

INSURANCE NOMINATING COMMITTEE
MEETING AGENDA
THURSDAY, APRIL 20, 2017
1:00 P.M.

State Capitol Building, Room 321
409 Old Santa Fe Trail, Santa Fe, New Mexico

1. CALL TO ORDER – Thomas Taylor, Vice-Chairman

A regular meeting of the Insurance Nominating Committee was called to order on the above date at approximately 1:00 p.m. by Mr. Thomas Taylor, Vice Chairman, at the State Capitol Building, Room 321, Santa Fe, New Mexico.

Introductions indicated the presence of a quorum as follows:

Members Present

Thomas Taylor, Vice-Chairman
Tim Jennings
Bill Kinyon
Michael Hawkes
Scott Yurcic
Angela Romero

Members Absent

Zach Cook
Lisa Farrell Luján

Staff Liaison Present

Vicente Vargas, General Counsel, Office of the Superintendent

Others Present

John G. Franchini, Superintendent of Insurance
Melissa Martinez, General Counsel's Law Clerk
Patricia Warwick, Office of the Superintendent
John Grubescic from the Atty. Gen.'s office
Robert Doucette, Deputy Superintendent of Insurance

A. INTRODUCTION OF COMMITTEE MEMBERS AND STAFF

Members of the OSI Staff introduced themselves.

Roberta Baca, Enforcement Division Bureau Chief
Devon Chapman, Fraud prosecutor
Mark Marquez, Civil Division Chief

B. INTRODUCTION OF ATTENDEES

Others in attendance introduced themselves.

C. APPROVAL OF AGENDA

Member Kinyon moved to approve the agenda as published. Member Romero seconded the motion and it passed by unanimous voice vote.

D. APPROVAL OF MINUTES

- **March 10, 2016**

Member Jennings moved to approve the minutes of March 10, 2016 as presented. Member Kinyon seconded the motion and it passed by unanimous voice vote.

2. COMMITTEE CHAIRMAN: Vice-Chairman Thomas Taylor

A. Resignation of Chairman Roger H. Buelow

The letter of resignation is attached as Exhibit 1 to the minutes.

Member Romero moved to accept Chairman Buelow's resignation. Member Jennings seconded the motion, which passed by unanimous voice vote.

Member Hawkes suggested sending a letter to thank Chairman Buelow for his service.

B. Process to Elect a New Chairperson

Vice-Chair Taylor suggested looking at the requirements and advertising the position. Candidates could be asked to submit complete resumes and outline their qualifications and reason for interest and the Committee could select from those. The Committee should think about how to conduct the interviews since the law does not provide opportunity for confidential interviews.

Member Yurcic agreed. The Board should discuss where to post the position for public record, and recognize their due diligence in the process.

Vice-Chair Taylor noted the requirement of the position is narrow and requires the chairman to be a former superintendent of insurance or have equivalent experience. He thought it important for the Committee to have a relationship with the superintendent and be in a position to advise and oversee them.

He inquired about publications used to fill the last position and was told they used the New Mexican and the OSI website.

Vice-Chair Taylor suggested the Committee plan to meet in the fall to allow time for applications.

Ms. Martínez said she would receive the applications and forward those to the members.

Member Jennings said other than the newspaper, the earliest they could get into publications would be May or June.

He said there was testimony during the legislature about proposals that would do away with the high-risk pool. That would cause the rest of the market in New Mexico to cave and possibly price everyone out of existence. He said it

behooved the Committee not to have vacancies because of the possible turmoil between Congress and the Committee.

Member Jennings was also concerned about adding hospitals to the Physicians Insurance Fund because of their losses and there was not enough money. He said there should be a full Committee to support Mr. Franchini.

Ms. Martínez noted the deadlines for advertising would be for the newspapers and the end of July would be the earliest date to review applications. They could post the position to the OSI website and to member Kinyon's website and put in the newspapers.

Member Hawkes said the pool of qualified applicants is narrow and if they have no candidates the Board would be hurried. They should set deadlines and parameters and plan to meet to make a selection by the end of August or first of September.

Member Romero added that last time they did not have any applications and had to call people.

Vice-Chair Taylor said it is not an easy set of requirements and they should aim for July 3 as a deadline for the receipt of applications.

The members discussed the process.

Member Yurcic pointed out to schedule interviews for both the Committee and the applicants could take until the third week of July.

