



## New Mexico Hospital Association

### 2009 Legislative Agenda

NMHA will be actively engaged in the 2009 Legislative Session:

- Using our Policy Statements as general guidance
- Responding to breaking issues as they are introduced
- Supporting member-specific capital requests
- Directly lobbying the following legislation:

#### WORKFORCE

##### Nursing Priorities

Background: NMHA has collaborated with NM Center for Nursing Excellence and related stakeholders to develop a set of legislative initiatives to support nursing (see attached detail). The elements include:

- Maintain current funding for Nursing Loan for Service Program (\$300,000).
- Maintain current funding for the Nurse Educator Loan for Service Program (\$50,000).
- Request a tax credit for nursing educators.
- Request a memorial to explore nursing faculty salary issues by looking at reclassification of nursing programs within the funding formula and/or other strategies to enhance nurse faculty salaries. The disparity of nurse faculty salaries to the salaries of their community colleagues is a major recruitment/retention barrier for nurse educators.
- Support HED's proposed legislative language change that would allow HED to use up to 3% of the nursing education expansion grant funds to administer the program. HED plans to use these funds to hire a nursing/health professions policy administrator.

*NMHA Position: **Support** the collaborative [nursing initiatives](#).*

##### Health Professional Priorities

Background: The following initiatives have been developed by New Mexico Health Resources and others to improve health professional education, recruiting and retention efforts:

- New Mexico Health Service Corps (NMHSC) Expansion
- Health Professional Education Loan for Service Program (HPELFS) Expansion
- Health Professional Education Loan Program (HPELRP) Expansion
- Western Interstate Commission on Higher Education (WICHE) Dentist Scholarship Program Expansion
- UNM Dental Residency Program Expansion
- BA-DDS Program
- Nursing Education Program Expansions
- Implement changes in dentist licensure

*NMHA Position: **Support** the [listed initiatives](#).*

##### Nursing Ratios

Background: Hospitals, nurse leaders and nurses all agree that patient safety is critical to all that we do. New Mexico hospitals and nurse leaders are committed to safe staffing for our patients. New Mexico hospitals and nurse leaders support the right patient care, at the right

place and at the right time. We believe that it takes a team of caregivers to care for patients, and we recognize the critical role of the Registered Nurse on that team.

- The number of patients a nurse should care for at any one time must be based on the acuity of the patient, the education and experience of each nurse, the geography of the specific unit, and the team members available to care for a patient's needs.
- The clinical judgment of an experienced care team can never be replaced by a number.
- The demand for care and patient needs change constantly and adjustments must be made to ensure needs are met.
- With New Mexico health care reform initiatives to improve access, provide affordable health care coverage, reduce the uninsured, and provide for adequate provider payments being rolled out, it is just not the right time to add costly mandates.

*NMHA Position: **Oppose** [mandatory nurse staffing ratios](#).*

### **Health Care Provider Liability Act**

Background: NMHA has worked with a member taskforce, NMDOI, NMMS and other health care provider groups for a year to explore access to the liability limits provided under the Medical Malpractice Act. Hospitals are named in the Act but have been excluded by regulatory interpretation. We are now proposing a separate Act to provide limits on liability to hospitals and other providers that are excluded from the MMA.

*NMHA Position: **Support** the [Health Care Provider Liability Act](#).*

## **QUALITY**

### **Hospital Associated Infection (HAI) Reporting**

Background: Over the past year, NMHA has been an active participant in an advisory committee staffed by NMDOH which has overseen a pilot project of 6 hospitals gathering data on Central Line Blood Stream Infections (CLABSIs) and immunization of health care workers. This has been a solid, science-based project and the committee, DOH and legislators are preparing to broaden the program. The Advisory Committee recommendations are:

- Expand reporting of CLABSIs and HCW influenza vaccination rates to include additional hospitals and plan for public reporting to begin after one additional year of data collection in order to:
  - Gain more experience validating and analyzing the data
  - Utilize the first year of pilot data to develop and test (e.g., with focus groups, experts in the field) public reporting mechanisms
  - Educate/recruit additional New Mexico hospitals to join the HAI reporting initiative
- Recommend to the New Mexico Legislature that mandated reporting be considered to start July 1, 2010 with adequate resources for implementation
- If HAI reporting is mandated, program development would include:
  - Hospital training; data collection/management/analysis/dissemination; public reporting

