

STATE OF NEW MEXICO  
INSURANCE NOMINATING COMMITTEE

REGULAR OPEN MEETING  
August 13, 2020  
9:06 a.m.  
Via Zoom

REPORTED BY: BERNADETTE C. PEREA CCR#123  
PAUL BACA COURT REPORTERS  
500 4th Street, NW Suite 105  
Albuquerque, New Mexico 87102

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A P P E A R A N C E S

- Superintendent of Insurance - Randall Toal
- Chairwoman Diane Dennish
- Melissa Gutierrez
- Goeff Romero
- Patti Green Williams
- Alegra Carpenter
- Dave Hunton
- Julia Ruttan
- Benny Hodges
- Jane Wishner
- M. DeMeule
- Jennifer Ford
- Scott Yursic
- Douglas R. Perkins

DRAFT

1 (NOTE: In session at 9:06 a.m.)

2 MS. DENISH: I'm going to call the  
3 meeting to order.

4 I'd like someone to call the roll.  
5 Melissa, can someone call the roll? So who is on,  
6 because we have some phone numbers on here and I'd  
7 like to know of any of our other Board members who  
8 aren't on video.

9 MS. GUTIERREZ: Committee Chair Diane  
10 Denish.

11 MS. DENISH: Present.

12 MS. GUTIERREZ: Jennifer Ford.

13 MS. FORD: Present.

14 THE COURT: Mr. David Hunton.

15 MR. HUNTON: Present.

16 MS. GUTIERREZ: Mr. Scott Yursic.

17 MR. YURSIC: Good morning, present.

18 MS. GUTIERREZ: Mr. Benny Hodges. I saw  
19 Benny, I'm sure --

20 MR. HODGES: Present.

21 MS. GUTIERREZ: Ms. Patti Green  
22 Williams.

23 MS. WILLIAMS: Here.

24 MS. GUTIERREZ: Ms. Alegra Carpenter.

25 MS. CARPENTER: Present.

1 MS. GUTIERREZ: Mr. Douglas R. Perkins.

2 MR. PERKINS: Present.

3 MS. GUTIERREZ: Mr. Goeffrey Romero.

4 MR. ROMERO: Present.

5 MS. GUTIERREZ: That is everyone.

6 MS. DENISH: Okay. Thank you.

7 Let me just say thank you to everybody,  
8 and I think the superintendent and I actually had  
9 a socially distanced cup of coffee about a month  
10 or so ago, and we agreed that he was very eager to  
11 have this meeting, so I appreciate everybody  
12 getting on to kind of get the rundown of what  
13 we're going to -- what's been happening and what  
14 he's looking forward to.

15 So, unless anybody else has any  
16 introductory remarks, I will go ahead and take a  
17 motion for approval of agenda. Are there any?

18 MR. HODGES: I would so move, Madam  
19 Chariman.

20 MS. DENISH: Do I hear a second.

21 MS. CARPENTER: Second.

22 MS. DENISH: All in favor.

23 (All parties said, "Aye.")

24 MS. DENISH: Opposed?

25 (No response.)

1 MS. DENISH: The approval of our  
2 minutes, which seems like an eternity ago,  
3 January 17th, I've read through them, I didn't see  
4 anything that jumped at out at me. Are there any  
5 additions, corrections that people have noticed  
6 from our January 17 meeting? And, if not, I would  
7 take a motion to approve the minutes.

8 MR. PERKINS: Madam Chairwoman, let me  
9 back up just a little bit.

10 In the prior meeting, Ms. DeMeule had  
11 explained or recommended that we need an adoption  
12 of the Open Meetings Act Resolution, and she had  
13 required -- she had made a recommendation that we  
14 go through that approval process at each committee  
15 meeting. Do we need to -- is Ms. DeMeule on the  
16 call today?

17 MS. DENISH: I'm sorry, Randy, what are  
18 you saying, that we have to do that at every  
19 meeting?

20 MR. PERKINS: She had made a comment  
21 explaining that the statute requires that it be  
22 adopted in January for every committee meeting  
23 during the year, and it was the adoption of the  
24 Open Meetings Act Resolution.

25 MS. DENISH: So she's on here somewhere,

1 but maybe she's on mute. I saw her.

2 MR. PERKINS: Is she on? Okay.

3 MS. DENISH: She's somewhere. There she  
4 is, she's talking, you're on mute; we can't hear  
5 you. She on mute, maybe I can unmute her.

6 We can't hear you. It shows she's on  
7 mute. Can you unmute, Myra? There you go --

8 MR. PERKINS: There you go -- no.

9 MR. ROMERO: I think she's indicating  
10 she can type on the chat line.

11 MS. DENISH: I don't see her in the  
12 chat, but my thing shows she's on mute. There we  
13 go, she's on the chat box now. Maybe, Melissa can  
14 you -- Maybe Melissa, unmute her?

15 MS. GUTIERREZ: I tried, and I don't  
16 show her as muted, her little microphone is clear  
17 to go, Diane, because I tried to click on her mute  
18 button and I couldn't get her. She may want to go  
19 out and come back in.

20 MS. DENISH: She did say once we've  
21 adopted our open meetings resolution, it's valid  
22 for the year.

23 MR. PERKINS: Okay. Perfect.

24 MS. DENISH: So, back to the minutes,  
25 and adoption of the minutes from that meeting.

1 Did we adopt -- we did adopt the meetings  
2 resolution in that meeting, right?

3 MR. PERKINS: We did.

4 MS. DENISH: Is there a motion to  
5 approve the minutes as written?

6 MR. HODGES: I believe I so moved, Madam  
7 Chariman.

8 MS. DENISH: All in favor, say "Aye".

9 (Note: All members said, "Aye.")

10 MS. DENISH: Okay. Thank you. Now  
11 we're going go to the superintendent's update,  
12 which is the core of this meeting, and so we'll  
13 turn it over to you, Russell. If you have barking  
14 dogs or anything, put yourself on mute, or if you  
15 want to bark, put yourself on mute. And then, at  
16 the end we'll have a chance for questions, just  
17 either put your question in the chat room, or wave  
18 your hand and we'll -- and unmute yourself, okay?

19 SUPERINTENDENT TOAL: Thank you, and  
20 thanks to all the members. We're here, I'm  
21 delighted to see this great attendance. I've had  
22 the pleasure of talking to a number of you since  
23 our January meeting, and I also hope that you  
24 found that report that we sent out to you whenever  
25 that was, I guess June, helpful, I apologize for

1 the length of it, but we were trying to make sure  
2 that you knew all that was going on.

3 I wish that you-all had told me in  
4 November of last year that we were going to be  
5 dealing with COVID. It certainly has impacted  
6 everybody on this call and everybody in the state,  
7 of course. We really had a crash run, if you  
8 will, when the Governor decided to take aggressive  
9 action, and I'm actually quite pleased at the way  
10 the agency responded, and I'll talk about that a  
11 little more detail.

12 I am in the office every day. The  
13 office, those of you who have been to the OSI,  
14 know that the superintendent's office is sort of  
15 quarantined off to the side. I'm here because we  
16 have five or six people who really have to be here  
17 every day to handle the huge volume of mail that  
18 we get. And I'll have to admit that I mistakenly  
19 assumed that the insurance world, for the most  
20 part, was all electronic and, while a large part  
21 of it is, there is sure a ton of it that is still  
22 done hard copy.

23 So we have filings that come in by mail,  
24 we have lots of checks, believe it or not, that  
25 come in with mail. We're going to try to fix



1 that, and we get lots inquiries. And the other  
2 thing that we have to do on a daily basis is,  
3 we -- as the attorneys on this call know, we serve  
4 essentially as the server of process, so if  
5 somebody's filing an action against an insurance  
6 company, it comes to us and we actually take care  
7 of the service, and that doesn't let up, either.

8 So, as long as the other staff have to  
9 be here, then I feel like I should be here, and it  
10 probably won't surprise any of you to learn that  
11 my wife is very happy about that arrangement, so I  
12 find myself here being much more productive than I  
13 would be at home.

