

**NEW MEXICO INSURANCE NOMINATING COMMITTEE
MEETING MINUTES
MONDAY, JANUARY 17, 2020
10:00 A.M.
New Mexico Gaming Board
4900 Alameda NE, Albuquerque, New Mexico**

1. CALL TO ORDER

Chair Denish called the meeting to order at approximately 10:00 a.m.

A. Introductions

Each member of the Committee introduced herself/himself. Staff members and other attendees also introduced themselves as follows:

Members Present

Diane Denish, Chair
Randall Perkins, Vice Chair
Allegra Carpenter
Jennifer Ford
Benny Hodges
Geoffrey Romero
Scott Yurcic

Members Absent

David Hunton
Patricia Greene Williams

Staff Present

Melissa Gutierrez, Board Administrator

Others Present

Russell Toal, Superintendent of Insurance
Marah deMeule, Assistant Attorney General [telephonically]
Carl Boaz, Stenographer

B. Approval of the Agenda

MOTION: Member Hodges moved, seconded by Member Perkins, to approve the agenda as published.

VOTE: The motion was approved on a unanimous (7-0) voice vote with Members Denish, Carpenter, Ford, Hodges, Perkins, Romero, and Yurcic voting in favor and none voting against.

C. Approval of Minutes

- Regular Meeting Minutes of November 16, 2019

Member Hodges requested an amendment to the minutes. He pointed out that he was not included in the motions nor shown as present. There were eight members present at the meeting.

MOTION: Member Hodges moved, seconded by Member Yurcic, that the minutes of November 16, 2019 be approved as amended.

VOTE: The motion was approved on a unanimous (7-0) voice vote with Members Denish, Carpenter, Ford, Hodges, Perkins, Romero, and Yurcic voting in favor and none voting against.

2. ADOPTION OF OPEN MEETINGS ACT RESOLUTION (NMSA 1978, § 10-15-1 (D))

Ms. deMeule explained that the Nominating Committee must adopt this resolution pursuant to the State Statute for compliance of the Open Meetings Act.

Member Hodges asked if this is an annual approval or done at every meeting.

Ms. deMeule explained the statute requires it be adopted in January for every committee meeting during the year.

MOTION: Member Perkins moved, seconded by Member Carpenter to adopt the Open Meetings Act Resolution as presented.

VOTE: The motion was approved on a unanimous (7-0) voice vote with Members Denish, Carpenter, Ford, Hodges, Perkins, Romero, and Yurcic voting in favor and none voting against.

3. FY20 SUPERINTENDENT'S ANNUAL COMPENSATION (NMSA 1978, § 59A-2-2(D))

Ms. deMeule clarified this is another requirement in the Statutes, § 59A-2-2(D), to be approved at the start of the Superintendent's position and that it be advertised when selected. This is just a formal vote to approve his salary at the beginning of his term.

Member Hodges understood that it must be at the same as the cabinet Secretaries. He asked, if that amount changes for the next FY, whether the Nominating Committee must change it.

Ms. deMeule commented that it could be a 3% raise for all, and that would be automatic. The \$156,000 is for the fiscal year and will be processed through DFA and signed by the Governor for that particular amount. It might be appropriate at the beginning of next fiscal year to vote on that salary amount again so that it coincides with the new fiscal year.

Member Hodges asked who is responsible to ensure the correct salary is in place.

Superintendent Toal said he would make sure.

Ms. deMeule added that it must go through DFA and hopefully it will be approved.

Member Hodges recalled in the last administration, there was a disconnect and hopefully that won't happen this year.

Ms. deMeule agreed.

MOTION: Member Hodges moved, seconded by Member Yurcic, to set the Superintendent's annual salary at \$156,000.

Member Ford asked if the 3% is automatic.

Ms. deMeule agreed. The Governor has set the Secretaries' salary last year at \$150,000 and those salaries were all raised to \$156,000 at that time.

Ms. Gutierrez said that did happen automatically so if it is automatic for the Secretaries, then it will happen automatically for the Superintendent too.

VOTE: The motion was approved on a unanimous (7-0) voice vote with Members Denish, Carpenter, Ford, Hodges, Perkins, Romero, and Yurcic voting in favor and none voting against.