Vice-Chair Taylor entertained the motion for a tentative date of Thursday, July 20, 2017 at 9:30 AM. to start the application process

Member Jennings moved to approve to start the application process with a deadline of July 3, 2017 for the receipt of applications and a tentative Board meeting on July 20th at 9:30 a.m.

Members discussed the advertising and publications. Ms. Martínez noted that advertising is normally 10 days or 2 weeks and the position will be posted in the Albuquerque Journal, Santa Fe New Mexican, in Las Cruces, Farmington, etc.

Member Hawkes seconded the motion and the motion passed by consent.

3. AUDIT INFORMATION: Superintendent of Insurance, John G. Franchini

A. 2016 Audit Report

Supt. Franchini said they are excited about where they are going and what they have done. His presentation is summarized as follows:

- They are excited about the audit process with the State Auditor's office. The office had had seven findings last year, which were similar to the previous year. When they moved from the PRC they had no COO, CFO or HR person or a financial section and those have been created.
- Last year they paid \$40,000 for an in-depth audit and there were 31 findings. He used those as a roadmap to make their agency independent and modern and now they have all the checks and balances of a financial organization.
- There are 7 responses that have not been finalized, but they are on track and will take a lot of work because they are structural. The other seven responses have to do with other state agencies where both agency and OSI need to change the structure of their financial agreements. The State Treasurer has 5 of the findings and the process requires a change in the way OSI gives money to the State Treasurer as well as the manner in which the Treasurer handles the money received from OSI. There are also two findings with the AG that need to be corrected.
- This has provided tools to be a stand-alone agency and OSI is considering this process with other departments, but the problem is funding.
- The status of all the responses will be provided by the next meeting. A few will take more than a year to fix, but will make the agency more responsive and efficient and will ensure the protection of cash flow and that there are checks

and balances.

Supt. Franchini listed the fees that are in addition to the premium tax.

Last year, \$332.7 million was collected from statutes and, depending on where they come from, must go into certain funds. The majority of funds go into the General Fund, but about \$100 million goes into funds like the Fire Marshal's Fund, the Volunteer Fire Department Fund, the Law and Order Fund, etc. that were set up by statute.

The taxes, fees and premium collections in FY 12 were \$227 million; dropped to \$207 million in 2013; back up to \$222 million in 2014; \$297million in 2015 and \$332 million in 2016, because of insurance and healthcare cost increases. More people were insured (56,000 were added) and 200,000 people were added to Medicaid.

Member Jennings said with all that happened from the audit, it seemed the Public Information Officer would be a needed improvement. The Superintendent's office should have the ability to communicate with the public.

Supt. Franchini agreed. He said if things were as bad as they sounded they would not have collected \$332.5 million dollars last year, which was the second largest premium tax collection in the state.

Member Hawkes asked if the \$332 million increase was a result of picking up what had been lacking from the previous two years.

Supt. Franchini said people were not paying their taxes and once they learned there was no statute of limitations for uncollected taxes they paid. The end product was an increase of over \$100 million in premium tax collection in two years.

Member Hawkes asked what detractors stop the Superintendent from completing the remaining seven responses.

Supt. Franchini said they are not detractors, but legal things concerning the AG's office. They need to open up the relationship and do that contractually this year. There are also five findings with the Treasurer's Office on how they

contract, bring in, and reserve funds being worked on.

Appropriations were requested in 2013 on the premium tax audit review (page 6) when he saw the premium tax decreasing and the request was updated in 2014 to include a legal review. The premium taxes were being collected incorrectly and the tax collection law was like Swiss cheese. Lobbyists were getting the law changed with exceptions and accommodations.

There are now four agencies, the LFC, DFA, the State Auditor and OSI working together on the new audit for premium taxes. There are three companies that do that type of audit and a bid has been accepted and the process will begin in two weeks and should be completed by September 30, 2017.

The audit will improve methodology for recalculating the premium tax liability and should be simplified and transparent. Variables will be cleaned up and include source documentation and exceptions will be corrected or excepted and over/under payments will be identified.

Member Jennings thought the departments with see more money than before with insurance premiums going up and having to fund the departments 1/12 every year and now having to disperse the money when they get a percentage of funds.

Supt. Franchini thought the opposite would happen. The LFC is now giving the funds 1/12 at a time on July first and no one can buy equipment or build because funds are not available.

Member Yurcic asked if there would be a punitive trigger on the funds when taxes were paid late that were due to the agency.

Supt. Franchini said punitive amounts are due 30 days after the taxes are due and taxes are due every quarter. Last year they had \$1.2 million in fines and the previous year was only 624,000 dollars.

