

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

NEW MEXICO MEDICAL INSURANCE POOL,

Plaintiff,

v.

Case No. D-101-CV-2018-02497

NEW MEXICO STATE AUDITOR, in his official capacity,

Defendant.

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND  
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant Office of the New Mexico State Auditor ("OSA"), by and through its attorneys, Robert W. Parker and John M. Butrick, and moves this Court to grant Summary Judgment to Defendant and dismiss Plaintiff's ("NMMIP's") Complaint.

In support of Defendant's Motion for Summary Judgment, Defendant submits the following Memorandum of Law.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**I. STANDARD OF REVIEW**

The standard of review for summary judgment is well-settled in New Mexico. Summary judgment should be granted if there is "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Koenig v. Perez, 1986-NMSC-066, ¶ 6, 104 N.M. 664, 665, 726 P.2d 341, 342. "If the facts are undisputed and only a legal interpretation of the facts

remains, summary judgment is the appropriate remedy.” Bd. of Cty. Com’rs v. Risk Management Div., 1995-NMSC-046, ¶ 4, 120 N.M 178, 179, 899 P.2d 1132, 1133.

## II. UNDISPUTED MATERIAL FACTS

This case, filed by Plaintiff NMMIP for a declaratory judgment that Plaintiff is not an “agency” subject to audit by Defendant OSA, is based solely on statutory interpretation. Accordingly, summary judgment is appropriate.

The only material facts, all of which are undisputed, are merely background for the dispute:

1. In a letter of August 10, 2018 (Exhibit A), OSA designated Plaintiff for a Special Audit in order to assess Plaintiff’s board’s compliance with applicable laws, regulations, and policies and procedures for the period from January 1, 2013 through December 31, 2017. The stated purpose of the Special Audit was to correct the deficiencies and lack of information contained in Plaintiff’s existing annual financial audits and bring Plaintiff into compliance with state law. OSA informed Plaintiff that Plaintiff would be required to bear the cost of engaging an independent public accountant and further required Plaintiff to initiate the procurement process for obtaining these accounting services no later than August 25, 2018. OSA stated that it was taking these actions pursuant to the Audit Act, NMSA 1978, § 12-6-1 to -14.

2. Plaintiff refused to comply with OSA’s direction to initiate the procurement process for obtaining the above-described audit services and instead, on August 24, 2018, filed a Complaint for Declaratory and Injunctive Relief. In its Complaint, Plaintiff maintained that it was not an “agency” as defined in the Audit Act and, therefore, OSA lacked authority to

designate Plaintiff for a Special Audit or direct Plaintiff to initiate a procurement process to obtain the services of an auditor to perform the required audits.

### III. ARGUMENT

Pursuant to NMSA 1978, Section 12-6-3, “the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. . . (emphasis added). The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.”

Section 12-6-2(A)(3) of the Audit Act defines the term “agency”:

“‘agency’ means:

...

(3) any entity or instrumentality of the state specifically provided for by law . . . .”

The first rule of statutory construction is that “[t]he plain language of a statute is the primary indicator of legislative intent.” General Motors Acceptance Corp. v. Anaya, 1985-NMSC-066, ¶ 15, 103 N.M. 72, 76, 703 P.2d 169, 173. NMMIP falls squarely within the plain meaning of the term “entity or instrumentality of the state specifically provided for by law.” NMMIP is specifically provided for by law, NMSA 1978 § 59A-54-4, and it performs as an instrument of the state the governmental function of providing for “access to health insurance coverage to all residents of New Mexico who are denied adequate health insurance and are considered uninsurable.” NMSA 1978, § 59A-54-2. In other words, NMMIP was created as a

governmental entity specifically to address a need that could not be met by the private sector: to provide for health insurance coverage to otherwise uninsurable New Mexicans.<sup>1</sup>

NMMIP's enabling statute does not exempt it from the Audit Act. It says that NMMIP is a "non-profit entity" and provides that insurers who wish to transact insurance business in New Mexico are required to participate. NMSA 1978, § 59A-54-4(A).

The statute makes it clear that, although NMMIP requires the participation of both state and non-state actors, Plaintiff itself is organized and operates as a state entity. NMMIP operates subject to the supervision and approval of a board, NMSA 1978, § 59A-54-4(C), but the board is subject to and under the control of the state Superintendent of Insurance (the chief officer of an adjunct state agency). The superintendent or his designee not only serves as NMMIP board's chairman but also appoints six of the remaining ten board members. NMSA 1978, § 59A-54-4(C). The board's plan of operation must be submitted to and approved by the superintendent; if the board fails to submit a plan of operation, the superintendent is to adopt and promulgate rules to effectuate the act. NMSA 1978, § 59A-54-4(E), (F). The pool is subject to and responsible for examination by the superintendent. NMSA 1978, § 59A-54-8. Finally, the superintendent adopts disclosure rules for members, rules that implement the provisions of the Medical Insurance Pool Act, and any other rules deemed necessary in order to carry out the provisions of the Medical

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<sup>1</sup> That Plaintiff provides an essential governmental function is not in dispute. In Plaintiff's partial audit of 2016, NMMIP stated that it was exempt from federal taxes under Section 115 of the Internal Revenue Code because it "provides an essential governmental function" (Exhibit B). That section, 26 U.S.C. § 115 (2012), exempts from gross income "income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia."

