F I S C A L I M P A C T R E P O R T

SPONSOR Hickey/Steinborn **ORIGINAL DATE** 03/04/21 **LAST UPDATED** 04/12/21 **HB**

SHORT TITLE No Behavioral Health Cost Sharing **SB** 317/aHFl

ANALYST Esquibel/Torres

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	**FY22**		
	*See Fiscal Implications	Recurring	Health Care Affordability Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	**FY22**	**FY23**	**FY24**	**FY25**		
	$22,000-$23,147	$38,329.4-$41,433.0	$38,809.4 - $43,073.0	$91,015.2-$105,616.0	Recurring	General Fund
	$54,712.7-$56,420.0	$114,988.1-$124,300.0	$116,428.3 - 129,250.0	$63,010.5-$73,200.0	Recurring	Health Care Affordability Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI Data Collection and Analysis		$150.0	$300.0	$450.0	Recurring through FY27	General Fund
LFC Data Collection and Analysis		$50.0	$50.0	$100.0	Recurring through FY27	General Fund
State of New Mexico Group Benefits Program		$1,100.0	$2,200.0	$3,300.0	Recurring through FY27	GSD/RMD Health Benefits Fund
NMRHCA Elimination of Cost Share and Increased Utilization		$1,000.0 - $1,350.0	$2,000.0 - $2,700.0	$3,000.0 - $4,050.0	Recurring through FY27	NMRHCA Benefits Fund

of Medical, Prescription						
NMPSIA Plan Costs		$940.0	$1,940.0	$2,880.0	Recurring through FY27	NMPSIA Benefits Fund
Total		$3,240.0 - $3,590.0	$6,490.0 - $7,190.0	$9,730.0 - $10,780.0	Recurring through FY27	General Fund, Public Benefit Funds

Health Insurance Premium Surtax Increase and Health Care Affordability Fund Impacts:

	FY22	FY23	FY24	FY25	4 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD – Costs for Surtax Implementation	$21.8				$21.8	Nonrecurring	General Fund
State Share – Medicaid MCO Rate Increases	$15,100.0	$30,200.0	$31,000.0	$31,700.0	$108,000.0	Recurring	General Fund
Federal Share - Medicaid MCO Rate Increases	$59,900.0	$119,900.0	$122,700.0	$125,700.0	$428,200.0	Recurring	Federal Medicaid Matching Funds
OSI - Actuarial Analyses	$250.0	$250.0	$250.0	$250.0	$1,000.0	Recurring	Health Care Affordability Fund
Total	$75,271.8	$150,350.0	$153,950.0	$157,650.0	$537,221.8	Recurring	General Fund/ Federal Medicaid Match/ Health Care Affordability

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION
LFC Files

Responses Received From
General Services Department (GSD)
Human Services Department (HSD)
Office of Superintendent of Insurance (OSI)
Public Schools Insurance Authority (NMPSIA)
Retiree Health Care Authority (NMRHCA)
UNM Health Sciences Center (UNMHSC)
New Mexico Attorney General (NMAG)
Retiree Health Care Authority (RHCA)
New Mexico Health Insurance Exchange (NMHIX)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HFl #1

House floor amendment #1 to Senate Bill 317 adds the contents of House Bill 122, Health Insurance Premium Surtax, as amended by HAFC and the House floor which establishes a "health care affordability fund" and raises the health insurance premium surtax by 2.75 percent.

House Bill 122's proposed health care affordability fund would be funded with a 55 percent distribution of revenues from the health insurance premium surtax, which the amendment proposes to raise from 1 percent to 3.75 percent. The health care affordability fund would be used to reduce healthcare premiums and cost-sharing for New Mexico residents who purchase health insurance through the state's health insurance exchange, provide resources for the development and implementation of healthcare initiatives for uninsured New Mexico residents, reduce premiums for small businesses and their employees purchasing healthcare coverage in the fully insured small group market, and provide resources for the administration of healthcare initiatives for uninsured New Mexico residents. The healthcare affordability fund could also be used to maintain health insurance coverage for New Mexico residents with incomes below 200 percent of the federal poverty level in the event the federal Patient Protection and Affordable Care Act is repealed or struck down.

The increase to the health insurance premium surtax included in the amendment begins January 1, 2022. The new fund would receive a 52 percent distribution of surtax revenue from January 1, 2022, to June 30, 2022, 55 percent from July 1, 2022 through July 1, 2024, and 30 percent from July 1, 2024 onward.