4. SUPERINTENDENT'S UPDATE

Superintendent Toal thanked the Committee for being here. He provided a printed list of talking points. The good news is "so far so good." Staff has been very receptive and helpful. He has met with all managers and found it a rewarding experience. Some have been there quite some time and elucidated problems. Some problems were also reinforced. For instance, who takes the calls and complaints? We have to beef that up.

At the "all-hands" meeting, folks were receptive and heard how we will do business, transparent, open, balanced. We will be the agency we need to be in working with others. And we will sit down and work through the problems. Most of the critical functions e.g., rulemaking, we will sit and figure out what we can do. He emphasized his belief that once the legislation is passed, we will immediately implement those statutes. Historically, that was not done.

There are some big gaps of critical positions. At the end of December, we have a vacant Deputy Superintendent position and need someone with experience, especially in P&C. We are bereft of that staff. And a Deputy Superintendent is critical. He asked for help from the Committee if they knew someone with P&C and personnel management experience.

Member Perkins asked if he could share a job description.

Superintendent Toal promised to draft the position requirements and share it with the Committee. The salary range is \$105,000 - \$130,000. He added that he has interviewed some but rejected them for a variety of reasons. The other position is Health and Life Actuary There is a total of one or two in the whole state. And we are unbelievably lucky to have the woman we have. Unfortunately, we are farming it out actuary services out of state. He asked Committee members, if they happen to hear of someone who qualifies, to let him know. Since he came to Santa Fe to retire, perhaps an actuary would also come here.

Another vacant position is for a Health Care Attorney. The best one he knew was his wife. He is reaching out to the health sections in the state and elsewhere. We have a lot of healthcare activity. There is no PIO on board. That position was frozen under the last Superintendent. He has someone in mind but would have to steal her from another agency. In the meantime, if a Committee member hears of someone to do press releases and outreach for compliance and filings, he would like to know about them. He will be posting for customer service positions, looking for experience in P&C.

He explained that OSI is constrained by State Personnel job classifications. From his perspective, they are not sensitive for people with experience. It is not an assured process, but we will start with those key positions needing to be filled.

OSI has slightly under 90 people with 19 bureaus. That doesn't make organizational sense or provide maximum efficiency for cross development. We have bureaus without any budget. There are peak times during the year, and then they are not busy during the rest of the year. We will make a major restructure after the Session. We have not maximized our legal staff. He was not used to an environment with attorneys supervising attorneys. "If you have thoughts about better organization, please share that with me."

Member Hodges asked if he would have adequate budget if all vacancies were filled.

Superintendent Toal said he would not.

Member Carpenter asked about communicating with him by Staff.

Superintendent Toal said he has provided four phone numbers for the Committee and the staff to use.

Chair Denish asked if the budget had contract funds to use for the PIO, etc. as retainers on contract.

Superintendent Toal liked that suggestion. He did that at HSD. He mentioned Healthcare Solutions. We are also short on IT.

Member Ford asked if the Committee could get a copy of that list in order to make suggestions.

Superintendent Toal agreed. He did a review of contracts and too many of them are just renewed every year. He will be putting more review on those. Some will feel something has been taken away from them, but it is time to make changes. He also will be meeting with all the attorneys. It is best to have negotiations with them. We are looking at litigation and putting some of these things behind us and move forward.

Superintendent Toal provided a handout of the Agency rollup. It showed what was actually spent and compared the amount requested with the recommendations of LFC and the Executive Branch, both of which are increases. He prefers the LFC recommendation because it is more. Even though staff numbers are the same, it is really dependent on the total amount and what we can do with the appropriation. Since the Agency has no presence in the southern part of the State, he would like to set up an office in Las Cruces. It is important to be more visible and reach out to help people. That would not be a high cost item.

On the next page of the roll up is the Patient Compensation Fund. He was pleased with their recommendation. He asked the Committee members, to the extent they have contact with legislators, to help with support for the LFC recommendation. He told the Governor's Office that LFC would give the agency better flexibility. He noted that the former Governor had the Superintendent give up 36 positions. He didn't know the reason for it, but we are still climbing out of that hole. Hopefully, the restructure will help.