Insurance Act, NMSA 1978, § 59A-54-17. In addition, NMMIP is specifically required to comply with the Per Diem and Mileage Act, NMSA 1978, §§ 10-8-1 to -8, and the Procurement Code, NMSA 1978, §§ 13-1-28 to -199. These are all hallmarks of an entity or instrumentality of the state, not a private entity.

In addition to the explicit statutory operating and organizational scheme detailed above, NMMIP actually conducts itself as an instrumentality of the state: at NMMIP's request, the Commission of Public Records at State Records Center and Archives confirmed that NMMIP is a state agency eligible for archiving records at the State Records Center (Exhibit C); NMMIP has an "open meetings policy," which includes making its agendas available to the public in the governor's office and having all of its board meetings open to the public, see <https://nmmip.org/blog/board-of-directors/open-meetings-policy/>; and Plaintiff responds to requests made under the Inspection of Public Records Act, NMSA 1978, § 14-2-1 to -12 (Exhibit D).

The Legislature knows how to provide that an entity is not to be considered an entity of the state and has done so in connection with a different statutory insurance entity, the New Mexico Health Insurance Exchange ("Exchange"). The Exchange, created as a nonprofit public corporation, has enabling legislation that states:

"The exchange is a governmental entity for the purposes of the Tort Claims Act . . . , and neither the exchange nor the board shall be considered a governmental entity for any other purpose."

NMSA 1978, § 59A-23F-3 (emphasis added). In contrast, NMMIP's enabling legislation (1) creates an "entity," not a "corporation" and (2) provides that NMMIP's board is a

governmental entity for purposes of the Tort Claims Act but, unlike the Exchange's enabling legislation, contains no language indicating that NMMIP or its board shall not be considered a governmental entity for any other purpose. NMSA 1978, § 59A-54-4(A).

#### IV. CONCLUSION

NMMIP is about as far removed as one can get from a private non-profit group of charitably-minded insurance companies. It is an "agency" as defined in the Audit Act: "any entity or instrumentality of the state specifically provided for by law . . . ." Plaintiff was provided for by law to carry out a governmental purpose: to provide for health insurance when private insurance companies would not provide it. And Plaintiff is organized and controlled by state officials and is specifically subject to statutes applicable to state agencies, with no indication whatsoever that is exempt from the Audit Act.

OSA has demanded that NMMIP comply with state law by obtaining audits of NMMIP's compliance with the statutes, regulations, and policies that apply to it. This Court should not permit NMMIP to continue to hide behind a strained interpretation of straightforward statutory language in order to avoid the transparency and accountability to which the public and policymakers are entitled.

WHEREFORE, Defendant prays the Court grant Defendant's Motion for Summary Judgment, dismiss Plaintiff's Complaint, and grant such other and further relief as it may deem just and proper.

Respectfully submitted,

OFFICE OF THE STATE AUDITOR

By: /s/ John M. Butrick  
JOHN M. BUTRICK  
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**ATTORNEYS FOR OFFICE OF  
THE STATE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment was electronically served on Plaintiff's attorney using Odyssey's File and Serve on October 19, 2018.

/s/ John M. Butrick  
Attorney for Defendant  
Office of the State Auditor  
[John.Butrick@osa.state.nm.us](mailto:John.Butrick@osa.state.nm.us)

Wayne A. Johnson  
State Auditor



C. Jack Emmons, CPA, CFE  
Deputy State Auditor

**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

August 10, 2018

John Franchini, Chairman  
Board of Directors  
New Mexico Medical Insurance Pool  
1223 St. Francis Dr. Ste B  
Santa Fe, New Mexico 87505

Re: New Mexico Medical Insurance Pool (NMMIP) Special Audit Designation

Dear Mr. Franchini:

This letter is to notify you that the OSA is designating the New Mexico Medical Insurance Pool for a special audit.

We met on July 3, 2018, and I followed up with you on July 25, 2018. The most recent correspondence I received from the Board's attorney, Ms. Laura Sanchez-Rivét, states that the Board now intends to meet on August 24 and "will have information to share with [my office] after that meeting."

I am deeply concerned with the Board's lack of responsiveness regarding the requirement that it comply with the Audit Act, § 12-6-1 et seq. NMSA 1978 and the Audit Rule, NMAC § 2.2.2.1, for the reasons that we discussed, and which are set forth in greater detail below.

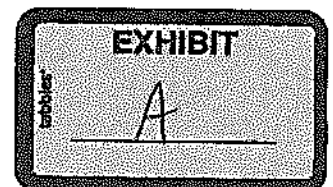
**The NMMIP's status as an "instrumentality of the state" under NMSA 1978, § 12-6-2(A)(3)**

During our meeting on July 3, a key aspect of our discussion was Ms. Sanchez-Rivét's contention that the NMMIP is not a state agency for purposes of compliance with the Audit Act. As I have pointed out, the Audit Act, § 12-6-2(A)(3) defines an "agency" as "any entity or instrumentality of the state specifically provided for by law." It is clear that the NMMIP meets that definition.

The NMMIP has recently posted the annual audits that were prepared by an independent public accountant (IPA) on its website for the years 2007-2016. We note that the 2017 audit has not yet been posted.

In the 2016 audit you published, the IPA stated that "in management's opinion, the Pool provides an essential governmental function to its members" and is exempt from federal taxes under Section 115 of the Internal Revenue Code. Section 115 of the IRS Code states:

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§115. Income of States, municipalities, etc.

