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

SPONSOR Armstrong, D **ORIGINAL DATE** 02/01/21 **LAST UPDATED** 03/11/21 **HB** 122/aHAFC/aHFl#1

SHORT TITLE Health Insurance Premium Surtax **SB**

ANALYST Esquibel/Torres

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	**FY22**		
	*See Fiscal Implications	Recurring	Health Care Affordability Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	**FY22**	**FY23**	**FY24**	**FY25**		
	$22,000-$23,147	$38,329.4-$41,433.0	$38,809.4 -$43,073.0	$91,015.2-$105,616.0	Recurring	General Fund
	$54,712.7-$56,420.0	$114,988.1-$124,300.0	$116,428.3 -$129,250.0	$63,010.5-$73,200.0	Recurring	Health Care Affordability Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	FY25	4 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD – Costs for Surtax Implementation	$21.8				$21.8	Nonrecurring	General Fund
State Share – Medicaid MCO Rate Increases	$15,100.0	$30,200.0	$31,000.0	$31,700.0	$108,000.0	Recurring	General Fund
Federal Share - Medicaid MCO Rate Increases	$59,900.0	$119,900.0	$122,700.0	$125,700.0	$428,200.0	Recurring	Federal Medicaid Matching Funds
OSI - Actuarial Analyses	$250.0	$250.0	$250.0	$250.0	$1,000.0	Recurring	Health Care Affordability Fund

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files
Responses Received From
New Mexico Attorney General (NMAG)
Office of the Superintendent of Insurance (OSI)
Public Schools Insurance Authority (NMPSIA)
Retiree Health Care Authority (RHCA)
General Services Department (GSD)
New Mexico Health Insurance Exchange (NMHIX)
Taxation and Revenue Department (TRD)
Human Services Department (HSD)

SUMMARY

Synopsis of HFl #1

The House Floor #1 amendment to House Bill 122 provides for a decrease in the health insurance premium surtax if the annual fee on health insurance providers is re-imposed at the federal level. The decrease is at a rate equal to the rate of the annual federal fee imposed. However, the rate of the health insurance premium surtax shall not be less than its current rate of 1 percent.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 122 changes the distribution of the health insurance premium surtax to the new health care affordability fund. The new fund will receive a 52 percent distribution for January 1, 2022 to June 30, 2022, 55 percent from July 1, 2022 through July 1, 2024, and 30 percent from July 1, 2024 onward. The House Appropriations and Finance Committee amendment also provides an additional permitted use of the fund to "reduce premiums for small businesses and their employees purchasing health care coverage in the fully insured small group market." Finally, the amendment calls for the Legislative Finance Committee staff to conduct a program evaluation to measure the impact of changes to the health insurance premium surtax and the creation of the health care affordability fund prior to July 1, 2025.

Synopsis of Original Bill

House Bill 122 (HB 122) establishes a "health care affordability fund" and raises the health insurance premium surtax. The proposed health care affordability fund would be funded with a 55 percent distribution of revenues from the health insurance premium surtax, which the bill proposes to raise from 1 percent to 3.75 percent. The health care affordability fund would be used to reduce health care premiums and cost sharing for New Mexico residents who purchase health insurance through the state's health insurance exchange, provide resources for the development and implementation of healthcare initiatives for uninsured New Mexico residents, and provide resources for the administration of healthcare initiatives for uninsured New Mexico residents. The health care affordability fund could also be used to maintain health insurance coverage for New Mexico residents with incomes below 200 percent of the federal poverty level in the event that the federal Patient Protection and Affordable Care Act is repealed or struck down.

The increase to the health insurance premium surtax included in HB 122 begins January 1, 2022. For the remainder of FY22, all surtax revenue would be distributed to the general fund. Beginning in FY23, 55 percent of the revenue generated by the surtax would be distributed to the newly-created health care affordability fund and 45 percent would be distributed to the general fund.

