

1 SENATE BILL 267

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Gay G. Kernan

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; PROVIDING DEDUCTIONS FROM GROSS RECEIPTS
12 FOR RECEIPTS FROM PROVIDING ORTHOTIC AND PROSTHETIC CARE;
13 EXPANDING THE RURAL HEALTH CARE PRACTITIONER TAX CREDIT TO
14 INCLUDE ORTHOTISTS AND PROSTHETISTS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "7-2-18.22. [~~TAX CREDIT~~] RURAL HEALTH CARE PRACTITIONER
20 TAX CREDIT.--

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

.191654.1

underscored material = new
[bracketed material] = delete

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, orthotists and prosthetists
9 who qualify pursuant to the provisions of this section, except
10 the credit shall not exceed three thousand dollars (\$3,000) for
11 all eligible dental hygienists, physician assistants, certified
12 nurse-midwives, certified registered nurse anesthetists,
13 certified nurse practitioners and clinical nurse specialists.

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

24 D. Before an eligible health care practitioner may
25 claim the rural health care practitioner tax credit, the

.191654.1

underscored material = new
[bracketed material] = delete

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

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

19 F. As used in this section:

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

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

25 (b) a dentist or dental hygienist

.191654.1

underscored material = new
[bracketed material] = delete

1 licensed pursuant to the Dental Health Care Act;

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

4 (d) an orthotist or prosthetist
5 certified by the American board for certification in orthotics,
6 prosthetics and pedorthics who develops and implements orthotic
7 or prosthetic care plans pursuant to a prescription from a
8 physician or osteopathic physician;

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

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

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

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

22 [~~h~~] (i) a registered nurse in advanced
23 practice who has been prepared through additional formal
24 education as provided in Sections 61-3-23.2 through 61-3-23.4
25 NMSA 1978 to function beyond the scope of practice of

.191654.1

underscoring material = new
~~[bracketed material] = delete~~

1 professional registered nursing, including certified nurse
2 practitioners, certified registered nurse anesthetists and
3 clinical nurse specialists;

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

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

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

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

18 "7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL
19 AND HEALTH CARE SERVICES.--

20 A. Receipts from payments by the United States
21 government or any agency thereof for provision of medical and
22 other health services by medical doctors, osteopathic
23 physicians, doctors of oriental medicine, athletic trainers,
24 chiropractic physicians, counselor and therapist practitioners,
25 dentists, massage therapists, naprapaths, nurses,

.191654.1

underscored material = new
[bracketed material] = delete

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

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

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

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

25 E. Receipts from payments by the United States

.191654.1

underscoring material = new
~~[bracketed material] = delete~~

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

6 F. For the purposes of this section:

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

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

13 (3) "clinical laboratory" means a laboratory
14 accredited pursuant to 42 USCA 263a;

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

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

21 (6) "doctor of oriental medicine" means a
22 person licensed as a physician to practice acupuncture or
23 oriental medicine pursuant to the provisions of Chapter 61,
24 Article 14A NMSA 1978;

25 (7) "home health agency" means a for-profit

.191654.1

underscoring material = new
~~[bracketed material] = delete~~

1 entity that is licensed by the department of health and
2 certified by the federal centers for medicare and medicaid
3 services as a home health agency and certified to provide
4 medicare services;

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

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

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

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

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

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

23 (14) "nutritionist" or "dietitian" means a
24 person licensed as a nutritionist or dietitian pursuant to the
25 provisions of Chapter 61, Article 7A NMSA 1978;

.191654.1

underscored material = new
[bracketed material] = delete

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

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

7 ~~(17)]~~ (16) "optometrist" means a person
8 licensed to practice optometry pursuant to the provisions of
9 Chapter 61, Article 2 NMSA 1978;

10 (17) "orthotist or prosthetist" means a person
11 certified by the American board for certification in orthotics,
12 prosthetics and pedorthics who develops and implements orthotic
13 or prosthetic care plans pursuant to a prescription from a
14 medical doctor or osteopathic physician;

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

18 ~~[(18)]~~ (19) "pharmacist" means a person
19 licensed as a pharmacist pursuant to the provisions of Chapter
20 61, Article 11 NMSA 1978;

21 ~~[(19)]~~ (20) "physical therapist" means a
22 person licensed as a physical therapist pursuant to the
23 provisions of Chapter 61, Article 12D NMSA 1978;

24 ~~[(20)]~~ (21) "podiatrist" means a person
25 licensed as a podiatrist pursuant to the provisions of the

underscored material = new
[bracketed material] = delete

1 Podiatry Act;

2 [~~(21)~~] (22) "psychologist" means a person
3 licensed as a psychologist pursuant to the provisions of
4 Chapter 61, Article 9 NMSA 1978;

