

**MINUTES OF THE MAY 15, 2014 OPEN MEETING
(EIGHT MEETING)
OF THE INSURANCE NOMINATING COMMITTEE**

CALL TO ORDER

A regular meeting of the Insurance Nominating Committee was called to order on the above date at approximately 9:31 a.m. by Mr. Chris Krahling, Chair, at the State Capitol building, Room 321, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present

Chris Krahling, Chair
Norm Becker
Bill Kinyon
Gabriel Parra [arriving later]
Jason Marks
Kevin Martinez
Babette Saenz
Scott Yurcic

Members Absent

Zach Cook

Staff Present

David Barton, Office of the Superintendent
John Franchini, Superintendent of Insurance

Guests Present

A guest list is attached in the original minutes of this meeting.

Chairman Krahling welcomed those in attendance to the meeting. He asked everyone attending to introduce themselves to the Committee. Following their introduction, Superintendent Franchini introduced staff members from the Office of the Superintendent.

Approval of the Agenda

Upon motion made by Mr. Marks and seconded by Ms. Saenz, the agenda was approved as published by unanimous voice vote.

Approval of Minutes of the January 9, 2014 Meeting

Upon motion made by Mr. Becker and seconded by Mr. Kinyon, the minutes of January 9, 2014 were approved as presented by unanimous voice vote.

Chairman Krahling reminded the Committee that when they nominated Mr. Franchini almost a year ago to be the Superintendent of Insurance that this committee would meet quarterly to get things off on the right start and to meet their statutory responsibility in the transition from the PRC to the Office of the Superintendent went smoothly. So if they met in August, it would complete the first year's cycle of quarterly meetings. He asked the members to think about what this committee's role should be going forward; what they should be doing; what their authority was; and how they saw themselves as a committee beyond the first year. At the end of the meeting he would come back to that and discuss it together to get a clear agreement on their future direction.

Committee Staff Transition from the Legislative Council Service to the Office of the Superintendent

- **John Yaeger – Legislative Council Service**
- **David Barton – Office of the Superintendent**

Mr. Yaeger felt the transition went smoothly, including the web transfer. All documents and pertinent things were transferred from the Legislative Council Service to the Office of the Superintendent. The tricky part would be the upcoming appointment of the next Superintendent in about a year and a half according to the requirements.

Mr. Barton introduced law clerk Ana Kippenbrock who previously worked at the PRC and applauded her skills and accomplishments in the transition. He also briefly described the transition of assets and website from the PRC.

Mr. Kinyon asked if the Committee was doing anything with this transition. Mr. Barton replied that the transition was done in a transparent way and would continue that way.

Mr. Becker asked about document confidentiality. Mr. Barton said they were fully sensitive to the need for maintaining confidentiality. Mr. Yaeger added that during the application process, the background checks were funneled through the Attorney General to keep that sensitive information confidential. Mr. Barton agreed and did not anticipate any issues with that.

Mr. Parra asked if they would keep meeting in the Capitol Building meeting room.

Mr. Yeager said they had been meeting in this room and could continue since they didn't meet often. They would try to meet in a comfortable sized room.

Mr. Barton explained that per diem would be provided by the Office of the Superintendent and the OSI forms needed to be completed for payment.

Chairman Krahling thanked John Yeager for all of his work supporting the committee and assuring that the nominating process was completed in an objective and transparent manner, in accomplishing the transition of staff support from the Legislative Council Service to the Office of the Superintendent and for his overall dedication to the work of the Superintendent.

Update of Personnel Issues Including Number of Authorized Positions, Positions Filled, Unfilled Positions Still Requiring Reclassification, Posting to Hire times, and Hard to Fill Positions

- **John Franchini, Superintendent of Insurance**

Chairman Krahling pointed out that in the minutes the Committee just approved, Ms. Jolene Gonzales reported that 96 positions were authorized and 70 of them were filled. She felt the unfilled positions needed reclassification and in response from a question from Mr. Marks, she said she hoped to have 83 positions filled before the Committee next met. He invited Superintendent Franchini to provide the latest report.

Mr. Franchini first introduced new Senior Actuary, Mr. Terry Seaton, and shared his background. He related that the OSI had 20 LTC rate requests that couldn't be processed for lack of an actuary to review them. Mr. Seaton took care of them in about two weeks. Long Term Care was a risky thing for consumers to consider and He provided a good review of them. Mr. Franchini was grateful for his quick action on them.

He next introduced Evelyn Padilla, action Bureau Chief of Property and Casualty who replaced a person who retired.

Mr. Franchini said they were still working on revising the job classifications for the Department and briefly described some of them. They needed reclassification in order to provide the higher salaries and had to accomplish it by July 1. He anticipated it would all get done and he would be able to hire people with greater skills that could do the work that needed to get done. He clarified that several of the reclassifications were still in process.