The amendment requires the Superintendent of Insurance to provide premium and cost-sharing assistance for the purchase of qualified health plans on the New Mexico health insurance exchange. To facilitate this, the Superintendent would develop healthcare affordability criteria and income eligibility parameters to focus aid on certain income-restricted individuals by January 1, 2023. The amendment also requires the Superintendent of Insurance to develop and submit a plan to extend healthcare coverage access to New Mexico citizens who do not qualify for federal premium assistance or qualified health plans through the New Mexico health insurance exchange.

The amendment requires the Superintendent of Insurance to report annually to the Legislature regarding (a) a summary of the affordability criteria, (b) the estimated number of uninsured New Mexico residents who enrolled in coverage following the implementation of the affordability criteria, and (c) reduced costs and coverage assistance provided by the initiatives in this bill. The amendment also provides an additional permitted use of the fund to "reduce premiums for small businesses and their employees purchasing health care coverage in the fully insured small group market." The amendment also calls for the Legislative Finance Committee staff to conduct a program evaluation to measure the impact of changes to the health insurance premium surtax and the creation of the health care affordability fund prior to July 1, 2025.

Finally, the House floor amendment to Senate Bill 317 provides for a decrease in the health insurance premium surtax if the annual fee on health insurance providers is re-imposed at the federal level. The decrease is at a rate equal to the rate of the annual federal fee imposed. However, the rate of the health insurance premium surtax shall not be less than its current rate of 1 percent.

Synopsis of SB317 Original Bill

Senate Bill 317 would add new sections to the Health Care Purchasing Act and to the Insurance Code to prohibit the imposition of cost-sharing by health insurers on behavioral health services covered by an individual or group health insurance policy, health care plan, or certificate of health insurance.

The bill defines "behavioral health services" to include inpatient hospitalizations, partial hospitalizations, residential treatment, detoxification, treatment of substance use disorder, intensive outpatient therapy, outpatient treatment and all medications; essentially, the full array of behavioral health services currently delivered in the health system. The bill defines cost-sharing as deductibles, coinsurance and copayments.

The bill would require the Office of the Superintendent of Insurance (OSI) to collect data regarding the elimination of cost-sharing for behavioral health services. The bill would require OSI to report this data along with the effects of eliminating cost-sharing on both providers and patients in terms of the costs of behavioral health services, and the effects on patients in terms of health and social outcomes using health quality performance measurement tools developed by a nationally recognized organization. OSI would be required to report this information annually by November 1 to the Legislative Finance Committee (LFC) and the interim Legislative Health and Human Services Committee (LHHS).

The bill would require the Legislative Finance Committee to report to the Governor and LHHS on the effects of the elimination of cost-sharing both in terms of costs for behavioral health services and the health and social outcomes.

The provisions of this bill would go into effect on January 1, 2022 and end on December 31, 2026.

FISCAL IMPLICATIONS

Federal Funding Implications of House Floor Amendment #1/ Analysis from House Bill 122

The American Rescue Plan Act of 2021 includes:

- Fully subsidize health insurance exchange coverage for people earning up to 150 percent of the federal poverty level, as well as those on unemployment insurance, for two years;
- End the so-called subsidy cliff, qualifying enrollees who make over 400 percent of the federal poverty level subsidies for the first time, for two years;
- Cover 85 percent of the cost of private health insurance for those laid off during the pandemic, through Sept. 21.

Fiscal Implications of House Floor Amendment #1/ Analysis from House Bill 122

The following analysis is from the Fiscal Impact Report for House Bill 122 which relates to House Floor amendment 1.

Tax Implications

Using the most recent health insurance premium surtax reporting available, staff estimate the increased insurance premium surtax would result in total revenues of $208.7 million, an increase of $153.2 million from current collections. HB 122 distributes 52 percent of total revenue in the last 6 months of FY22 to the affordability fund when the increase takes effect, 55 percent from FY23-FY24, and 30 percent thereafter. The remaining health insurance premium surtax revenue would be distributed to the general fund, as represented in the tables above.

Although new revenue is generated for the general fund, the increased tax is expected to result in increased general fund costs for the Medicaid program. Because the Medicaid program would also have to pay the tax, the general fund portion of the Medicaid tax liability is estimated to be between $15.1 million and $31.7 million, annually. Because Medicaid costs are supported by federal revenues, federal funds would also be taxed, effectively leveraging the state's tax liability into additional federal tax liability. Most of the increased tax revenue is a result of this leverage and therefore, most of the tax is effectively exported to the federal government.

This bill creates a new fund and provides for continuing direct distributions to the fund. The LFC has concerns with including earmarking language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

Appropriation Implications

The bill states the "insurance department" shall administer the health care affordability fund, and money in the fund is subject to appropriation by the Legislature for the following purposes: 1) reduce premiums and cost sharing on the New Mexico health insurance exchange (NMHIX); 2) provide resources for planning, design, and implementation of health care coverage initiatives for the uninsured; and 3) provide resources for administration of health care coverage initiatives for the uninsured.

