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A PUBLICATION OF THE HEALTH LAW  
SECTION OF THE NEW MEXICO STATE BAR



# Health -E- News

## SECTION NEWS

**Upcoming CLEs:** Regarding the one hour CLEs, please note that there have been changes in the date and times (in red) for some of the CLEs. If you placed them on your calendar after receiving the last Health-E-News, please correct your calendar. Here is the new schedule:

March 25th	11:30 AM	Fraud & Abuse: State laws and Enforcement Policy
April 22nd	7:30 AM	Fraud & Abuse: Federal Laws - Civil Enforcement Policy
May 27th	11:30 AM	Fraud & Abuse: HMO and DOI Enforcement Activities
June 24th	7:30 AM	Fraud & Abuse: Stark I & II and Anti-Kickback

**Board Meetings:** The Board will meet on the following dates at the State Bar office, and any member of the Section is welcome to attend these meetings:

March 18 <sup>th</sup>	7:30 AM
April 15 <sup>th</sup>	11:30 AM
May 20 <sup>th</sup>	7:30 AM
June 17 <sup>th</sup>	11:30 AM

## NM Legislative Update on Health Care Bills

Barbara Quissell's CLE presentation on Bills passed in the 2004 NM Legislature was very well attended and inspired lively debate. Listed below are the health-related bills sent to Governor Richardson. He has already signed one, and he has until March 10, 2004 to sign the others. If you had attended the CLE you would have received copies of the bills, the Fiscal Impact Report and additional materials. You can download the bills and the FIR from the NM Legislature's website

<http://legis.state.nm.us/newsite/default.asp>

Under the Legislature listing on the left side of the screen, click on "Bill Locator" and then select the chamber and insert the bill number. The Health-E-News will report on the status of these bills. If you have questions or concerns about the bills, share them with other lawyers on the Health Law Section's Forum. (See the article in this issue regarding the new State Bar website features.).

HB 2	General Appropriations Bill HB
271*	Creating a Behavioral health Planning Council
HB 322 & SB 315*	Providing the Secretary of Health Oversight of hospitals, long term care facilities and primary care facilities
HB 468	Medicaid False Claims Act
	HB 581 NM Telehealth Act
HB 625	Food and Medical Services Gross receipts Tax

SB 34*	To Develop a Comprehensive Strategic Plan for Health
SB 73	Cancer Clinical Trial Patient Coverage
SB 113	Brain Injury Medicaid Waiver Program
SB 203 & HB 254	Immunization Registry Act
SB 385	Health Facility Daily Bed Surcharge Signed February 18, 2004.
SB 436	Nursing Home & Care Facility Tax Credits
SB 502	Increases Premium Tax on all health insurance, group and individual plans (but not self-insured plans), Mandating coverage for alpha-fetoprotein screening test for pregnant women and coverage for circumcision for newborn males.
SB 538 & HB 561*	Consolidated Public Health Program Purchasing *Part of the Governor's Health Care Initiative.

Where two bills are listed, duplicates were introduced in each chamber and passed. Check the locator for each bill.

There were over 1240 bills introduced. Only 138 made it through the legislative meat grinder. The Section extends its thanks to Barbara Quissell, Assistant General Counsel to Blue Cross/Blue Shield of NM and a member of the Health Law Section Board.

### **Health Law Section Web Page Update.**

Did you know that the Health Law Section (HLS) has a webpage on the New Mexico State Bar Website? Did you know that you can locate all of the members in the section via the State Bar Website? Did you know that you can read the Health-E-News on the HLS Web page? The answers to these questions (which hopefully are obvious) are just a few clicks away.

At the last HLS Board meeting the State Bar's webmaster, Veronica Cordova, gave the board a live presentation. You can take a tour by going to [www.nmbar.org](http://www.nmbar.org). (Click on the website in this newsletter and it will take you there). Log on using your State Bar number as your user identification and your last name as your password.

**A SECTION MEMBERSHIP LIST:** To access a current list of the HLS members click on the "Attorney/Law Firm Finder" button at the very top of your screen. Go down to the "Section Membership" dialogue box (second one from the bottom) and select "Health law." Click on search and the entire section membership will appear with members listed in Alphabetical order! If they have an email address on file with the State Bar, click on the little envelop to the right of the name and your email system should open and you are ready to go. If you want to talk to a lot of section members at one time – use the new Forum.

