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HOUSE BILL 116

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO TAXATION; PROVIDING DEDUCTIONS FROM GROSS RECEIPTS FOR RECEIPTS FROM PROVIDING ORTHOTIC AND PROSTHETIC CARE; PROVIDING AUTHORITY FOR ORTHOTISTS AND PROSTHETISTS TO CLAIM THE RURAL HEALTH CARE PRACTITIONER TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.22 NMSA 1978 (being Laws 2007, Chapter 361, Section 2) is amended to read:

"7-2-18.22. TAX CREDIT--RURAL HEALTH CARE PRACTITIONER TAX CREDIT.--

A. A taxpayer who files an individual New Mexico tax return, who is not a dependent of another individual, who is an eligible health care practitioner and who has provided health care services in New Mexico in a rural health care underserved area in a taxable year, may claim a credit against

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1 the tax liability imposed by the Income Tax Act. The credit
2 provided in this section may be referred to as the "rural
3 health care practitioner tax credit".

4 B. The rural health care practitioner tax credit
5 may be claimed and allowed in an amount that shall not exceed
6 five thousand dollars (\$5,000) for all eligible physicians,
7 osteopathic physicians, dentists, clinical psychologists,
8 podiatrists, ~~and~~ optometrists, ~~and~~ orthotists and
9 prosthetists who qualify pursuant to the provisions of this
10 section, except the credit shall not exceed three thousand
11 dollars (\$3,000) for all eligible dental hygienists, physician
12 assistants, certified nurse-midwives, certified registered
13 nurse anesthetists, certified nurse practitioners and clinical
14 nurse specialists.

15 C. To qualify for the rural health care
16 practitioner tax credit, an eligible health care practitioner
17 shall have provided health care during a taxable year for at
18 least two thousand eighty hours at a practice site located in
19 an approved, rural health care underserved area. An eligible
20 rural health care practitioner who provided health care
21 services for at least one thousand forty hours but less than
22 two thousand eighty hours at a practice site located in an
23 approved rural health care underserved area during a taxable
24 year is eligible for one-half of the credit amount.

25 D. Before an eligible health care practitioner may

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1 claim the rural health care practitioner tax credit, the
2 practitioner shall submit an application to the department of
3 health that describes the practitioner's clinical practice and
4 contains additional information that the department of health
5 may require. The department of health shall determine whether
6 an eligible health care practitioner qualifies for the rural
7 health care practitioner tax credit and shall issue a
8 certificate to each qualifying eligible health care
9 practitioner. The department of health shall provide the
10 taxation and revenue department appropriate information for all
11 eligible health care practitioners to whom certificates are
12 issued.

13 E. A taxpayer claiming the credit provided by this
14 section shall submit a copy of the certificate issued by the
15 department of health with the taxpayer's New Mexico income tax
16 return for the taxable year. If the amount of the credit
17 claimed exceeds a taxpayer's tax liability for the taxable year
18 in which the credit is being claimed, the excess may be carried
19 forward for three consecutive taxable years.

20 F. As used in this section:

21 (1) "eligible health care practitioner" means:

22 (a) a certified nurse-midwife licensed
23 by the board of nursing as a registered nurse and licensed by
24 the public health division of the department of health to
25 practice nurse-midwifery as a certified nurse-midwife;

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1 (b) a dentist or dental hygienist
2 licensed pursuant to the Dental Health Care Act;

3 (c) an optometrist licensed pursuant to
4 the provisions of the Optometry Act;

5 (d) an orthotist and prosthetist
6 certified by the American board of certification in orthotics,
7 prosthetics and pedorthics who develops and implements orthotic
8 or prosthetic care plans pursuant to a prescription from a
9 physician, osteopathic physician or other health care
10 practitioner with prescriptive authority;

11 [~~(d)~~] (e) an osteopathic physician
12 licensed pursuant to the provisions of Chapter 61, Article 10
13 NMSA 1978 or an osteopathic physician assistant licensed
14 pursuant to the provisions of the Osteopathic Physicians'
15 Assistants Act;

16 [~~(e)~~] (f) a physician or physician
17 assistant licensed pursuant to the provisions of Chapter 61,
18 Article 6 NMSA 1978;

19 [~~(f)~~] (g) a podiatrist licensed pursuant
20 to the provisions of the Podiatry Act;

21 [~~(g)~~] (h) a clinical psychologist
22 licensed pursuant to the provisions of the Professional
23 Psychologist Act; and