14 The 2020 regular session, I think went  
15 very well. The 2020 special session was really  
16 bizarre. It was, as you all know, virtual, no one  
17 was allowed inside the Roundhouse, thankfully,  
18 both the Governor's office and Legislative Finance  
19 Committee left us off the budget reduction list  
20 since we do not get any general funds from the  
21 appropriations process. We are funded, as you all  
22 know, exclusively through the fees that we  
23 collect, but it still was bizarre to have to try  
24 to track everything through this same medium that  
25 we're using here today.

1           There were several pieces of legislation  
2   from the regular session, Melissa, if you'll  
3   hit -- there you go -- that impacted us.

4                           (Note: Screen sharing.)

5           SUPERINTENDENT TOAL: We sent a notice  
6   out on the first one, to all insurance carriers  
7   saying they had to take this action. We've met  
8   with the New Mexico Health Insurance Exchange  
9   several times, in fact, I'm a member of that Board  
10   and I'd be happy to talk about that in more  
11   detail, if there are questions about the changes  
12   that we're pushing at the Exchange. They have to  
13   send us a new plan of operation in September for  
14   us to review and approve. The goal is for the New  
15   Mexico Health Insurance Exchange to become a  
16   state-based exchange instead of an operation that  
17   uses the federal platform.

18           Now, it's not just a platform question,  
19   however, the attractiveness of being a state-based  
20   exchange, is we can set our own open enrollment  
21   period, which we could not do in the middle of  
22   this COVID pandemic like the other state-based  
23   exchanges did. We can set our own requirements  
24   for what are called standard plan design, and it  
25   allows us to be far more responsive to the

1 specific market demands that we can, having to  
2 follow all the CMS rules.

3 So, we are still working on that. I  
4 want to go ahead and let you know that we had a  
5 dramatic increase in the number of insurance plans  
6 that are proposed to be offered during open  
7 enrollment this fall, so much so, that we had to  
8 bring in a second actuarial firm to assist with  
9 the reviews.

10 Because we're an exchange that uses the  
11 federal guidelines, one of the frustrations that  
12 we have is that the Federal Center for Medicare  
13 and Medicaid Services continues to raise the  
14 out-of-pocket maximums and, from my perspective,  
15 they've really gotten unreasonable. For example,  
16 for this upcoming open enrollment period, the  
17 maximum out-of-pocket for individuals, according  
18 to CMS, can be as high as 8,500, or 17,100 for a  
19 family.

20 Now, I think I can gather most of the  
21 people who can afford that in my office. I mean,  
22 it's just simply unaffordable for most New  
23 Mexicans. So as we're completing our review  
24 process, one of the things we're asking all the  
25 carriers to do, is to maximize the actuarial value

1 of their plans by lowering the maximum  
2 out-of-pocket, but if we have a carrier that says,  
3 "No, I'm going with the CMA's guidelines,"  
4 unfortunately, there's not very much we can do  
5 that will change next year, but this year we're  
6 sort of stuck, but anyway, we're moving forward on  
7 that.

8 The 126 covers for health artery calcium  
9 scan, that takes effect in January, we've made  
10 sure all the health plans is that are being  
11 submitted for review to extend that coverage. The  
12 specific criteria for who can be covered, it's not  
13 just open to anybody who thinks they want a scan,  
14 so we're trying to check for that.

15 234 which directly impacts you, allows  
16 the Chair of the committee to appoint a  
17 superintendent and removes the requirement that  
18 the superintendent be a resident, and we were  
19 faced with the situation where if, for example, I,  
20 God forbid, had some health problem that would  
21 prevent me from doing my duties, once we gave  
22 notice, there was no provision in the statute for  
23 your committee to have an interim superintendent  
24 until you go through the formally designed process  
25 outlined in the statute for selection of a new

1 superintendent.

2           So we thought this was -- and the  
3 Governor thought this was something we needed to  
4 do, so that did get signed into law, thankfully.  
5 No action is required of you at this point, and I  
6 certainly hope that will continue to be the case.

7           The prescription drug cost sharing, this  
8 you may recall was the subject of some debate.  
9 The CAPS consumer cost sharing for insulin  
10 products in the Bill, also ordered a study group  
11 to look at nine other drug categories to determine  
12 whether the cost sharing associated with those  
13 categories was precluding people from getting  
14 their prescriptions, so we brought in an actuarial  
15 firm, a different one, and they have done a data  
16 call to all the carriers, we'll be getting that  
17 information in the next week or two, certainly  
18 before the end of August, and then we have to do  
19 some analysis about what is the impact of the  
20 co-pays and can we or should we recommend to the  
21 Legislature that they take similar action?

22           One of the things that we obviously have  
23 to be sensitive to, is that we not do some  
24 significant cost shifting. So, if we require or  
25 we impose limits on cost sharing, we want to make

1 sure that the premiums don't bounce up  
2 dramatically on the other end, so that's part of  
3 the reason for getting an actuarial firm who can  
4 help us do those estimates.

5 And then, finally, Senate Bill 1, which  
6 has to do with the importation of prescription  
7 drugs from Canada, we did create an advisory  
8 committee, we're doing a data call on this, we  
9 then take that information, and we compare it to  
10 the pricing information that we access from  
11 Canada, and we have a public hearing on that, and  
12 the bill calls for us to have a plan to go to the  
13 FDA, I think by December 15th, if I remember the  
14 exact date.

15 Now, while this is going on, the Trump  
16 Administration has said that it's going to issue  
17 final -- it's going to issue final rules for the  
18 State on drug importation, so we may have to start  
19 and stop and start and stop until those rules are  
20 made public to us, but our report obviously will  
21 be the subject of some degree of interest.

22 There's about five states who have  
23 submitted proposals, our nearest neighbor would be  
24 Colorado that has a plan. Colorado submitted a  
25 plan to import approximately 1,600 different

1 drugs, most of the other states are being far more  
2 selective.

3 The big challenge for any state who  
4 wants to do this, is they really have to get a  
5 wholesaler to manage the process. It is not  
6 something a state can or, from my perspective,  
7 should try to do, but it remains to be seen  
8 whether we have wholesalers who are receiving a  
9 lot of pressure from the pharmaceutical industry,  
10 itself, not to support these efforts, whether we  
11 can get a wholesaler who wants to be part of this  
12 process.

13 We are probably going to do a request  
14 for information to see if we get any interest from  
15 the respective wholesalers that have the capacity.  
16 There are lots of different small wholesalers,  
17 frankly, they could not handle something of this  
18 size, so we're looking at the five or six largest,  
19 all of which have a presence in New Mexico,  
20 thankfully, but we don't know the level of  
21 interest, yet.

22 So, those were the major bills that came  
23 out of the regular session that were -- that we're  
24 having to deal with. There were no bills in the  
25 special session that had an impact on us, except

1 for the Bill that requires licensed or certified  
2 police officers to have body cameras. And, as I  
3 think most of you know, we have a Criminal Fraud  
4 Unit and we have six agents there that in fact are  
5 certified as police, and so we are in the process  
6 of buying a body camera for those individuals, and  
7 perhaps once we demonstrate how well they work, we  
8 can show them to the sheriff from Bernalillo  
9 County, and he may change his mind. But, that was  
10 the only thing that really came out of the special  
11 session, as I mentioned. We had no budget impact  
12 to us.

13 Let me stop there, and see if you have  
14 questions about any of these Bills.

15 MR. HODGES: Madam Chariman,  
16 Mr. Superintendent.

17 SUPERINTENDENT TOAL: Yes, sir.

18 MR. HODGES: On the House Bill 234,  
19 maybe I was a little distracted, it suggests that  
20 the -- and I don't recall reading it -- the  
21 summary suggests that allows the Chair of the  
22 Insurance Nominating Committee to appoint that in  
23 conjunction with the Nominating Committee, or was  
24 that the Chair's sole and separate project?

25 SUPERINTENDENT TOAL: The vision was



1 that it be done in cooperation, but it  
2 specifically gives the Chair the authority to make  
3 the interim appointment.