Gross income does not include— (1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia;

It is disingenuous for the NMMIP to claim on one hand that it is an instrumentality of the state for purposes of the IRS Code, while claiming it is not an instrumentality of the state for purposes of the transparency that the New Mexico Audit Act provides for public expenditures.

In fact, the statutory organization and structure of the NMMIP demonstrate that it is far more than simply an entity or instrumentality of the state specifically provided by law. The superintendent of insurance (the chief officer of an adjunct State agency) not only serves as the board's chairman but also appoints six of the ten board members. (§59-54-4(C) NMSA 1978). The board's plan of operation must be submitted to and approved by the superintendent. (§59-54-4(E), (F)). The pool is subject to and responsible for examination by the superintendent. (§59A-54-8). Finally, the superintendent adopts disclosure rules for members, rules that implement the provisions of the Medical Insurance Pool Act, and any other rules deemed necessary in order to carry out the provisions of the Medical Insurance Act. (§ 59A-54-17). This statutory framework is indicative of a state agency, not an independent and non-public nonprofit.

#### **Compliance Requirements under the Audit Rule, NMAC 2.2.2.10**

The audits that the NMMIP has procured on its own, without the involvement of the State Auditor's Office, do not meet the requirements of the Audit Act and the Audit Rule because they do not address the NMMIP's compliance with various statutes applicable to it.

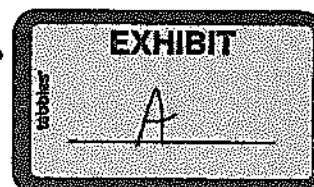
The IPA noted in the 2016 Audit report that the report does not provide an opinion on compliance issues because that was not an objective of the audit. An audit properly conducted under the Audit Rule would require a thorough review of statutory compliance with those financial statutes that are applicable to the NMMIP.

Section 2.2.2.10 of the Audit Rule provides for the scope of annual financial audits of agencies or instrumentalities such as the NMMIP. It provides that "An IPA shall identify significant state statutes, rules and regulations applicable to the agency under audit and perform tests of compliance." It also provides that: "In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable..." The Rule then lists twenty (20) state statutes which may apply to state entities, including the Procurement Code. If the listed statutes are applicable to an agency or entity, then the IPA is required to test for compliance.

#### **2017 Compliance Findings on NMMIP Contracts**

In 2017, under then State Auditor Keller, the Office of the State Auditor (OSA) conducted the annual audit of the Office of the Superintendent of Insurance. That audit resulted in 28 findings and a Disclaimer of opinion, which means that the OSA was not able to obtain sufficient appropriate audit evidence to provide a basis for audit opinions on the financial statements."

As part of the research for a Procurement Compendium published in October, 2017 under Auditor Keller, the OSA reviewed eight (8) contracts for services procured by the NMMIP



Board. The audit found a lack of compliance with the New Mexico Procurement Code, as follows:

*Conclusion: Based on our test work we have determined that MIP procurements are not complying with the State Procurement Code.*

*We noted 3 out of 8 RFPs were not publicized in a newspaper of general circulation. We noted that 8 out of 8 RFPs tested did not contain the disclosure of campaign contributions given by prospective contractors to applicable public officials and did not note the requirements for complying with any applicable in-state preference. Additionally, we noted 1 out of 8 RFPs tested did not contain all contractual terms and conditions applicable to the procurement. We noted 1 out of 8 RFPs did not publish notice at least 10 calendar days prior to opening of the bids.*

### **Designation of the NMMIP for Special Audit**

Based on the foregoing and concerns outlined in previous correspondence, sufficient concerns have been raised regarding the NMMIP's lack of compliance with applicable statutes to warrant a Special Audit.

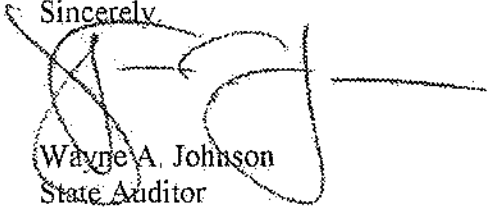
The OSA is designating the NMMIP for a special audit in order to assess the Board's compliance with applicable laws, regulations and policies and procedures for the period from January 1, 2013 through December 31, 2017. This Special Audit is intended to correct the deficiencies and lack of information contained in the NMMIP's existing annual financial audits and bring the entity into compliance with state law.

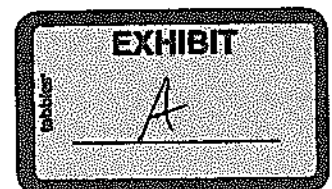
Pursuant to Section 12-6-3 (C) NMSA 1978 ("Audit Act"), in addition to the agency's annual financial audit, the State Auditor "may cause the financial affairs and the transactions of an agency to be audited in whole or in part." Additionally, in accordance with Section 2.2.2.15 NMAC ("Audit Rule"), the State Auditor may initiate a special audit regarding financial affairs and transactions of an agency or local body based on information it receives.

Please be advised that the NMMIP is required to bear the cost of the engagement pursuant to Section 12-6-4 NMSA 1978, which will be conducted by an independent public accountant. The NMMIP is required to initiate the procurement process to obtain the services of an IPA no later than August 25, 2018.

In order to conduct the examination, the auditor must have unrestricted access to all documents pertaining to the issues outlined above as well as access to NMMIP staff, Board members and contractors that may have knowledge and information about the areas of concern. We appreciate your cooperation and will be contacting you to discuss next steps, including scope of work and the timeline for completion.