Mr. Marks had questions on LTC rate issues. He posed a question regarding a particular block of policies that were not being sustained because of inadequate rates and what would be done about it.

Mr. Franchini responded that they would find alternative ways to settle the problem. After a brief discussion, Mr. Franchini said the Actuary helped to make sure that rates were sustainable. He did not anticipate significant increases in the near future. He agreed that insurance companies had to be very careful with

the way they handled finances. He explained that currently in the Exchange, there were over a hundred different policies and he was managing the workload for that with the same number of staff.

Mr. Marks commented on the propensity to have too many exempt positions and should have more classified positions in the government. He felt deputy chiefs should be classified and thought Ms. Gonzales would have been chosen in competitive recruitment for her position as a classified position. He understood the circumstances of needing to get staffing done quickly and that it was not set in pace. He believed Mr. Franchini was doing well in his position as Superintendent.

Mr. Franchini responded that he understood and agreed it had to be done quickly at the beginning.

Update of 2014 Initiatives per 2013 Annual Report, Other Plans for the Year and Any Areas of Concern

- **John Franchini, Superintendent of Insurance**

Chair Krahling recalled there were three initiatives that Mr. Franchini was going to pursue in 2014.

Mr. Franchini agreed. They were to have a better organizational structure to respond better to consumer complaints and concerns; improve the one-stop shop for agents; and upgrade information technology. They accomplished the first one for better organizational structure and it was reflected in the budget for 2015.

The second initiative was to improve the one-stop shop for agents and that was accomplished in April by signing a contract to use the SPS system. He decided to use the system as it was the NAIC design and would make our state compatible with their services including licensing for agents and from a professional point of view, put the state in league with other states in that regard.

For the third initiative, to upgrade the information technology was in process. He was working with DoIT to use the new IT system. So two were accomplished and one was in process.

Chairman Krahling asked Mr. Marks about the new SPS system and if he endorsed it.

Mr. Marks agreed. It was a good system. The majority of the regulatory database while at PRC was called Ideal. It was created by a local developer in the 1990's but it had a unique function among the 50 states, it required a lot of technical support and was incompatible with the other states. The national system was updated regularly and interactive with other states.

Mr. Franchini said 43 states now used the SPS system.

Chairman Krahling recalled when Ms. Gonzales was going through the organizational chart in the January meeting. Mr. Marks raised concerns about the independence of General Counsel when dealing with a fraud case that perhaps inadequate firewalls were in place to ensure the Department would not get in trouble in the prosecution of such cases.

Chairman Krahling shared the activity he had undertaken in working for a clear way to accomplish the task. After his investigation, he believed the current structure was the best that could be done. He was invited to attend the fraud Investigation Task Force meetings.

Mr. Franchini reminded the Committee that they didn't have a director of the Fraud Bureau at the present time. They would find a qualified person for that position and then work on the system to determine what changes might need to be made. It should be filled within 30 days. Any changes in structure should await that hiring.

Mr. Parra didn't feel the need to go further if others were comfortable with it.

Mr. Martínez asked someone to describe the specific circumstances.

Mr. Parra felt it would be best to do that at the next meeting.

Mr. Marks said it wasn't so much that Mr. Franchini would be influenced but that Mr. Barton might be. He pointed out that it might be possible for one bureau to be pursuing a civil case with an agent while another bureau could be pursuing a criminal case and they both would report to Mr. Barton. It could create an objection to the attorney involved in the case.

Mr. Martínez said he was not entirely sure how the conflict existed.

Mr. Barton explained that the attorney involved in the civil case did not report to him and that was kept separate. The Fraud Bureau was separate in its investigation and prosecution. The persons involved in the civil case did not ever get involved in the criminal case.

Mr. Marks was satisfied.

Mr. Martínez appreciated the explanation.

Mr. Becker pointed out that the Committee was actually charged to evaluate the performance of the Superintendent and decide if they needed to replace a superintendent. The Committee should be careful not to expand to be a full-fledged board or to jump into the superintendent's business.

Mr. Kinyon asked in line with that what members should do if approached by the press for comment and whether they would talk or not talk. He didn't see anything wrong with making a statement to the press as a personal opinion and not speaking on behalf of the Committee.

2014 Legislative Report Including Approved Budget for Fiscal Year 2015

- **John Franchini, Superintendent of Insurance**

Mr. Franchini referred to Exhibit A - the report update on positions and budget as of May 13, 2014. He was pleased with their status and optimistic about their future financially. He was also pleased with the appropriation of \$16.5 million for patient compensation.

He referred to Exhibit B, Revenue Processed and reviewed it with the Committee. He noted they processed \$7.6 million more this year than last. He provided the distribution of the revenue received.

