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## FISCAL IMPACT REPORT

**SPONSOR** Kernan **ORIGINAL DATE** 2/1/22 **LAST UPDATED** 2/1/22 **HB** \_\_\_\_\_  
**SHORT TITLE** Medical & Health Care Gross Receipts **SB** 138  
**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
	Minimal	NFI	NFI	NFI	Recurring	General Fund
	Minimal	NFI	NFI	NFI	Recurring	Local Governments

Parenthesis ( ) indicate revenue decreases

This bill conflicts with HB-82 “Dialysis Facility Gross Receipts” in section 7-9-77.1 NMSA 1978.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (NMAG)  
 Office of Superintendent of Insurance (OSI)  
 Human Services Department (HSD)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 138 (SB138) amends Section 7-9-77.1 NMSA 1978 by providing that receipts from payments from a “Medicare administrative contractor” be eligible for a gross receipts tax deduction for certain medical and health care services. It defines “medicare administrative contractor” as a third-party administrator operating under contract with the federal centers for Medicare and Medicaid services to process Medicare claims and make Medicare fee-for-service payments for Medicare fee-for-service beneficiaries.

The amendment aligns with Title 42 Chapter IV Subchapter B Part 421 of the Social Security Act.

### § 421.401 Definitions.

*Medicare Administrative Contractor (MAC)* means an agency, organization, or other person with a contract under section 1874A of the act.

SB138 also adds hospice and nursing homes to the list of entities that may deduct payments from the U.S. Government, agency, or Medicare administrative contractor for services provided to Medicare beneficiaries.

The effective date of this bill is July 1, 2022.

### FISCAL IMPLICATIONS

The provisions in this bill seem to be technical in nature and probably the result of a gross receipts tax audit or managed audit. In practice, the provisions of this bill are intended to confirm hospice and nursing homes' current practice of deducting payments from a Medicare services contractor who is acting on behalf of the Center for Medicaid and Medicare Services (CMS).

TRD indicates, "...the proposed changes to Section 7-9-77.1 NMSA 1978 clarify that Medicare administrative contractors' payments for Medicare beneficiaries are eligible for the Gross Receipts Tax (GRT) deduction. This deduction is not separately reported by taxpayers. Taxation and Revenue Department (Tax & Rev) understands that currently this deduction is being taken for such payments and therefore the clarification in the statute would have no fiscal impact. Similarly, nursing homes and hospices are already permitted to take the deduction, so the bill merely clarifies existing interpretation of the statute and has no fiscal impact."

### SIGNIFICANT ISSUES

OSI notes that, "...SB138 adds payments from Medicare administrative contractors as a source of tax deductible payments for certain services delivered to Medicare beneficiaries. The Centers for Medicare and Medicaid (CMS) uses regional fiscal intermediaries to administer Medicare Parts A and B, and has done so for decades. ... the definition enhances the clarity of the code. It strikes some hard-to-interpret language in Section A concerning the exemption of payments for medical and health care services delivered by nursing homes and hospices, and in its place, the bill adds a new section that clarifies the language that was struck in Section A."

HSD has similar comments. "A Medicare administrative contractor is defined in Section (1)(J)(7) SSA Title XVIII: "*A Medicare Administrative Contractor (MAC) is a private health care insurer that has been awarded a geographic jurisdiction to process Medicare Part A and Part B (A/B) medical claims or Durable Medical Equipment (DME), for Medicare Fee-For-Service (FFS) beneficiaries. See <https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/What-is-a-MAC>.*

TRD also confirms this analysis:

"Section 7-9-77.1 has been subject to multiple changes over the years, rendering the meaning of the statute potentially unclear. The proposed changes clarify in statute that Medicare administrative contractors who are approved by the Centers for Medicare and Medicaid Services (CMS) to process claims in states are treated equally in the statute

with other federal agency payments, and that hospices and nursing homes are entitled to this gross receipts deduction.”

#### **PERFORMANCE IMPLICATIONS**

If the provisions of the bill are technical and only serve to confirm current practice, then the LFC tax policy of accountability is not specifically applicable to the provisions of this bill. If the provisions of this bill expand a tax expenditure, then the LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

#### **ADMINISTRATIVE IMPLICATIONS**

TRD will update forms, instructions, and associated publications. These updates will be incorporated into annual tax program revisions with no budget impact.

#### **CONFLICTS**

Section 1 of this bill amending 7-9-77.1 NMSA 1978 conflicts with Section 1 of HB-82 “Dialysis Facility Gross Receipts.”

LG/rl/acv