Sincerely,

  
Wayne A. Johnson  
State Auditor



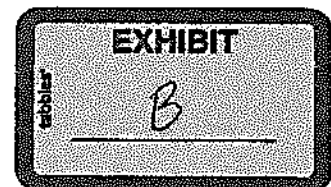
Report of Independent Auditors  
and Financial Statements  
with Supplementary Information

New Mexico Medical Insurance Pool

December 31, 2016 and 2015

**MOSS ADAMS** LLP

Certified Public Accountants | Business Consultants



## NEW MEXICO MEDICAL INSURANCE POOL

### NOTES TO FINANCIAL STATEMENTS

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#### Note 1 – Summary of Significant Accounting Policies (continued)

**Estimated claims incurred but not reported** – This liability represents benefits due to policyholders and to providers for services provided but not yet recorded or paid. The Pool's actuarial estimate of this liability considers historical experience and subjective judgments, and is based on the development method. Management reviews the actuarial assumptions used in determining the liability. The amount ultimately paid may be more or less than such estimates. Accounting estimates are subject to change and the effects of such changes are recognized in the period in which they can be reasonably estimated.

**Payable to third-party administrator** – The third-party administrator of the Pool, Blue Cross Blue Shield of New Mexico (BCBSNM), initially pays for all claims and claims processing costs, and is reimbursed by the Pool. The third-party administrator also bills and receives all premiums on behalf of the Pool, which are then passed onto the Pool.

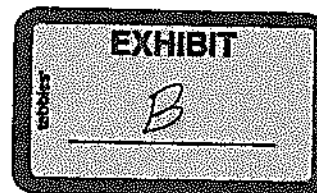
**Net position** – Net position of the Pool were \$522,155 as of December 31, 2016 and 2015. The amount represents the historical excess of the Pool's premiums and assessments revenues over its costs. The Pool accrues assessments revenue or refunds (contra-revenue) at the end of each calendar year based on the Pool's income or loss prior to those final assessments and, accordingly, there was no operating income or loss reported in 2016 or 2015. Management and the board of directors routinely review the appropriateness of the amount of net position and believe such amount is appropriate as of December 31, 2016 and 2015.

**Earned and unearned premium revenue** – Premium revenue is recognized as revenue in the month premiums are earned. Policyholders pay premiums monthly over their contract period, which is determined by the effective date of their policy. Policyholders who do not remit their premiums within 45 days of the monthly due date are eliminated from the plan. Delinquent premium payments are recognized as revenue upon collection and are not accrued.

**Income and premium taxes** – In management's opinion the Pool provides an essential governmental function to its members as described in Section 115 of the Internal Revenue Code and, accordingly, the Pool is exempt from such taxes. No provision for such taxes is included in the accompanying financial statements. The Pool is also exempt from State of New Mexico taxes.

**Subsequent events** – Subsequent events are events or transactions that occur after the balance sheet date but before financial statements are available to be issued. The Pool recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the statement of net position, including the estimates inherent in the process of preparing the financial statements. The Pool's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the balance sheet but arose after the statement of net position date and before financial statements are available to be issued.

The Pool has evaluated subsequent events through May 26, 2017, which is the date the financial statements were available to be issued.



**MEMORANDUM**

**To: Debbie Armstrong, Executive Director**  
**From: Laura E. Sanchez-Rivét & K. Stephen Royce**  
**Date: March 20, 2017**  
**Re: NMMIP Records Retention**

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Advice has been requested concerning document retention requirements applicable to records generated in the operations of the New Mexico Medical Insurance Pool (NMMIP). This memorandum will summarize the recommendation for records retention for the Pool. The Public Records Act, the NMMIP Act, and rules related to records retention were examined to formulate the advice.

**The Public Records Act**

The Public Records Act, §§ 14-3-1, et seq., NMSA 1978, defines public records as follows:

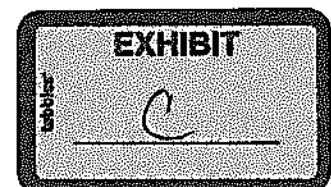
G. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

14-3-2(G), NMSA 1978. Under the Public Records Act, the NMMIP qualifies as a state agency.

**Rule 1.21.2. NMAC**

To effectuate the purpose of the Public Records Act, the State Commission of Public Records issued Rule 1.21.2 NMAC which relates to the Retention and Disposition of Public Records. The rule provides functional records retention and disposition schedules (FRRDS). The FRRDS identifies the types of records maintained by all agencies and specifies a period of time for which the official copy of record must be retained. The rule provides hundreds of categories for many different agencies of state government. Certain categories will apply to NMMIP, while others clearly do not. Attached as Exhibit A is a summary of the subsections that could apply to NMMIP based on its work and records it might generate. The summary also includes the recommended record retention period.

Following these rules would require that the NMMIP's files be organized according to the given categories. While this might require more work up front, it could also be very helpful in determining which records can be destroyed and which can be moved to the State Records Center.



### Records Retention Issues for Email

Management of electronic records for state agencies is established at §1.13.3 NMAC. The purpose of this rule is "...to establish an architecture for the management of public records on electronic media." § 1.13.36(A) NMAC. The rule is organized in order to provide for administration and best practices for information and resource management to ensure the reliability of records being produced. The rule takes into account the full life cycle of records, where some records may have finite life spans and others may have an indefinite life and may have to be viewed or regenerated forever. There are four aspects this rule requires related to information: (1) its preservation, (2) accessibility, (3) readability (info shall be able to be read) and (4) comprehensibility (to be read and understood in its original context without question). This rule should be read in partnership with the records retention and distribution schedules, but provides specific guidance on how to best preserve electronic records, keeping the four aspects of information in mind. NMMIP staff and contractors, particularly anyone dealing with the administration of records and the information technology staff/consultants, should review the rule to understand the state's best practices on storage of electronic records.