*NMHA Position: **Support** the [Advisory Committee](#) recommendations and **Oppose** onerous reporting of and no-payment for Serious Reportable Events.*

## **FINANCING**

### **HSD Emergency Rule on Hospital Services (HSD Register Vol. 31, No. 50)**

Background: The Human Services Dept. has published an emergency rule which is meant to take effect on 1/1/09 with a public hearing date of January 15. The rule amends NMAC 8.311.2. Among other things, HSD wants to take these steps which are suggested in the background summary but not defined yet:

- Lower the interim OP reimbursement rate from 77% of charges to the cost to charge ratio. This is agreeable for Medicaid FFS because those services are cost settled. However, it also essentially sets a negotiation floor for Salud contracts.
- Reimburse OP hospital services at Outpatient Prospective Payment System (OPPS) Rates
- Reimburse for OP radiology services according to a MAD fee schedule.

The emergency rule language itself states:

- If a provider and an MCO are unable to agree on terms, the default payment will be the “applicable reimbursement rate” which is defined as the “rate paid by HSD to the provider participating in Medicaid” which is will ultimately be linked to the cost to charge ratio mentioned above.
- Effective 1/1/09, OP hospital services are reimbursed using OPPS with lab and radiology services not exceeding “maximum levels established by MAD”. These levels have not been defined but again the reference is back to their overall premise of cost to charge

The rule estimates an impact of \$2.8M but HSD acknowledges that this refers to the known FFS impact and the Salud impact is more like \$40M.

*NMHA Position: **Oppose** the [implementation of this rule as published](#). Seek equitable modifications through the public hearing process and through legislation if needed.*

### **Fully Funding Medicaid**

Background: The Medicaid budget in general is a highly volatile and moving target. Factors such as the economy, federal participation, unreliability of financial systems and management information systems data from the Medical Assistance Division, SALUD contracts and interim policy or contract modifications all keep the Medicaid budget in flux.

From a policy perspective it is difficult to simply advocate for a certain level of appropriation for the Medicaid program. A letter that has been produced as a compilation of several advocacy and provider groups involved with the Medicaid program incorporates policy goals that should drive the appropriations process. The major points included in the letter are:

- New Mexico should maximize federal funds.
- There should be no program reductions in coverage.
- SCI (the state coverage insurance program) should be preserved and expanded or a similar program to cover adults should be initiated.
- Enrollment barriers should be eliminated.
- Provider reimbursement rates should not be reduced.

NMHA continues to meet with various stakeholders, legislative leadership, the Governor and Lt. Governor to express support for these policy goals while working to identify possible cost containment strategies to help address the overall fiscal crisis facing the state. NMHA opposes any arbitrary, unilaterally conceived rule-driven reductions in reimbursement that the Medical Assistance Division may attempt to promulgate.

NMHA also opposes any premature State mandated reductions to the Medicaid program prior to actions being taken by the Federal government to address the national economic crisis and the enactment of economic stimulus legislation. Premature state action may have the unintended consequence of reducing New Mexico’s potential receipt of additional federal dollars if the Medicaid program is cut at this point in time.

*NMHA Position: **Support** the [“Statement of Support for Fully Funding Medicaid”](#) as developed by an advocate collaborative.*

## **Standardized Reporting of Use of SCP Funds**

Background: The New Mexico Association of Counties has proposed that a standardized reporting process be implemented statewide to provide information regarding how sole community hospitals are expending the sole community provider allocations as matched by county funds through intergovernmental transfers.

The existing indigent fund statute provides for reports based on a format and process jointly developed and approved by counties and hospitals. NMHA supports accountability in terms of reporting and has made numerous attempts to work with the NMAC to develop a process and strategy regarding such reporting.

Given the complexity of the SCP program and the myriad of means by which the program receives matching funds, pending and potential issues with the federal government, legislation prescribing a standardized reporting mechanism would be problematic without further comprehensive and inclusive development among the stakeholders.

