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## FISCAL IMPACT REPORT

SPONSOR Sandoval DATE TYPED 3/3/05 HB 971

SHORT TITLE Health Care Practitioner Gross Receipts SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	(\$724.0)		Recurring	General Fund
	(\$452.0)		Recurring	Local Governments

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Taxation and Revenue Department (TRD)  
 Health Policy Commission (HPC)  
 Department of Health (DOH)  
 Aging and Long-Term Services Department (ALTSD)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of Bill

House Bill 971 provides a number of health care practitioners a gross receipts tax deduction for receipts from third-party administrators of Medicare and the Federal Military TRICARE program and codifies a section of law passed during the 2003 regular legislative session which included as deductible the Medicare receipts of clinical laboratories and home health agencies. TRICARE is a managed care health insurance program for active duty military, active duty service families, military retirees and their families, survivors, and active duty Reservists and National Guardsmen.

#### Significant Issues

SB 971 would expand the list of health care providers to include acupuncturists and doctors of oriental medicine, athletic trainers, chiropractors, clinical laboratories, counselors, therapists,

dentists, massage therapists, naprapaths, nurses, nutritionists, dieticians, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, radiology technologists, respiratory therapists, audiologists, and speech language pathologists, hospices and home health agencies.

## **PERFORMANCE IMPLICATIONS**

The TRD comments:

Laws 2003, Chapter 350, Section 1 amended the deduction under Section 7-9-77.1 NMSA 1978 to include Medicare receipts of home health agencies and clinical laboratories. However, because Laws 2003, Chapter 351, Section 1, which also amended Section 7-9-77.1, was signed last by Governor, it was codified, while Laws 2003, Chapter 350, Section 1 (deduction for clinical labs and home agencies) appears in the annotations to that section. The Tax Department interprets the annotations of the statute to be binding as law until and unless they are omitted in a subsequent amendment of the statute. The Department's position is based on the argument that rules of statutory construction are only aids when interpreting true legislative intent (*Quintana v. New Mexico Dep't of Cors.*, 100 N.M. 224, P2d 1101 [1983]).

## **FISCAL IMPLICATIONS**

The fiscal impact is limited to the new deduction allowed for health care practitioners only. There is no fiscal impact associated with the provision for clinical laboratories and home health agencies because the TRD is currently honoring the deductions for clinical laboratories and home health agencies as passed in Laws 2003 Chapter 350.

About 3 percent of the state's population is covered by TRICARE and 16 percent of the state's population is covered by Medicare. The number of Medicare beneficiaries has increased an average of 2.3 percent per year from 1999 to 2003. Gross receipts information was taken from the TRD's "Analysis of Gross Receipts by North American Industry Classification System (NAICS)" (Report-80) for the industries relate to the health care practitioners listed in the bill.

SB 971 phased in the deduction from one-third of gross receipts in FY04, to 100% of gross receipts after June 30, 2005. The retrospective provision on previously paid taxes is considered only for clinical labs and home health and not for the other classifications of providers named in HB971.

## **ADMINISTRATIVE IMPLICATIONS**

TRD reports changes to systems, forms and publications can be implemented with existing resources.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 971 relates to:

HB 446 and SB 401 allow a gross receipts tax deduction for physical therapists, clinical laboratories and home health agencies for services provided to Medicare beneficiaries;  
HB 715 permits persons licensed or registered under the Counseling and Therapy Practice Act a

gross receipts tax deduction from certain payments from managed health care providers/insurers; HB 88 provides for gross receipts deductions for certain receipts of psychologists; HB 904 allows hospitals to deduct the state portion of the gross receipts tax; SB 59 permits certain licensed health care practitioners, which include clinical mental health counselors; marriage and family therapists; professional art therapists; optometrists; osteopathic physicians and osteopathic physician's assistants; physical therapists; physicians and physician assistants; podiatrists; psychologists; registered and practical nurses; registered occupational therapists; respiratory care practitioners; speech-language pathologists and audiologists; baccalaureate, master and independent social workers; and department of health registered lay midwives to deduct from gross receipts certain payments from managed health care providers; SB 73 adds a provision allowing a gross receipts tax deduction for the receipts received by chiropractic physicians, clinical laboratories and home health agencies for services provided to Medicare beneficiaries; SB 179 provides for a phased-in gross receipts tax deduction for receipts from fee-for-service payments by health care insurers; SB 643 proposes a credit for the state portion of gross receipts tax for hospitals licensed by the DOH; SB 649 allows receipts from payments by managed health care providers, a health care insurer for commercial contract services or Medicare part C services provided by a health care practitioner that are not otherwise deductible pursuant to another provision of the Gross Receipts & Compensating Tax Act, to be deducted.

### **TECHNICAL ISSUES**

The HPC note that page 2, line 16 –20 states “receipts from payments by the United States government *or any agency* thereof for medical services... may be deducted from gross receipts.” The bill is unclear if this includes payments from private insurance companies who underwrite Medicare Part C health plans. At the present time, the plan may contract directly to the lab for services for Medicare beneficiaries. The question is whether HB971 intends to include Medicare Advantage plans as “any agency.”

### **ALTERNATIVES**

The HPC suggests a study of the numbers of professionals outlined in the bill for current data on supply and age distribution to determine if a gross receipts tax change as a method for retention is warranted.

### **OTHER SUBSTANTIVE ISSUES**

The HPC has the following comment:

The gross receipts tax reduction strategy employed for physicians in last year's legislature was significant in that data had established a significant undersupply of physicians in New Mexico as well as further possible exodus of providers if the gross receipts tax issue was not resolved. Studies and testimony in the Blue Ribbon Tax Reform Commission demonstrated that a tax policy change, based upon factual data, resulted in the consideration and eventual law change with respect to physician gross receipts tax. Normative data showed a significant shortage that would only get worse with retirement of physicians over the next ten years.

Other than for dentists and nurses, no current data exists on what the “correct” number of health professionals should be for those named in HB971, or whether there is any significant shortage of any of the professionals (other than dentists or nurses). There is no more current information than 1998 and 2000 with respect to per capita number of the professionals compared to other states.

In 2000, New Mexico had 77.4 pharmacists and 79.6 pharmacy technicians and aides per 100,000 population in 2000, which ranked 25th and 31st among the 50 states. Also, there were 33.8 dentists per 100,000 population in New Mexico in 2000, well below the national rate of 63.6. New Mexico ranked 49th in the nation in dentists per capita. However, the 1998 data showed New Mexico to lead the nation in number of occupational therapists per capita. Speech and language pathologists were third in the nation in 1998 with 64 per capita compared to 32.7 for the nation as a whole.

DOH reports a significant shortage of all health care practitioners especially in the rural areas of the state. New Mexico is competing with the rural and frontier states in trying to attract and retain professionals. Health care provider organizations have indicated that the gross receipts taxation of revenues paid to providers compounds the tax burden they shoulder under business and personal income tax.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

Continuation of the current gross receipts tax structure for New Mexico’s health professionals.

**AHO/lg**