Disbursements from the fund shall be made by warrant of the secretary of the Department of Finance and Administration pursuant to vouchers signed by the Superintendent of Insurance or the Superintendent's authorized representative.

Under the provisions of the bill, the revenue in the health care affordability fund can only be used if appropriated by the Legislature. The New Mexico health insurance exchange is a quasi-governmental organization and does not receive state appropriations in the General Appropriation Act. Therefore, OSI will have to initiate mechanisms to transfer revenue to NMHIX which is not a state agency.

Operating Budget Implications

In previous iterations of the bill, it was estimated two additional FTE at an approximate cost of $179.7 thousand would be needed for the rule promulgation and design of the coverage plan and the associated administrative requirements, but OSI reports it can conduct the additional work with no additional FTE. The rule promulgation and design of

a coverage plan would require actuarial analysis estimated to cost $250 thousand in FY22.

HSD reports under the provisions of the bill, the Medicaid program would be required to pay the additional 2.75 percent surtax increase and would also draw down the federal matching portion associated with the increase. HSD indicates the Medicaid program would increase the per-member per-month capitation rates HSD pays to the Medicaid managed care organizations. For the 2nd half of FY22, this would result in an estimated total cost of approximately $75 million, with a general fund estimated impact of $15.1 million, which would draw down approximately $59.9 million in federal funds. In FY23, the total cost is estimated at $150.1 million, with an estimated general fund impact of approximately $30.2 million, which would draw down approximately $119.9 million in federal funds.

The Human Services Department also analyzed coverage initiatives and funded the Urban Institute study that provided data and information used in crafting this legislation. In FY21, HSD's operating budget included $500 thousand from the general fund targeted for coverage initiative analysis. The Urban Institute study indicated the estimated cost of providing additional premium subsidies above those provided by the federal government as well as additional cost sharing, would cost a total of $68 million to cover up to 23,000 people.

This bill, when introduced last legislative session, considered HSD as the administrative entity setting up the coverage initiatives described in the bill. Unlike the Office of Superintendent of Insurance, HSD and the Medicaid program are able to leverage a 50 percent federal match rate for administrative work for coverage initiative-related activities. HSD reports the bill, as drafted, does not include significant administrative implications for HSD, but depending on the initiatives implemented, there could be an administrative impact that is not quantifiable at this time.

Additional Federal Subsidies for Exchanges included in Congress' Current Relief Package

Congress' forthcoming Covid relief package is slated to bolster, for a designated time period, the federal aid extended to health insurance exchange enrollees and expand the population eligible for subsidies. The proposal, which is headed to the President, would, among other things:

- Fully subsidize health insurance exchange coverage for people earning up to 150 percent of the federal poverty level, as well as those on unemployment insurance, for two years;
- End the so-called subsidy cliff, qualifying enrollees who make over 400 percent of the federal poverty level subsidies for the first time, for two years;
- Cover 85 percent of the cost of private health insurance for those laid off during the pandemic, through September 21.

Urban Institute Study's Cost Analysis

Under the provisions of HB 122, the health care affordability fund would be created to augment federal subsidies for the purchase of health insurance by lower income

individuals on the state's health insurance exchange. According to findings from an Urban Institute study commissioned by the New Mexico Human Services Department, up to 23,000 uninsured New Mexicans could gain coverage if New Mexico invested in reducing premiums and out-of-pocket costs on the health insurance exchange. The Urban Institute study indicated a general fund cost of $68 million and $189 million in federal funds to cover the enhanced premium and cost sharing assistance for these 23,000 individuals. The study suggests uncompensated care could be reduced by $43 million.

Fiscal Implications of Original Senate Bill 317

Office of Superintendent of Insurance Fiscal Implications

The Office of Superintendent of Insurance (OSI) indicates the data collection and reporting required of OSI in the bill, particularly the analysis of the effects of the elimination of cost-sharing on both costs and outcomes, would require OSI to enter into contracts with organizations that specialize in this type of analyses and have the expertise and tools to collect and analyze the data. OSI estimates this would result in annual cost of $300 thousand.

Legislative Finance Committee Fiscal Implications

Existing LFC staff could conduct a portion of the data collection and analysis proposed in SB317. However, additional contract assistance costing up to an estimated $100 thousand could be necessary.

State of New Mexico Group Benefits Program Fiscal Implications

The General Services Department's Risk Management Division reports under the provisions of the bill the State of New Mexico Group Benefits program (SONM) would incur additional costs as it would be required to pay all behavioral health services at 100 percent whereas some of these services are now partially paid by plan members (approximately 20 percent copayment).

