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

		ORIGINAL DATE	02/20/17		
SPONSOR	Neville	**LAST UPDATED**	02/28/17	**HB**	
SHORT TITLE	High-Risk Insurance Pool Assessments			**SB**	469
				ANALYST	Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY17	**FY18**	**FY19**	**FY20**	**FY21**		
$0.0 - minimal	$10,112.0 - $37,422.0	$10,112.0 - $37,422.0	$27,921.0	$18,614.0	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

* The timing of the revenues is highly uncertain and what leads to the wide range of estimates. The Office of Superintendent of Insurance (OSI), the agency responsible for collecting insurance premium taxes and administering the credit phased out by this bill, did not estimate the fiscal impact by fiscal year.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	**FY18**	**FY19**	**3 Year Total Cost**	**Recurring or Nonrecurring**	**Fund Affected**
Total		($5,520.0)	($5,520.0)	($11,040.0)	Recurring	HSD (Assessment Covered by Medicaid)

Parenthesis ( ) indicate expenditure decreases

Duplicates HB316/aHBIC

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of Superintendent of Insurance (OSI)
Department of Finance and Administration (DFA) – to a similar bill
Human Services Department (HSD) – to a similar bill
Office of the Attorney General (OAG) – to a similar bill

SUMMARY

Synopsis of Bill

Senate Bill 469 removes receipts from Medicaid managed care premiums from health insurers' premium income exclusively for the purpose of calculating the New Mexico Medical Insurance Pool (NMMIP) assessments to each insurer. It also prevents the NMMIP board from considering the number of Medicaid enrollees when determining assessments. It then cuts in half the value of the credit based on these assessments for the calendar year 2016 assessment accrual period and eliminates the credit for calendar year 2017 and subsequent years.

Additionally, the bill removes NMMIP eligibility for individuals who are eligible to receive subsidized coverage through the New Mexico health insurance exchange or commercial insurance market.

Finally, the bill cleans up existing language. There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends.

FISCAL IMPLICATIONS

OSI, the agency responsible for collecting insurance premium taxes and administering the NMMIP credit, did not estimate the fiscal impact of this bill by fiscal year. Unfortunately, there is uncertainty and debate about the timing regarding when insurance companies take the credits based on NMMIP assessments for a given year. This does not affect the total savings to the general fund but substantially affects the fiscal years in which the savings will be achieved. The ranges shown in the estimated revenue table are due to this timing uncertainty.

OSI provided the following information in its analysis.

> We are currently collecting data required to provide insight about how this shift in the responsibility for funding the high-risk pool will affect ongoing health insurance business. While the total dollar value of assessments will not change in the short run, several peripheral issues arise. First, because the federal government matches Medicaid spending with four federal dollars for every state dollar spent, reduced Medicaid spending on the pool will reduce federal dollars brought into the state. By OSI's calculations, eliminating assessments on Medicaid premiums will currently save the state approximately $11 million in general funds, but will forgo $48.5 million in federal matching dollars. If the state implements the legislation as written, decreasing the size of the pool will save the state approximately $6 million in general funds, but will forgo $24 million in matching funds.

In response to a similar bill, the Human Services Department (HSD) and the Department of Finance and Administration (DFA) provided the following analysis.

> Elimination of Assessment Based on Insurers' Medicaid Revenue
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> This bill would remove the authority of NMMIP to place assessments on insurers contracted with the Human Services Department to administer the department's Medicaid managed care program based on counts of those insurers' enrolled Medicaid members or

their Medicaid premiums. These insurers are known as Medicaid managed care organizations (MCOs).

With the expansion of New Mexico's Medicaid program and the provisions of the Affordable Care Act that expanded the availability of commercial health insurance coverage, both effective January 1, 2014, it was anticipated that NMMIP enrollment would decline substantially. The enrollment in NMMIP has come down since 2014, but the current membership is estimated to be 2,747 as of December 31, 2016 and 2,311 as of December 31, 2017.