24 [~~(h)~~] (i) a registered nurse in advanced
25 practice who has been prepared through additional formal

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1 education as provided in Sections 61-3-23.2 through 61-3-23.4
2 NMSA 1978 to function beyond the scope of practice of
3 professional registered nursing, including certified nurse
4 practitioners, certified registered nurse anesthetists and
5 clinical nurse specialists;

6 (2) "health care underserved area" means a
7 geographic area or practice location in which it has been
8 determined by the department of health, through the use of
9 indices and other standards set by the department of health,
10 that sufficient health care services are not being provided;

11 (3) "practice site" means a private practice,
12 public health clinic, hospital, public or private nonprofit
13 primary care clinic or other health care service location in a
14 health care underserved area; and

15 (4) "rural" means an area or location
16 identified by the department of health as falling outside of an
17 urban area."

18 Section 2. Section 7-9-77.1 NMSA 1978 (being Laws 1998,
19 Chapter 96, Section 1, as amended) is amended to read:

20 "7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL
21 AND HEALTH CARE SERVICES.--

22 A. Receipts from payments by the United States
23 government or any agency thereof for provision of medical and
24 other health services by medical doctors, osteopathic
25 physicians, doctors of oriental medicine, athletic trainers,

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1 chiropractic physicians, counselor and therapist practitioners,
2 dentists, massage therapists, naprapaths, nurses,
3 nutritionists, dietitians, occupational therapists,
4 optometrists, orthotists and prosthetists, pharmacists,
5 physical therapists, psychologists, radiologic technologists,
6 respiratory care practitioners, audiologists, speech-language
7 pathologists, social workers and podiatrists or of medical,
8 other health and palliative services by hospices or nursing
9 homes to medicare beneficiaries pursuant to the provisions of
10 Title 18 of the federal Social Security Act may be deducted
11 from gross receipts.

12 B. Receipts from payments by a third-party
13 administrator of the federal TRICARE program for provision of
14 medical and other health services by medical doctors and
15 osteopathic physicians to covered beneficiaries may be deducted
16 from gross receipts.

17 C. Receipts from payments by or on behalf of the
18 Indian health service of the United States department of health
19 and human services for provision of medical and other health
20 services by medical doctors and osteopathic physicians to
21 covered beneficiaries may be deducted from gross receipts.

22 D. Receipts from payments by the United States
23 government or any agency thereof for medical services provided
24 by a clinical laboratory to medicare beneficiaries pursuant to
25 the provisions of Title 18 of the federal Social Security Act

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1 may be deducted from gross receipts.

2 E. Receipts from payments by the United States
3 government or any agency thereof for medical, other health and
4 palliative services provided by a home health agency to
5 medicare beneficiaries pursuant to the provisions of Title 18
6 of the federal Social Security Act may be deducted from gross
7 receipts.

8 F. For the purposes of this section:

9 (1) "athletic trainer" means a person licensed
10 as an athletic trainer pursuant to the provisions of Chapter
11 61, Article 14D NMSA 1978;

12 (2) "chiropractic physician" means a person
13 who practices chiropractic as defined in the Chiropractic
14 Physician Practice Act;

15 (3) "clinical laboratory" means a laboratory
16 accredited pursuant to 42 USCA 263a;

17 (4) "counselor and therapist practitioner"
18 means a person licensed to practice as a counselor or therapist
19 pursuant to the provisions of Chapter 61, Article 9A NMSA 1978;

20 (5) "dentist" means a person licensed to
21 practice as a dentist pursuant to the provisions of Chapter 61,
22 Article 5A NMSA 1978;

23 (6) "doctor of oriental medicine" means a
24 person licensed as a physician to practice acupuncture or
25 oriental medicine pursuant to the provisions of Chapter 61,

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1 Article 14A NMSA 1978;

2 (7) "home health agency" means a for-profit
3 entity that is licensed by the department of health and
4 certified by the federal centers for medicare and medicaid
5 services as a home health agency and certified to provide
6 medicare services;

7 (8) "hospice" means a for-profit entity
8 licensed by the department of health as a hospice and certified
9 to provide medicare services;

10 (9) "massage therapist" means a person
11 licensed to practice massage therapy pursuant to the provisions
12 of Chapter 61, Article 12C NMSA 1978;