SB317 defines behavioral health services as "professional and ancillary services for the treatment, habilitation, prevention, and identification of mental illnesses, substance abuse disorders and trauma spectrum disorders, including inpatient, detoxification, residential treatment and partial hospitalization, intensive outpatient therapy, outpatient and all medications, including brand-name pharmacy drugs when generics are available." In the past fiscal year, about 14,500 members of the SONM accessed behavioral health services resulting in claims being filed with a managed care organization (health plan). These services are currently subject to the health plan's cost sharing requirements which includes copayments for most in-office behavioral health visits (same as a primary care physician copayment), additional deductibles for facility-based programs, and copayments for medications.

The SONM received claims in FY20 totaling about $11.3 million and paid about $9.1 million for these services. The members were responsible for the remaining $2.2 million (or about 19 percent) in cost sharing. SB317 would prohibit the member cost sharing and would require the SONM to increase its contribution to account for the difference. Assuming current utilization, the SONM would incur approximately $2.2 million in additional annual costs ($1.1 million in FY22 because the act becomes effective January 1, 2022).

New Mexico Retiree Health Care Authority Fiscal Implications

The NM Retiree Health Care Authority (NMRHCA) indicates its fiscal impact estimate is based on paid claims data from 2019, as opposed to 2020, to limit the impact of increased utilization of behavioral health services resulting from Covid-19. According to the analysis performed by NMRHCA's consulting actuaries, the elimination of cost-sharing agreements for behavioral health services and drug treatments would save between $2 and $2.7 million for all self-insured plans including the Medicare supplement. The table below provides the components.

Elimination of Cost Share on Medical	$ 762,932.77
Elimination of Cost Share on Prescription	$1,247,501.83
Increased Utilization on Medical	$ 634,785.95
Increased Utilization on Prescription	$ 54,802.37
Total	$2,700,022.92

The NMRHCA estimate is based the Health Insurance Experiment which analyzes how cost sharing effects behavior (https://www.rand.org/health-care/projects/hie.html). A set of equations are used that were developed based on the way people used health care as a function of how rich their benefits were. Effectively, if you have richer benefits, you'll utilize more, expressed as elasticity of demand by economists and induction by health insurance actuaries.

NMRHCA reports currently behavioral health services and treatments range from a $20 copay when services are rendered in network up to 50 percent of the cost when services are rendered out-of-network for members participating on one of NMRHCA's pre-Medicare plans, with prescription drug copays ranging from $5 for 30 days (generic) to $125 for 30 days (non-preferred brand name). These amounts vary on the Medicare plans from $0 copays after the Part B deductible is met up to $40 on the lowest costing Medicare Advantage Plans, with prescription drug copays ranging from $0 to $125 for 30 days.

New Mexico Public School Insurance Authority Fiscal Implications

The NM Public Schools Insurance Authority (NMPSIA) indicates it currently covers behavioral health services and medication associated with the treatment of mental illness and substance abuse disorders subject to member cost sharing as shown in the table below:

	High Option	**Low Option**	**EPO Option**
Office, Home, Outpatient Facility/Physician	$30 copay (deductible waived)	$35 copay (deductible waived)	$25 copay (deductible waived)
Inpatient	$500 copay plus 20% coinsurance	25% coinsurance	$500 copay plus 20% coinsurance
Partial Hospitalization	$250 copay plus 20% coinsurance	25% coinsurance	$250 copay plus 20% coinsurance
Facility-Based Intensive Outpatient Programs	$125 copay plus 20% coinsurance	25% coinsurance	$125 copay plus 20% coinsurance
	Retail Pharmacy	**Mail-Order Pharmacy**	
Generic Drugs	$10 copay	$22 copay	

Preferred brand drugs	30% coinsurance ($30 min, $60 max)	$60 copay
Non-preferred drugs	70% coinsurance	70% coinsurance

NMPSIA reports eliminating the cost sharing for behavioral health services is expected to result in a moderate increase in utilization to professional services (office visits, etc.) due to the richer benefit, with the potential for more significant volatility in utilization changes for inpatient services, partial hospitalization ad facility-based intensive outpatient programs. NMPSIA's estimate includes an assumption of an overall 10 percent increase in utilization across all categories.