B. 2017 Audit Progress

There were no questions on the audit progress.

4. LEGISLATURE MATTERS: Vice-Chairman Thomas Taylor

A. 2017 Legislative Update: General Counsel Vicente Vargas

Mr. Vargas provided an update of the major legislation they participated in.

A summary of Mr. Vargas's update follows:

- 54 analyses were submitted to the legislature.
- A legislative taskforce met daily during the session to discuss the previous day's session requests and coordinate their legislative testimony, often as expert witnesses.
- OSI focused on 9 pieces of legislation; four were signed:

-SB 88 public insurance adjusters working independently that contract to represent an insured person in negotiation. Oversight was implemented by defining *public adjuster* and the role was clarified and continuing education was mandated.

- SB 220 theft protection warranties to regulate service contracts related to the repair of various vehicle parts. The required components of the service contract were expanded. A service contract provider is allowed to purchase a reimbursement insurance policy as an alternative to a security deposit with OSI.

- SB 367 insurance code changes to comply with NAIC. Stop loss insurance was removed from the list of health products as well as other code changes. They have to contribute to the immunization fund, but do not have to do the loss / ratio coverage. They no longer have to work with the AG's office when filing against late annual statements and conducting investigatory hearings. The hearings are confidential unless the person waives them.

- HB 2 to explore the possibility for premium tax collection and whether collaboration between the Superintendent Department and the Tax Revenue Department was appropriate to the collection to TRD. They would report back to the LFC and Department of Finance Administration. SB 376 is the companion bill that ensured the transfer would occur.

- Legislation that was vetoed after passage included:

-SB 105 – Own Risk Solvency Assessment (on the NAIC model) would allow OSI to keep NAIC Accreditation - basically consumer protection.

-SB 306 - Penalties for False Insurance Claims

-HB 402 - Air Ambulance reimbursement

-HB 313 - Surprise Billing Protection Act

-HB 269 - Auto Theft Taskforce

Mr. Vargas concluded his presentation and stood for questions.

Member Yurcic congratulated Mr. Vargas on the electronic funds transfer. He asked how they should report roofers, hail, etc. and how that would be enforced. That is a huge concern for southern New Mexico and the eastern side of the state because claims are filed by the roofing contractor instead of the insured.

Mr. Vargas said it is incumbent upon the agency to get the message out.

Vice-Chair Taylor asked if that meant a company would not accept a claim filed a contractor.

Mr. Vargas said not necessarily, but would be appropriate if the contractor was acting solely as the adjuster and licensed through OSI. The bill will include regulations and the adjusters will have to take exams, file and pay fees and be registered. Currently public adjusters do not have to be licensed in New Mexico.

B. Committee Participation in Legislative Process

Vice-Chair Taylor said when he was in the legislature he recognized it was best to have two insurance people involved - Carol Leavell and John Sapien. There are not a lot of advocates on the inside and things often get passed at the last minute.

He thought the Committee could be helpful to the Superintendent's office if they are briefed on legislation being supported and could help lobby, especially like 367 national codes. He thought it important that the Superintendent's office maintain their relationship with NAIC because things often get passed only because they happened to get to the item in the last couple of days.

Supt. Franchini agreed. The insurance risk assumption drives the economy and that entity has enough money to pay for the losses and claims. He said everything collapsed 10 years ago with mortgage-backed securities. AIG had two divisions buying and creating mortgage-backed securities and signing them to big investment firms. They were class A contracts for a long time and went to B's and C's and no one knew what they were doing. When the contracts were called, AIG needed \$600 billion and investment firms that had been around for 100 years collapsed in a day.

The NAIC stopped government entities that wanted to go after the surplus in the insurance policies. With the ORSA legislation they hope to know beforehand where and how money is being invested.

5. SUPERINTENDENT'S REPORT: Superintendent of Insurance John G. Franchini

Supt. Franchini said they have identified vital administrative positions: Deputy Superintendent, Chief Financial Officer, Chief Administrative Officer, Chief Procurement Manager, and Human Resources Manager.

-They are proud of what they have done with the Affordable Care Act. They received a multimillion dollar federal grant to implement the ACHA (the American Health Coverage Act) and established a new department in 2015 with six staff members. Without the team, they would not have been able to do the legislation for the Ambulance Bill and Balance Billing that will help to keep medical costs down.

-They have data driven analysis to address health policy issues. They monitored and addressed federal regulatory changes in the AHCA that take the place of Obama Care and are providing more health education and outreach.

