

**Legislative Update February 28, 2015**  
**Steve Lucero, NMAFP Legislative Liaison**

**SB 325 Health Agreement No-Compete Provisions (Sen. Ingle)**

This bill passed a Senate Floor vote 37-3 on Tuesday February 17<sup>th</sup>. It has been referred to House Health and House Judiciary Committees. The bill is waiting to be scheduled in House Health Committee.

**SB 121 Vaccine Purchasing Act (Sen. O'Neill)**

This bill will be heard next in Senate Judiciary Committee (date to be determined) as a Senate Judiciary Committee Substitute. The changes suggested by the stakeholders have been written into a discussion draft substitute bill (*attached*). If this version of the bill passes Senate Judiciary Committee it will be the official committee substitute bill.

**HB 122 Scope of Practice Act (Rep. McMillan)**

This bill is scheduled on the House Calendar as of Friday February 27<sup>th</sup>.

**HB 259 Certain Physician Services Gross Receipts (Rep. McMillan)**

This amended bill received a Do Pass in House Health Committee on Thursday February 19<sup>th</sup>. The amended bill strikes the Purpose Clause of the bill (deleting all of Section A beginning on page one and lines 1-6 on page 2). The bill is waiting to be scheduled in House Ways and Means Committee.

**SB 376 Chiropractic Medicine & Advanced Practice (Sen. McSorley)**

This amended bill received a Do Pass in Senate Public Affairs Committee on Thursday February 26<sup>th</sup> and has been referred to Senate Judiciary. The amendment would require more supervision from doctors or nurse practitioners. (*See the attached Senate Public Affairs Committee report for a look at the amendments*).

**SB 571 Physical Therapy Treatment & Board (Sen. Shendo)**

This bill awaiting a hearing date in Senate Public Affairs. Stakeholders have been working on a version of the bill that will have wide support. The following section is suggested as an amendment:

*A physical therapist shall refer a patient to their licensed health care provider if after 30 days of initiating physical therapy intervention the patient has not made objective, or measurable, or functional improvement with respect to the primary complaints of the patient, or if at any time the physical therapist has reason to believe the patient has symptoms or conditions requiring treatment beyond the scope of practice of the physical therapist. The 30-day limit shall not apply to a patient previously diagnosed by a licensed health care provider with a chronic, or neuromuscular, or developmental condition when treatment or services are being provided for those previously diagnosed conditions, nor apply to services being provided for health promotion, wellness, fitness, or maintenance purposes, nor to those participating in programs under the Individuals with Disabilities in Education Act Title 20 USC 1400.*

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 121

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE VACCINE PURCHASING ACT;  
ESTABLISHING A VACCINE PURCHASING PROGRAM; CREATING THE VACCINE  
PURCHASING FUND; REQUIRING REPORTING OF THE NUMBER OF INSURED  
CHILDREN; REQUIRING HEALTH INSURERS AND GROUP HEALTH PLANS TO  
REIMBURSE THE STATE FOR COSTS OF VACCINES PURCHASED BY THE  
STATE FOR INSURED CHILDREN; PROVIDING FOR PENALTIES; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Vaccine Purchasing Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Vaccine Purchasing Act:

A. "advisory committee on immunization practices"  
means the group of medical and public health experts that

underscored material = new  
[bracketed material] = delete

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1 develops recommendations on how to use vaccines to control  
2 diseases in the United States, established under Section 222 of  
3 the federal Public Health Service Act;

4 B. "department" means the department of health;

5 C. "fund" means the vaccine purchasing fund;

6 D. "group health plan" means an employee welfare  
7 benefit plan to the extent that the plan provides medical care  
8 to employees or their dependents under the Employee Retirement  
9 Income Security Act of 1974 directly or through insurance,  
10 reimbursement or other means;

11 E. "health insurance coverage" means benefits  
12 consisting of medical care provided directly or through  
13 insurance or reimbursement or other means under any hospital or  
14 medical service policy or certificate, hospital or medical  
15 service plan contract or health maintenance organization  
16 contract offered by a health insurance issuer;

17 F. "health insurer" means any entity subject to  
18 regulation by the office of superintendent of insurance that:

19 (1) provides or is authorized to provide  
20 health insurance or health benefit plans;

