what
18 it takes. The legislature has been great to us.
19 You know, we have fewer than 80 some-odd people when
20 I took office. We're now, with new positions, going
21 to be at 112. And we have the lowest vacancy rate
22 of all state agencies.

23 Again, because we're very aggressive about
24 getting people through the process, getting
25 positions posted, and hiring the right people. I'm

1 very proud of that. But it wouldn't able to have
2 been done without your support and the support of
3 the legislative committee. So again, I would just
4 urge you to keep that in mind as you think about
5 what you're looking for.

6 Now, we did include for you a history and
7 job description. What we did was take the
8 description that was advertised some years ago, we
9 updated the new statutory requirements. But this
10 needs to not be our document. This needs to be your
11 document. You're going to have either in total or a
12 committee look at this, decide whether this is
13 appropriate. Because this is what you will have to
14 put on the web for people to apply to.

15 MS. CARPENTER: Do you have edits to it?
16 Patti and I wrote this one.

17 SUPERINTENDENT TOAL: Yes, we did edit it.

18 MS. CARPENTER: Okay. So this is edited?

19 SUPERINTENDENT TOAL: Absolutely.

20 MS. CARPENTER: Okay. All right.

21 SUPERINTENDENT TOAL: Yeah, there wasn't
22 much that we had to change. There were some left
23 out like being Chair of the New Mexico Medical
24 Insurance Pool. The salary obviously has changed,
25 which I'm grateful for. There are few other things

1 that we took out. There was a statutory provision
2 that related to reports to the 40th Legislature.
3 We're way past 40th. So we took those kinds of
4 thing out.

5 But I think, Allegra, a lot of what you
6 did is still in there. But you may want to change
7 it. Beef it up. It's entirely your document.

8 We also included, I think the little
9 one-pager that was used for advertising this last
10 time. It is not sufficient.

11 CHAIRWOMAN DENISH: Yeah.

12 SUPERINTENDENT TOAL: You're going to need
13 to revise both of those.

14 CHAIRWOMAN DENISH: So to that end,
15 talking about the advertisement or what was posted,
16 would your HR staff help us figure out what should
17 be the appropriate posting?

18 SUPERINTENDENT TOAL: Yes.

19 CHAIRWOMAN DENISH: And what it should
20 include and what to put a link in for?

21 SUPERINTENDENT TOAL: Correct.

22 CHAIRWOMAN DENISH: And people can do
23 their research.

24 SUPERINTENDENT TOAL: Right. We use the
25 state website. We used the Albuquerque Journal but

1 I think we want to do more.

2 MS. CARPENTER: I think we did three
3 papers actually.

4 MS. FORD: Yeah. We did Las Cruces.

5 MR. YURCIC: I think we did Las Cruces and
6 Carlsbad just to hit all hammers.

7 MS. CARPENTER: I'm not sure you were on
8 the committee.

9 CHAIRWOMAN DENISH: No. As a matter of
10 fact, you had applications when I was elected chair.

11 MS. CARPENTER: Right. Exactly.

12 So what we did, and I would propose that
13 we do this today, is we formed a subcommittee to
14 craft these documents, float them. You know, not
15 having a meeting but float them and give everyone a
16 chance to review and make sure.

17 Do you recall this?

18 MR. YURCIC: We did have a committee.

19 MS. CARPENTER: Yeah. I think that we
20 don't, all of us, want to do this. And I honestly
21 don't neither want to do it. So I don't need to be
22 part of this, but I think the best thing is to have
23 a subcommittee of three or four of us to re-craft
24 these documents. We should create that subcommittee
25 today, let that get done immediately so that we can

1 keep this process going.

2 CHAIRWOMAN DENISH: I think that's a good
3 idea. And you know what, I would like to suggest,
4 at least for consideration, is that we do that.
5 That we schedule our next meeting within a couple of
6 weeks so that we can review what's recommended by
7 the committee. And also, I would ask the committee
8 to work with the staff and the professionals to
9 think about where and how, if we have the budget for
10 advertising, you know, across the county and how far
11 we want to go. I mean I think there's a lot of
12 value in having somebody who's familiar with New
13 Mexico. Don't get me wrong. But I also think there
14 a lot of expertise out there --

15 MR. YURCIC: And that's the reason for the
16 way it was originally drawn up.

17 CHAIRWOMAN DENISH: -- that we might be
18 missing. And we never know, there's people that
19 used to be here that might want to come home.
20 Right? I mean, they may not be insurance
21 commissioners but they may be linked to the industry
22 somehow.