*NMHA Position: **Support** a legislative memorial directing NMHA and NMAC to develop such a [reporting process](#) in the 2009-2010 interim. An [NMHA Alert](#) was issued in July 2008.*

## **Redesign of Sole Community Provider Program**

Background: The sole community program has grown significantly since its inception and is projected to have a base approaching \$200 million in 09-10 with a possible \$30 to \$50 million dollar supplemental allocation as well. There are four major issues facing the SCP:

- There are still pending federal rules that would have a serious negative impact on the program. The new administration and congressional leaders (lead by Senator Bingaman) have however strongly indicated that the pending rules now under moratorium will be eliminated.
- The level of matching for the program due to its strong growth has become problematic for counties faced with significant levels of intergovernmental transfers required to fully match the available SCP funds and the recent downturn in available revenues that are primarily driven by local option gross receipts taxes.
- The program's allocation methodology has become somewhat skewed over the years due to the original allocation base, that reflected each eligible county's expenditure for indigent health care claims and the ability or willingness or unwillingness to fully match, overmatch or under-match available SCP base and supplemental funds annually.
- There is an inequity in terms of hospital legal structure relative to the legal ability to participate in the intergovernmental transfer.

NMHA has attempted for two legislative sessions to secure state appropriations to avoid losing available SCP funds. If they are not matched they remain with the federal government. An estimated \$40 million in available funds has not been drawn down with a projected loss of \$30 million for 09-10 in base allocations alone. An actual number will be known by February 15<sup>th</sup> which is the date by which counties have to submit their matching budget agreement to the state. Given the dismal revenue projections and budgetary shortfalls facing the state it is highly unlikely that state general fund revenues will be available for use by this program in 09-10. NMHA has perennially supported all proposals to maximize federal Medicaid funds in general. This program specifically benefits hospitals so it should be a top priority in terms of NMHA's advocacy efforts.

NMHA has engaged a consultant to review options available to restructure the SCP program and potential funding options. The consultant has been directed to recommend restructuring options, evaluate new and enhanced funding mechanisms and sources, and statutory language to assure that the sole community provider fund and any revenues accruing to it will be used to match available SCP allocations and not to supplant or supplement other state general funded programs.

*NMHA Position: **Support** options to modernize the SCP program and enhance hospital funding, as consultant analysis becomes available and reviewed by membership before and during the session.*

### **2009 Proposed Fiscal Solvency Legislation**

Background: The state is facing an estimated \$450 million budgetary shortfall this year and an undetermined but significant revenue decline in 2010. The Executive and the Legislative Finance Committee have been developing a “fiscal solvency” strategy that will be put into bills to be considered this upcoming session. Some of the proposals will include freezing previously enacted tax cuts which could include stopping the phased reduction of the gross receipts tax on for investor owned hospitals that NMHA successfully lobbied for in 2006. NMHA has already argued to the LFC staff that this item should not be included in a reduction package based on tax equity considerations and the fact that the revenue impact is marginal to the state.

Another component of the solvency package involves “take back” or reauthorization of appropriations for capital projects. Local governments, school and universities have been directed to provide the state with listings of all capital projects that are not yet under construction contract. The executive and the legislature will consider which of the projects should be put on hold or reconsidered at a later time. There are a few hospital related capital appropriations that may be considered for deferral; however, in most cases, public hospital projects should be excluded due to the fact that they are directly related to the general health, safety and welfare of the state and they are not subject to the constitutional prohibition on anti-donation because they fall under the “sick and indigent” exemption. This component of the solvency package will be very controversial and contentious due to the fact that legislators are fiercely protective of their capital projects and because it can be effectively argued that the projects create jobs and help economic development. NMHA will continue to argue for keeping all hospital related capital outlay projects intact. Members with pending capital projects that have a state funded component should be contacting local government officials and their local legislators to request hospital projects be kept whole.

Another component of the package may be program cuts. The Governor has asked agency heads to submit budget reduction proposals for consideration. According to the Governor’s office there should not be reductions in Medicaid or education; however, the Human Services Department has already begun initiating rule changes that will result in cuts to hospitals under the Medicaid program as noted above. The LFC has staff has indicated that they have no intentions at this point to cut Medicaid.

*NMHA Position: **Oppose** program cuts to Medicaid and specifically cuts to hospital reimbursement without consultation and consensus among stakeholders. Hospital capital outlay projects should remain intact unless individual hospitals in conjunction with the local government and legislators determine projects can be deferred or terminated.*

***Oppose** a suspension of the phase-in of the final increments of the gross receipts tax cuts on investor owned hospitals.*