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

SPONSOR Taylor **ORIGINAL DATE** 2/23/09 **LAST UPDATED** 3/03/09 **HB** 680

SHORT TITLE Health Practitioner Gross Receipts Definition **SB**

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	($13,686.0)	($15,054.6)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB116, HB509

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Regulation and Licensing Department (RLD)
Health Policy Commission (HPC)
Attorney General's Office (AGO)
Human Services Department (HSD)

SUMMARY

Synopsis of Bill

House Bill 680 expands the medical services deduction enacted in 2004 (Section 7-9-93 NMSA 1978) to include receipts from co-payments or other payments paid by a patient for patient services provided pursuant to a commercial contract with a managed health care provider or a health care insurer.

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

FISCAL IMPLICATIONS

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 $13,686 thousand 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.

TRD:
Mathematica's July 31, 2007, report "Quantitative and Comparative Analysis of Reform Options for Extending Health Care Coverage in New Mexico" indicates that for insured New Mexicans the percent of total expenditures on selected healthcare services made up of co-payments and deductibles was as follows:

	State Employees	Private Group	Private Individual
Physician services	21.4%	16.1%	40.5%
Other medical services & supplies	40.8%	42.7%	71.6%

This estimate does not use the higher percentages for private individual insurance and other medical services; only a weighted average of the 21.4% and 16.1% for physician services is used. Mathematica's report also shows that out of total expenditures by State employees, federal employees, and privately insured on office-based medical providers, federal employees together with privately insured account for 95.2% of expenditures and State employees 4.8%. This estimate assumes the average co-payment and deductible rate for federal employees and all privately insured is at the lowest rate of 16.1%. Taking a weighted average of the State employees' 21.4% rate and all others' at the 16.1% rate gives an average rate of 16.4%.

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.

The annual growth rate of 10% is based on the historical and forecasted growth of the current medical deduction under Section and national data on growth rates for deductibles and co-payments over the past eight years.[1] Using this growth rate, it is estimated that the current deduction under Section 7-9-93 will allow healthcare practitioners to deduct $996 million in their receipts in FY10. Assuming 16.4% of their total receipts for these services are made up of deductibles and co-payments, their total receipts for qualifying services will be $1,191 million and their receipts from co-payments and deductibles for these services will be $195 million.[2] Applying a 7.03% gross receipts tax rate to $195 million in receipts that the proposal makes deductible leads to a cost to the general fund of $13.7 million 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.

[1] National Coalition on Healthcare. *Health Insurance Costs* (http://www.nchc.org/facts/cost.shtml);
[2] For example, if 16% of the total cost of services was due to copays and deductibles and the current claimed deduction was $84 it would indicate the total cost of services was $100 [$84/(1-.16)] and copays and deductibles accounted for $16.

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.

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, 2009 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.

The proposal would have an impact on auditing this industry because the auditor would need to verify that the patient that made the payment is covered by a managed health care provider or health care insurer. The taxpayer would need to provide individual records, which may not be possible due to HIPPA. It would force the industry to track these payments.

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

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 680 relates to:

- HB116 – also expands the health care practitioner's gross receipts by adding orthotists and prosthetists
- HB509 – also amends the GRT to include co-payments, deductibles and fee-for-service

TECHNICAL ISSUES

TRD notes that the definition of "receipts" in the bill creates a contradiction. It defines receipts to include payments paid by a patient. Receipts that are deductible under subsection A of the section are those "payments by a managed health care provider or health care insurer." So even defined as "receipts", payments paid by a patient would not be deductible because they are not receipts paid by a managed health care provider or health care insurer.

BLG/mc