23 So I'd like to just kind of give the
24 charge to a subcommittee to do those couple of
25 things and to work with maybe the interim. The soon

1 to be interim, the deputy, now to get that ready for
2 the next meeting. I personally would like to meet
3 that first week of the legislature before things
4 turn into --

5 SUPERINTENDENT TOAL: The first week or
6 the second week? The week of the 23rd, right?

7 CHAIRWOMAN DENISH: Either one. But
8 before the -- you know, nothing happens even though
9 you may be called to testify somewhere, but nothing
10 really gets rolling in the legislature until a good
11 ten days in. You know, when things are ...

12 SUPERINTENDENT TOAL: It's entirely your
13 decision.

14 CHAIRWOMAN DENISH: Yeah. So this may not
15 be your last meeting. You can come too.

16 MR. YURCIC: I have question, Madam Chair.
17 The legislation provides for a four-year term for
18 the superintendent in the end of the year. So
19 technically his term would have expired December 31
20 of this year. In our search and what we're doing,
21 is that going to be our date of job availability or
22 are we going to change the time frame within the
23 legislation?

24 CHAIRWOMAN DENISH: You know, I haven't
25 thought about that but in my --

1 SUPERINTENDENT TOAL: The way I read the
2 law, the moment you make your appointment, that
3 person has a four-year term starting from whatever
4 date you choose.

5 CHAIRWOMAN DENISH: What line are you on?

6 MR. YURCIC: I'm on C in the Act. This is
7 the original legislation, but it takes -- this is
8 specific, it says "The superintendent shall serve a
9 term of four years, except that the initial term
10 beginning July 1 of 2013, at that time shall end on
11 December 31, 2015." So December 31st has always
12 been the ending of the four-year term of the
13 superintendent.

14 MS. JOE: In the prior legislation, there
15 were things about the terms and --

16 MR. YURCIC: And there was change in of
17 our terms to coincide with the term of the --

18 MS. JOE: But I believe when they changed
19 this, that's now taken away. So whenever you
20 appoint the four-years --

21 MR. YURCIC: We start a new four-year
22 term.

23 CHAIRWOMAN DENISH: Yeah.

24 MS. JOE: They get a full four years. You
25 don't have a partial term to worry about.

1 MR. YURCIC: Okay.

2 CHAIRWOMAN DENISH: Okay.

3 Okay. So who has an interest in being on
4 this committee? You would have two to go through
5 the job description and work with the deputy for
6 now, and also to think about the jobs, the
7 advertising, and where we're going to cast the net.

8 And I see there's a lot of enthusiasm to
9 that.

10 Did you do it before, Scott?

11 MR. YURCIC: I haven't been on the
12 committee before because I'm way down south and they
13 always had meetings that were local within that
14 committee.

15 CHAIRWOMAN DENISH: But we can do these
16 meetings by Zoom now. We know we can do things
17 remotely.

18 MR. YURCIC: Yeah. That was the only
19 reason that I wasn't involved before was just
20 proximity.

21 CHAIRWOMAN DENISH: So if you would be
22 interested ...

23 Jennifer Ford, are you interested?

24 She's looking at her paper really
25 intently.

1 MS. FORD: I don't have a ton of expertise
2 in this area as Allegra and Patti, but I would be
3 willing to do it.

4 CHAIRWOMAN DENISH: Okay. So maybe I
5 won't decide today. I'll talk to Patti as well and
6 see if she's interested because she is kind of a
7 detailed person.

8 And is there anybody that would do it if
9 asked?

10 MR. RYCRAFT: I would be interested
11 because I've done as President of the MMLTA and
12 we've got a legislative session starting.