21 (2) administers health insurance or health  
22 benefit coverage; or

23 (3) otherwise provides a plan of health  
24 insurance or health benefits;

25 G. "insured child" means a child under the age of

1 nineteen who is eligible to receive health insurance coverage  
2 from a health insurer or medical care pursuant to a group  
3 health plan;

4 H. "office of superintendent" means the office of  
5 superintendent of insurance;

6 I. "policy" means any contract of health insurance  
7 between a health insurer and the insured and all clauses,  
8 riders, endorsements and parts thereof;

9 J. "provider" means an individual or organization  
10 licensed, certified or otherwise authorized or permitted by law  
11 to provide vaccinations to insured children; and

12 K. "vaccines for children program" means the  
13 federally funded program that provides vaccines at no cost to  
14 eligible children pursuant to Section 1928 of the federal  
15 Social Security Act.

16 SECTION 3. [NEW MATERIAL] STATEWIDE VACCINE PURCHASING  
17 PROGRAM.--

18 A. The department shall establish and administer a  
19 statewide vaccine purchasing program to:

20 (1) expand access to childhood immunizations  
21 recommended by the advisory committee on immunization  
22 practices;

23 (2) maintain and improve immunization rates;

24 (3) facilitate the acquisition by providers of  
25 vaccines for childhood immunizations recommended by the

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1 advisory committee on immunization practices; and

2 (4) leverage public and private funding and  
3 resources for the purchase, storage and distribution of  
4 vaccines for childhood immunizations recommended by the  
5 advisory committee on immunization practices.

6 B. The department shall:

7 (1) purchase vaccines for all children in New  
8 Mexico, including children eligible for the vaccines for  
9 children program and insured children;

10 (2) invoice each health insurer and group  
11 health plan to reimburse the department for the cost of  
12 vaccines provided directly or indirectly by the department to  
13 such health insurer's or group health plan's insured children;

14 (3) maintain a list of registered providers  
15 who receive vaccines for insured children that are purchased by  
16 the state and provide such list to each health insurer and  
17 group health plan with every invoice;

18 (4) report the failure of a health insurer to  
19 reimburse the department within thirty days of the date of the  
20 invoice to the office of superintendent;

21 (5) report the failure of a health insurer or  
22 group health plan to reimburse the department within thirty  
23 days of the date of the invoice to the office of the attorney  
24 general for collection; and

25 (6) credit all receipts collected from health

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1 insurers and group health plans pursuant to the Vaccine  
2 Purchasing Act to the fund.

3 C. No later than July 1, 2015 and July 1 of each  
4 year thereafter, the department shall estimate the amount to be  
5 expended annually by the department to purchase, store and  
6 distribute vaccines recommended by the advisory committee on  
7 immunization practices to all insured children in the state,  
8 including a reserve of ten percent of the amount estimated.

9 D. No later than September 1, 2015 and each quarter  
10 thereafter, the department shall invoice each health insurer  
11 and each group health plan for one-fourth of its proportionate  
12 share of the estimated amount and reserve pursuant to  
13 Subsection C of this section, calculated pursuant to Subsection  
14 B of Section 6 of the Vaccine Purchasing Act.

15 E. The department may update its estimated amount  
16 to be expended annually and its reserve to take into account  
17 increases or decreases in the cost of vaccines or the costs of  
18 additional vaccines that the department determines should be  
19 included in the statewide vaccine purchasing program and adjust  
20 the amount invoiced to each health insurer and group health  
21 plan the following quarter.

22 SECTION 4. [NEW MATERIAL] VACCINE PURCHASING FUND.--

23 A. The "vaccine purchasing fund" is created in the  
24 state treasury. The fund consists of amounts reimbursed to the  
25 state by health insurers and group health plans pursuant to the

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1 Vaccine Purchasing Act and of appropriations from, and  
2 transfers made to, the fund. Money in the fund shall be  
3 expended only for the purposes specified in the Vaccine  
4 Purchasing Act, by warrant issued by the secretary of finance  
5 and administration pursuant to vouchers approved by the  
6 secretary of health.

7 B. Money from the fund may be appropriated to the  
8 department to be expended only as authorized in Section 5 of  
9 the Vaccine Purchasing Act.

