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FISCAL IMPACT REPORT

SPONSOR Moores ORIGINAL DATE 02/19/15
LAST UPDATED _____ HB _____

SHORT TITLE Health Caring Sharing Ministry and Insurance SB 475

ANALYST Dunbar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Office of the Superintendent of Insurance (OSI)

SUMMARY

Synopsis:

Senate Bill 475 includes a section in the New Mexico Insurance Code which states that a health care sharing ministry shall not be considered to be engaging in the business of insurance for the purposes of the Insurance Code.

The bill defines a Health Care Sharing Ministry (HCSM) as follows:

- 1) as a non-profit exempt from taxation under the internal revenue code Section 501,
- 2) limits its membership to those of a "similar faith,"
- 3) acts as a facilitator between participants who have financial or medical needs and other participants with the present ability to assist those in need in accordance with criteria established by the health care sharing ministry and
- 4) provides for the financial or medical needs of a participant through contributions from one participant to another

FISCAL IMPLICATIONS

To the extent any of these companies would chose to do business as a regulated entity they would pay premium tax. Making the company exempt from regulation will also exempt them from the tax. OSI has no record of any companies of this description doing business in New Mexico to date.

SIGNIFICANT ISSUES

OSI indicates these companies shall not be considered to be practicing the business of insurance under the New Mexico Insurance Code, NMSA 1978 §59A-1-1 *et seq.* The exemption created would seem at first glance to be contrary to the definition of "insurance" under the New Mexico Insurance Code, which defines "insurance" as follows:

59A-1-5. "Insurance"

"Insurance" is a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit in connection with ascertainable risk contingencies, or to act as surety.

However, the HCSM would argue the statute should not apply because the company itself is not accepting risk or agreeing to any contract to indemnify its members, and that the payments or "contributions" exchanged between members at the suggestions of the facilitator are strictly "voluntary".

SB 475 exempts HCSM companies from regulation as insurance as a matter of law. This is a policy decision within the exclusive province of the Legislature. The argument, as noted by OSI, is that these companies are not insurers, but rather act as facilitators helping others to fulfill their Christian duty in assisting others in need. OSI is not questioning the sincerity of those in this business. However, OSI believes that it is relevant to inquire how this arrangement would be perceived by the ordinary member, regardless of technical legal arguments about acceptance of risk or contracts of indemnity. Most lay consumers will perceive and describe this arrangement as "insurance". Members pay a monthly amount, and when they incur medical expenses the company arranges for reimbursement or payment, viz., indemnification. Furthermore, OSI states that if the normal person would perceive this product or service as insurance, the public would reasonably expect the consumer protections which ordinarily accompany insurance coverage.

OSI discovered that in at least in one "agreement" found at the website for Samaritan Ministries, <http://samaritanministries.org>, the member agrees to keep their "sharing" up to date and current or lose eligibility for participating in sharing themselves. This is similar to a contract of insurance, which requires prompt payment of monthly premium to be eligible for payment of benefits.

Concerns for consumer protection, discussed by OSI arise in other areas as well. Notably, the member waives any right to take the HCSM to a civil court in the event of a dispute about benefits. See:

http://samaritanministries.org/wp-content/uploads/2014/07/20140601-MemberApp_type1.pdf
and <http://samaritanministries.org/how-it-works/guidelines/>.

Moreover, OSI indicates that all states have insurance regulators in order to ensure that consumer protections are in place. The arrangement proposed in this bill exempts Health Care Sharing Ministries from any oversight in New Mexico. All protections such as appeals and grievance procedures, required inclusion of legislated mandates, mental health parity and limits on out of pocket expenses would not be in place for the consumers participating in this program. Importantly, as indicated by OSI is that no protections regarding the solvency of the company,

reserve and surplus requirements would apply to these companies.

A significant issue discussed by OSI pertains to state insurance regulation that seeks to ensure a level playing field for the insurers. This kind of organization also excludes preexisting conditions and has limits on benefits, removing the healthiest members from the regular market and leaving the gravely ill and long term chronic patients in the regular insurance market. This in turn skews that market and inflates costs and premiums for regulated carriers.

BD/aml/bb