The bill requires the Superintendent of Insurance to provide premium and cost-sharing assistance for the purchase of qualified health plans on the New Mexico health insurance exchange. To facilitate this, the Superintendent would develop healthcare affordability criteria and income eligibility parameters to focus aid on certain income-restricted individuals by January 1, 2023. The bill also requires the Superintendent of Insurance to develop and submit a plan to extend healthcare coverage access to New Mexico citizens who do not qualify for federal premium assistance or qualified health plans through the New Mexico health insurance exchange.

The bill requires the Superintendent of Insurance to report annually to the Legislature regarding a) a summary of the affordability criteria, b) the estimated number of uninsured New Mexico residents who enrolled in coverage following the implementation of the affordability criteria, and c) reduced costs and coverage assistance provided by the initiatives in this bill.

FISCAL IMPLICATIONS

Tax Implications

Using the most recent health insurance premium surtax reporting available, staff estimate the increased insurance premium surtax would result in total revenues of $208.7 million, an increase of $153.2 million from current collections. HB 122 distributes 52 percent of total revenue in the last 6 months of FY22 to the affordability fund when the increase takes effect, 55 percent from FY23-FY24, and 30 percent thereafter.The remaining health insurance premium surtax revenue would be distributed to the general fund, as represented in the tables above.

Although new revenue is generated for the general fund, the increased tax is expected to result in increased general fund costs for the Medicaid program. Because the Medicaid program would also have to pay the tax, the general fund portion of the Medicaid tax liability is estimated to be between $15.1 million and $31.7 million, annually. Because Medicaid costs are supported by federal revenues, federal funds would also be taxed, effectively leveraging the state's tax liability into additional federal tax liability. Most of the increased tax revenue is a result of this leverage and therefore, most of the tax is effectively exported to the federal government.

This bill creates a new fund and provides for continuing direct distributions to the fund. The LFC has concerns with including earmarking language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

Appropriation Implications

The bill states the "insurance department" shall administer the health care affordability fund, and money in the fund is subject to appropriation by the Legislature for the following purposes: 1) reduce premiums and cost sharing on the New Mexico health insurance exchange (NMHIX); 2)

provide resources for planning, design, and implementation of health care coverage initiatives for the uninsured; and 3) provide resources for administration of health care coverage initiatives for the uninsured.

Disbursements from the fund shall be made by warrant of the secretary of the Department of Finance and Administration pursuant to vouchers signed by the Superintendent of Insurance or the Superintendent's authorized representative.

Under the provisions of the bill, the revenue in the health care affordability fund can only be used if appropriated by the Legislature. The New Mexico health insurance exchange is a quasi-governmental organization and does not receive state appropriations in the General Appropriation Act. Therefore, OSI will have to initiate mechanisms to transfer revenue to NMHIX which is not a state agency.

Operating Budget Implications

In previous iterations of the bill, it was estimated two additional FTE at an approximate cost of $179.7 thousand would be needed for the rule promulgation and design of the coverage plan and the associated administrative requirements, but OSI reports it can conduct the additional work with no additional FTE. The rule promulgation and design of a coverage plan would require actuarial analysis estimated to cost $250 thousand in FY22.

HSD reports under the provisions of the bill, the Medicaid program would be required to pay the additional 2.75 percent surtax increase and would also draw down the federal matching portion associated with the increase. HSD indicates the Medicaid program would increase the per-member per-month capitation rates HSD pays to the Medicaid managed care organizations. For the 2nd half of FY22, this would result in an estimated total cost of approximately $75 million, with a general fund estimated impact of $15.1 million, which would draw down approximately $59.9 million in federal funds. In FY23, the total cost is estimated at $150.1 million, with an estimated general fund impact of approximately $30.2 million, which would draw down approximately $119.9 million in federal funds.

The Human Services Department also analyzed coverage initiatives and funded the Urban Institute study that provided data and information used in crafting this legislation. In FY21, HSD's operating budget included $500 thousand from the general fund targeted for coverage initiative analysis. The Urban Institute study indicated the estimated cost of providing additional premium subsidies above those provided by the federal government as well as additional cost sharing, would cost a total of $68 million to cover up to 23,000 people.