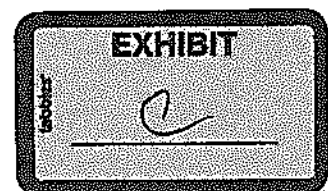
### State Records Center

Regulations for storage and access to records by state agencies that utilize the State Records Center and the State Archives are established in § 1.13.10 NMAC. The purpose of this rule is to establish requirements for the custody, access, storage and disposition of records stored at the state records center by agencies that utilize the records center services.

### Next Steps

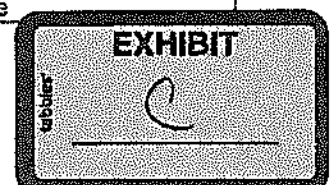
Laura Sanchez-Rivét consulted with Jennifer Camp, Management Analyst with the Agency Analysis Bureau of the Records Management Division of the Commission of Public Records at State Records Center and Archives. Ms. Camp confirmed with her supervisor that NMMIP is indeed a state agency eligible for archiving records with the State Records Center. However, they have no available space for storing additional records from any agency at this time. Ms. Camp said they are looking into possibly contracting for more space in the future. Ms. Camp can be reached at 505-270-1280 or JenniferN.Camp@state.nm.us.

We recommend that one or two staff members from NMMIP staff attend a records retention training session to better understand the process for requesting destruction and later storage of its records. Ms. Camp highly recommends taking the training they offer. The next class will be **April 4, 2017 from 1:30-4:30PM**, and will provide the NMMIP staff person with details on records retention and destruction, and the process for requesting that the State store records. The following website provides all training dates: <http://www.nmcpr.state.nm.us/training>. Participants must register at this site. There is a maximum of 30 attendees per training.



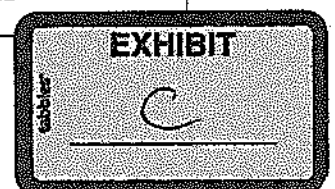
**EXHIBIT A: Functional Records Retention and Dispositions Schedules (FRRDS)**

<b>Section of §1.21.2</b>	<b>Category</b>	<b>Description</b>	<b>Retention</b>
101 Authorization	Admin – general management	Records related to authorization of personnel or entities to perform specific duties and not identified in other classifications	Destroy 10 years from date file closed
102 Calendars and Schedules	Admin – general management	Appointments and schedules and related records	Destroy 1 year from close of calendar year in which created
104 Correspondence – Executive Level	Admin – general management	Internal & external communications and related records to or from executive level personnel including, but not limited to, directives and not identified in other classifications	Permanent, transfer to archives when no longer needed for reference
105 Correspondence – General	Admin – general management	Routine correspondence and related records of day-to-day office administration and not identified in other classifications	Destroy 1 year from close of calendar year in which created
107 Denied, Rejected or Withdrawn Records	Admin-general management	Records including, but not limited to, applications, complaints or requests which are incomplete, have no merit or have been denied, rejected or withdrawn	Destroy 2 years from date file closed
108 Distribution, Mailing and Contact Lists	Admin – general management	Lists of individuals and organizations for mailing, contact or distribution	Destroy when superseded or obsolete
109 Indexes and Finding Aids	Admin – general management	Indexes, lists and finding aids used to provide access to records or information	Retain until disposition of corresponding record
110 Logs	Admin – general management	Logs used to monitor or control	Retain until no longer needed for reference
111 Planning and Development	Admin – general management	Records related to planning and development	Permanent, transfer to archives 5 years from date file closed
112 Program and Project Files	Admin – general management	Records related to administrative programs and projects not identified in other classifications	Destroy five years from date file closed
114 Publications	Admin – general management	Agency publications intended for distribution to the public	Permanent, transfer to state library when published
116 Reports – General	Admin – general management	General reports not identified in other classifications	Destroy two years from date file created
117 Reports – Historical	Admin – general management	Historical reports including, but not limited to the following subject matter: vital records, natural resources, emissions, professional licensure registries, disease management, rural health care, student nutrition, emergency response, homeland security, infrastructure, tribal education and statutorily required reports; and not identified in other classifications	Permanent, transfer to archives one year from date file created
118 Reports – Statistical	Admin – general management	Statistical reports	Destroy five years from date file created
119 Speeches and Presentations	Admin – general management	Speeches, presentations and related records, does not include records related to training	Permanent, transfer to archives when no longer needed for reference