13 (10) "medical doctor" means a person licensed
14 as a physician to practice medicine pursuant to the provisions
15 of the Medical Practice Act;

16 (11) "naprapath" means a person licensed as a
17 naprapath pursuant to the provisions of Chapter 61, Article 12E
18 NMSA 1978;

19 (12) "nurse" means a person licensed as a
20 registered nurse pursuant to the provisions of Chapter 61,
21 Article 3 NMSA 1978;

22 (13) "nursing home" means a for-profit entity
23 licensed by the department of health as a nursing home and
24 certified to provide medicare services;

25 (14) "nutritionist" or "dietitian" means a

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1 person licensed as a nutritionist or dietitian pursuant to the
2 provisions of Chapter 61, Article 7A NMSA 1978;

3 (15) "occupational therapist" means a person
4 licensed as an occupational therapist pursuant to the
5 provisions of Chapter 61, Article 12A NMSA 1978;

6 [~~(16)~~] "~~osteopathic physician~~" means a person
7 ~~licensed as an osteopathic physician pursuant to the provisions~~
8 ~~of Chapter 61, Article 10 NMSA 1978;~~

9 ~~(17)]~~ (16) "optometrist" means a person
10 licensed to practice optometry pursuant to the provisions of
11 Chapter 61, Article 2 NMSA 1978;

12 (17) "orthotist and prosthetist" means a
13 person certified by the American board of certification in
14 orthotics, prosthetics and pedorthics who develops and
15 implements orthotic or prosthetic care plans pursuant to a
16 prescription from a medical doctor, osteopathic physician or
17 other medical services provider with prescriptive authority;

18 (18) "osteopathic physician" means a person
19 licensed as an osteopathic physician pursuant to the provisions
20 of Chapter 61, Article 10 NMSA 1978;

21 [~~(18)]~~ (19) "pharmacist" means a person
22 licensed as a pharmacist pursuant to the provisions of Chapter
23 61, Article 11 NMSA 1978;

24 [~~(19)]~~ (20) "physical therapist" means a
25 person licensed as a physical therapist pursuant to the

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1 provisions of Chapter 61, Article 12D NMSA 1978;

2 ~~[(20)]~~ (21) "podiatrist" means a person
3 licensed as a podiatrist pursuant to the provisions of the
4 Podiatry Act;

5 ~~[(21)]~~ (22) "psychologist" means a person
6 licensed as a psychologist pursuant to the provisions of
7 Chapter 61, Article 9 NMSA 1978;

8 ~~[(22)]~~ (23) "radiologic technologist" means a
9 person licensed as a radiologic technologist pursuant to the
10 provisions of Chapter 61, Article 14E NMSA 1978;

11 ~~[(23)]~~ (24) "respiratory care practitioner"
12 means a person licensed as a respiratory care practitioner
13 pursuant to the provisions of Chapter 61, Article 12B NMSA
14 1978;

15 ~~[(24)]~~ (25) "social worker" means a person
16 licensed as an independent social worker pursuant to the
17 provisions of Chapter 61, Article 31 NMSA 1978;

18 ~~[(25)]~~ (26) "speech-language pathologist"
19 means a person licensed as a speech-language pathologist
20 pursuant to the provisions of Chapter 61, Article 14B NMSA
21 1978; and

22 ~~[(26)]~~ (27) "TRICARE program" means the
23 program defined in 10 U.S.C. 1072(7)."

24 Section 3. Section 7-9-93 NMSA 1978 (being Laws 2004,
25 Chapter 116, Section 6, as amended) is amended to read:

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1 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
2 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

3 A. Receipts from payments by a managed health care
4 provider or health care insurer for commercial contract
5 services or medicare part C services provided by a health care
6 practitioner that are not otherwise deductible pursuant to
7 another provision of the Gross Receipts and Compensating Tax
8 Act may be deducted from gross receipts, provided that the
9 services are within the scope of practice of the person
10 providing the service. Receipts from fee-for-service payments
11 by a health care insurer may not be deducted from gross
12 receipts. The deduction provided by this section shall be
13 separately stated by the taxpayer.