This bill, when introduced last legislative session, considered HSD as the administrative entity setting up the coverage initiatives described in the bill. Unlike the Office of Superintendent of Insurance, HSD and the Medicaid program are able to leverage a 50 percent federal match rate for administrative work for coverage initiative-related activities. HSD reports the bill, as drafted, does not include significant administrative implications for HSD, but depending on the initiatives implemented, there could be an administrative impact that is not quantifiable at this time.

Additional Federal Subsidies for Exchanges included in Congress' Current Relief Package

Congress' forthcoming Covid relief package is slated to bolster, for a designated time period, the

federal aid extended to health insurance exchange enrollees and expand the population eligible for subsidies. The proposal, which is headed to the President, would, among other things:

- Fully subsidize health insurance exchange coverage for people earning up to 150 percent of the federal poverty level, as well as those on unemployment insurance, for two years;
- End the so-called subsidy cliff, qualifying enrollees who make over 400 percent of the federal poverty level subsidies for the first time, for two years;
- Cover 85 percent of the cost of private health insurance for those laid off during the pandemic, through September 21.

Urban Institute Study's Cost Analysis

Under the provisions of HB 122, the health care affordability fund would be created to augment federal subsidies for the purchase of health insurance by lower income individuals on the state's health insurance exchange. According to findings from an Urban Institute study commissioned by the New Mexico Human Services Department, up to 23,000 uninsured New Mexicans could gain coverage if New Mexico invested in reducing premiums and out-of-pocket costs on the health insurance exchange. The Urban Institute study indicated a general fund cost of $68 million and $189 million in federal funds to cover the enhanced premium and cost sharing assistance for these 23,000 individuals. The study suggests uncompensated care could be reduced by $43 million.

SIGNIFICANT ISSUES

In December 2019, the U.S. Congress permanently repealed as the "health care provider fee" which was authorized under the federal Affordable Care Act (ACA). The federal "health care provider fee" tax was levied on health insurance carriers to help support state health insurance exchanges created under the ACA. The final payment of the federal fee was due on September 30, 2020. With the repeal of the "health care provider fee," HB 122 is seeking to impose a similar fee on health insurance carriers in New Mexico with a goal of shifting the previously levied revenue to the state for use on initiatives to reduce the cost of health insurance purchased on the New Mexico health insurance exchange by New Mexico residents.

Revenue in the health care affordability fund cannot be used to leverage federal Medicaid funds under the provisions of the bill, except if the ACA is repealed. If the federal ACA is repealed, then revenue in the fund could be used to cover the adult expansion category of eligibility population or individuals on the exchange up to 200 percent of the federal poverty level.

The Kaiser Family Foundation estimates 16,855 uninsured New Mexicans are currently eligible to access a free, federally subsidized "bronze" health insurance plans on the health insurance exchange after tax credits are applied.

HSD previously reported that at the federal level, the health care provider fee, when collected, resulted in a tax on health insurance carriers of approximately 2.75 percent to 3 percent on average. Under current New Mexico law, there is a general premium tax of 3.003 percent which applies to multiple types of insurance including life, title, health, etc., and on top of that general premium tax, New Mexico also levies an additional 1 percent surtax on health insurance premiums. Under HB 122, the general premium tax of 3.003 percent would remain in place. The bill also would raise the premium surtax by 2.75 percent from 1 percent to a total of 3.75 percent.