13 CHAIRWOMAN DENISH: Yeah.

14 MR. RYCRAFT: And I'm concerned about
15 taking on some more work.

16 CHAIRWOMAN DENISH: Okay. Yeah, I
17 understand that.

18 MR. RYCRAFT: Yeah.

19 SUPERINTENDENT TOAL: This work needs to
20 be really before they get rolling.

21 MR. RYCRAFT: Yeah.

22 MS. CARPENTER: I don't think this is
23 actually going be all that time-consuming and I'm
24 willing to do it too.

25 CHAIRWOMAN DENISH: Okay.

1 MS. CARPENTER: I think this will be
2 pretty straightforward. I would propose that the
3 subcommittee be composed of equal representation.

4 CHAIRWOMAN DENISH: Right.

5 MS. CARPENTER: Whatever that number is.

6 CHAIRWOMAN DENISH: I think that's a good
7 idea.

8 So let me think about that and I'll do it
9 within the next day or two. Okay? And I'll call
10 those people that, you know, that we think would
11 make a good committee. I mean I'm interested in
12 sitting in on the meetings and being part of it, if
13 that would help, but I don't know. I don't
14 represent --

15 MS. CARPENTER: Honestly, I don't think
16 it's going to be that much. I think this is just
17 going to be a bunch of emails.

18 CHAIRWOMAN DENISH: Yeah, I don't think
19 it's going to be that. Right. And I think we will
20 rely on either committee members here or staff to
21 give us your recommendations about where
22 publications should go.

23 If you have an idea, independent agents,
24 national association of insurance commissioners,
25 whatever it is, let's all be part of putting into

1 that and seeing if it's a reasonable list. And if
2 we have the budget to do it all of those different
3 places. Okay?

4 MS. JOE: Chair, I would just suggest,
5 because this is a public body that maintains openly
6 and transparently, that perhaps it's best to keep
7 conditionally means people of subcommittees so you
8 can get rolling as opposed to leaving it out in the
9 open because all committee members, subcommittee
10 members, must be announced to the public, and that
11 it's known what they're doing. So maybe like
12 conditional Patti or a backup in case you have --

13 CHAIRWOMAN DENISH: So Patti is a --
14 what's Patty's designation? She's a
15 governor-appointee, I know that.

16 SUPERINTENDENT TOAL: Right. She is.

17 MS. CARPENTER: I believe she's industry.

18 CHAIRWOMAN DENISH: Yeah, I believe she is
19 industry, isn't she. I mean she represents the
20 insurance industry.

21 MS. CARPENTER: Yeah.

22 CHAIRWOMAN DENISH: Who here represents
23 consumers?

24 MS. FORD: I would be willing to be on the
25 subcommittee not the internal.

1 CHAIRWOMAN DENISH: Okay. And you're a
2 consumer advocate?

3 MS. FORD: Yes.

4 CHAIRWOMAN DENISH: Okay. So Jennifer
5 Ford.

6 MS. CARPENTER: I'm consumer.

7 CHAIRWOMAN DENISH: You're consumer,
8 right?

9 MS. CARPENTER: I think, Geoffrey, are you
10 consumer?

11 MR. ROMERO: I think so. I'm
12 Governor-appointed, but I don't know if it was
13 specific as consumer.

14 MS. CARPENTER: I think --

15 MR. YURCIC: I think we are all consumer
16 advocates.

17 MR. ROMERO: Yeah.

18 MS. CARPENTER: When I got the call from
19 the governor's office, they were like, you were
20 this, you will be this.

21 CHAIRWOMAN DENISH: Yeah.

22 MS. CARPENTER: It was like clear.

23 CHAIRWOMAN DENISH: Right.

24 MR. YURCIC: I just thought it was an
25 appointment and the end of the course.

1 CHAIRWOMAN DENISH: Yeah. And you're an
2 industry person.

3 MR. YURCIC: Sure.

4 CHAIRWOMAN DENISH: Yeah.

5 And Jennifer, that's two. I can't speak
6 for Patti at this point.

7 MS. CARPENTER: I would have it in my
8 notes. I can find it. It will take me a minute.
9 I'll let you know.

10 CHAIRWOMAN DENISH: Okay. But if we have
11 you, Jennifer, Scott, and Patti, that would be an
12 even distribution. Two and two.