**THE HLS FORUM:** Another important new service on the site is the Forum capability. If you want to discuss a health law topic with other members of the Bar, (later the Board may limit access to the forum to just members of the HLS, but before it does so it will solicit your input) log on and then click on the "Discussion Groups" button, which is on the second row of buttons, second from the end on the right hand side of the screen. Then click on Forums, and select the section in which you want to post a topic. If you do not want your name to appear on the posting, you can do so by listing your self as "anonymous." Be advised that some forums do not permit anonymous postings. You might want to do this if you are concerned that people will know who your client is if they know who are. You can ask to be sent an email when someone responds to your posting. The HLS Board will set up special Topics on the HLS Forum, which will allow the Forum users to focus their dialogue more precisely. If you think a new Topic should be created, post the suggestion on the forum. Just one request – please limit the postings on the HLS Forum to issues related to health care.

**VISIT THE SECTION PAGE:** You can find useful information on the Section Pages. Click on the "Divisions/Section Committees" button in the second row from the top. Then click on the section button

and you get a list of all the sections. If you click on the Health Law Section you will see (look at the vertical bar on the left hand side of the page) that our Board, the Bylaws, and all past editions of the Health-E-News are available. Click on Health-E-News, and all of the editions are listed. If you lose the email that sent you the Health-E-News, you can find it here. Don't forget the other sections. For example, click on the Prosecutors Section, and then click on the "Expert Contact List" beneath Prosecutors in the vertical panel on the left hand side of the screen. Up pops a list of forensic experts. *If you need an expert in a case you are handling, post a request on the HLS forum.*

The HLS Board would like your input regarding items like the Prosecutors Expert list that you would like to see on the Health Law Section page. We can include health related forms from the HLS CLEs, practice forms, checklists, etc.

**OTHER GOODIES:** The State Bar website contains links to thousands of different legal forms and to free research. Click on the "Legal Research Button" at the very top of the screen and explore the possibilities. Set up your own personalized look with quick access to the HLS forum and other pages using the "MyBar" option on the top row of buttons. While you are at it, explore the rest of the State Bar's excellent website.

The Board of the HLS Section plans to use the State Bar website to its fullest advantage. If you have suggestions, please communicate them to the Board.

### **The Section's Budget for 2004**

As of February 15, 2004, the section had 110 members. The Board prepared a budget using the assumption of 123 members. The Section had a reserve from last year of \$273.12, and its projected revenues are \$3,455.12. Anticipated Expenses are as follows:

Administrative expense (Postage, Telephone, photocopies)	\$100.00
Board Meetings (mileage, teleconference, refreshments)	\$534.51
Webpage	\$125.00
Awards	0
Annual Meeting	\$500.00
UNM Law Library	\$500.00
Reception for UNM Students	\$200.00
CLE	\$278.00
2003 Reserve designated for CLE	<u>\$722.00</u>
	<b>\$3,455.12</b>

### **Members of the Board**

The following lawyers will serve as your Board for 2004.

<b>Jennifer Stone</b> (Chair)	505-842-1950	jstone@mstlaw.com
<b>John Bannerman</b> (Chair Elect.)	505-837-1900	jab@NMCounsel.com
<b>Susan Sullivan</b>	505-827-2962	ssulliva@doh.state.nm.us
<b>Charles Gurd</b>	505-856-1468	cgurd@aol.com
<b>Diane Garrity</b>	505-983-6956	dgarrity@sgmnlaw.com
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<b>Barbara Quissel</b>	505-816-4224	Barbara-Quissel@bcbsnm.com
<b>Gabe Parra</b>	505-923-6505	gparra@phs.org
<b>Kathleen Hessler</b> (Past Chair)	505-828-1150	khessler@worldnet.att.net
<b>Brenda Maloney</b> (YLD)	505-765-5900	bmmaloney@rodey.com

## **NEW DEVELOPMENTS IN HEALTH LAW**

### **DHHS Sees No Legal Bar To Hospitals Offering Discounts To Uninsured Patients**

Medicare program regulations do not prohibit hospitals from offering discounts to uninsured patients who are unable to pay their bills, Department of Health and Human Services (DHHS) Secretary Tommy G. Thompson told the American Hospital Association (AHA) in a February 19 letter to the organization's president Richard J. Davidson. Hospitals also may reduce or waive Medicare cost-sharing obligations for financially strapped beneficiaries under federal rules, Thompson said. The letter directed hospitals to a series of questions and answers prepared by the Centers for Medicare and Medicaid Services (CMS) concerning charges for the uninsured. The DHHS Office of Inspector General (OIG) also recently posted guidance on its Web site summarizing federal policies on the issue. The OIG guidance notes that the federal Anti-Kickback Statute does not prohibit discounts to uninsured patients who are unable to pay their hospital bills so long as the discounts are not linked to generating business payable by federal healthcare programs.