4 MR. HODGES: So it would really be up to  
5 the Chair to determine how she wants to accomplish  
6 that or -- in this case.

7 SUPERINTENDENT TOAL: Yeah, I think the  
8 point is, it couldn't be a long-term appointment,  
9 because once the committee knows there's going to  
10 be a vacancy, that it needs to start the normal  
11 application process.

12 MR. HODGES: You can't have a five-year  
13 interim?

14 SUPERINTENDENT TOAL: No, you cannot.

15 MR. HODGES: Roger that.

16 SUPERINTENDENT TOAL: Any other  
17 questions about legislation?

18 Okay.

19 So, COVID-19. Within two days of the  
20 Governor's emergency declaration in March, we had  
21 90 plus percent of our staff working from home.  
22 We had already, prior to the order, formed a COVID  
23 working group in-house, and we went about the  
24 process of making sure that people had the laptops  
25 and other equipment and VPM access, and all that

1 sort of thing to be able to do their job. We also  
2 decided who it is that needs to come into the  
3 office on a rotating basis to handle the mail, as  
4 I talked about earlier.

5 But then the immediate issue became,  
6 what can we do to respond to this pandemic in an  
7 appropriate way? And I must say that, personally,  
8 I think we went about it the right way. Instead  
9 of just issuing edicts, we had conference calls  
10 with the health insurance community, virtual  
11 meetings, we sent out drafts of bulletins for them  
12 to look at, we also chose to follow the guidance  
13 that came out from the American Association of  
14 Health Insurance Plans, which was quite helpful to  
15 us.

16 The initial step bulletin that we  
17 issued, dealt with both what the insurance had to  
18 report and what they had to do and, as I think you  
19 probably all know, the most important thing we  
20 did, and we were among the very first one or two  
21 states in the country, we said, "If you have a  
22 COVID test or you need COVID treatment, that the  
23 insurer and the provider cannot charge you. The  
24 insurance company can be charged, of course, but  
25 there can be no cost sharing obligations imposed

1 on the citizen." And that included any kind of  
2 related charges, not just the collection of the  
3 specimen for the test, but the office visit charge  
4 and things like that.

5 And that I think it was important for us  
6 to make a very clear statement about where that  
7 line was. There was some occasions where we had  
8 to intervene with specific providers coming from  
9 Medicaid and the HSD world and many of these  
10 providers I knew and, frankly, being able to just  
11 make a phone call and say, "You can't do what  
12 you're doing"; or, "You have to change your  
13 policy"; or, "You need to refund the payments that  
14 these individuals made" has been very helpful.

15 And, we only, on occasion, do we find  
16 people running afoul of that. I had to make a  
17 call earlier this week to a hospital CEO, whose  
18 emergency room had gone rogue and was charging  
19 people for COVID testing inappropriately, but for  
20 the most part, there's been really great  
21 compliance and cooperation from the respective  
22 provider associations.

23 Now, New Mexico is very fortunate that  
24 the Legislature had the foresight to put into the  
25 statute, coverage for telemedicine and telehealth,

1 and it says in the statute that the payment for  
2 telemedicine or telehealth, which must be  
3 required -- which must be covered by insurers,  
4 that the payments have to be equal to what they  
5 would pay for an in-office visit and the statute  
6 also prohibits any kind of discrimination for  
7 provision of mental or behavioral health services.

8 So, again, we jumped out there very  
9 early and said, "Here's what the statutes say,  
10 this is how we're interpreting it and enforcing  
11 this," and I think it really has been a lifesaver  
12 for many providers who lost 80 or 90 percent of  
13 their business overnight, people quit coming when  
14 they were told to stay at home and they did.  
15 Hospitals canceled elective procedures, as you all  
16 know, but because of the use of telehealth and  
17 telemedicine, the providers were able to continue  
18 to operate and generate the revenue they need and,  
19 most importantly, access their patients.

20 We made it clear to the insurance  
21 community that they could not impose unreasonable  
22 requirements, so no prior approval for telehealth  
23 visits or telemedicine visits, no imposition of  
24 point of origin requirements because, frankly, a  
25 lot of the physicians were like the rest of us,

1 operating from home, so I think that has been the  
2 huge reason, part of the reason that many people  
3 have been -- many providers have been able to hold  
4 on, but --

5 MR. HODGES: Mr. Chairman can I ask a  
6 question there -- I mean, Mr. Superintendent.

7 SUPERINTENDENT TOAL: Of course.

8 MR. HODGES: Would that apply also to  
9 out-of-state health providers.

10 SUPERINTENDENT TOAL: Yes, it does. If  
11 they're in the insurance carrier's network.

12 MR. HODGES: Right, yes they are.

13 SUPERINTENDENT TOAL: Then it does  
14 apply.

15 MR. HODGES: I've got a specific issue  
16 in my own case, but I'll figure that out with my  
17 insurance company. Thank you.

18 SUPERINTENDENT TOAL: But we have a lot  
19 of citizens who use Lubbock and El Paso on  
20 occasion, so it's important to have access to  
21 those services.

22 Now, I will tell you this, we got  
23 requests I probably shouldn't characterize it this  
24 way, but we got requests supplied by providers who  
25 want licenses in New Mexico and wanted the

1 coverage of the patient compensation fund during  
2 this period and we said no to those. Nobody  
3 pushed back. We asked insurers, not just health  
4 insurers, but all insurers, refrain from canceling  
5 or not renewing policies. We, with the Governor's  
6 assistance, clarified the insurance that insurance  
7 was in fact an essential business, and if they  
8 needed to have people in the office to service  
9 customers and clients, then that was okay.

10 We asked the insurance carriers to  
11 provide direct and advance support for hospitals  
12 and providers and make payments more expeditiously  
13 and, very importantly, we issued the bulletin on  
14 surprise billing saying that with respect to COVID  
15 matters there was no distinction between  
16 in-network and out-of-network, that whenever  
17 someone went to get a test or treatment, that had  
18 to be considered in-network, and, for other types  
19 of services during the period of the emergency, we  
20 reminded them of the provisions of the New Mexico  
21 statute, in terms of how they were to pay.

22 In 11, we asked the commercial insurers  
23 that base their insurance on sales volume, number  
24 of employees, operating days or hours, to make  
25 adjustments to reflect the shutdowns or the

1 reduced operations that were occurring across the  
2 state. And I think you also know that we made the  
3 similar request to the auto insurance commute and  
4 I hope you all saw the presence release that we,  
5 through our actions, we have about \$67 million  
6 that's being returned to New Mexico auto  
7 policyholders.

8 And then, last week, we issued a new  
9 COVID bulletin, again, we did so after discussing  
10 it at length with the insurance community before  
11 they released. It took quite a while to bulletin  
12 out because of the coordination that was required  
13 with the Department of Health, the Governor's  
14 Office and Human Services Department and, because  
15 of the continually-changing landscape out of  
16 Washington.

17 Now, I'm not talking about politics, in  
18 our case I'm talking about the fact that the  
19 Center for Medicare and Medicaid Services keeps  
20 issuing new interpretations of what they'll cover  
21 and what they won't cover, and it has been a  
22 scramble, quite frankly, to keep up and there are  
23 some things that we just don't agree with CMS,  
24 and, thankfully, the legislation that has been  
25 passed by Congress, allows the states to impose

1 higher consumer protection provisions if the State  
2 authorizes that. And I'll give you one example of  
3 COVID. The feds say that the insurer has to cover  
4 costs associated with the test, if possible, an  
5 actual test is ordered.

6 Our position is, that if somebody comes  
7 in and they believe they need a test, then that  
8 health provider has to perform some kind of  
9 medical service, an assessment, to determine  
10 whether a test is appropriate or not, that those  
11 costs, too, should be covered, because we don't  
12 want to discourage people who think they need that  
13 test, from getting the care that they need.

14 The other important distinction, the CMS  
15 took the position that no surveillance testing of  
16 any kind could be covered. And, again, we're  
17 saying differently that if people are in a  
18 high-risk environment, a long-term care facility,  
19 a childcare facility or, frankly, they're a member  
20 of the Navajo Nation, for example that, those  
21 people should be tested, even if they're  
22 presenting without symptoms.