13 MR. YURCIC: Yeah.

14 MS. JOE: And just in that case, you may
15 not be able -- well, you may not be able to attend
16 because there's five, there's a quorum.

17 CHAIRWOMAN DENISH: You should have one
18 more person?

19 MS. JOE: No. Up to four people can
20 participate.

21 CHAIRWOMAN DENISH: Yeah. So that's
22 right. So two, two and Patti.

23 MS. JOE: So no one else can come in and
24 observe and see what's going on.

25 CHAIRWOMAN DENISH: I mean I'm only going

1 to only appoint four and if somebody says no, we'll
2 send in the substitute, whoever that is. So four is
3 fine, right?

4 MS. JOE: Yes.

5 CHAIRWOMAN DENISH: Yes. Okay.

6 MS. CARPENTER: This is going to be so
7 straightforward. I don't think it's going to --

8 CHAIRWOMAN DENISH: Okay.

9 MR. YURCIC: The biggest thing is what
10 timeline do you want to give the subcommittee to
11 come back and report to the committee so we can move
12 forward?

13 CHAIRWOMAN DENISH: I want to set our next
14 committee date today.

15 MR. YURCIC: Okay.

16 CHAIRWOMAN DENISH: And hopefully if have
17 the materials. Well, we'll just make it part of the
18 agenda, you know?

19 MR. YURCIC: You set the deadline and
20 we'll go ahead and make sure we comply.

21 CHAIRWOMAN DENISH: But I would like to
22 meet either the week of the 17th or the week of the
23 23rd, right? And so just give me an informal idea
24 of what your schedules are, if people would prefer
25 that first week of the legislature. The legislature

1 begins on the 17th. I was thinking maybe -- is that
2 right, the legislature begins on the 17th?

3 MS. JOE: Yes.

4 SUPERINTENDENT TOAL: Correct.

5 CHAIRWOMAN DENISH: Either the 19th, that
6 Thursday the 19th or the following Tuesday or
7 Thursday. One of those, sometime in there.

8 MR. YURCIC: I can accommodate.

9 CHAIRWOMAN DENISH: Either one of those?

10 I think we were thinking we'd meet in
11 Santa Fe because it would meet at the beginning of
12 the legislature. It would be better for staff and
13 all of the demands. With some of the demands, you
14 know, it's more convenient for them.

15 What do you think?

16 MS. VASQUEZ: I think I'd be able to make
17 it. If you need four, it's a little drive for me to
18 Santa Fe. It's four hours for me to come here.

19 CHAIRWOMAN DENISH: Right. Okay. So what
20 about Tuesday the 24th?

21 SUPERINTENDENT TOAL: I'm free.

22 MS. CARPENTER: I'm actually traveling
23 that day. I can potentially attend by Zoom. I'm
24 traveling for work.

25 CHAIRWOMAN DENISH: Oh, okay.

1 MS. VASQUEZ: I'm also open on the 19th.

2 MS. FORD: Actually the 19th is a really
3 good day.

4 CHAIRWOMAN DENISH: What day, the 19th?

5 I think there's a little internal,
6 something going on here. I actually do prefer the
7 19th, if people can make that date.

8 MR. RYCRAFT: I'm sorry. I lost track.
9 Is the subcommittee or --

10 MS. CARPENTER: The whole committee.

11 The whole committee, okay.

12 CHAIRWOMAN DENISH: Yeah. To approve the
13 process. Hopefully we'll have a broad brush to look
14 at everyone advertised and maybe we'll have actually
15 a schedule of how long applicants will have to
16 submit their applications once it's out in the open.
17 And we'll set ourselves a timeline so we can all be
18 thinking about that going forward.

19 MS. CARPENTER: And I would just throw
20 out, this is one of those meetings that not everyone
21 has to be present for. I mean as long as we have a
22 quorum because this is so straightforward.