The New Mexico Medicaid program currently calculates the cost of the assessments levied by NMMIP on the MCOs based on their Medicaid premiums and includes that amount when determining the MCOs' capitation payment rates. These amounts included in the MCOs' capitation rates typically account for approximately 70% of NMMIP's funding. The calendar year 2017 estimated total statewide assessment is $69.3 million. The amount attributable to Medicaid is $54.2 million including premium tax. The federal Medicaid share of the $54.2 million is $42.8 million and the state's share from the general fund is $11.4 million. This liability is then offset by the application of the premium tax credit and the net result is the inclusion of $5.5 million in general fund in the MCOs' capitation rates.

<u>Phase-out of Premium Tax Credits</u>

Additionally, the bill would phase out the premium tax credits that insurers are able to claim against the assessments made by NMMIP. Current statute defines the tax credits as "a fifty-percent credit on the premium tax return for that member and a seventy-five-percent credit on the premium tax return for that member for the assessment attributable to pool policy holders that receive premiums in whole or in part, through the federal Ryan White CARE Act, the Ted R. Montoya hemophilia program at the university of New Mexico health sciences center, the children's medical services bureau of the public health division of the department of health or other program receiving state funding or assistance." In this context, a "member" is an insurer responsible for paying an assessment. The bill phases out the premium tax credits associated with the NMMIP assessments by eliminating 50% of the premium tax credit for the 2016 pool assessment year (January 1, 2016 through December 31, 2016) and 100% of the premium tax credit thereafter. Potential additional premium tax revenue based on this phase-out process is described below.

<u>Reduction of Premium Tax Credit for CY 2016 NMMIP Assessment (FY17)</u>

CY 2016 Total NMMIP Assessment	$74,900,000
Average Tax Credit Percentage	54%
Total Reduction to GF due to Tax Credit	$40,446,000
Reduction to GF if Tax Credit Reduced 50%	$20,223,000
Additional GF Revenue if Tax Credit Reduced 50%	$20,223,000

Elimination of Premium Tax Credit for CY 2017 NMMIP Assessment (FY18)

CY 2017 Estimated NMMIP Assessment	$69,300,000
Average Tax Credit Percentage	54%
Total Reduction to GF due to Tax Credit	$37,422,000
Reduction to GF if Tax Credit Eliminated	$0
Additional GF Revenue if Tax Credit Eliminated	$37,422,000

Restriction of Enrollment Eligibility

The bill also would limit enrollment of new members to those who are not eligible for subsidized coverage through the New Mexico Health Insurance Exchange. Medicare and Medicaid eligibility are existing disqualifiers. This change would reduce the number of new potential pool enrollees and could decrease the total number of pool members going forward.

LFC staff analysis agrees almost exactly with the fiscal impact numbers estimated by HSD but disagrees with the timing. In the absence of timing data from OSI, LFC staff analysis used timing data supplied previously by NMMIP, which indicates a full calendar year delay between the end of a pool assessment year and the start of a calendar year in which the credits may be taken. These amounts are shown as the low end of the ranges in the revenue estimate table.

This bill addresses the LFC tax policy principle of adequacy. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The board of NMMIP, a healthcare coverage option for high-risk patients created before the Affordable Care Act and chaired by the superintendent of insurance, has allowed many members to remain in the pool despite eligibility for coverage through the health insurance exchange. The pool is intended as an insurance option of last resort for those who are denied coverage or offered coverage at unaffordable rates. The pool board in 2015 voted to add a one-year delay to transition members out of the pool, transitioning a third of members who have other insurance options out of the pool each year over three years, starting in 2017. This bill eliminates pool eligibility for those who are eligible for subsidized insurance through the insurance exchange.

Currently, insurers paying into the pool receive a tax credit of 50 percent on the premium tax return for that member and a 75 percent credit on the premium tax return for that member for assessments attributable to pool policyholders that receive eligible premiums. Starting for the

2016 pool assessment plan year, the assessment for any pool member shall be allowed as a 25 percent credit on the premium tax return for that member and a 37.5 percent credit on the premium tax return for that member for the assessment attributable to pool policyholders that receive eligible premiums. The credit is eliminated for following pool assessment years.

The bill phases out the credit to insurers for operation of NMMIP, but it does not shut down the pool. It remains within the board's discretion whether or not to continue pool operations. However, given the elimination of the credit, there is a greater incentive for insurance company representatives on the pool board to take steps to reduce operational costs, which could include the option of shutting down the pool.