**EXHIBIT A: Functional Records Retention and Dispositions Schedules (FRRDS)**

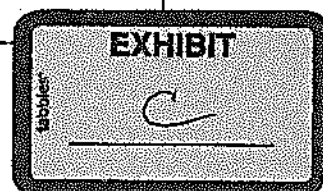
<b>Section of §1.21.2</b>	<b>Category</b>	<b>Description</b>	<b>Retention</b>
120 Surveys	Admin – general management	Surveys or questionnaires and related records	Destroy five years from date file created
121 Tracking	Admin – general management	Records related to the tracking of data for the purpose of reporting	Destroy five years from date file created
122 Grant Administration	Admin – general management	Records related to grant administration	Destroy three years from the date file closed
141 Awards – Community and Public Relations	Admin – community & public relations	Records related to awards and recognition	Permanent, transfer to archives one year from date file closed
142 Complaints	Admin – community & public relations	Records related to complaints by the public relating to policies, procedures or business practices including, but not limited to, filing forms, recommendations, responses and resolution	Destroy 1 year from date file closed
143 Outreach – Historical	Admin – community & public relations	Records related to community outreach with historical significance.	Permanent, transfer to archives 5 years from date file created
144 Press and News Releases	Admin – community & public relations	Records related to official government press, news releases and notices.	Permanent, transfer to archives 5 years from date file created
145 Programs – Community and Public Relations	Admin – community & public relations	Records related to community programs not identified in other classifications.	Destroy 3 years from date file closed
146 Publicity and Promotion	Admin – community & public relations	Records related to marketing of the government including, but not limited to, advertising and public relations with the media including newspapers, TV and magazines.	Permanent, transfer to archives 5 years from date file created
156 Access and Control	Admin – information technology	Records related to security and access to information technology.	Destroy 3 years from date file closed
157 Systems and Networks	Admin – information technology	Records related to management of public websites including, but not limited to, design, graphics, formats and links.	Destroy when superseded or obsolete
158 Web Management	Admin – information technology	Records related to management of public websites including, but not limited to, design, graphics, formats and links.	Destroy 1 year from date file closed
301 Accounts Payable	Financial & accounting - accounting management	Records relating to accounts payable including, but not limited to, purchasing and reimbursements.	Destroy 6 years from date audit report released
303 Accounts Receivable	Financial & accounting - accounting management	Records related to accounts receivable including, but not limited to, invoicing.	Destroy 6 years from date audit report released
304 Account Transfers	Financial & accounting - accounting management	Records relating to transferring of funds.	Destroy 3 years from date audit report released
305 Collections	Financial & accounting - accounting management	Records related to collections of funds including, but not limited to, bankruptcy.	Destroy 3 years from date audit report released
306 Donations	Financial & accounting - accounting management	Records related to donations of funds and assets to or from a government entity.	Destroy 3 years from date audit report released





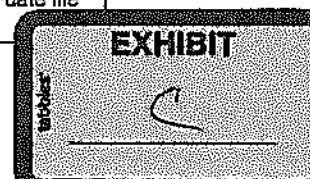
**EXHIBIT A: Functional Records Retention and Dispositions Schedules (FRRDS)**

<b>Section of §1.21.2</b>	<b>Category</b>	<b>Description</b>	<b>Retention</b>
307 Funds Management	Financial & accounting - accounting management	Records related to the management of funds including, but not limited to, inmate and patient funds.	Destroy 3 years from date audit report released
308 Journal Entries	Financial & accounting - accounting management	Journal entries.	Destroy 3 years from date audit report released
309 Ledgers	Financial & accounting - accounting management	Records relating to ledger management.	Destroy 3 years from date audit report released
310 Reports – Accounting	Financial & accounting - accounting management	Records related to accounting processes and controls.	Destroy 1 year from date audit report released
316 Fixed Assets	Financial & accounting - accounting management	Records related to the control of fixed assets.	Destroy 3 years from date audit report released
321 Bank Relationship	Financial & accounting - bank administration	Records relating to the establishment, maintenance and termination of bank accounts.	Destroy 3 years from the close of the fiscal year in which file closed
322 Statements and Reports – Bank Administration	Financial & accounting - bank administration	Records related to bank account and credit card statements and reconciliations.	Destroy 3 years from date audit report released
326 Annual Budget	Financial & accounting - budget management	Records related to the request, recommendation and approved annual budget.	Permanent, transfer to archives when no longer needed for reference
331 Reconciliations and Balancing	Financial & accounting - financial statements and reports	Records related to reconciliations and balancing for financial reports and statements.	Destroy 3 years from date audit report released
346 Bids, Proposals and Quotes	Financial & accounting - procurement	Bids, quotes and proposals and related records.	Destroy 3 years from date file closed
347 Vendor Management	Financial & accounting - procurement	Records related to management of vendors.	destroy 3 years from date file closed
351 Exemptions	Financial & accounting - tax management	Records related to exemptions from taxation.	destroy 1 year from close of calendar year in which file created
413 Federal Compliance and Reporting	Governance & compliance - audit, oversight and compliance	Records related to oversight and federal compliance reporting.	Destroy 3 years from date file closed
414 Financial – Audits	Governance & compliance - audit, oversight and compliance	Records related to financial audits of agencies and programs.	Destroy 3 years from the close of the fiscal year in which file created
415 General – Audits and Compliance	Governance & compliance - audit, oversight and compliance	Records related to general compliance and audits of agencies and programs.	Destroy 5 years from date file closed
451 Bylaws	Governance & compliance - governance	Bylaws.	Permanent, transfer to archives 5 years from date file closed
452 Meetings	Governance & compliance – governance	Records related to mtgs of statutory & policy making bodies including, but not limited to, minutes & not identified in other classifications.	Permanent, transfer to archives 5 years from date file closed



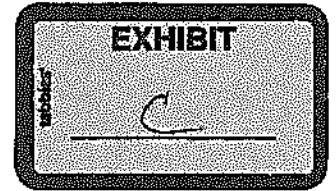
**EXHIBIT A: Functional Records Retention and Dispositions Schedules (FRRDS)**