23 CHAIRWOMAN DENISH: Yes.

24 MS. CARPENTER: This just procedural.

25 CHAIRWOMAN DENISH: Exactly. And it maybe

1 one of those meetings where we, if we can do it and
2 we're someplace, we might want to have a Zoom option
3 for members who are --

4 MS. CARPENTER: Are you allowed to do
5 that?

6 CHAIRWOMAN DENISH: Can we do that?

7 MS. JOE: Well, I think these days the
8 issue is, you know, during the pandemic, and I know
9 we're still in the pandemic, we're not quite out of
10 it, there is more flexibility. So it's more about
11 how you structure the options for both the
12 attendees, as well as those you want to participate
13 remotely, whether they be public or members.

14 So I think since you haven't quite settled
15 on what you're stance is, I think trying to figure
16 it out is okay. And figuring out what works best.
17 I know that now that things are more in-person, the
18 preference is always in-person, but to allow remote
19 participation.

20 You know, as we've learned through the
21 pandemic that things tend to get a little more
22 participation when you have those remote options to
23 people from the other parts of the state who cannot.
24 Or especially with inflation and with the gas
25 prices, they go up, they go down, who knows, the

1 constraints on people's personal finances make it
2 difficult to travel, whereas getting either -- and
3 even with Zoom, you can participate by phone if you
4 don't have, say that internet connection as well.

5 So I think it's okay for the committee to
6 be figuring it out as we go so considering the
7 options, I think it's all right to do that. We do
8 now have a new attorney general. There's been no
9 official provision or change to what we have had in
10 the past. That is what the office's position has
11 been. I've been informed from our attorney general
12 that things should go as they have been until we
13 have been informed of any changes.

14 CHAIRWOMAN DENISH: All right. So is
15 there a consensus? Could we meet on the 19th?

16 MR. RYCRAFT: Are you talking about Santa
17 Fe though?

18 CHAIRWOMAN DENISH: Yes. Meeting in Santa
19 Fe beginning of the session. We'll invite the
20 current superintendent and the future interim
21 superintendent.

22 MR. RYCRAFT: Okay.

23 MS. FORD: In the afternoon just so that
24 people have time to travel?

25 CHAIRWOMAN DENISH: 1 o'clock.

1 And I think Allegra is right, as long we
2 have our quoram, this will be a pretty
3 straightforward limited agenda meeting. And then
4 just to put in your mind since we'll be thinking
5 about going forward, and the more important
6 meetings, we're going to be as we call through
7 applications, narrow down interviews, that's when
8 we're really going to want everybody to participate
9 as much as they can.

10 So does that work?

11 SUPERINTENDENT TOAL: It works for us. It
12 means your agenda is going to have to be posted by
13 Friday the 13th.

14 CHAIRWOMAN DENISH: A week.

15 SUPERINTENDENT TOAL: Because it has to be
16 72 hours ahead of time since that Monday is a
17 holiday.

18 CHAIRWOMAN DENISH: Right. We have a
19 whole week to post the agenda.

20 MS. CARPENTER: This is so
21 straightforward.

22 CHAIRWOMAN DENISH: Yeah.

23 Don't anybody offer up any other agenda
24 items.

25 SUPERINTENDENT TOAL: We'll send you our

1 draft for everybody to look at.

2 CHAIRWOMAN DENISH: Okay. All right.

3 Are there other items related to this that
4 we -- I'll get in touch with Patti to round out that
5 committee, and then you all can set your Zoom
6 schedules or whatever to review the documents and
7 make any changes.

8 MS. FORD: Madam Chair, is the intent for
9 the subcommittee to also propose a timeline or is
10 that something we're going to do?

11 CHAIRWOMAN DENISH: I would certainly
12 welcome that, but I think I'll work on that some
13 with the interim superintendent, just thinking about
14 what's realistic. I'm not sure.

15 Last time, how much time did people have
16 to apply? Do you remember?

17 SUPERINTENDENT TOAL: It was too short.

18 MS. CARPENTER: Yeah, it was too short.

19 MR. YURCIC: We were in a crunch.

20 MS. CARPENTER: We were in a crunch
21 because it was taking so long to get a Chair.

22 CHAIRWOMAN DENISH: Yeah, you were just
23 like getting the Speaker of the House, right?
24 Deadlocked.

25 MS. CARPENTER: That was the thing so we

1 need more time.