23 So those are the kind of things we tried  
24 to address in our latest bulletin, if you're  
25 wondering why it was five pages long, the answer



1 is, it was the elephant created by committee, and  
2 I would have preferred it be shorter, but there  
3 were lots of things we had to address.

4 I don't intend to read through all the  
5 press releases that are shown there for you, but  
6 hopefully you're getting a copy of all those, I  
7 believe Melissa is sending everything to you, and  
8 we will continue to do that. We actually released  
9 another statement just yesterday, some of you may  
10 be aware, that the health insurance carrier, New  
11 Mexico Health Connections, is closing down at the  
12 end of the year. We released a statement about  
13 that saying, "Well, if you have coverage through a  
14 plan, your coverage is good through the year, and  
15 your insurance claims, your service claims will be  
16 honored, even past the end of the year."

17 MS. DENISH: Mr. Superintendent, this is  
18 Diane, how many lives does that affect? How many  
19 subscribers did they have.

20 SUPERINTENDENT TOAL: At present, Madam  
21 Chair, they have about 14,000.

22 MS. DENISH: And their they're risk  
23 based -- were you going to have to close them down  
24 if they didn't do it voluntarily? Were you going  
25 to have to take over?

1 SUPERINTENDENT TOAL: Well, essentially  
2 we've been in that position.

3 MS. DENISH: You've been running it,  
4 right.

5 SUPERINTENDENT TOAL: It's a  
6 receivership arrangement, so all the releases, for  
7 example that the New Mexico Health Connections  
8 issued on Monday, those were all drafted and  
9 edited and approved by our office.

10 For those of who you who don't know, a  
11 company out of Colorado called Friday Health, has  
12 stepped in and is basically underwriting their  
13 operation, and they have submitted plan proposals  
14 to take over that business to the fullest extent  
15 that they can.

16 Are there any questions about the  
17 bulletins or about any of the press releases? I'm  
18 happy to take any questions. These are just the  
19 bulletins related to COVID-19, of course.

20 MS. DENISH: I don't know about the  
21 rest. I just want to say I got an auto insurance  
22 refund, which I thought was one of those grand  
23 things -- the only good thing I can remember, just  
24 because companies are issuing those premium  
25 refunds for less driving, less accidents,

1 whatever. Anyway those are kind of nice little  
2 surprises that came out. I don't know if that's  
3 what your April 10th press release was about  
4 premium refunds, but certainly ...

5 SUPERINTENDENT TOAL: Yes, that's been  
6 helpful, and we've gotten word that some of the  
7 businesses have gotten adjustments on their  
8 insurance, as well.

9 Okay.

10 MS. DENISH: Are there any other  
11 questions on this portion?

12 Okay.

13 SUPERINTENDENT TOAL: Okay --

14 MS. DENISH: Yeah, go ahead.

15 SUPERINTENDENT TOAL: Well, again, I  
16 don't think it's probably a good use of the  
17 committee's time for me to go over all these  
18 rules, we just wanted to give you the orders, we  
19 wanted to give you a sense of the things that we  
20 have done to ensure that, with respect to COVID,  
21 that we've done everything we can do because  
22 what's not reflected in this, I want committee to  
23 know that there have been lots of individual cases  
24 that we've gotten involved in, people who can't  
25 pay premiums, people who suffered business

1     catastrophes, and we've also done a huge effort on  
2     letting people know where they can get health  
3     insurance if they've lost their coverage because  
4     of job loss.

5             And we really did a coordinated effort  
6     with the New Mexico Health Exchange, the Human  
7     Services Department and Medicaid, the New Mexico  
8     Medical Insurance Pool and the Governor's Office,  
9     and actually came up with a tool that people could  
10    use that tells them that what programs they're  
11    eligible for and whether they can get documents or  
12    premium subsidies.

13            Although, this is not in our bailiwick,  
14    the Medicaid enrollment, as you would expect, has  
15    gone up. It's presenting budget problems for the  
16    Legislature and for HSD. One of the provisions  
17    for accepting federal relief on Medicaid was that  
18    the states could not take anybody off the program  
19    and, as you may suspect, you know, there's a  
20    certain amount of churn that occurs in Medicaid,  
21    people are eligible, then become ineligible, all  
22    of the rest of that. Well, right now, nobody is  
23    becoming ineligible, so those folks are staying on  
24    the plan, plus there are, you know, new folks  
25    getting on.

1           So, normally, over the past few years,  
2   the Medicaid increases by about .15 per month --  
3   percent per month, now the increase is about  
4   1.75 percent per month. So, if it continues --  
5   they're projecting a total enrollment in the  
6   Medicaid program, of almost 900,000 people by the  
7   end of the calendar year, even though we're  
8   getting enhanced match, that still has a  
9   significant cost impact on this.

10           Any questions on these orders, or else,  
11   Melissa, you can go on to the next.

12           Okay.

13                   (Note: Screen sharing.)

14           SUPERINTENDENT TOAL: Okay, when I met  
15   with you back in November, you said that I thought  
16   that the structure of the OSI did not make a lot  
17   of sense, and it did not allow folks from the  
18   outside who deal with us, to know where to go.  
19   So, in this reorganization, we had tried to  
20   concentrate our focus in three broad categories:  
21   Consumer services, which is new; life and health;  
22   and then reporting under "Robert," all the  
23   property and casual functions.

24           I think it will give us something we've  
25   badly needed, and that is, really, a sense of

1 where do you belong in the organizations and where  
2 do folks on the outside, where do they go when  
3 they want to access specific sources?

4 Now, the other part of this that will  
5 become apparent to the external world, is that  
6 while we've made some changes in our website,  
7 we're going to be dramatically changing and  
8 improving that website, and we're consolidating  
9 some of the functions that we have. You know,  
10 right now, we have individual units that are  
11 insanely busy certain times of the year, and not  
12 so busy other times of the year. This new  
13 structure will allow us to do some cross-training  
14 and be able to re- -- use resources as we need  
15 them.

16 Now, we would have liked to have done  
17 this reorganization sooner, but we needed to get  
18 through at least the initial months of COVID but,  
19 most importantly, we needed the right people to  
20 lead up life and health units and consumer  
21 services, and I'm very pleased, excited about the  
22 folks we've been able to recruit, and Julie  
23 started this week and Angelica starts next week.

24 Do you want to move on a little bit?

25 (Note: Screening sharing.)

1 SUPERINTENDENT TOAL: So Julie is  
2 someone I've known, she was the Medicaid director  
3 here for a number of years, but most importantly  
4 to me, is that, believe it or not, she's one of  
5 the few people in the organization now who  
6 actually have insurance -- actually have  
7 experience being on private insurance side. And I  
8 think that's really important to give us the level  
9 of understanding that we need. So she's worked  
10 for several different private insurance companies,  
11 most recently, she was the COO for a Medicaid  
12 health plan in Hawaii.

13 Thankfully, Julie kept her home here in  
14 Santa Fe and she became a New Mexico resident in  
15 1974, so she's been here a long, long time. She's  
16 got claims experience, lots of management  
17 experience, knows government inside and out. I'm  
18 really very, very, very, very pleased about having  
19 her on board.

20 The same thing is true with our new  
21 Consumer Services director. I told (Zoom froze)  
22 that we wanted an agency that's far more consumer  
23 focused, consumer friendly and I was thinking  
24 about consumers and essentially all that we do.  
25 We do have a fair amount of consumer services now,

1 but we don't always do it in the best and most  
2 consumer-friendly way, we need to make sure all  
3 our policies, our rules, our actions, keep that  
4 consumer focus in mind.

5 She was most recently the general  
6 counsel for New Mexico Workers' Comp, she worked  
7 for the AG's Office for quite sometime, you see  
8 she has other experience there, has a law degree  
9 from some small college called Harvard, and she  
10 really, I think, is going to be an exceptional  
11 asset to the organization.