10 C. The fund shall be audited in the same manner as  
11 other state funds are audited, and all records of payments made  
12 from the fund shall be open to the public.

13 D. Any balance remaining in the fund shall not  
14 revert or be transferred to any other fund at the end of a  
15 fiscal year.

16 E. Money in the fund shall be invested by the state  
17 investment officer in accordance with the limitations in  
18 Article 12, Section 7 of the constitution of New Mexico.  
19 Income from investment of the fund shall be credited to the  
20 fund.

21 SECTION 5. [NEW MATERIAL] AUTHORIZED USES OF THE VACCINE  
22 PURCHASING FUND.--

23 A. The fund shall be used for the purchase, storage  
24 and distribution of vaccines, as recommended by the advisory  
25 committee on immunization practices, for insured children who

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1 are not eligible for the vaccines for children program.

2 B. The department shall credit any balance  
3 remaining in the fund at the end of the fiscal year toward the  
4 department's purchase of vaccines the following year; provided  
5 that the department maintains a reserve of ten percent of the  
6 amount estimated to be expended in the following year.

7 C. The fund shall not be used:

8 (1) for the purchase, storage and distribution  
9 of vaccines for children who are eligible for the vaccines for  
10 children program;

11 (2) for administrative expenses associated  
12 with the statewide vaccine purchasing program; or

13 (3) to pass through a federally negotiated  
14 discount pursuant to 42 U.S.C. 1396s for vaccines administered  
15 to children who are not vaccine-eligible under 42 U.S.C.  
16 1396s(b).

17 SECTION 6. [NEW MATERIAL] REPORTING.--

18 A. No later than one hundred twenty days following  
19 the enactment of the Vaccine Purchasing Act, the office of  
20 superintendent shall:

21 (1) promulgate rules requiring each health  
22 insurer and group health plan to report the number of children  
23 it insured who were under the age of nineteen as of December  
24 31, 2014 and to annually report the number of children it  
25 insures who will be under the age of nineteen as of December 31

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1 of each subsequent year to the office of superintendent,  
2 excluding from such reports children who are enrolled in  
3 medicaid or in any medical assistance program administered by  
4 the department or the human services department and children  
5 who are American Indian or Alaska Natives; and

6 (2) for each health insurer or group health  
7 plan, provide the department with the number of insured  
8 children reported by such health insurer or group health plan  
9 pursuant to Paragraph (1) of this subsection.

10 B. Each health insurer and group health plan shall  
11 reimburse the department for the cost of vaccines for childhood  
12 immunizations purchased by the state for the benefit of such  
13 health insurer's or group health plan's insured children  
14 according to such health insurer's or group health plan's  
15 policy obligations and in accordance with health insurance  
16 coverage requirements under state and federal law. The amount  
17 reimbursed by each health insurer or group health plan shall be  
18 a fraction, the denominator of which is the total number of  
19 insured children reported by all health insurers and group  
20 health plans pursuant to Subsection A of this section and the  
21 numerator of which is the number of insured children reported  
22 by such health insurer or group health plan pursuant to  
23 Subsection A of this section multiplied by the total amount as  
24 determined by the department pursuant to Subsection B of  
25 Section 3 of the Vaccine Purchasing Act.

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1           C. A health insurer's or group health plan's  
2 reimbursement to the department pursuant to the Vaccine  
3 Purchasing Act shall be deemed payment for clinical services  
4 and activities to promote health care quality for the purpose  
5 of calculating a health insurer's or group health plan's  
6 medical loss ratio.

7           **SECTION 7. [NEW MATERIAL] APPEAL--PENALTIES.--**

8           A. A health insurer aggrieved pursuant to the  
9 Vaccine Purchasing Act may appeal as provided in Section  
10 59A-4-20 NMSA 1978.

11           B. A health insurer or group health plan that fails  
12 to file a report required by the office of superintendent  
13 pursuant to Subsection A of Section 6 of the Vaccine Purchasing  
14 Act shall pay a late filing fee of five hundred dollars (\$500)  
15 per day for each day from the date the report was due.