2 CHAIRWOMAN DENISH: You know, I need some
3 advice on that. What is a realistic time frame,
4 three weeks, a month, 30 days from the time we post?

5 MR. YURCIC: What are the requirements for
6 posting? Does it need to be for a specific amount
7 of time?

8 CHAIRWOMAN DENISH: Right.

9 MR. YURCIC: And that way we can conform
10 to the rules and guidelines as well.

11 CHAIRWOMAN DENISH: Yeah.

12 MS. CARPENTER: We'll have to look to the
13 AG's office.

14 MS. JOE: Right now in the statute, it
15 says you have the ability to select and, you know,
16 cast the net out. But there's no specific time
17 requirement.

18 CHAIRWOMAN DENISH: Yeah.

19 MS. JOE: So it's what you deem is the
20 appropriate amount of time that you need to cast the
21 net wide enough to be able to review all of that,
22 and then have your interview process. And that's
23 what the committee would like to do as it considers
24 the applicants.

25 I know the last time we had a written

1 exchange with the candidates and had them speak
2 briefly.

3 CHAIRWOMAN DENISH: Right. And last time
4 the applications went to ...

5 SUPERINTENDENT TOAL: Melissa.

6 CHAIRWOMAN DENISH: Right.

7 SUPERINTENDENT TOAL: Yeah. They will go
8 to the general.

9 CHAIRWOMAN DENISH: Okay.

10 SUPERINTENDENT TOAL: Last time --

11 CHAIRWOMAN DENISH: I mean 30 days sounds
12 reasonable to me for it to be circulated and people
13 apply.

14 SUPERINTENDENT TOAL: Then you got to
15 review the application.

16 CHAIRWOMAN DENISH: Yes. Then we have to
17 review them.

18 SUPERINTENDENT TOAL: So the big question
19 is when you tell people to apply, what do they do?
20 Do they just submit a resume or do you want them to
21 answer a specific set of questions?

22 I think that's the first and most
23 important decision you have to make.

24 MS. CARPENTER: We need to go back and
25 look at what we did because we didn't a

1 questionnaire?

2 SUPERINTENDENT TOAL: There was.

3 MR. YURCIC: Yes.

4 MS. CARPENTER: Because that was part of
5 this too.

6 CHAIRWOMAN DENISH: Yeah.

7 MS. CARPENTER: So that should be a third
8 thing that the subcommittee reviews.

9 CHAIRWOMAN DENISH: Yeah.

10 MR. YURCIC: We just need to dust all that
11 stuff off.

12 SUPERINTENDENT TOAL: All right. And then
13 you had an all-day session on a Saturday to
14 interview all the candidates.

15 MR. RYCRAFT: All of them or just the --

16 SUPERINTENDENT TOAL: We heard from
17 everyone.

18 CHAIRWOMAN DENISH: We certainly did.

19 MR. ROMERO: You had the benefit of going
20 last.

21 SUPERINTENDENT TOAL: That's right.

22 CHAIRWOMAN DENISH: So I think the
23 subcommittee, review the job description, number
24 one. Think about the broad net that we're going to
25 cast. And three, I don't know if it's a little

1 premature to craft the list of questions before we
2 send out the application. We can do that in the
3 process, I think.

4 SUPERINTENDENT TOAL: Well, unless you
5 want to tell every applicant, as you did last time,
6 that you have to fill out that questionnaire.

7 CHAIRWOMAN DENISH: Right.

8 MS. CARPENTER: It was integrated, I
9 believe. I haven't reviewed it but I think the
10 advert that we had was like a link to fill this out.
11 But they may have been in part because we were in
12 such a rush.

13 MR. RYCRAFT: I have a question. If you
14 interview everybody, you're going to have a big --

15 CHAIRWOMAN DENISH: We're not going to
16 interview everybody.

17 MR. RYCRAFT: So this will be part of the
18 screening process?

19 CHAIRWOMAN DENISH: Yeah.

20 MR. RYCRAFT: Because before it wasn't so
21 why have it?

22 CHAIRWOMAN DENISH: Yeah. What I was
23 thinking was, the people who had answered a
24 questionnaire would be the people after we had
25 combed through the first set of applications. You

1 know, I think in the application process, we should
2 say, "There will be a finalist for the position or
3 those being interviewed."