In response to a similar bill, the Office of the Attorney General noted some may be concerned whether insurers received adequate notice of the phase-out of the credit, as it reflects activity from a taxable year that has already ended. However, the retroactive calendar year assessment is due and payable equitably among all insurers whether a credit is given or not. Further, there is no advantageous strategic adjustment possible against the year-end assessment and both the credit and the assessment by law must be applied equitably among the insurers. The existing statutory structure for pool participation allows the board to remove the credit mandated by this bill.

In response to a similar bill, HSD provided the following analysis.

> By excluding the NMMIP assessment from Medicaid MCOs, the net general fund need of the Medicaid program is reduced by about $5.5 million in FY18. Without such savings, HSD will have to undertake other cost containment efforts, such as reducing provider rates, cutting health care benefits, or changing eligibility for Medicaid, to reduce spending by an equivalent amount.
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> The federal rules for actuarial rate setting for Medicaid require taxes and assessments to be included in the rates paid to MCOs. Therefore, the cost of the NMMIP assessment is primarily born by the state and federal government. These rules do not exist in the commercial market. Health insurance plans might insist that they would have to raise premiums for individual and small employer health insurance plans in order to maintain underwriting gains and meet certain OSI rules, but the health insurers would not be required to do so.

OSI provided the following analysis.

> While some insurance carriers with smaller market share may be able to absorb the costs of the new assessment burden without significantly affecting their rates. OSI projects that the major medical carriers that underwrite the largest portions of individual and small group markets in the state will see a significant increase in the assessable magnitude of their market share. This increased assessment burden will likely result in carriers passing along costs to insureds through premiums increases. These increases will likely need to be significant in order to protect carrier solvency and ability to pay claims. OSI projects that the magnitude of this premium increase would likely cause premiums for a single individual to increase hundreds of dollars a year. While federal subsidies for coverage purchased through the New Mexico Health Insurance Exchange will blunt the rise in premium costs for those who are eligible, ineligible individuals and small businesses will likely find these new premium costs unaffordable. Unaffordability of insurance premiums

> will likely increase uninsured rates, resulting in additional uncompensated care costs for the state.

ADMINISTRATIVE IMPLICATIONS

The HSD Medicaid Program would reduce rates paid to MCOs to reflect the elimination of the assessment to MCOs.

OTHER SUBSTANTIVE ISSUES

OSI provided the following additional information.

> The market share ratio defined in the bill modifies the formula for assigning market share to individual companies. In so doing, carrier market share for NMMIP assessments will be unavoidably altered.
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> The change will be beneficial to companies that have a higher proportion of their premiums written on Medicaid; their assessed market share will decrease, and, as such, the amount of their assessments. Conversely, carriers that have limited exposure to Medicaid premiums will be adversely affected; their assessable market share and thus assessments will increase. The proposed bill therefore penalizes companies that prefer the private health insurance market to the public health insurance market and rewards the companies that prefer to do business within the public insurance sector. This penalty on insurers without a presence in the public market may be so significant as to cause rate increases effecting market competition.
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> It is difficult to calculate the exact impact on private health insurance premiums of changing the assessment and eligibility structures for the pool. At minimum, we are unequivocally certain that there will be an increase in health insurance premiums for New Mexico's consumers. Given current market instability and carrier uncertainty about the cost of absorbing the pool's risk, these rate increases are likely to be ample. Carriers across the board will raise rates. These rate increases will likely need to overestimate the risk absorbed by the pool to insure carrier solvency. As a result, expected premium increases will have a substantial impact on insurance affordability in the state. Also, 2016 rates were submitted and approved and are already being collected from members. Pool members have not had a chance to re-adjust for their decreased credit when they submitted rates for 2016. Any changes to pool assessments and eligibility would be better after 2017.
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> OSI also has concerns about the timing of this legislation. Currently, 2016 rates were submitted and approved and are already being collected from members. Pool members have not had a chance to re-adjust for their decreased credit when they submitted rates for 2016. Any changes to pool assessments and eligibility would be better after 2017.

CONFLICT

This bill duplicates HB316/aHBIC.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As noted above, if the federal government eliminates or changes the ACA in ways that reduce the number of individuals eligible for health insurance coverage, it could result in significant numbers of people moving into NMMIP at a substantial cost to the state. This bill would prevent these costs from being paid by the state and would instead apply the costs to health insurers.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

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