12 So, getting these key people in place is  
13 going to make a world of difference.

14 On a personal level, you know, quite  
15 honestly, I'm not embarrassed to say it, I need  
16 help. We need good people who can take over some  
17 of these responsibilities and manage things,  
18 because I'm having to do a level of nitty and  
19 gritty that really detracts me from doing some of  
20 the big stuff that needs to be done. So I'm very  
21 pleased about them. Julie started Monday, and the  
22 other -- Angelica, starts next Monday, okay?

23 MR. HODGES: Mr. Superintendent, this is  
24 Ben Hodges. I'd like to complement you on this  
25 organizational chart. I think the flow will be



1 much easier and much better for both the insured  
2 and the insurer, and I commend you for this.

3 SUPERINTENDENT TOAL: Well, I thank you  
4 for that. I took to heart your comment in the  
5 nominating committee back in November where you  
6 said that people didn't know where to go or who to  
7 contact and all of the rest of that, and we're  
8 going to address all of those concerns.

9 I'll tell you that, at least so far, the  
10 response from staff has been positive, I think  
11 there's excitement about the new people, there are  
12 two or three people that are unhappy, as they  
13 always are. I'm hoping they'll go job hunting,  
14 I'm going to be blunt and tell you we've had a few  
15 people who are not used to being held accountable  
16 for what they do and their responsibility, I think  
17 everybody now understands that we have a different  
18 sheriff and we're doing things differently. We've  
19 had what I will call some strategic retirements,  
20 which have actually benefited the agency, and I  
21 think we'll see some more changes along those  
22 lines.

23 And if you don't want to take my word  
24 for it, you can certainly ask Melissa. There is a  
25 profoundly different way of doing things, and I

1 think it's the kind of accountability and  
2 responsiveness that you have every right to expect  
3 out of this office.

4 So we do have some new hires here, as  
5 you see, those are listed on the left by office  
6 and position. We do, however, still have some  
7 vacancies.

8 We recently made a request to the  
9 Governor's Office and Secretary of Finance and  
10 Administration that we be allowed to fill some of  
11 these vacancies. As you know, all of state  
12 government's are under a hiring freeze, but since  
13 we don't use any general funds in support of  
14 positions, we're asking for an exception. And I  
15 must say that, you know, the Legislative Finance  
16 Committee has been very supportive of us, because  
17 they know how short staffed we are, and I'm  
18 hoping -- hopeful we'll get the green light to  
19 fill those nine positions.

20 We did -- I know that we asked the  
21 committee for your assistance on two positions,  
22 one was for the healthcare attorney which we have  
23 filled, and the other is for the attorney for the  
24 Patient Compensation Fund. We have our two final  
25 interviews on that, later today, I'm hoping we

1 will make a selection very soon. This is  
2 something we really need to fill. Mike DeMers,  
3 who some of you may know, has been the adjustor  
4 and handled many things for the PCF over the past  
5 few years. Mike unfortunately has had his third  
6 heart attack here recently, and he's finally  
7 taking his doctor's advice to retire and quit  
8 working like he has been.

9 So we brought a new firm on to assist  
10 with the Adjustment Services, but we need an  
11 attorney to review and negotiate the actual final  
12 settlements and prepare all the legal documents  
13 and all the rest of that.

14 So, we're moving along, but we do really  
15 need these other nine positions filled. Any  
16 questions about staffing or operations?

17 MS. CARPENTER: Allegra Capenter.

18 SUPERINTENDENT TOAL: Yes.

19 MS. CARPENTER: Just a question, you  
20 said that the agency has brought in an adjusting  
21 company, is that something that has -- I don't  
22 know anything about that.

23 SUPERINTENDENT TOAL: We did an RFP,  
24 Request for Proposals, and from that, we selected  
25 the firm called Integrion. Integrion serves as

1 the administrator for the Property and Casualty  
2 Guaranty Fund, they administer a number of other  
3 such funds. We've worked with them over the  
4 years. They're actually wholly owned by New  
5 Mexico Mutual, the large Workers' Comp fund, and  
6 they turned in a very good proposal. Mike DeMers,  
7 the gentleman I referenced who we're going to be  
8 losing, is doing the training for those folks and  
9 essentially they will report to the PCF attorney  
10 as soon as we can get that attorney handled right.  
11 Most of the work right now is running through  
12 Bryan Brock, our general counsel, but it has taken  
13 him away from his other responsibilities.

14 MS. CARPENTER: Thank you.

15 SUPERINTENDENT TOAL: And that contract,  
16 Allegra, like all our contracts, is a public  
17 document, if that's something you or the other  
18 committee members want to see, I'm happy to share  
19 it with you.

20 MS. CARPENTER: Thank you.

21 SUPERINTENDENT TOAL: Was that a yes?

22 MS. CARPENTER: I'd like to see it.

23 Thank you, very much.

24 SUPERINTENDENT TOAL: Okay.

25 Next slide.

1 (Note: Screen sharing.)

2 SUPERINTENDENT TOAL: Well, I freely  
3 admit, this is high level, but in part it's at  
4 high level because we haven't finalized our fiscal  
5 year '22 agency request. This budget number that  
6 you see for '21, is the same number we shared with  
7 you back in June. The '22 represents a \$575,000  
8 increase, that money is for two things: Being  
9 allowed to fill all of our allotted positions,  
10 some contract expansions for our Life and Health  
11 Unit because, as I mentioned, we had to do two  
12 actuarial firms, and we think that will continue,  
13 and then I'm sure that some of you have followed  
14 the saga of the Public Regulatory Commission which  
15 got into an unfortunate public battle with the  
16 wrong person, and then they have been told they  
17 have to vacate this building no later than  
18 September 30th.

19 Now, this building is pretty much a  
20 ghost town right now, anyway, I mean, our five or  
21 six people are about the only folks here. But  
22 their departure means that the New Early Childhood  
23 Department will be moving into the PERA building,  
24 and it also means that our offices on the second  
25 floor and the third floor where all of producer

1 licensing is housed, as well as IT, have to  
2 relocate to the fourth floor.

3 So, everything for the OSI will be  
4 consolidated on the fourth floor. That's the good  
5 news. The bad news, even though the other  
6 departments are getting money related to the move,  
7 we are not, so we're asking for an authorization  
8 to let us use more of our fees to pay for those  
9 costs.

10 As some of you are aware that we also  
11 have had to expand our footprint in Albuquerque,  
12 we're in the same building, but we ran out of  
13 space in that small first-floor office, we'll be  
14 moving to the fourth floor, ironically, in the  
15 Albuquerque building. We're not planning for  
16 offices for everybody, because I think as COVID  
17 has taught everybody, not everybody has to be in  
18 an office. And, of course, Legislative Finance  
19 Committee is very interested in trying to reduce  
20 office expense, lease costs and all the rest of  
21 that, but we were able to negotiate a lease on  
22 that Albuquerque space considerably below market.  
23 I think the General Services Department square  
24 footage lease cost in Albuquerque is \$22 and we  
25 negotiated a rate of \$16, so they were very

1 pleased with what we were able to do, and that  
2 space is being fitted out now.

3 Albuquerque, of course, is far and away,  
4 the largest home for both insurance companies and  
5 brokers as well as for the people we insure. We  
6 need a service office, a consumer center there  
7 where people can go, so that was another  
8 motivation for our space.

9 Scott and others know that we are still  
10 trying to open an office in Las Cruces, but I  
11 don't know whether we will get the green light on  
12 that or not. I think it's important that we have  
13 a presence in Southern New Mexico. We have none,  
14 now. It's difficult to do some of the servicing  
15 we have to do out of Albuquerque or Santa Fe and  
16 looking at our Investigations Unit, alone. If  
17 they have to send officers out to Roswell or Hobbs  
18 or Las Cruces or Deming or wherever, they spend  
19 most of their time traveling, so it would be  
20 better if we could have some base of operations in  
21 Las Cruces.