<b>Section of §1.21.2</b>	<b>Category</b>	<b>Description</b>	<b>Retention</b>
453 Oaths of Office	Governance & compliance - governance	Oaths of office and related records.	Permanent, transfer to archives 1 year from date file closed
511 Policies and Procedures	Governance & compliance - policy & standards management	Policies and procedures including, but not limited to, code of conduct.	permanent, transfer to archives one year from date superseded or obsolete
512 Standards	Governance & compliance - policy & standards management	Records related to standards and best practices including, but not limited to, information technology standards.	Permanent, transfer to archives 1 year from date superseded or obsolete
518 Information Release	Governance & compliance - records management	Records related to requests for release of information, does not include public records requests.	Destroy 1 year from date file closed
519 Public Records Request	Governance & compliance - records management	Records related to requests for information under the Inspection of Public Records Act including, but not limited to, tracking and responses.	Destroy one year from date request fulfilled
520 Records Custody	Governance & compliance - records management	Records related to withdrawal and receipt of records.	Destroy 25 years from date file closed
601 Agreements – Other	Legal & judiciary - contract management	Records related to agreements not identified in other classifications.	Destroy 6 years from date file closed
603 Cooperative Agreements	Legal & judiciary - contract management	Cooperative agreements including, but not limited to, memoranda of understanding.	Permanent, transfer to archives 5 years from date file closed
604 Goods and Services	Legal & judiciary - contract management	Records related to contracting of goods and services.	Destroy 6 years from date file closed
627 Advice and Opinions	Legal & judiciary - legal matter management	Records related to research and correspondence related to legal issues including, but not limited to, precedents and opinions.	Permanent, transfer to archives from date file closed
631 Signature Records	Legal & judiciary - legal matter management	Records related to signatures including, but not limited to, facsimile and digital signatures.	Destroy 10 years from date file closed
632 Hearings and Appeals	Legal & judiciary - legal matter management	Records related to hearings and appeals.	Destroy 10 years from date file closed
633 Hearings and Appeals – Historical	Legal & judiciary - legal matter management	Records related to hearings and appeals which affect public policy.	Permanent, transfer to archives 10 years from date file closed
636 Legal Case Files	Legal & judiciary - legal matter management	Legal case files other than historical case files.	Destroy 10 years from date file closed
814 Assistance – Medical	Public health & social services - family & aging	Records related to medical assistance.	Destroy 6 years from date audit report released
830 Patient Management	Public health & social services - hospital & medical	Records related to management of patients including, but not limited to, accounts and client files.	Destroy 5 years from date file closed
831 Patient Records – Adult	Public health & social svcs - hospital & med	Adult patient records.	Destroy 10 years from date file closed



**EXHIBIT A: Functional Records Retention and Dispositions Schedules (FRRDS)**

<b>Section of §1.21.2</b>	<b>Category</b>	<b>Description</b>	<b>Retention</b>
832 Patient Records – Minor (≥9 Years of Age)	Public health & social services - hospital & medical	Patient records for minors nine years of age or over at date of last discharge.	Destroy 10 years from date of last discharge
833 Patient Records – Minor (≤8 Years of Age)	Public health & social services - hospital & medical	Patient records for minors eight years of age or under at date of last discharge.	Destroy 19 years from date of birth
834 Programs -- Hospital and Medical	Public health & social services - hospital & medical	Records related to clinical and health programs.	Destroy 5 years from date file closed



From: Kristina Campbell [kcampbell@nmmip.org](mailto:kcampbell@nmmip.org)  
Subject: Fwd: Public Records Request  
Date: January 13, 2017 at 4:08 PM  
To: Debbie Armstrong [darmstrong@nmmip.org](mailto:darmstrong@nmmip.org)



*Is there anything I need to do with this?*

*Thanks!*

**Kristina Campbell**  
Deputy Director  
New Mexico Medical Insurance Pool  
1223 S St Francis Dr Suite B  
Santa Fe, NM 87505  
(505) 424-7105 Otc  
(505) 424-7107 Fax

----- Forwarded message -----  
From: Kelly J. Brewer <[KJB@sutinfirm.com](mailto:KJB@sutinfirm.com)>  
Date: Fri, Jan 13, 2017 at 3:40 PM  
Subject: Public Records Request  
To: "[info@nmmip.org](mailto:info@nmmip.org)" <[info@nmmip.org](mailto:info@nmmip.org)>  
Cc: "[jarango@nmia.com](mailto:jarango@nmia.com)" <[jarango@nmia.com](mailto:jarango@nmia.com)>

**Ms. Deborah Armstrong**  
Executive Director  
New Mexico Medical Insurance Pool  
1223 St. Francis Drive, Suite B  
Santa Fe, NM 87505

Via email: [info@nmmip.org](mailto:info@nmmip.org)

Dear Ms. Armstrong,

**This is a request for public records under the New Mexico Inspection of Public Records Act. Sutin, Thayer & Browne wishes to obtain copies of the following records:**

**All responses to New Mexico Medical Insurance Pool RFP # 02 – 2016 for Legal Services, issued October 24, 2016, and any related discussion or correspondence related to the RFP, including but not limited to meeting minutes, evaluation discussions and scoring.**

**If any of the records are available in electronic format, we wish to receive electronic copies at [kjb@sutinfirm.com](mailto:kjb@sutinfirm.com) or, if that is not possible, on a blank compact disk. If electronic format is not available, paper copies will suffice. We**