Chairman Krahling gave kudos to the Superintendent for getting a 256 page bill passed in the legislature that was instrumental for the state's accreditation with NAIC in Senate Bill 56. He and his staff deserved credit for that accomplishment.

Mr. Franchini gave thanks for the work of his staff who worked hard to get it passed by the Senate Judiciary Committee. He reported that they had 11 pieces of legislation that were approved by the legislature and now they needed work on the implementation of them.

Chairman Krahling said a lot of recognition needed to go to Mr. Barton for the model acts that were built into the legislation and put New Mexico in compliance with NAIC and addressing the problems that arose in the effort.

Review and Update of the Federally Supported Health Insurance Programs and the Affordable Care Act, Status of the New Mexico Health Insurance Exchange and Other Related Health Insurance Issues Including Recent Rate Filings

- **John Franchini, Superintendent of Insurance**

Mr. Franchini reported on his visit with the President on health care and shared some of the topics they covered. Each of the eight were elected to speak on a particular issue. He referred to his report in the packet. The President gave them extra time and listened carefully to the things that needed to be done for the Affordable Care Act. The President reminded them of the 5% increase approved

by OMB which was a concern for him in light of possible greater inflation in the economy. He really wanted the group to continue to work for improvement of the ACA.

Mr. Franchini also met with the Health Insurance Exchange Committee and it appeared they would not have large rate increases. Now that they had an actuary on board, they would do it fairly and prudently. They put 150,000 people into the exchange. The Committee was doing a good job and would meet tomorrow. They were becoming really professional with outreach. He referred to the Cap reports grant chart in Exhibit C. He announced they would hire another staff person to deal with the rush that would occur in December. He was happy that their department was changing radically. Soon they would be responsible for federal money coming through the exchange. They would have \$7 million to handle the exchanges and would hire two junior actuaries to help.

Mr. Franchini shared a document on the Health Insurance consumer Advisory Group [Exhibit D] that met the day before. Their mission was to provide advice to the Office of the Superintendent of Insurance on making the private health insurance market better meet the needs of consumers. They were excited about their work and would be a good team for his Office.

Ms. Saenz asked where they were going with the 2016 benefits.

Mr. Franchini said they really needed to understand how to use what they had now and not to consider new benefits until they had determined how these would work.

Mr. Yurcic asked how they were going to determine what the rates would be.

Mr. Franchini said they were working on the actuarial considerations to make sure the rates were appropriate. The Exchange did not have that now. With an Actuary on board now, they would be able to work through it. Everyone was now trying to cut their costs. With the competition through the Exchange, he didn't see a big increase in rates.

Mr. Kinyon asked about the pre-existing conditions issue.

Mr. Franchini said they would need to be in the Exchange. A large percentage had pre-existing conditions. Also the legislature agreed that the state needed to focus on those who were 65 and older. There was a lot of acrimony and misinformation being given out. The Department needed to be ready for that.

Mr. Parra asked what they should be concerned or worried about now.

Mr. Franchini said what he was most worried about was getting the vacant positions filled.

Mr. Marks felt they should be proud of how well New Mexico was represented and the great job Superintendent Franchini was doing.

Mr. Franchini said they were working hard on ACA and would be prepared to handle any problems arising. They were working on new rate classifications for the oil and gas industry in all of the oil producing states. Their classifications were inadequate and all the states were using the same classifications. They would report where it went next.

Public Comment

Ms. Lydia Pendley, Health action New Mexico, thanked the Committee for listening to consumer advocates and their assistance and help for those who were frustrated during enrollment and for forming the new Health Insurance Exchange Advisory Committee.

Time and Place of Next Meeting

Chairman Krahling asked where the Committee should go from here.

Mr. Marks thought they should meet twice a year. They didn't need to meet in August. At the time of rehiring they would need to have reports from the Superintendent and others in the Department.

The other members of the Committee agreed with that suggestion.

Chairman Krahling thought they needed to make decisions about legislation in the next session. Mr. Yaeger came up with five issues.

Mr. Franchini said they should review the annual report of his office that is due in December. And in a little over a year from now, the group would be involved in the process of hiring a new Superintendent.

Mr. Parra said they should have discussion on the open enrollment of the insurance exchange.

Chairman Krahling said they talked about forming a legislative sub-committee. He said he would appoint Jason Marks as Chair and appointed Babette Saenz and Gabe Parra. Mr. Yaeger would send the bills to the sub-committee.

After a brief discussion, the Committee set the next meeting on October 23, 2014 at 9:30 a.m. At the meeting they would address the upcoming legislation

and talk about the selection process.

Adjournment

Having completed the agenda and with no further business to come before the Committee, the meeting was adjourned at 11:45 a.m.