22 So we will be asking for authorization,  
23 again, I don't know whether we will be successful  
24 this year or not.

25 But as you see, it's not much of a

1 request, it obviously calls for no additional  
2 general funds, the Legislative Finance Committee  
3 and the Department of Finance and Administration  
4 have instructed most state agencies to re- -- to  
5 submit a budget request that reflects a five  
6 operating reduction, there is a deflection for  
7 Medicaid and for public education, but otherwise,  
8 they're not looking for any kind of expansion, so  
9 hopefully they'll understand we're not asking for  
10 expansion, we're just asking for the ability to  
11 deal with this housing issue, the office space  
12 issue and to deal with -- make sure we have money  
13 to fill all 97 positions that well we are having  
14 to.

15 MR. HODGES: Mr. Superintendent, this is  
16 Ben Hodges again. Can I go back to the PERA  
17 building for a moment?

18 Do you have an estimate what your moving  
19 costs might be to renegotiate one floor to another  
20 in the PERA building.

21 SUPERINTENDENT TOAL: We're still  
22 working on that, it has not been made clear to us,  
23 yet, Mr. Hodges, as to whether we're going to be  
24 able to keep our office furniture in our other  
25 offices and bring it up, and whether PFC is taking



1 their office furniture, of course, they have no  
2 location to take it to, they will -- excuse me,  
3 have been told to work from home. If I were to  
4 give you a ballpark number, it would be somewhere  
5 around \$20,000, which is not a lot of money.

6 MR. HODGES: Again, what is the time  
7 frame involved?

8 SUPERINTENDENT TOAL: They want us to  
9 accomplish our move in October.

10 MR. HODGES: Very good. Thank you.

11 SUPERINTENDENT TOAL: We get to inherit  
12 very nice offices of the five individual PRC  
13 commissioners. And, actually, we've already  
14 offered one of those offices to the Secretary of  
15 Early Childhood, because the space she's going to  
16 be in is frankly not nearly as nice. She'll have  
17 to make a decision whether she wants to be up here  
18 or if she wants to be with all the rest of her  
19 staff.

20 Any other questions?

21 Final point on this, if I may, we plan  
22 to move about -- in terms of office location, we  
23 plan to move about 18 staff who currently have  
24 office space here will move to the Albuquerque  
25 office because they live in Albuquerque, most of

1 their work is in Albuquerque, the new Director of  
2 Consumer Services, for example, will be working  
3 out of the Albuquerque office, and many of our  
4 legal staff will be housed in Albuquerque, as  
5 well.

6 Any other questions? Okay.

7 (Note: Screen sharing.)

8 SUPERINTENDENT TOAL: Well, we've been  
9 doing our fair share of rule making. You see the  
10 ones on top that we've already implemented, we  
11 have two pending adoptions, one on PBM's, Pharmacy  
12 Benefit Managers and, to be honest, it's just on  
13 hold, because there is a major case on PBM in  
14 state regulation in front of the U.S. Supreme  
15 Court and we, like every other state, are sort of  
16 waiting to hear what the Supreme Court has to say  
17 about that, and whether the states can regulate  
18 PBMs. I'm hoping the answer is yes, but we'll  
19 have to wait and see.

20 Coverages for contraception, as some of  
21 the committee members know, we had a draft  
22 recommendation, but I heard from a number of  
23 people who say these rules need to be reopened.  
24 Frankly, I spent the last month figuring out how I  
25 could change the rules, but I've been convinced by

1 the lawyers that the appropriate way to do that is  
2 reopen the hearing and allow this comment to be  
3 put into the record and then have the rules sent  
4 to me for final approval, so we will go through  
5 that process now.

6 Now, the trade-off is, our original hope  
7 is that we were going to be able to have these  
8 contraceptive coverage rules in place by  
9 September 1, at the latest, now I think,  
10 realistically, we're looking at November 1. But  
11 the input that we have gotten has been very  
12 helpful, and I'm looking forward to a robust  
13 hearing on that.

14 Now, you'll see the agreement is being  
15 planned, there are actually two hearings going on  
16 today, one, as we speak, on accepted benefits.  
17 Return plans is later today. I think you -- as  
18 some of you know, that to maintain our  
19 accreditation, the National Association of  
20 Insurance Commissioner has -- just issued --

21 (Note: Audio interruption.)

22 MS. DENISH: Somebody needs to put their  
23 thing on mute. Okay. Thank you.

24 SUPERINTENDENT TOAL: We had to adopt  
25 new rules on annual audit and financial reports,

1 insurance holding companies and corporate  
2 governings. We have hearings scheduled on all of  
3 those later this fall. Will be the so-called  
4 "Mega Title Rule" that we are working diligently  
5 with the title association, in fact, we've  
6 involved them in all of these rules, and in none  
7 of our rule making have we just gone off into the  
8 corner and tried to adopt this without significant  
9 input.

10 The two other rules that I think are  
11 going to be a challenge, but we will get them  
12 done, one is grievance procedures, where there was  
13 a process underway with a set of rules that I  
14 found overly proscriptive, so they've gone back to  
15 square one, and we're still working on prior  
16 authorization, utilization review following on the  
17 legislation that was adopted by the Legislature a  
18 year or so ago.

19 Now, as you would expect, I hope, we  
20 also have rule making scheduled for 2021, but we  
21 really, as you can see here, have our hands full  
22 this for this year.

23 Any questions on this rule making?

24 Okay, Melissa.

25 (Note: Screen sharing.)

1 SUPERINTENDENT TOAL: Okay, 2021. There  
2 are three primary pieces of legislation that we're  
3 looking at. I want to preface this by saying, I  
4 don't know how in the world this is going to work,  
5 a 16-day session being conducted virtually with no  
6 one being allowed in the Roundhouse. The idea of  
7 taking up some of these major pieces of  
8 legislation without being able to be there and to  
9 manage them, is going to be a huge challenge.

10 We're trying to find out from  
11 legislative leadership and the Governor's Office,  
12 what they anticipate the ground rules to be.  
13 Those have not been set, but I think as a prime  
14 indicator of what we're facing, the office that  
15 normally takes -- that does the scheduling for  
16 special events, for appearances in the Roundhouse,  
17 for Kidney Day, Heart Day, Southern New Mexico  
18 Day, Las Cruces Day, on and on and on, they are  
19 doing no scheduling, whatsoever. And they're  
20 telling other people to anticipate that there will  
21 be no such occasions and events during the  
22 session.

23 So, the question arises, how are we  
24 going to manage this? Now, we've made a strong  
25 commitment that '21 was going to be the year that

1 we finally pushed forward on revising the Medical  
2 Malpractice Act in a serious way, that is still  
3 our plan, but we have a lot of logistics to be  
4 worked out.

5 The first piece of legislation is one  
6 that I've mentioned that we are going to do what  
7 I'm calling a Clean-Up Bill. There shouldn't be  
8 things that are controversial about that for you.  
9 We need to remove, for example, some of the  
10 remaining references to the Insurance Department  
11 of the PRC. There are things in there that make  
12 reference to federal legislation that's been  
13 changed, there are some other provisions that are  
14 in conflict that need to be resolved.

15 Now, the one piece of that, changes that  
16 we haven't made a decision on, and I would welcome  
17 your input, you probably all are aware of the fact  
18 that the fees that we charge are actually set in  
19 law, which is a cumbersome way to do business. So  
20 anytime we want to raise our lower any kind of  
21 fee, and I'll give you an example, I asked earlier  
22 this year, "Can we do like many other state  
23 agencies do and offer a discounted fee for  
24 licensing to New Mexico residents who are  
25 Veterans?" And the message that came back from

1 the attorneys was, "No, you can't do that because  
2 you don't have express authority and actual fee  
3 amounts are set in statute."

4 So the question of, do we try to get  
5 that changed to give us the discretion to set the  
6 fees where we think they need to be to offer some,  
7 what I'll call, incentives or rewards, to folks  
8 like Veterans? I'm going to be honest with you  
9 and tell you that I would love -- you know, we now  
10 license 194,000 individual brokers, agents,  
11 adjustors and producers. That's a staggering  
12 number. The vast majority of those are out of  
13 state. You know, I would love to frankly be able  
14 to charge the out-of-state people more than we  
15 charge the New Mexico people.