5 [~~(22)~~] (23) "radiologic technologist" means a
6 person licensed as a radiologic technologist pursuant to the
7 provisions of Chapter 61, Article 14E NMSA 1978;

8 [~~(23)~~] (24) "respiratory care practitioner"
9 means a person licensed as a respiratory care practitioner
10 pursuant to the provisions of Chapter 61, Article 12B NMSA
11 1978;

12 [~~(24)~~] (25) "social worker" means a person
13 licensed as an independent social worker pursuant to the
14 provisions of Chapter 61, Article 31 NMSA 1978;

15 [~~(25)~~] (26) "speech-language pathologist"
16 means a person licensed as a speech-language pathologist
17 pursuant to the provisions of Chapter 61, Article 14B NMSA
18 1978; and

19 [~~(26)~~] (27) "TRICARE program" means the
20 program defined in 10 U.S.C. 1072(7)."

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

23 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
24 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

25 A. Receipts from payments by a managed health care

.191654.1

underscoring material = new
~~[bracketed material] = delete~~

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

11 B. For the purposes of this section:

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

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

20 (a) has a valid certificate of authority
21 in good standing pursuant to the New Mexico Insurance Code to
22 act as an insurer, health maintenance organization or nonprofit
23 health care plan or prepaid dental plan; and

24 (b) contracts to reimburse licensed
25 health care practitioners for providing basic health services

.191654.1

underscored material = new
[bracketed material] = delete

1 to enrollees at negotiated fee rates;

2 (3) "health care practitioner" means:

3 (a) a chiropractic physician licensed
4 pursuant to the provisions of the Chiropractic Physician
5 Practice Act;

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

8 (c) a doctor of oriental medicine
9 licensed pursuant to the provisions of the Acupuncture and
10 Oriental Medicine Practice Act;

11 (d) an optometrist licensed pursuant to
12 the provisions of the Optometry Act;

13 (e) an orthotist or prosthetist
14 certified by the American board for certification in orthotics,
15 prosthetics and pedorthics who develops and implements orthotic
16 or prosthetic care plans pursuant to a prescription from a
17 physician or osteopathic physician;

18 [~~e~~] (f) an osteopathic physician
19 licensed pursuant to the provisions of Chapter 61, Article 10
20 NMSA 1978 or an osteopathic physician's assistant licensed
21 pursuant to the provisions of the Osteopathic Physicians'
22 Assistants Act;

23 [~~f~~] (g) a physical therapist licensed
24 pursuant to the provisions of the Physical Therapy Act;

25 [~~g~~] (h) a physician or physician

.191654.1

underscoring material = new
~~[bracketed material] = delete~~

1 assistant licensed pursuant to the provisions of Chapter 61,
2 Article 6 NMSA 1978;

3 ~~[(h)]~~ (i) a podiatrist licensed pursuant
4 to the provisions of the Podiatry Act;

5 ~~[(i)]~~ (j) a psychologist licensed
6 pursuant to the provisions of the Professional Psychologist
7 Act;

8 ~~[(j)]~~ (k) a registered lay midwife
9 registered by the department of health;

10 ~~[(k)]~~ (l) a registered nurse or licensed
11 practical nurse licensed pursuant to the provisions of the
12 Nursing Practice Act;

13 ~~[(l)]~~ (m) a registered occupational
14 therapist licensed pursuant to the provisions of the
15 Occupational Therapy Act;

16 ~~[(m)]~~ (n) a respiratory care
17 practitioner licensed pursuant to the provisions of the
18 Respiratory Care Act;

19 ~~[(n)]~~ (o) a speech-language pathologist
20 or audiologist licensed pursuant to the Speech-Language
21 Pathology, Audiology and Hearing Aid Dispensing Practices Act;

22 ~~[(o)]~~ (p) a professional clinical mental
23 health counselor, marriage and family therapist or professional
24 art therapist licensed pursuant to the provisions of the
25 Counseling and Therapy Practice Act who has obtained a master's

.191654.1

underscoring material = new
[bracketed material] = delete

1 degree or a doctorate;

2 [~~(p)~~] (q) an independent social worker
3 licensed pursuant to the provisions of the Social Work Practice
4 Act; and

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

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

- 18 (a) health maintenance organizations;
19 (b) preferred provider organizations;
20 (c) individual practice associations;
21 (d) competitive medical plans;
22 (e) exclusive provider organizations;
23 (f) integrated delivery systems;
24 (g) independent physician-provider
25 organizations;

.191654.1

underscoring material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(h) physician hospital-provider organizations; and
(i) managed care services organizations; and
(5) "medicare part C services" means services performed pursuant to a contract with a managed health care provider for medicare patients pursuant to Title 18 of the federal Social Security Act."

SECTION 4. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2013.

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.