-There have been great successes in health care and about 140,000 are insured under ACHA and 250,000 in Medicaid. Four companies in the individual market write insurance on the exchange and four are writing in the commercial market. The average monthly premium in New Mexico last year was \$317.64 compared to rates for the surrounding states: Arizona at \$317.24; Colorado at \$374.52; Texas, \$347.31.

-New Mexico's rates are good because they became a state managed exchange. New Mexico in 2013 nationally ranked as a state regulatory agency at 27 and in 2016 was 17th in the country. The ranking is based on the ability to respond to the public's needs; the ability to respond to the industry needs and the efficiency and cost-effectiveness of the regulatory process.

-There was a 13% increase in insurance licenses last year; 20% in renewals and 100% of producer applications in renewed processing was done in 10 days. The system is being converted to a state-based system to be even more efficient. The title insurance department has already reviewed and approved all the 110 title plants.

-The department is working with Representative Lujan to solve property disputes with the Pueblo Nations with the hope to avoid a crisis on title insurance and availability.

Member Jennings suggested hiring a retired insurance agent as PIO. There is a lot of information on health care and changes in billing and facilities, doctors, etc. in the plan.

Supt. Franchini replied that was not their job in the past, but they are getting people now because other regulatory bodies are not doing their job. Balanced billing is a good example where the cost in one place is \$3k but could be \$800 in another for the same thing if people knew the difference. Legislation is needed so everyone wins and everyone knows the rules.

He talked about issues with ambulances and the pharmaceuticals. He said there was nothing they could do because they lacked the staff and money.

Mr. Yurcic said his personal healthcare premium went up 54% which forced him back to the exchange for a better alternative. He thought if the

situation continued the public would become nomads going from company to company for the best deal in insurance.

He questioned the amount of people under Medicaid. A lot of the numbers were enhanced because of the definition of Medicaid and the federal funds helped to offset the number of people. Mr. Yurcic asked what they would do if the definition changed.

Supt. Franchini said that does not affect the industry directly, but affects the company and their services because they are dependent on a 90/10 split. From an economist viewpoint those people are now getting health care at a discounted cost, but if not in the system would be piecemeal at retail rates and the community would have to pay those expenses.

Vice-Chair Taylor introduced Robert Doucette to talk about the budget and Roberta Baca to talk about the Fraud Division.

Mr. Doucette passed out the agency budget through June 30 signed by the Governor. He provided a general overview.

-The FY17 budget over 2018 increased in total to cover the second half of the premium tax audit. The big difference is in personnel salary and benefits which will receive \$1.6 million less.

-The permanent FTE numbers will go to 84 and 11 for term in they will end up with about 100 FTEs; a difference of about 30 positions. No current employees would lose their job or be rifted, as these are vacancies.

- The PIO is one of the positions to be deleted and they will look at a contractor.

Member Yurcic asked what Mr. Doucette would do about that.

Mr. Doucette said the state is in a deficient. That will give him a chance to reorganize and find a way to do things better. He will have to prove in the budget when positions are needed and that gives him an opportunity to look at their operation. An example was the Division Director of Life and Health retired and he filled the position internally. He could not hire to fill the vacancy and that manager is doing two jobs.

There were six positions created a few years ago that have been inactive that will be eliminated. The biggest need is to fill the position for a CFO, which is in process and at DFA. There is a good opportunity to get good candidates because of the hiring freeze.

Vice- Chair Taylor introduced Roberta Baca, a former prosecutor who has worked with the Workers Comp Administration, the Chief Attorney handling Insurance fraud claims and now heads the Fraud Bureau. He asked her to share the changes made in the division.

Ms. Baca said 20 years ago when the legislation was introduced for the Interns Fraud Bureau she had the honor of working in the House of Representatives and the Chief Clerk's office. She now has the honor of serving as the Enforcement Division Director.

She oversees the Insurance Fraud Bureau and staff, the prosecutors, police officers, crime management analyst, paralegals and the Civil Commission Bureau Chief that oversees the Managed Healthcare Bureau and the Consumer Assistance Bureau and civil investigators.

Ms. Baca said even though working with half the staff, her staff has risen to the occasion and is doing more with less. The Consumer Division, Managed Healthcare and Civil Division helped consumers recoup at least \$7.3 million.

The Fraud Bureau in the last couple of years implemented an operational strategic plan, grew their workforce, diversified and has a presence in Santa Fe, Albuquerque and Las Cruces. Agents are cross-commissioned through Homeland Security and have federal commissions. They were the second in the nation to be an accredited law enforcement agency.