16 Now, as you all know, I'm no lawyer, and  
17 I'm not sure we can get away with that, but it  
18 doesn't seem right to me, you know, that a broker  
19 Texas who wants to sell here or a broker in  
20 Oklahoma or wherever, that they should pay the  
21 same fee that New Mexico residents pay.

22 I'll give you another example,  
23 third-party administrators, you know that,  
24 administrator claims and insurance regulations for  
25 large employers, their fee to be licensed as a

1 third-party administrator in this state is a  
2 hundred dollars, and 50 to renew. That's a  
3 preposterously low rate, particularly given the  
4 work that we have to do to ensure they're meeting  
5 all requirements.

6 There are other examples of such fees  
7 where we just don't have the discretion to adjust  
8 fees like we need to. So we haven't made the  
9 decision, we are all under marching orders from  
10 both VFA and the Legislative Finance Committee to  
11 find new sources of revenue. Fee adjustments  
12 could be a significant source of revenue, it's not  
13 revenue we need, so it's revenue that could be  
14 swept into the general fund. So we're at least  
15 looking at it, we're looking to see how our fees  
16 stack up to surrounding states and we're looking  
17 at where fees have not been adjusted in quite  
18 sometime.

19 So, I just wanted to make you aware of  
20 that. We haven't made a final decision.  
21 Obviously, that could be controversial, but we  
22 really would like to get out from underneath the  
23 situation where we have literally no discretion  
24 about what the fee amounts are. The  
25 superintendent, I think, needs to have some



1 discretion in that regard.

2 Now, the second --

3 MR. PERKINS: Mr. Superintendent, this  
4 is Randy Perkins. As you are looking and finding  
5 out what our surrounding states are doing in  
6 regard to that fee structure, I would be very  
7 interested in your findings because, you know, I  
8 guess I look at this from a selfish point of view,  
9 I'm licensed in, you know, 50 jurisdictions, and I  
10 don't always see the necessary fees that are  
11 coming back and hitting me, so as you undergo this  
12 investigation, I'd be very interested in your  
13 findings.

14 SUPERINTENDENT TOAL: You know, if we  
15 have discretion, I could excuse all the nominating  
16 committee members from paying -- I'm joking, of  
17 course.

18 MR. PERKINS: Yes, I know.

19 SUPERINTENDENT TOAL: Mr. Perkins, given  
20 the presence of "HUB" across the country, if our  
21 office or headquarters has information about what  
22 they're paying in different states, that could  
23 really be helpful to us.

24 MR. PERKINS: I will see if I can get  
25 that for you.

1 SUPERINTENDENT TOAL: We don't want to  
2 be out of line, obviously, with the surrounding  
3 states.

4 MR. PERKINS: Right.

5 SUPERINTENDENT TOAL: But neither do I  
6 want to be essentially giving them a free pass.

7 MS. CARPENTER: Madam Chair,  
8 Superintendent Toal, I just have a question, is  
9 the concept that you would exercise that  
10 discretion in the same way that you go about rule  
11 making, or what would be --

12 SUPERINTENDENT TOAL: Yes, it would have  
13 to be done by rule, certainly. I would never give  
14 it -- or ask a superintendent to have really  
15 discretion, I think we go through the normal rule  
16 process.

17 Any other questions?

18 MS. DENISH: Any more questions on this  
19 agenda item all?

20 MR. HODGES: I have none.

21 SUPERINTENDENT TOAL: The other two  
22 bills, quickly. The ORSA Bill has been put in  
23 front of the Legislature multiple times, and it  
24 has failed, and its failed because the members of  
25 the Trial Bar don't like the NAIC provisions on

1 confidentiality on domestic companies.

2 Now, we don't have that many  
3 domesticated companies. The big was one that gets  
4 everybody's attention is Presbyterian Health Plan.  
5 And, I can't speak for the Trial Bar, but I will  
6 say their general concern has been they don't want  
7 to pass a piece of legislation that allows PHPs to  
8 hide information that should be made public. I  
9 totally get that, but for accreditation purposes,  
10 we have to put this in front of the Legislature  
11 and show the National Association of Insurance  
12 Commissioners that we at least made the effort to  
13 get this Bill passed.

14 The third piece, as I mentioned, is the  
15 Malpractice Act which, for all practical purposes,  
16 hasn't been revised in more than 40 years, there  
17 is an agreement across all parties, that we need  
18 to make changes to the Act, to the caps, to other  
19 provisions in there. I think you all know that  
20 we've had some new actuarial studies, one which  
21 has been completed and another which is underway.

22 But, more importantly, I have been  
23 meeting with all the respective interested  
24 parties, the Medical Society, the Trial Lawyers,  
25 the Hospital Association, the Defense Lawyers

1 Association, Malpractice Carriers, I think that's  
2 everybody, I've met with all of them, multiple  
3 times, to try to get a sense of where people are,  
4 what they think needs to be done, and then the  
5 plan is over the next two or three months, to  
6 essentially conduct a show of diplomacy, by  
7 affording trial "balloons" to individual groups  
8 saying, "Would this be acceptable? What's wrong  
9 with this? What's your reaction to this?" in the  
10 hopes that by October we can have some form of a  
11 Bill that most of the folks could support and  
12 then, of course, we would present that to the  
13 Governor's Office. The Governor, to her credit,  
14 has not indicated to us what her interests are,  
15 she did ask all the respective parties not to  
16 introduce a Bill to reform the NMA in the short  
17 session and to give us time look at this and study  
18 it, and I'm hopeful that we can come forward with  
19 something that can at least be the focus of debate  
20 and discussion.

21 We have also not begun talking to the  
22 key legislators, which I will start doing right  
23 away, to get a sense of where they are and how  
24 they think we might be able to manage such a Bill  
25 in a virtual session. And, again, I will share

1 that with all of the interested parties.

2 But, right now, those are the only  
3 pieces of legislation, I think these will be a  
4 heavy lift. Of course in the 60-day session,  
5 there will be lots of information, a lot of  
6 legislation introduced that impacts us, and we'll  
7 have to respond to that. And, as usual, much of  
8 our time will be consumed with budget.

9 MS. DENISH: Any other questions from  
10 the committee about the legislation?

11 MR. HODGES: No.

12 MS. DENISH: Thank you, Superintendent  
13 Toal, I appreciate that. That's a very thorough  
14 review of the department, I really, really  
15 appreciate it.

16 The next item in our agenda is the  
17 public comment, but before we go to actual public  
18 comment, I just want to see if anybody on our  
19 committee has any comments, just general comments  
20 they'd like to make prior to us going -- we have a  
21 few people from the public, I think on, so if you  
22 would like to either put your comment into the  
23 chat room or your questions, especially if you  
24 have a question through that, but I think,  
25 Jennifer, I saw you raise your hand.

1 MS. FORD: Thank you, Madam Chair. I  
2 just wanted to really appreciate, Superintendent,  
3 your incredible diligence on protecting and  
4 advocating for consumers, especially just the  
5 COVID report. You know, in some ways, consumers  
6 are experiencing just extreme financial hardships,  
7 health challenges, and I just want to really thank  
8 you and your staff for just the monumental time  
9 and effort that was put into all of that, all the  
10 COVID bulletins, all of the, you know, just  
11 shepherding all that through, you know, it just  
12 really shows and demonstrates your commitment to  
13 create a more consumer-focused bureau, and I'm  
14 just really so thankful for the way that you've  
15 centered consumers.

16 SUPERINTENDENT TOAL: Thank you, very  
17 much for that. I mean, we've tried to be  
18 responsive. I want to be quick to note that if it  
19 weren't for people like Melissa who, you know,  
20 almost starts trembling when I come near her  
21 office because she knows some new order or rule or  
22 bulletin or something is getting ready to be  
23 issued that she's going to have to deal with.  
24 They have really busted their tails.