16           C. The office of superintendent may require a  
17 health insurer or group health plan subject to the Vaccine  
18 Purchasing Act to produce records that were used to prepare the  
19 report required under Subsection A of Section 6 of the Vaccine  
20 Purchasing Act. If the office of superintendent determines  
21 that there is other than a good faith discrepancy between the  
22 number of insured children reported and the number of insured  
23 children that should have been reported, the health insurer or  
24 group health plan shall pay a civil penalty of five hundred  
25 dollars (\$500) for each report filed for which the office of

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1 superintendent determines there is such a discrepancy.

2 D. Failure of a health insurer or group health plan  
3 to make timely payment of an amount invoiced pursuant to  
4 Subsection D of Section 3 of the Vaccine Purchasing Act shall  
5 subject the health insurer or group health plan to a civil  
6 penalty of five hundred dollars (\$500) for each day from the  
7 date the payment is due.

8 SECTION 8. [NEW MATERIAL] POWERS AND AUTHORITY.--The  
9 department and the office of superintendent shall promulgate  
10 and enforce such rules as may be necessary to carry out the  
11 provisions of the Vaccine Purchasing Act.

12 SECTION 9. [NEW MATERIAL] APPLICABILITY.--The provisions  
13 of the Vaccine Purchasing Act:

14 A. do not apply to an entity that only issues  
15 policies, certificates or subscriber contracts within New  
16 Mexico that are limited to a specific disease; hospital  
17 confinement; indemnity; accident-only; credit; dental; vision;  
18 medicare supplement; long-term care; disability income  
19 insurance; student health benefits-only coverage issued as a  
20 supplement to liability insurance; workers' compensation or  
21 similar insurance; automobile medical payment insurance;  
22 nonrenewable short-term coverage issued for a period of twelve  
23 months or less; medicaid; or any medical assistance program  
24 administered by the department or the human services  
25 department; and

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FIFTY-SECOND LEGISLATURE  
FIRST SESSION, 2015

SB 376/a

February 26, 2015

Mr. President:

Your **PUBLIC AFFAIRS COMMITTEE**, to whom has been referred

**SENATE BILL 376**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 3, line 11, strike "and".
2. On page 3, between lines 16 and 17, insert the following new subparagraph:

"(d) the prescription, administration, injection or dispensing of any controlled substance enumerated in Schedule I or Schedule II of the Controlled Substances Act; and".
3. On page 25, line 4, after "instruction", insert "that has been approved by the New Mexico medical board".
4. On page 26, between lines 7 and 8, insert the following new subsections:

"D. Upon receipt of certification as a level-two certified advanced practice chiropractic physician, the level-two certified advanced practice chiropractic physician shall enter into a written collaborative practice agreement with a physician licensed pursuant to the Medical Practice Act or Chapter 61, Article 10 NMSA 1978 or a certified nurse practitioner in order to prescribe, administer, inject and dispense dangerous drugs that are used in a standard primary care practice, with the exception of controlled substances enumerated under Schedule I or Schedule II of the Controlled Substances Act. A written collaborative practice agreement shall include the following:

- (1) a plan for consultation and referral;
- (2) protocols for prescribing; and

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FIRST SESSION, 2015**

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(3) a fifteen percent random sample of charts and prescriptions on a quarterly basis that will be reviewed and attested to by the collaborating physician or certified nurse practitioner.

E. At the end of five years of collaborative practice, the collaborating physician licensed pursuant to the Medical Practice Act or Chapter 61, Article 10 NMSA 1978 or certified nurse practitioner may attest in writing to the successful completion of the period of collaboration.

F. Upon receipt of a signed, written attestation pursuant to Subsection E of this section, the level-two certified advanced practice chiropractic physician shall file the attestation with the board of chiropractic examiners. Upon the board's receipt of the attestation, the board shall issue to the level-two certified advanced practice chiropractic physician written permission to practice outside of the chiropractic physician's collaborative practice agreement."

5. Reletter the succeeding subsections accordingly.,  
and thence referred to the **JUDICIARY COMMITTEE.**

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Respectfully submitted,

\_\_\_\_\_  
Gerald Ortiz y Pino, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 1 Against

Yes: 5

No: O'Neill

Excused: Ivey-Soto, Kernan

Absent: None

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