Member Carpenter said when she started investigating the Agency to be on this "Board," she noticed that loss in the org chart. She was delighted to see attention to that issue. She asked if consumer advocacy was also addressed.

Superintendent Toal said it is called "compliance officer" at SPO. There is not a classification for consumer advocate. We could take some existing staff to supervise that in a contract.

Chair Denish suggested if he could contract with someone to create the educational materials, but we need people there to answer the calls.

Superintendent Toal agreed. Communications are very important. People here don't know what we do. When an agent or broker applies, we turn it around in 24 hours now, not days. We need to make that known. And we do need to have people to connect with agents and brokers. We are now starting to see other challenges to which we need to pay attention.

There is a group of "plans" that are not really health insurance plans. They are sharing arrangements offered by the industry and they don't have to submit their plans for approval. But we do need for the consumers to know the risk they still have and what is not covered. This is a challenge. What authority do we have under the law to cover this? At least three states have filed actions against the largest of those firms for violating state insurance laws.

There are other kinds of plans with which we have the same kind of concern. We are setting hearings again that some time ago went bust. We have taken some action on so-called short-term policies but these sharing plans are creating concerns.

Member Perkins asked if he had said they have two people handling complaints.

Superintendent Toal said those are staff handling consumer complaints.

Member Perkins said there is a different mechanism that should be added to the staffing to handle the other types of complaints.

Superintendent Toal said the agency has two investigators in Santa Fe and the Fraud Unit in Albuquerque and they focus on fraud. These "plans" are not so much fraud, but they are deceptive and inappropriate. He added that the Fraud Unit generates its own resources.

Legislature Issues:

For the Legislature, we have done FIR's on four bills, so far. One of them is HB 100, sponsored by Representative Armstrong. It is to impose structure around the New Mexico Health Insurance Exchange and would make them coordinate with OSI which is the only agency that authorizes health plans. It will require them, for the first time, to offer standardized plans with consistent co-pays across the board. Some other states are doing this and making decisions based on price.

Member Hodges asked if he saw any resistance in the Legislature

Superintendent Toal said he doesn't see that happening and has every reason to believe the Legislature welcomes this.

He mentioned House Bill 42 on pharmacy service reversal character, one on cost sharing for elective services, HB 107, a bill to require health counseling scans to recover that speaks to medical algorithms - HB 126. On the Senate side, SB 1 deals with drug importation. It is not our bill, but we are interested in it. He did not know which Senator sponsored it. It would allow importation with limits. SB 151 deals with violations of the Continuing Care Act. He explained that it deals with facilities that are not licensed as nursing or assisted living but as a continuing care facility which cares for people with severe disabilities.

Chair Denish asked if the OSI gets complaints on those facilities.

Superintendent Toal said the Agency on Aging gets those complaints.

Finally, there are three bills regarding the Patient Compensation Fund in which there are issues on both sides. He was not impressed but maybe there are pearls of wisdom there. Early next week on Tuesday, he will issue a press release on this. He read part of it to the Committee. The second actuarial study of the PCF will be done. If any discrepancies are found, the new rates will be suspended until corrected. Stakeholders can advocate for changes. To facilitate, a second study is to address how providers should participate and caps through the Malpractice Act and how their participation will affect the PCF. We hope to get the study done quickly and will share the study with all stakeholders on our web site. He thought there is no reason for so many to question the actuarial. He hoped it will take a little steam out of things. It requires a lot of work. He is telling people we plan next year to come with proposals to change the Insurance Code and to reach some agreement on it. There are three components of the PCF and this kind of study of the PCF has never been done before.

Chair Denish knew there are proponents of the PCF out there.

Superintendent Toal agreed and he will ask them to review this. He also asked the Governor's Office to support it and they agreed.

2019 Annual Audit

Copies of the Audit were distributed to the members.

Superintendent Toal understood the audits have not been shared in the past. He referred to page 68 for the summary of Auditor's findings and noted that one year ago there were no less than 12 findings.

Member Hodges asked about keeping the same auditor.