25 And, as you all know, when -- and I'm

1 not trying cast aspersions, but when you've had  
2 the same person as superintendent for nine years,  
3 everybody's used to doing things in that  
4 particular way. Completely understandable, I'm  
5 not being critical of that, that's just a fact of  
6 life. So we've had to make a pretty determined  
7 effort to make people understand it's a different  
8 ballgame, it's a different focus, and there are  
9 certainly different expectations about being  
10 consumer responsive. So I appreciate your  
11 comments very much and if it's okay, I will pass  
12 those on to others.

13 MS. Denish: Mr. Hodges?

14 MR. HODGES: Madam Chariman, and this  
15 really is, I suspect, addressed to you. Back in  
16 the January 17th meeting, we had a conversation  
17 about the role of the Insurance Nominating  
18 Committee, and at that time, you had suggested  
19 that you would perhaps create a subcommittee to  
20 work with staff to refine the nominating  
21 committee's role to make it more relevant and  
22 beneficial, what is the status of that?

23 MS. DENISH: From my point of view, I  
24 think we just got caught up in the pandemic, and  
25 we really didn't want to take any staff time or

1 pull away from that during this period of time, so  
2 the status is inertia --

3 MR. HODGES: On hold?

4 MS. DENISH: -- but I don't I think --  
5 was thinking that about that when I read through  
6 the minutes that we might want to get back to that  
7 and see what that's like in the kind of new normal  
8 situation that we now kind of are living in.

9 And I'm happy to work with the  
10 vice-chair to maybe figure that out with Randy and  
11 the superintendent to think about the  
12 subcommittee, but today there's no progress on  
13 that.

14 SUPERINTENDENT TOAL: Madam Chair, I  
15 think it is something that could be easily  
16 incorporated into a clean-up bill. And when the  
17 House Bill 234 went through the Legislature this  
18 session, as you may know, I made the point that  
19 I'm used to having a Board to report to and that  
20 our -- that it was our intention to get a Board  
21 that has more responsibility than just appointing  
22 a superintendent. Not that that isn't important,  
23 but I do think all state agencies should have some  
24 sort of entity that provides oversight. So, if  
25 you want to get a group together, I think we could



1 come up with something pretty quickly to put in  
2 the Clean-Up Bill and would be supportive and I  
3 believe the Governor's Office would be very  
4 supportive, as well.

5 MS. DENISH: What I would like to do is  
6 let me chat with the vice-chair, with Randy, and  
7 is there anybody on here that particularly wants  
8 to serve on a sub-committee, Benny, Allegra? So  
9 we'll put together a little committee and then  
10 I'll talk with you, Mr. Superintendent, about it,  
11 and if Melissa will help us orchestrate maybe a  
12 Zoom meeting to just organize around that and talk  
13 through some of the particulars, we could do that,  
14 okay?

15 SUPERINTENDENT TOAL: That will work.

16 MS. DENISH: I'll try to do something on  
17 that between now and the middle of September, if  
18 that's acceptable.

19 MR. HODGES: Thank you Madam Chair.

20 MS. DENISH: So, Mr. Superintendent, I  
21 wanted to ask you a question back on some of the  
22 COVID things you did, the COVID scams, I meant to  
23 ask this at this time, are there instances where  
24 you've had to work with the Attorney General's  
25 Office? Have there been any substantial COVID

1       scams that have risen to that level?

2                   SUPERINTENDENT TOAL:   There have only  
3       been a couple of situations or cases where it was  
4       clearly some kind of scam, and we did refer those  
5       to the Attorney General's Office, but once it gets  
6       in his office, they take control.  It's probably  
7       time for us to be issuing another kind of warning  
8       to folks.

9                   The other publicity we need to restart  
10      is being, as you know, we do have a COVID hotline  
11      that we staff from 8 a.m. through 6 p.m., Monday  
12      through Saturday.  We got a lot of calls for the  
13      first month or two, they've really died down, but  
14      it's hard for me to believe that all the problems  
15      have gone away.  I think people just don't know  
16      that the ability to make that call is out there,  
17      so we're going to do some more publicity about  
18      that.

19                   MS. DENISH:   Okay.  Thank you.

20                   Are there other -- any other comments  
21      from the Board or from people who might be on this  
22      call that are representing other entities or  
23      public -- some people who I can't see.

24                   MS. CARPENTER:  If I could just slip in,  
25      this is Allegra, Madam Chariman.

1 MS. DENISH: Sure.

2 MS. CARPENTER: I had said I would want  
3 you to send me those documents on Integrion, but  
4 just was on the website to see if I could find  
5 them, and I couldn't, so if you could forward me  
6 any of those documents surrounding that.

7 SUPERINTENDENT TOAL: Sure. No problem.

8 MR. HODGES: Madam Chariman?

9 MS. Denish: Yes.

10 MR. HODGES: I had one other -- and this  
11 is really for Melissa, if she wouldn't mind  
12 sharing the slide show presentation with each us  
13 individually?

14 MS. GUTIERREZ: Yes, I'll send it out  
15 later on.

16 MR. HODGES: Perfect. Thank you.

17 MS. DENISH: Okay.

18 SUPERINTENDENT TOAL: When you're  
19 sending things out, remember what I told you that  
20 Oklahoma University grads, they go on the bottom  
21 of the priority list.

22 (Note: Laughing.)

23 MS. DENISH: Okay.

24 On that note, are there any relevant  
25 comments? Anybody in the -- I think we have 15

1 participants, it looks like, including everybody  
2 whose pictures you can see.

3           Next meeting I don't know that I'm ready  
4 to calendar that or, Mr. Superintendent, does  
5 anybody have a suggestion? I'm assuming we maybe  
6 want to have an update pre-legislative virtual  
7 session, just to get an idea of where we actually  
8 are, going in, and you may know by then some of  
9 the pre-filings of legislation that might affect  
10 us in some way or another, so I'm thinking maybe  
11 mid-December, does that --

12           SUPERINTENDENT TOAL: Well, that's, as  
13 you know, Madam Chair, that's usually a time when  
14 they're doing Legislative Finance Committee  
15 hearings and all that sort of thing, I haven't  
16 looked at my calendar.

17           MS. DENISH: Well, actually, I think I  
18 probably should change that, maybe after the first  
19 of the year, right before the session, if you  
20 wanted to -- but we'll send out some suggestions,  
21 how about that? We'll work together and see --

22           SUPERINTENDENT TOAL: That's fine.

23           MS. DENISH: -- if that seems okay.

24           Any other comments, questions before we  
25 adjourn and say goodbye?

1           Okay. If there are none, and nobody --  
2 I just want to say thanks to everybody for getting  
3 on. Thanks to the staff and thanks for the people  
4 from the public who listened in today, the  
5 Governor's Office, and I hope everybody takes good  
6 care and stays well while we continue to navigate  
7 the landscape.

8           SUPERINTENDENT TOAL: Thank you all.

9           MR. PERKINS: Good seeing everyone.

10          MS. DENISH: Yes, it was good seeing  
11 everybody.

12          Is there a motion to adjourn?

13          MR. ROMERO: So moved.

14          MS. DENISH: All in favor just wave  
15 goodbye.

16                   (Note: Everyone waving.)

17                   (NOTE: In recess at 10:30 a.m.)

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1 STATE OF NEW MEXICO )  
 )ss  
2 COUNTY OF BERNALILLO )

3 I, BERNADETTE C. PEREA, CCR, Court Reporter  
4 for the State of New Mexico, hereby certify that I  
5 reported, to the best of my ability, the Regular  
6 Open Meeting for the Insurance Nominating  
7 Committee; that the pages numbered 2 through 61,  
8 inclusive, are a true and correct transcript of my  
9 stenographic notes, and were reduced to  
10 typewritten transcript through Computer-Aided  
11 Transcription; and that on the date I reported  
12 these proceedings, I was a New Mexico Certified  
13 Court Reporter.

14 Dated at Albuquerque, New Mexico, this 28th  
15 day of August, 2020.

16  
17  
18 \_\_\_\_\_  
19 BERNADETTE C. PEREA, CCRE  
20 New Mexico CCR No. 123  
21 Expires: December 31, 2020  
22  
23  
24  
25