The Office of the Superintendent of Insurance provides this additional analysis:

> The cost of health insurance continues to be a major factor in why individuals remain uninsured. In 2019, 73.7 percent of uninsured adults said that they were uninsured because the cost of coverage was too high. A survey of individuals who shopped for plans in the individual market (including health insurance exchanges) found that 42 percent did not end up selecting a plan, with 71 percent of those individuals citing the cost of coverage as the main reason for remaining uninsured.
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> According to a study commissioned by the New Mexico Human Services Department, 26 percent of individuals who remain uninsured in New Mexico qualify for premium assistance through the state's health insurance exchange. Among those who qualify for federal assistance on the exchange, 37.2 percent remain uninsured. Improving the affordability of premiums and cost sharing could boost enrollment significantly, reducing the number of uninsured individuals by as much as 23,000, according to the study. Increasing enrollment would have the effect of improving the individual market risk pool, reducing sticker premiums by up to 18.5 percent in the first year. This type of initiative could increase federal premium tax credit payments by as much as $40 million due to increased enrollment and would also decrease uncompensated care by up to $43 million. Boosted enrollment will also increase revenue generated by the state's premium tax and health insurance surtax by up to $8.87 million, according to OSI's estimates [this amount is not included in the Fiscal Impact].
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> In addition to increasing the number of state residents who have health insurance, HB 122 would reduce the incidence of underinsurance by creating state-funded cost sharing assistance. In 2021, annual deductibles could be as high as $8,550 per person, providing insufficient financial protection for state residents.
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> …Colorado, Delaware, Maryland, and New Jersey have enacted a similar fee to replace the federal version and will use (or already are using) the revenue to improve coverage affordability for state residents.
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> …According to OSI's estimates, approximately 75 percent of the revenue generated by this bill would come from Medicaid MCOs, which are financed by the state and federal government.
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> … OSI expects between 40 percent to 50 percent of the funds will be used to support coverage on the health insurance exchange. The remaining funds will be used to provide coverage to individuals who do not qualify for federal financial assistance on the health insurance exchange. HB 122 directs OSI to work with stakeholder groups to develop and submit the plan for extending health care coverage access to the Legislative Finance Committee and Legislative Health and Human Services Committee. All expenditures from the fund will be subject to legislative appropriation.
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> The U.S. Supreme Court recently heard arguments in a case (California v. Texas) that could invalidate some or all of the provisions of the federal Patient Protection and Affordable Care Act. In the event that major coverage provisions of the law are impacted by such a decision, HB 122 allows the health care affordability fund to be used to maintain coverage for individuals who currently qualify for the Medicaid expansion or subsidized coverage on the health insurance exchange. In addition, if the U.S. Congress

makes any changes to the law that improve the assistance provided by the federal government, OSI has the flexibility to make adjustments to the affordability criteria to further improve coverage affordability or expand assistance to additional populations.

ADMINISTRATIVE IMPLICATIONS

The design and implementation of a coverage initiative plan could require additional resources at OSI and contracting for actuarial analysis, although OSI reports it can do all the additional staff work required under the provisions of the bill with no additional FTE. NMHIX also reports it could implement the provisions of the bill with no additional staff.

HSD reports the bill, as drafted, does not include significant administrative implications for HSD outside of consulting with OSI on additional study for policy options to reach residents who cannot get coverage through NMHIX (dba beWellnm). Depending on the policy options that result from that study, HSD could have administrative impact in the future if any pieces require HSD's implementation and oversight. Without those details, the administrative impact is not quantifiable at this time.

RELATIONSHIP

Office of the Attorney General indicates the bill relates with HB98, Omnibus Tax Bill, to the extent that HB98, also amends Section 7-40-3, but leaves insurance premium surtax unchanged.

TECHNICAL ISSUES

Under the provisions of the bill, the revenue in the health care affordability fund can only be used if appropriated by the Legislature. The New Mexico health insurance exchange is a quasi-governmental organization and does not receive state appropriations in the General Appropriation Act.

NMHIX, a quasi-governmental agency, is currently subject to the Open Meetings Act, state Procurement Code, Whistleblower Act, and Sunshine portal. NMHIX is not currently subject to the state Personnel Code, state Audit Act, or the Accountability in Government Act like other state agencies which receive appropriations in the General Appropriation Act.

LFC staff recommends adding a delayed repeal date for the distributions made to the "health care affordability fund."