14 B. For the purposes of this section:

15 (1) "commercial contract services" means
16 health care services performed by a health care practitioner
17 pursuant to a contract with a managed health care provider or
18 health care insurer other than those health care services
19 provided for medicare patients pursuant to Title 18 of the
20 federal Social Security Act or for medicaid patients pursuant
21 to Title 19 or Title 21 of the federal Social Security Act;

22 (2) "health care insurer" means a person that:

23 (a) has a valid certificate of authority
24 in good standing pursuant to the New Mexico Insurance Code to
25 act as an insurer, health maintenance organization or nonprofit

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1 health care plan or prepaid dental plan; and

2 (b) contracts to reimburse licensed
3 health care practitioners for providing basic health services
4 to enrollees at negotiated fee rates;

5 (3) "health care practitioner" means:

6 (a) a chiropractic physician licensed
7 pursuant to the provisions of the Chiropractic Physician
8 Practice Act;

9 (b) a dentist or dental hygienist
10 licensed pursuant to the Dental Health Care Act;

11 (c) a doctor of oriental medicine
12 licensed pursuant to the provisions of the Acupuncture and
13 Oriental Medicine Practice Act;

14 (d) an optometrist licensed pursuant to
15 the provisions of the Optometry Act;

16 (e) an orthotist and prosthetist
17 certified by the American board of certification in orthotics,
18 prosthetics and pedorthics who develops and implements orthotic
19 or prosthetic care plans pursuant to a prescription from a
20 physician, osteopathic physician or other health care
21 practitioner with prescriptive authority;

22 [~~e~~] (f) an osteopathic physician
23 licensed pursuant to the provisions of Chapter 61, Article 10
24 NMSA 1978 or an osteopathic physician's assistant licensed
25 pursuant to the provisions of the Osteopathic Physicians'

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1 Assistants Act;

2 ~~(f)~~ (g) a physical therapist licensed
3 pursuant to the provisions of the Physical Therapy Act;

4 ~~(g)~~ (h) a physician or physician
5 assistant licensed pursuant to the provisions of Chapter 61,
6 Article 6 NMSA 1978;

7 ~~(h)~~ (i) a podiatrist licensed pursuant
8 to the provisions of the Podiatry Act;

9 ~~(i)~~ (j) a psychologist licensed
10 pursuant to the provisions of the Professional Psychologist
11 Act;

12 ~~(j)~~ (k) a registered lay midwife
13 registered by the department of health;

14 ~~(k)~~ (l) a registered nurse or licensed
15 practical nurse licensed pursuant to the provisions of the
16 Nursing Practice Act;

17 ~~(l)~~ (m) a registered occupational
18 therapist licensed pursuant to the provisions of the
19 Occupational Therapy Act;

20 ~~(m)~~ (n) a respiratory care
21 practitioner licensed pursuant to the provisions of the
22 Respiratory Care Act;

23 ~~(n)~~ (o) a speech-language pathologist
24 or audiologist licensed pursuant to the Speech-Language
25 Pathology, Audiology and Hearing Aid Dispensing Practices Act;

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1 ~~[(p)]~~ (p) a professional clinical mental
2 health counselor, marriage and family therapist or professional
3 art therapist licensed pursuant to the provisions of the
4 Counseling and Therapy Practice Act who has obtained a master's
5 degree or a doctorate;

6 ~~[(p)]~~ (q) an independent social worker
7 licensed pursuant to the provisions of the Social Work Practice
8 Act; and

9 ~~[(q)]~~ (r) a clinical laboratory that is
10 accredited pursuant to 42 U.S.C. Section 263a but that is not a
11 laboratory in a physician's office or in a hospital defined
12 pursuant to 42 U.S.C. Section 1395x;

13 (4) "managed health care provider" means a
14 person that provides for the delivery of comprehensive basic
15 health care services and medically necessary services to
16 individuals enrolled in a plan through its own employed health
17 care providers or by contracting with selected or participating
18 health care providers. "Managed health care provider" includes
19 only those persons that provide comprehensive basic health care
20 services to enrollees on a contract basis, including the
21 following:

- 22 (a) health maintenance organizations;
- 23 (b) preferred provider organizations;
- 24 (c) individual practice associations;
- 25 (d) competitive medical plans;

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- 1 (e) exclusive provider organizations;
- 2 (f) integrated delivery systems;
- 3 (g) independent physician-provider
- 4 organizations;
- 5 (h) physician hospital-provider
- 6 organizations; and
- 7 (i) managed care services organizations;
- 8 and

9 (5) "medicare part C services" means services
10 performed pursuant to a contract with a managed health care
11 provider for medicare patients pursuant to Title 18 of the
12 federal Social Security Act."

13 Section 4. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2009.