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

		ORIGINAL DATE	2/03/09		
SPONSOR	Lujan, B	**LAST UPDATED**	3/03/09	**HB**	509
SHORT TITLE	Health Care Practitioner Gross Receipts			**SB**	
				ANALYST	Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	($14,113.0)	($15,524.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB116 and HB680

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Human Services Department (HSD)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 509 expands the medical services deduction enacted in 2004 (Section 7-9-93 NMSA 1978) to include receipts from co-payments or deductibles paid by an insured person to a health practitioner.

The bill also creates a definition for the term “fee for services” and would change the definition of “commercial contract services” to reference “negotiated fee rates” pursuant to a contract with a managed care provider or health care insurer.

The provisions of the bill will become effective on July 1, 2009.

FISCAL IMPLICATIONS

In fiscal year 2008 qualifying health practitioners deducted $823.1 million of their receipts using the current deduction under Section 7-9-93. These receipts were not their total receipts but only payments for commercial contract services by a managed care provider or health care insurer and excluded all fee for service payments and any deductibles and co-pays.

Based on data from Mathematica's July 2007 report titled "Quantitative and Comparative Analysis of Reform Options for Extending Health Care Coverage in New Mexico" and current taxpayer reporting, TRD estimates that total taxable gross receipts for all physicians eligible for the proposed co-payment and deductible deduction will be about $195 million in FY10. Taxed at an average gross receipts tax rate of 7.03 percent, the co-payment and deductible deduction will reduce revenue by about $13.7 million in FY10. Because local governments are held harmless from the revenue losses associated with the medical services deductions in Section 7-9-93 NMSA 1978, the entire revenue decrease will be to the general fund.

In addition to expanding the current deduction under Section 7-9-93 to include receipts from co-payments and deductibles on services that currently qualify for the deduction, the proposal also expands the deduction to include receipts from co-payments and deductibles on services that do not currently qualify for the deduction. One type of service that does not currently qualify is fee for service payments under conventional health insurance plans. Under the proposal receipts from a conventional health care insurer on a fee for service basis are still excluded; however, the co-payments and deductibles paid by an insured or enrollee in such a conventional fee for service health plan will now be deductible. Recent data suggests that conventional fee for service health care plans accounted for 2% of all health plan enrolment.[1] The deductible and co-payment amounts for these conventional fee for service health plans is generally higher than with PPO, HMO, or POS plans; therefore, this estimate assumes that deductibles and co-payments make up 25% of the total payments under conventional healthcare plans. This indicates an additional $6 million in receipts from deductibles and co-payments would become deductible under the proposed expansion creating an addition cost to the general fund of $427 thousand in FY10.

SIGNIFICANT ISSUES

HSD:
The Centers for Medicare and Medicaid Services could potentially find this tax credit in violation of the hold harmless provision of the federal regulations and could withhold federal money from the State to the Medicaid program.

Proponents of this legislation note that recruitment and retention of health providers has been difficult in New Mexico because of the gross receipts tax. Economic theory suggests that a shortage of healthcare labor will push healthcare wages, and therefore healthcare costs higher. Although much of this problem was addressed in 2004 when Section 7-9-93 NMSA 1978 was enacted, some healthcare practitioners in New Mexico still pay gross receipts tax, while their counterparts in most other states do not. Unlike many businesses that are subject to gross receipts tax but pass the tax on to consumers, many health providers cannot pass the tax on because managed care organizations and Medicare refuse to pay the tax.

LFC notes that while individual deductions from the gross receipts tax may have small fiscal impacts, their cumulative effect significantly narrows the gross receipts tax base. Narrowing the gross receipts tax base increases revenue volatility and requires a higher tax rate to generate the same amount of revenue.

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[1] The Henery J. Kaiser Family Foundation. *Employee Health Benefits: 2008 Annual Survey.* September 2008.

LFC notes that receipts of health practitioners have historically grown faster than receipts of other industries. Removing receipts from high-growth sectors from the gross receipts tax base makes it more difficult for tax revenue to keep pace with inflation.

ADMINISTRATIVE IMPLICATIONS

TRD:
This bill will have a moderate initial impact on the Department. A large part of the impact will be rapidly educating taxpayers and insuring they report correctly beginning at the July 1 effective date. Taxpayer education will be required to insure proper reporting of this deduction. If the deduction is reported improperly by taxpayers it will affect local government's hold harmless distributions from the General Fund. Instructions and publications will be revised through the regular semi-annual update. By allowing all payments under a managed care plan to be deductible, the proposal may make it easier for some service providers to classify their receipts as deductible and non-deductible. However, the lack of definition of "health plan" means that there will be uncertainty and disputes between taxpayers and the Department.

The bill does not contain a sunset date and there is no provision for reporting on this deduction. It is important for policy makers to have regular information and an opportunity to review the effectiveness of the deduction.

RELATIONSHIP

House Bill 116 also expands the health care practitioner's gross receipts by adding orthotists and prosthetists.

House Bill 680 also adds co-payments and deductions to the deduction but does not include fee for service payments.

TECHNICAL ISSUES

TRD notes that the proposal splits present law Section 7-9-93(A) NMSA 1978 into two subsections. The first new subsection retains the GRT deduction for payments by a managed care provider or health care insurer, and retains the exclusion from the deduction for fee-for-service payments. The second new subsection provides a new deduction for receipts from "co-

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

payments or deductibles paid by an insurer or enrollee in a health plan for health care services…”. Unlike present law, this language is not limited to managed care plans, but extends to co-payments and deductibles under any “health plan.” Since health plan is not defined, the proposal will create uncertainty for taxpayers and the Department about what is covered by the deduction. For example, taxpayers who pay for their own health care with funds from medical savings accounts could argue that they are eligible for the deduction as long as they can claim they are “enrolled” in a “health plan.” Since this language is difficult to interpret, fiscal impacts may be larger than the estimates shown above.

HPC notes that the bill does not allow co-payments and deductibles paid by the self-insured to be deducted from gross receipts tax and the bill does not define “health plan”.

BLG/mt