SIGNIFICANT ISSUES

Significant Issues of House Floor Amendment/ Analysis from House Bill 122

In December 2019, the U.S. Congress permanently repealed as the "health care provider fee" which was authorized under the federal Affordable Care Act (ACA). The federal "health care provider fee" tax was levied on health insurance carriers to help support state health insurance exchanges created under the ACA. The final payment of the federal fee was due on September 30, 2020. With the repeal of the "health care provider fee," HB 122 is seeking to impose a similar fee on health insurance carriers in New Mexico with a goal of shifting the previously levied revenue to the state for use on initiatives to reduce the cost of health insurance purchased on the New Mexico health insurance exchange by New Mexico residents.

Revenue in the health care affordability fund cannot be used to leverage federal Medicaid funds under the provisions of the bill, except if the ACA is repealed. If the federal ACA is repealed, then revenue in the fund could be used to cover the adult expansion category of eligibility population or individuals on the exchange up to 200 percent of the federal poverty level.

The Kaiser Family Foundation estimates 16,855 uninsured New Mexicans are currently eligible to access a free, federally subsidized "bronze" health insurance plans on the health insurance exchange after tax credits are applied.

HSD previously reported that at the federal level, the health care provider fee, when collected, resulted in a tax on health insurance carriers of approximately 2.75 percent to 3 percent on average. Under current New Mexico law, there is a general premium tax of 3.003 percent which applies to multiple types of insurance including life, title, health, etc., and on top of that general premium tax, New Mexico also levies an additional 1 percent surtax on health insurance premiums. Under HB 122, the general premium tax of 3.003 percent would remain in place. The bill also would raise the premium surtax by 2.75 percent from 1 percent to a total of 3.75 percent.

The Office of the Superintendent of Insurance provides this additional analysis:

> The cost of health insurance continues to be a major factor in why individuals remain uninsured. In 2019, 73.7 percent of uninsured adults said that they were uninsured because the cost of coverage was too high. A survey of individuals who shopped for plans in the individual market (including health insurance exchanges)

found that 42 percent did not end up selecting a plan, with 71 percent of those individuals citing the cost of coverage as the main reason for remaining uninsured.

According to a study commissioned by the New Mexico Human Services Department, 26 percent of individuals who remain uninsured in New Mexico qualify for premium assistance through the state's health insurance exchange. Among those who qualify for federal assistance on the exchange, 37.2 percent remain uninsured. Improving the affordability of premiums and cost sharing could boost enrollment significantly, reducing the number of uninsured individuals by as much as 23,000, according to the study. Increasing enrollment would have the effect of improving the individual market risk pool, reducing sticker premiums by up to 18.5 percent in the first year. This type of initiative could increase federal premium tax credit payments by as much as $40 million due to increased enrollment and would also decrease uncompensated care by up to $43 million. Boosted enrollment will also increase revenue generated by the state's premium tax and health insurance surtax by up to $8.87 million, according to OSI's estimates [this amount is not included in the Fiscal Impact].

In addition to increasing the number of state residents who have health insurance, HB 122 would reduce the incidence of underinsurance by creating state-funded cost sharing assistance. In 2021, annual deductibles could be as high as $8,550 per person, providing insufficient financial protection for state residents.

…Colorado, Delaware, Maryland, and New Jersey have enacted a similar fee to replace the federal version and will use (or already are using) the revenue to improve coverage affordability for state residents.

…According to OSI's estimates, approximately 75 percent of the revenue generated by this bill would come from Medicaid MCOs, which are financed by the state and federal government.

… OSI expects between 40 percent to 50 percent of the funds will be used to support coverage on the health insurance exchange. The remaining funds will be used to provide coverage to individuals who do not qualify for federal financial assistance on the health insurance exchange. HB 122 directs OSI to work with stakeholder groups to develop and submit the plan for extending health care coverage access to the Legislative Finance Committee and Legislative Health and Human Services Committee. All expenditures from the fund will be subject to legislative appropriation.

The U.S. Supreme Court recently heard arguments in a case (California v. Texas) that could invalidate some or all of the provisions of the federal Patient Protection and Affordable Care Act. In the event that major coverage provisions of the law are impacted by such a decision, HB 122 allows the health care affordability fund to be used to maintain coverage for individuals who currently qualify for the Medicaid expansion or subsidized coverage on the health insurance exchange. In addition, if the U.S. Congress makes any changes to the law that improve the assistance provided by the federal government, OSI has the flexibility to make

adjustments to the affordability criteria to further improve coverage affordability or expand assistance to additional populations.

Significant Issues of Original Senate Bill 317

University of New Mexico Health Sciences Center Issues. The University of New Mexico Health Sciences Center reports a large percentage of behavioral health patients in New Mexico are covered by either Medicare, Medicare Advantage or Medicaid, which all have little or no cost sharing for behavioral health services. For commercial insurance patients, there would potentially be impacts to providers and the insurance companies as they would have to absorb the required co-insurance or co-payment amounts if SB317 was enacted. This would result in more out-of-pocket costs to commercial companies, which would likely be minimal as the rate and payment structures for behavioral health as a percentage of their total business would be relatively low. There is some risk the commercial insurance companies would look to pass the cost on to either their members or through lower total rates to providers.