OTHER SUBSTANTIVE ISSUES

Federal Limits on Health Insurance Taxes

HSD previously reported states are allowed to tax health insurance carriers, including Medicaid managed care organizations (MCOs), without risking federal financial participation in the Medicaid program. Federal law restricts how much states can tax certain healthcare-related entities in order to limit states from using the proceeds to finance the state's Medicaid program. The federal government presumes that a state is in compliance with federal rules if the tax is under 6 percent.

A state tax is considered healthcare-related under federal law if it meets either of two prongs:
1) 85 percent of the burden of the tax falls on health care providers; or
2) The tax provides for a different treatment for health care providers than others.

New Mexico's general premium surtax of 3.003 percent is not factored into the 6 percent overall limit for health care-related taxes under federal rules, because it does not meet the requirements as defined by federal law.

The premium surtax proposed in the bill, however, would be a healthcare-related tax under federal rules and therefore factored into the 6 percent cap. HB 122 would raise the premium surtax to 3.75 percent which is still below the 6 percent cap. It should also be noted that Medicaid managed care organizations and other health insurance carriers are one of 19 classes of health care providers under federal rules. Each class has its own 6 percent cap. Thus, any other taxes the state imposes on hospitals or other provider classes would not affect the 6 percent cap for the insurance premium surtax.

New Mexico Health Insurance Exchange

The federal Affordable Care Act (ACA) expanded health coverage for many New Mexicans by creating a health insurance exchange or marketplace (dba beWellnm) and providing financial assistance to reduce monthly premiums and out-of-pocket health care costs such as co-pays and deductibles. House Bill 122 proposes creation of a "health care affordability fund" envisioned to further add funding to augment federal subsidies for individuals on the health insurance exchange.

The number of New Mexicans enrolled through the health insurance exchange has been declining since 2017 from 54,653 members to 42,714 members in 2020. For comparison, the New Mexico Medicaid program currently enrolls 901,000 individuals.

The New Mexico health insurance exchange, beWellnm, reports the proposed health care affordability fund could work in complement with the exchange's standardized plans to maximize benefit to both the uninsured and underinsured. The reduction of the uninsured rate could provide more certainty and a healthier risk mix to the overall exchange population, promoting premium stability.

Other State Experiences

Eight states have passed legislation replacing the federal tax with a state tax. In July, New Jersey passed a similar proposal setting the surtax at 2.5 percent but excluded premiums from small business health insurance plans, Medicaid and Medicare policies, nonprofit dental plans, and certain self-funded group employer health insurance coverage.

Critics of the proposal in New Jersey warned increased taxes would be passed on to consumers purchasing the plans, including small businesses struggling under the pandemic. New Jersey also has an individual mandate requiring everybody to purchase health insurance or pay a fine in order to ensure the state has a large diverse risk pool funded by all.

New Jersey is using a portion of the new premium surtax revenues for a reinsurance program, which uses state and federal funds to offset the most expensive claims. This program has been

credited with stabilizing industry costs and reducing market volatility for individual and small business health insurance plans.