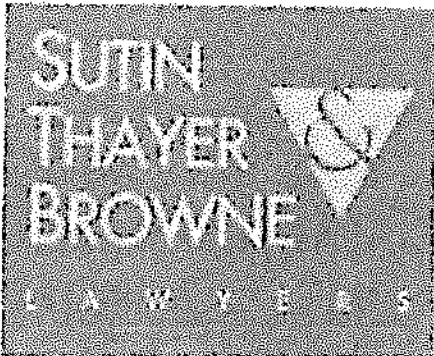
EXHIBIT

D

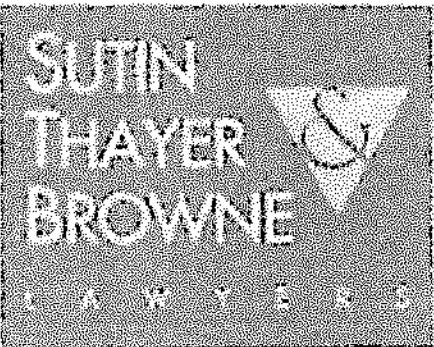
agree to pay reasonable copy fees upon being informed of the total cost.

Thank you for your attention and assistance, and please contact me at [kjb@sutfirm.com](mailto:kjb@sutfirm.com) or 505-883-3347 to discuss any aspect of this request.

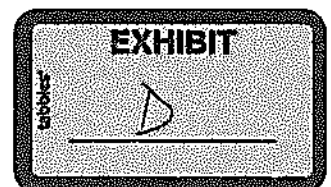
Kind regards,  
Kelly Brewer



KELLY BREWER  
DIRECTOR OF MARKETING & COMMUNICATIONS  
Sutin, Thayer & Browne APC  
Your Legal Team in New Mexico  
PO Box 1945 | Albuquerque, NM 87103  
505.883.3347 direct phone  
505.855.9546 direct fax  
[kjb@sutfirm.com](mailto:kjb@sutfirm.com)  
[sutfirm.com](http://sutfirm.com)



KELLY BREWER  
DIRECTOR OF MARKETING & COMMUNICATIONS  
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PO Box 6726 • Santa Fe, NM 87502  
Toll Free 1-866-622-4711 • Fax 505-424-7107  
www.nmmip.org

*"When no one else will help, we're there."*

February 2, 2017

Sutin, Thayer and Browne  
6100 Uptown Blvd NE, Suite 400  
Albuquerque, NM 87110

Re: Request to Inspect Public Records

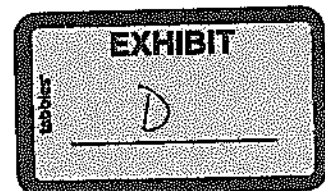
Dear Sutin, Thayer and Browne,

On January 26, 2017, we received your request to inspect certain records. We need additional time to respond, until February 7, 2017.

Sincerely,

A handwritten signature in cursive script that reads "Kristina Campbell".

Kristina Campbell  
Deputy Director  
New Mexico Medical Insurance Pool



**Subject:** Response to Sutin IPRA Request  
**Date:** Tuesday, 7 February 2017 at 14:44:27 Mountain Standard Time  
**From:** Laura E. Sanchez-Rivet  
**To:** Kristina Campbell  
**CC:** K. Stephen Royce, Gloria Williams  
**Priority:** High  
**Attachments:** image001.jpg, Cuddy McCarthy Response to NMMIP RFP.pdf, DeLayo Firm Full LS 2017 Proposal.pdf, Parra NMMIP RFP Response.pdf, Sutin Thayer Browne Firm Full LS 2017 Proposal.pdf, Legal Services Application Score Sheet.pdf, emails sent-received-committee members-applicants.pdf, Arango notes Evaluation meeting.pdf, Copy of NMMIP CORRECTED legal services cost.pdf, December 2 2016 Regular Meeting Minutes Final.pdf, Signed Legal Services decision letters.pdf

Kristina,

Attached are the documents to be provided to Kelly Brewer at Sutin, Thayer & Browne ([kjb@sutinfirm.com](mailto:kjb@sutinfirm.com)) in response to her IPRA request. The documents are as follows:

Responses to NMMIP RFP for Legal Services:

- Cuddy & McCarthy
- DeLayo
- Parra
- Sutin Thayer & Browne

Related Discussion:

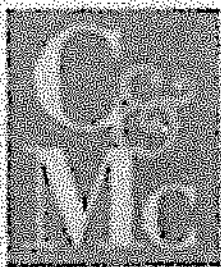
- Legal Services Application Score Sheet Template
- Emails from Board Members re: RFP
- John Arango Notes on Evaluation
- NMMIP Corrected legal services cost spreadsheet
- Minutes of Official Decision by Board

Correspondence:

- Official decision letters

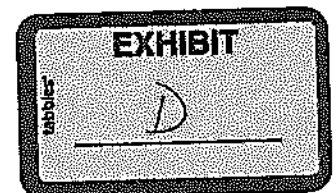
Please copy Stephen and I on your email to Ms. Brewer. Let me know if you have any questions.

Best regards,  
Laura



**CUDDY & McCARTHY, LLP**

*Attorneys at Law*



Laura E. Sanchez-Rivet, Attorney-at-Law  
Cuddy & McCarthy, LLP  
7770 Jefferson N.E, Suite 102  
Albuquerque, New Mexico 87109  
(505) 888-1335 (Main)  
(888) 977-3816 (Fax)  
[lsanchez-rivet@cuddymccarthy.com](mailto:sanchez-rivet@cuddymccarthy.com)

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