4 SUPERINTENDENT TOAL: Will be invited ...

5 CHAIRWOMAN DENISH: "Will be asked to fill
6 out additional questionnaires."

7 MS. CARPENTER: So how are we going to
8 find out what the finalist are? We're going to
9 meeting an interim meeting?

10 CHAIRWOMAN DENISH: Yeah.

11 MS. CARPENTER: So we should do the
12 questionnaire.

13 CHAIRWOMAN DENISH: And we're going --

14 MR. YURCIC: I know it was really helpful
15 in the interview process.

16 CHAIRWOMAN DENISH: We'll go through the
17 initial processes of background screening and we'll
18 ask HR probably to do that.

19 Now does that happen in HR or it's both?

20 SUPERINTENDENT TOAL: We can do it in HR.

21 CHAIRWOMAN DENISH: Yeah. You know,
22 security backgrounds before we ever come up with
23 that list.

24 MR. RYCRAFT: Do you have a selection
25 criteria anywhere that you created before?

1 CHAIRWOMAN DENISH: Right.

2 MS. CARPENTER: One of the things the last
3 time was this question about New Mexico residency.

4 CHAIRWOMAN DENISH: Yeah.

5 MS. CARPENTER: I mean that was clearly a
6 black and white one that's no longer an issue, but
7 there was other criteria that you know I --

8 MR. RYCRAFT: I guess some of it's
9 subjected and someone's going to be objective, you
10 know.

11 MS. CARPENTER: I can't remember what they
12 are now.

13 CHAIRWOMAN DENISH: I have no idea.

14 MR. RYCRAFT: Why not?

15 CHAIRWOMAN DENISH: I can't even remember
16 the process last time.

17 MR. ROMERO: We sent the questionnaire
18 with the application that they had to do. I think
19 it's very useful for two reasons: One, it gives us
20 a chance to do the initial calling and gives us more
21 information directly from the potential candidate.

22 And the other thing is it will eliminate
23 some people who don't feel like they want to be
24 forthcoming rather than them applying and then
25 deciding.

1 CHAIRWOMAN DENISH: So what you're
2 suggesting is do it in the initial application?

3 MR. ROMERO: I think that's better.

4 CHAIRWOMAN DENISH: I think that we should
5 just leave the door open to additional questions.

6 MR. ROMERO: Yeah.

7 MS. JOE: Yes.

8 CHAIRWOMAN DENISH: "A finalist for
9 interviews may be subject to additional questions."
10 Something like that.

11 MR. ROMERO: Yeah.

12 CHAIRWOMAN DENISH: I think that's a good
13 idea.

14 So does the subcommittee agree to work on
15 some of those questions that we want to put out
16 without, you know, the kind of the general kinds of
17 things that we want to know from them about their
18 experience and their background?

19 MR. YURCIC: And their philosophy of what
20 they want to do.

21 CHAIRWOMAN DENISH: Yeah.

22 MS. CARPENTER: I like it too because it
23 shows a level of commitment to the process. Because
24 you don't want people throwing their name in without
25 really being thoughtful.

1 CHAIRWOMAN DENISH: Yeah.

2 SUPERINTENDENT TOAL: Like a guy in
3 California who -- do remember him?

4 CHAIRWOMAN DENISH: Yeah.

5 MR. YURCIC: Who came in and he said he
6 was unemployed and he thought maybe the insurance
7 committee --

8 MS. CARPENTER: Yeah, it would be a fun
9 job. Yes.

10 SUPERINTENDENT TOAL: It would be
11 interesting and fun job.

12 CHAIRWOMAN DENISH: Or the people that had
13 a bone to pick with the department.

14 SUPERINTENDENT TOAL: Oh my God. We hear
15 from him regularly. Every time we do a set of
16 rules, he submits lengthy comments. Sometimes
17 they're very helpful.