General Services Department's Risk Management Division's Issues. The Risk Management Division of the General Services Department (RMD) reports as an employer, the State of New Mexico (SONM) recognizes the importance of access to affordable behavioral health services. As such, there are a number of existing no cost options:

1. All state employees and employees of local public bodies covered by the SONM have access to five free behavioral health visits (per occurrence) through the state's Well-Being Solutions Employee Assistance Program (EAP).
2. All members covered by the SONM (employees and covered dependents) have access to behavioral telemedicine with no cost sharing.
3. All members covered by the SONM (employees and covered dependents) have access to one free in office behavioral health visit each year.

Human Services Department's Issues. The Human Services Department (HSD) reports expanding access to behavioral health services is a critical priority for New Mexico. Both nationally and in New Mexico, large numbers of Americans struggle with mental health issues and are unable to access the care they need. Mental Health America ranks New Mexico 34th in the country for the combined prevalence of mental illness in the state and the ability to access care. In New Mexico, 19 percent of adults report experiencing a mental illness, 56.5 percent of whom were not able to get treatment. The statistics are worse for young people with 17.4 percent of New Mexico's youth reporting experiencing severe depression, almost twice the national average of 9.7 percent, and 62.9 percent of those young people did not receive treatment (see The State of Mental Health in America 2021, https://www.mhanational.org/issues/state-mental-health-america).

The availability of a nearby behavioral health provider and screening and referral by a trained provider both impact access to behavioral health treatment; but high out-of-pocket costs for copays, deductibles, and coinsurance are also major factors. The Affordable Care Act and the Mental Health Parity and Addiction Equity Act have required that all health insurance plans now cover mental health benefits. But having benefits in an insurance plan does not ensure all individuals can access these services, particularly for people who have health plans that balance lower premium costs with high deductibles. Of the New Mexican adults who did not access behavioral health treatment, 86 percent had some form of health insurance. Of the New Mexico children who did not access behavioral health treatment, 7.8 percent had some form of health

insurance. This results in New Mexico ranking 32nd in the country for the proportion of children who have private insurance that does not cover mental health (see The State of Mental Health in America 2021; https://www.mhanational.org/issues/state-mental-health-america).

PERFORMANCE IMPLICATIONS

Under the provisions of the bill, LFC and OSI would collect and report on nationally-recognized behavioral health outcomes to help determine the effects of eliminating behavioral health cost sharing on behavioral health outcomes in the state.

ADMINISTRATIVE IMPLICATIONS

OSI reports the bill would require specific health care and cost data reporting from insurers that the OSI has not defined or collected before.

Administrative Implications of House Floor Amendment/Analysis from House Bill 122

The design and implementation of a coverage initiative plan could require additional resources at OSI and contracting for actuarial analysis, although OSI reports it can do all the additional staff work required under the provisions of the bill with no additional FTE. NMHIX also reports it could implement the provisions of the bill with no additional staff.

HSD reports the bill, as drafted, does not include significant administrative implications for HSD outside of consulting with OSI on additional study for policy options to reach residents who cannot get coverage through NMHIX (dba beWellnm). Depending on the policy options that result from that study, HSD could have administrative impact in the future if any pieces require HSD's implementation and oversight. Without those details, the administrative impact is not quantifiable at this time.

TECHNICAL ISSUES

Constitutional Prohibition Technical Issue of HB317/as amended in HFl#1 to add HB122

The House Floor Amendment #1 merging HB122 with Senate Bill 317 may violate the New Mexico Constitution's prohibition on "logrolling." The provisions of HB122 that amend the health insurance premium surtax and create a health care affordability fund may violate Article 4, Section 16 of the Constitution of New Mexico, which states "the subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws." The proposed increase in the health insurance premium surtax and creation of the health care affordability fund may be unrelated to the subject of Senate Bill 317 stated in the title, "relating to health coverage."

Technical Issues of House Floor Amendment/Analysis from House Bill 122

Under the provisions of the bill, the revenue in the health care affordability fund can only be used if appropriated by the Legislature. The New Mexico health insurance exchange is a quasi-governmental organization and does not receive state appropriations in the General Appropriation Act.

NMHIX, a quasi-governmental agency, is currently subject to the Open Meetings Act, state Procurement Code, Whistleblower Act, and Sunshine portal. NMHIX is not currently subject to the state Personnel Code, state Audit Act, or the Accountability in Government Act like other state agencies which receive appropriations in the General Appropriation Act.