Eight cases and FY 2015 were being prosecuted and in FY 2016 she increased that to 18 cases and there are now 50 cases statewide. They work with the AG office in different districts to prosecute healthcare, auto, and securities fraud as well as fraudulent white-collar cases statewide. They have participated in several operations with the New Mexico law enforcement agencies and did a joint operation with a department in Arizona.

Member Jennings left the meeting at 3:05.

Albuquerque is the second in the nation for stolen cars. The Bureau hosted a national auto theft conference in 2016 that was attended by over 200 law enforcement officials across the state and nation. New Mexico and Bernalillo County is number two in the nation for auto thefts and poised to be number one this year. There is a one in six chance of being carjacked anywhere in the state on any given day and every minute and 41 seconds the car is stolen or burglarized.

Approximately 8,000 cars were lost out of the county and 15,000 out of the state last year and that benchmark has already been passed this year. Recovery of the cars is 37% to 40 percent. During International Balloon Fiesta, the Bureau started a Metro Area Auto Theft Task Force utilizing technology-based strategies to reduce vehicle theft. The idea was so popular they were asked to go to Red Rock Balloon Rally in Gallup.

The first two weeks of October swells to 2 to 3 million people into the county taking part in the festivities. Tourism and insurance losses were a half-million dollars just in balloon theft the year before, not including the equipment stolen out of cars. GPS trackers were put on the balloons and/or trucks in the Bernalillo County area and this year not one car was stolen except for the APD bait car.

Facebook and Twitter accounts will be started for the Insurance Fraud Bureau and partners like APD and the State Highway Department Helped put out signs. They and their law enforcement agency partners have executed numerous search warrants in many of the counties in New Mexico and property protected is estimated at over \$1.3 million.

The legislature unfortunately has removed \$1.2 million of funding from the Insurance Fraud Fund the last couple of years and the Bureau is working to keep the resources they currently have to continue their progress.

The Consumer Division and Managed Health Care is understaffed and had to send letters saying they would get to a complaint as soon as possible, but that may take up to 90 days. There are two staff members in Consumer Complaints and two in the Managed Healthcare.

Ms. Baca said law enforcement lost in legislation this year, but they have a lot of stakeholders and fraud directors visiting New Mexico to see their business plans and they have multi and cross jurisdictional cooperation.

Member Hawkes asked what role private industry plays in insurance.

Ms. Baca replied they have an MOU with the National Insurance Crime Bureau and one is located in El Paso.

Ms. Baca noted that several chop shops have been uncovered and one person was indicted who was connected to 300-500 cars in two years. The loss to GEICO was over \$3 million.

They have several border operations planned in the future.

Ms. Baca said they need be more innovative because there is no end to the white-collar crime that touches everyone and manpower is an issue. The state is down about 1600 police officers and is number two in the country for residential burglary. She said it is critical that the Law Enforcement Protection Funds - people like this agency - keep their funds at a level where they can function. She said people look at these issues when they look for a place to do business.

Member Romero acknowledged the Fraud Bureau's good work.

Supt. Franchini said the department is doing a lot of exciting things and once there is a full Nominating Committee they could communicate better and work together. A weakness has been the inability to reach out to the public and they will need help.

6. BUSINESS FROM THE FLOOR

Mr. Dick Mason, the Chair of the Policy Committee in Health Action New Mexico, said he convened an advisory committee on health insurance and health related matters. He commended OSI's commitment to consumer protection. He works with consumer reports around advocacy issues and a recent article on ambulances mentioned OSI as the only insurance company in New Mexico

working on ambulance issues. OSI is viewed as a leader in loss and consumer protection.

He said as a consumer advocate he is concerned with funding and every time funding is cut that impacts consumer protections. He encouraged the Nominating Committee to attend the next session and advocate for adequate funding.

Mr. Mason said a couple of years ago the legislature passed Pharmacy Benefit Manager Regulations in New Mexico and today New Mexico is viewed as a leader in the country, however, the legislation was not funded. He said the legislation will still move forward, but again that is one more issue where funding impacts consumer protections.

Mr. Mason urged the Nominating Committee to get involved in advocacy.

7. CALENDAR NEXT MEETING: Vice-Chairman Thomas Taylor

8. ADJOURNMENT

Member Hawkes moved to adjourn the meeting. Member Yurcic seconded the motion and the motion passed by unanimous voice vote.

The meeting adjourned at 3:37 PM