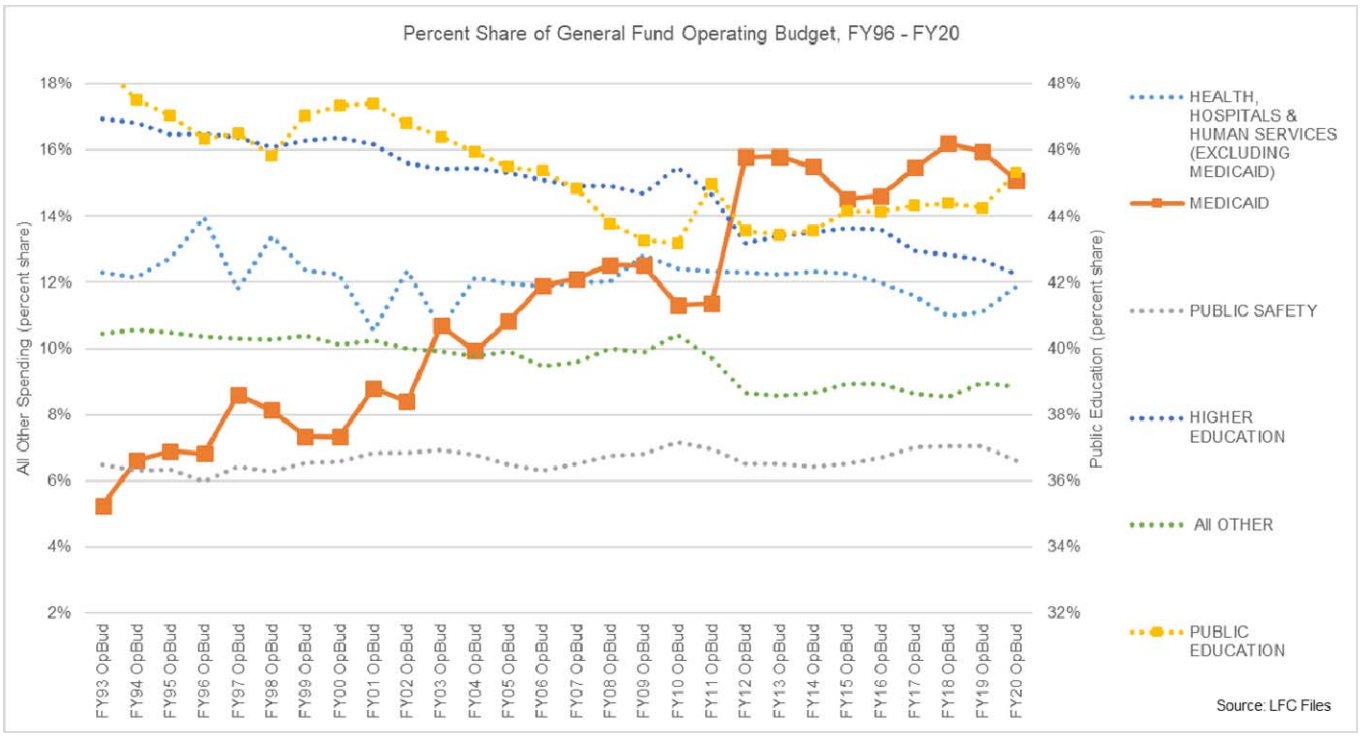
Federal Government and the Affordable Care Act

The Kaiser Family Foundation (KFF) and other media have reported the President could move to shore up healthcare coverage and affordability as currently allowed for under the federal Affordable Care Act (ACA).

Currently, families making between 100 percent and 400 percent of the federal poverty level are eligible for tax credits to help pay for health insurance on the exchange. There has been discussion regarding potentially eliminating the income cap and lowering the limit on the cost of coverage to 8.5 percent of income. If passed by Congress, these actions could help make insurance more affordable for families with wide-ranging incomes.

ALTERNATIVES

To meet the LFC adopted tax policy principle of adequacy, additional revenues generated by the surtax increase could continue to the general fund to meet the increasing cost of existing Medicaid services. Medicaid costs have grown more rapidly than all other areas of the budget as health care inflation continues to outpace inflation of the greater economy, as managed care organization (MCOs) and healthcare provider rate increases have been implemented, and as Medicaid enrollment has increased under the pandemic. This trend is expected to continue. Without additional revenues, Medicaid cost growth can crowd out other spending priorities and risks continuous state budget funding constraints. See the chart below comparing Medicaid's share of the general fund which has grown from 5 to 15 percent, compared with other categories of state spending. Given continuous funding constraints, the Medicaid program is continually under pressure of underfunding. An alternative is for the Legislature to use all the funds proposed in the legislation to adequately fund on a recurring basis the needs of the indigent and other populations.



Alternatively, other policy options could be considered such as the federal government providing more federal dollars to fund subsidies for populations on health insurance exchanges. This option is already being considered for funding in the current federal Coronavirus Relief Package.

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