To read Thompson's letter to AHA, go to  
<http://www.hhs.gov/news/press/2004pres/20040219.html>

To read the CMS guidance, click here  
[http://www.healthlawyers.org/hlh/docs/040223\\_CMS\\_FAQ\\_uninsured.pdf](http://www.healthlawyers.org/hlh/docs/040223_CMS_FAQ_uninsured.pdf)  
(Note: link will open an Adobe Acrobat PDF file)

To read the six-page guidance document, click here  
[http://www.healthlawyers.org/hlh/docs/040223\\_OIG\\_guidance.pdf](http://www.healthlawyers.org/hlh/docs/040223_OIG_guidance.pdf)  
(Note: link will open an Adobe Acrobat PDF file)

### **GAO Finds DHHS Waiver Of SCHIP Funds Is Inconsistent With Statutory Goals, Senators Urge Thompson To Reconsider Waivers**

DHHS' approval of waivers that allow states to use State Children's Health Insurance Program (SCHIP) funds for health insurance coverage for childless adults is inconsistent with SCHIP's statutory goal of expanding coverage for low-income children, the General Accounting Office (GAO) said in a recent report. The report responds to a request by Sen. Charles Grassley (R-IA), Chairman of the Senate Finance Committee, and Ranking Committee Member Max Baucus (D-MT) that GAO update its July 2002 report, "Medicaid and SCHIP: Recent HHS Approvals of Demonstration Waiver Projects Raise Concerns" (GAO-02-817). The new report, "SCHIP: HHS Continues to Approve Waivers That Are Inconsistent with Program Goals" (GAO-04-166R), found that DHHS is likely to continue to allow states to use SCHIP funds for coverage of childless adults and other adults regardless of whether the use of the funds meets the statutory requirement that the use be cost-effective.

To read GAO's report, click here  
[http://www.healthlawyers.org/hlh/docs/040223\\_gao\\_04\\_166r.pdf](http://www.healthlawyers.org/hlh/docs/040223_gao_04_166r.pdf)  
(Note: link will open an Adobe Acrobat PDF file)

### **Mich. Hospital Trying to Eliminate Errors**

University of Michigan Medical Center officials say they want to set the national standard for eliminating medical mistakes. The Ann Arbor facility is off to a good start. According to a report issued Feb. 12 by the Michigan Health and Safety Coalition, the U-M medical center is the only one in the state that met or exceeded all quality benchmarks for seven medical conditions.

To read more go to [http://news.findlaw.com/ap/o/1500/2-24-2004/20040224050008\\_10.html](http://news.findlaw.com/ap/o/1500/2-24-2004/20040224050008_10.html) From this Findlaw article you can link to the Standards and other useful information.

### **HIPAA and Medical Privacy**

Need some medical record horror stories for your next HIPAA or medical records presentation? Then

check out this document at [http://www.healthprivacy.org/usr\\_doc/Privacy\\_storiesupd.pdf](http://www.healthprivacy.org/usr_doc/Privacy_storiesupd.pdf).

It is part of a larger website dedicated to medical privacy issues. Go to <http://www.healthprivacy.org/>

You will need to register to get to most of the materials, but it is worth it.

[Contributed by Judith Humphrey of Bannerman & Williams, P.A.]

***This Email Newsletter is a publication for the members of the Health Law Section of the New Mexico State Bar Association. Its contents may be time dated, and references to Internet sites may change. The Content of this Newsletter does not reflect the opinions of the Members of the Board of Directors of the Health Law Section of the State Bar. This Newsletter is informational only, does not constitute legal advice. Members of the Health Law Section may submit topics for the newsletter by emailing them, or the internet site at which they can be located, to JAB@NMCounsel.com***