LFC staff recommends adding a delayed repeal date for the distributions made to the "health care affordability fund."

OSI Technical Issues with Senate Bill 317

The Office of Superintendent of Insurance notes the term "substance abuse disorder" is no longer widely used in the behavioral health community. OSI suggests the term be changed to "substance use disorder."

OSI suggests the word "treatment" be inserted after "outpatient" on page 2, line 10, and again in each definition of behavioral health services that occur in the bill.

OTHER SUBSTANTIVE ISSUES

OSI Issues with Senate Bill 317

The Office of Superintendent of Insurance (OSI) reports the legislation anticipates that eliminating cost sharing for all behavioral health services will result in increased access to, and utilization of, these services. The increased use of services would then lead to improved adherence to behavioral health treatment regimens, including medication use. The bill anticipates that improved adherence to treatments will improve outcomes and result in lower health care costs, particularly costs for emergency room and inpatient hospital admissions. In addition, a large percentage of individuals with behavioral health conditions have high rates of co-occurring chronic health conditions such as diabetes, hypertension and COPD. Studies show that these illnesses, which are costly to treat to begin with, can be three times more costly to treat when the individual has a co-morbid behavioral health condition. Therefore, improved access to behavioral health services could reduce the overall cost of health care.

While waiving cost-sharing for certain services may result in overall and long-term savings in plan cost, such as cost-sharing waivers for preventive care, other cost-sharing waivers may not have the same impact. If a cost-sharing waiver for a particular set of services does not result in overall lower health care expenditures, health insurers will typically raise the cost of insurance premiums for all members since they are no longer able to charge cost-sharing to the users of the particular set of services and the insurers overall expenditures have gone up. As a result, the full cost of the services may be spread out across all plan members via higher premiums.

OSI reports it appears no other state has implemented such a wide moratorium on out-of-pocket cost-sharing for behavioral health services. OSI conducted a health care literature survey and found that studies do not consistently show that eliminating cost-sharing for behavioral health services resulted in lower plan costs. However, OSI has seen a recent study on prescription drug costs by the National Bureau of Economic Research that found decreasing drug costs can increase adherence to prescription drug regimens and result in better health outcomes www.nber.org/system/files/working_papers/w28439/w28439.pdf

Other Substantive Issues of House Floor Amendment/ Analysis from House Bill 122

Federal Limits on Health Insurance Taxes

HSD previously reported states are allowed to tax health insurance carriers, including Medicaid managed care organizations (MCOs), without risking federal financial participation in the Medicaid program. Federal law restricts how much states can tax certain healthcare-related entities in order to limit states from using the proceeds to finance the state's Medicaid program. The federal government presumes that a state is in compliance with federal rules if the tax is under 6 percent.

A state tax is considered healthcare-related under federal law if it meets either of two prongs:
1) 85 percent of the burden of the tax falls on health care providers; or
2) The tax provides for a different treatment for health care providers than others.

New Mexico's general premium surtax of 3.003 percent is not factored into the 6 percent overall limit for health care-related taxes under federal rules, because it does not meet the requirements as defined by federal law.

The premium surtax proposed in the bill, however, would be a healthcare-related tax under federal rules and therefore factored into the 6 percent cap. HB 122 would raise the premium surtax to 3.75 percent which is still below the 6 percent cap. It should also be noted that Medicaid managed care organizations and other health insurance carriers are one of 19 classes of health care providers under federal rules. Each class has its own 6 percent cap. Thus, any other taxes the state imposes on hospitals or other provider classes would not affect the 6 percent cap for the insurance premium surtax.

New Mexico Health Insurance Exchange

The federal Affordable Care Act (ACA) expanded health coverage for many New Mexicans by creating a health insurance exchange or marketplace (dba beWellnm) and providing financial assistance to reduce monthly premiums and out-of-pocket health care costs such as co-pays and deductibles. House Bill 122 proposes creation of a "health care affordability fund" envisioned to further add funding to augment federal subsidies for individuals on the health insurance exchange.

The number of New Mexicans enrolled through the health insurance exchange has been declining since 2017 from 54,653 members to 42,714 members in 2020. For comparison, the New Mexico Medicaid program currently enrolls 901,000 individuals.

The New Mexico health insurance exchange, beWellnm, reports the proposed health care affordability fund could work in complement with the exchange's standardized plans to maximize benefit to both the uninsured and underinsured. The reduction of the uninsured rate could provide more certainty and a healthier risk mix to the overall exchange population, promoting premium stability.