Superintendent Toal explained that the State Audit Rules allow a 4-year maximum term with an auditor. Next year for this auditor is year 3. We have made progress in reducing findings, but we want to eliminate all of them. A material weakness is unacceptable and that has to do with the PCF. We are implementing a new system to correct the weakness and make it disappear. The federal monies were also a problem, but the federal monies expire this year for the ACA. It had to do with purchase of items (on page 73). There were no inappropriate purchases made but purchases were made before POs were issued. Training has been done to emphasize that POs must be received before any purchase is made. He hoped next year, the OSI would become a low risk audit.

Member Hodges asked if the scope of the audit is adequate.

Superintendent Toal said it is. The scope is set by DFA, who gets a copy of the audit.

Our transition has gone very well. we worked with TRD on the transition. We hit a bump in the road with Tritech who were hit with ransomware, paid the ransom, and claimed that all files were clean. Insurance companies were given the option of filing by paper. The other states using Tritech continue using it, but he was not so sure. It was a pleasure to work with the TRD Secretary. She was very helpful in that position and a couple of candidates that he ran through her he is proceeding to hire. He is working with all the Secretaries.

He urged the members to review the audit and welcomed any questions that might arise.

Role of Insurance Nominating Committee

Superintendent Toal is used to working with Boards to whom he has some accountability. But the statute does not allow for that. He felt an obligation to share information and reports with the Nominating Committee. We can do it informally or through regular sessions. He would like the Committee's input, in putting the budget together, for example, and to change the statute, if needed. There is value for the public and the agency to have an active committee.

Chair Denish said we talked about this briefly yesterday. She would like to have a wrap-up after the Session and create a subcommittee to work with Staff on this and on increasing the possibilities. That would be a better time to discuss it and make a recommendation on it for legislation. She favored a regular meeting time, keeping up with the agency, would be helpful.

Member Perkins appreciated Superintendent Toal being willing to have more open meetings. None of us are here just to have meetings, but to the degree the Superintendent wants to be accountable, he appreciated those comments.

Superintendent Toal said the attitude of the Legislature is one of a lone ranger, which is not helpful.

Member Yurcic added that the history to have one meeting for a report was not good.

Member Hodges pointed out that nothing in the statute precludes meeting more often.

Member Ford thought they should meet at least quarterly.

Chair Denish wanted to meet after the Session to see where we are. It was successful last time when the Committee did that.

5. PUBLIC COMMENT

There were no public comments.

6. CALENDAR NEXT MEETING

Member Hodges noted the Session ends February 20.

The Committee liked Superintendent Toal's choice of April 23 (Thursday).

Chair Denish asked Ms. Gutierrez to coordinate with Superintendent Toal to see if that is possible.

OTHER COMMENTS FROM THE BOARD

Member Perkins asked if the Superintendent had looked at the adequacy of the Fraud Unit.

Superintendent Toal said they will never have enough Staff. There are two on the auto side which was not recommended by the Governor. The Governor put into the call a bill to deal with "chop shops." That would likely fall on OSI.

Member Carpenter asked if on the OSI website he would be returning the information on qualified health providers.

Superintendent Toal said he would. It should be on the website. He is working on a way to get alternative information and doing rules on that. The Legislature made it very clear.

A woman in the audience was invited to comment. She thanked the members for their time on the Committee. She was grateful the Committee selected the new Superintendent. The trial lawyers are often the ones whom consumers seek out first. There is a crisis of some sort but often we are the ones to refer to appropriate agencies and she is pleased how things have developed here. We are most grateful about helping with the malpractice act. There are things to be addressed, like the website which was dismantled last year. Whether the PCF is adequate is also important. She was also grateful for the audit happening. The Trial Lawyers Association welcomes any opportunity to talk about things including litigation that has come about, transparency, etc. We need to sit at the table and work together. She provided copies of the history of her organization.

Member Ford asked the Superintendent to please err on the side of more information and if there are things to sign up for. She wanted more information as a Committee member to function better.

Superintendent Toal proposed an orientation for members. He would be happy to do that.

Ms. Gutierrez said an orientation could be scheduled with her and how to structure what areas members are interested in.

Chair Denish reminded them that if we do an orientation together, we would need to publish notice.

7. ADJOURNMENT

MOTION: Member Hodges moved, seconded by Member Perkins, to adjourn the meeting. The motion passed by unanimous voice vote.

The meeting was adjourned at 11:23 a.m.

Approved by:

Diane Denish, Chair