18 CHAIRWOMAN DENISH: Yeah.

19 MR. RYCRAFT: He needs a job.

20 SUPERINTENDENT TOAL: Yeah, I don't know
21 why.

22 CHAIRWOMAN DENISH: Okay. Do you feel
23 like there's enough clarity?

24 MS. CARPENTER: I do.

25 MR. YURCIC: Yeah, we can go work through

1 this.

2 MS. FORD: Where are the former questions?
3 Because those were --

4 MS. CARPENTER: I have it somewhere.

5 MS. FORD: That will be great to have
6 that.

7 CHAIRWOMAN DENISH: I don't know where
8 those questions are.

9 SUPERINTENDENT TOAL: Well, they should be
10 in Melissa's file.

11 MS. TSCHANTZ: I think I've seen them.

12 CHAIRWOMAN DENISH: Okay.

13 MS. FORD: Madam Chair, an additional
14 questions or an invitation to the committee. If you
15 just to send a feedback so we can start that process
16 right now instead of, you know.

17 CHAIRWOMAN DENISH: Right.

18 MS. FORD: People have things they want in
19 the job description.

20 CHAIRWOMAN DENISH: Okay.

21 MS. FORD: And I guess we don't know who
22 to send that to.

23 MR. YURCIC: At this point.

24 CHAIRWOMAN DENISH: Send them to Jennifer
25 and she will be in communication with me. And so

1 I'd like you to chair this subcommittee.

2 MS. FORD: Okay.

3 CHAIRWOMAN DENISH: So you can keep it
4 going.

5 MS. FORD: Okay. Scott, will you be my
6 co-chair?

7 SUPERINTENDENT TOAL: Jennifer is the one,
8 if you have the reimbursement form, you get it to
9 her. It's in the back of your folder.

10 MS. ROMERO: I also sent it
11 electronically.

12 SUPERINTENDENT TOAL: Okay.

13 CHAIRWOMAN DENISH: Any other questions.

14 MS. ROMERO: I have a quick question. Are
15 we approving it for it to be a hybrid meeting? So I
16 can set up for it.

17 CHAIRWOMAN DENISH: What's the preference
18 of the committee?

19 MR. YURCIC: Yes.

20 CHAIRWOMAN DENISH: And, you know, like
21 Allegra says, it's going to be pretty
22 straightforward. If you can't be there, the
23 important thing is to have a quorum to approve the
24 process, and to approve the subcommittee
25 recommendations.

1 But if you can set it up, we will meet at
2 the old, what is it? Right across from the Round
3 House.

4 SUPERINTENDENT TOAL: On the fourth floor.

5 CHAIRWOMAN DENISH: Can we say 1 pm?
6 Okay.

7 MR. RYCRAFT: You don't need to be
8 in-person.

9 MS. JOE: Chair, is that for the public
10 also to appear remotely our just the --

11 CHAIRWOMAN DENISH: I think that's just
12 for our committee to appear, but we will still be on
13 to have a public comment section.

14 MS. JOE: And I understand. It is open to
15 the public, of course. And I wanted to see if that
16 option is yet available.

17 CHAIRWOMAN DENISH: Right. So that we can
18 have interactive --

19 MS. CARPENTER: I think it's great to do
20 it this way too so we can sort of practice with
21 that.

22 CHAIRWOMAN DENISH: Yeah.

23 Well, that concludes this portion of the
24 meeting.

25 Is there any public comment today from our

1 public over there?

2 MR. MOORE: No, Madam Chair.

3 CHAIRWOMAN DENISH: We've talked about
4 future meetings and location.

5 Anything else, Mr. Superintendent?

6 SUPERINTENDENT TOAL: No.

7 CHAIRWOMAN DENISH: We'll be looking
8 forward to seeing you on the 19th.

9 SUPERINTENDENT TOAL: I hope I'll be the
10 one with the big smile.

11 MS. CARPENTER: Madam chair, I move the
12 meeting be adjourned.

13 CHAIRWOMAN DENISH: There's no objection.
14 The meeting is adjourn. Thank you all.

15 SUPERINTENDENT TOAL: Thank you, very
16 much.

17 (Meeting adjourned at 11:39 a.m.)
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