Other State Experiences

Eight states have passed legislation replacing the federal tax with a state tax. In July, New Jersey passed a similar proposal setting the surtax at 2.5 percent but excluded premiums from small business health insurance plans, Medicaid and Medicare policies, nonprofit dental plans, and certain self-funded group employer health insurance coverage.

Critics of the proposal in New Jersey warned increased taxes would be passed on to consumers purchasing the plans, including small businesses struggling under the pandemic. New Jersey also has an individual mandate requiring everybody to purchase health insurance or pay a fine in order to ensure the state has a large diverse risk pool funded by all.

New Jersey is using a portion of the new premium surtax revenues for a reinsurance program, which uses state and federal funds to offset the most expensive claims. This program has been credited with stabilizing industry costs and reducing market volatility for individual and small business health insurance plans.

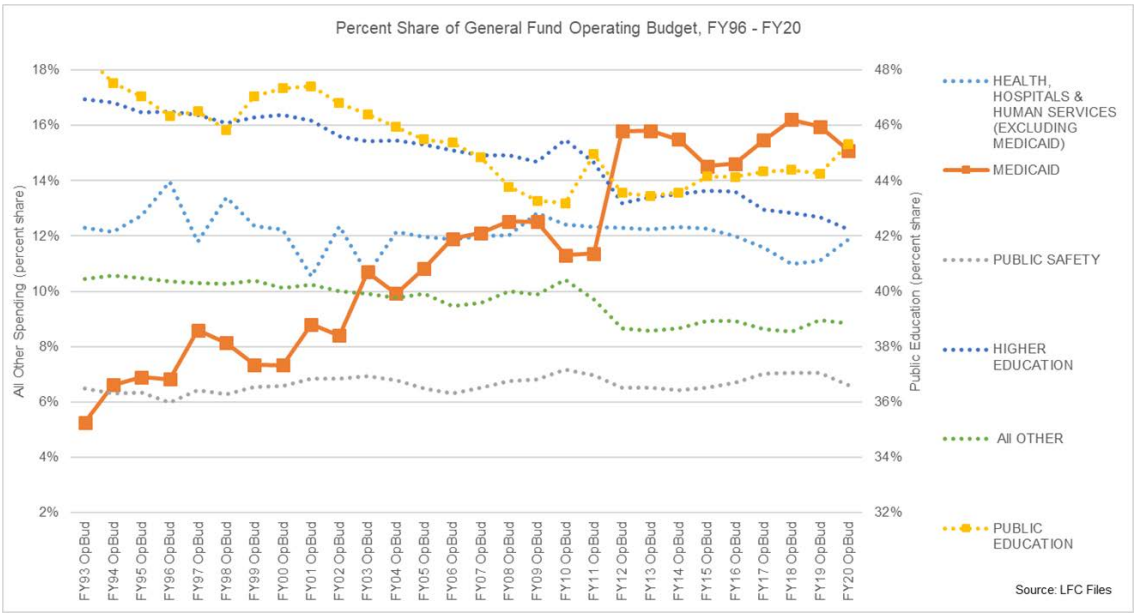
Federal Government and the Affordable Care Act

The Kaiser Family Foundation (KFF) and other media have reported the President could move to shore up healthcare coverage and affordability as currently allowed for under the federal Affordable Care Act (ACA).

Currently, families making between 100 percent and 400 percent of the federal poverty level are eligible for tax credits to help pay for health insurance on the exchange. There has been discussion regarding potentially eliminating the income cap and lowering the limit on the cost of coverage to 8.5 percent of income. If passed by Congress, these actions could help make insurance more affordable for families with wide-ranging incomes.

ALTERNATIVES

To meet the LFC adopted tax policy principle of adequacy, additional revenues generated by the surtax increase could continue to the general fund to meet the increasing cost of existing Medicaid services. Medicaid costs have grown more rapidly than all other areas of the budget as



health care inflation continues to outpace inflation of the greater economy, as managed care organization (MCOs) and healthcare provider rate increases have been implemented, and as Medicaid enrollment has increased under the pandemic. This trend is expected to continue. Without additional revenues, Medicaid cost growth can crowd out other spending priorities and risks continuous state budget funding constraints. See the chart below comparing Medicaid's share of
the general fund which has grown from 5 to 15 percent, compared with other categories of state spending. Given continuous funding constraints, the Medicaid program is continually under pressure of underfunding. An alternative is for the Legislature to use all the funds proposed in the legislation to adequately fund on a recurring basis the needs of the indigent and other populations.

Alternatively, other policy options could be considered such as the federal government providing more federal dollars to fund subsidies for populations on health insurance exchanges. This option is already being considered for funding in the current federal Coronavirus Relief Package.

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