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

		LAST UPDATED	2/9/23
SPONSOR	Cates/Jaramillo/Thomson	**ORIGINAL DATE**	2/7/23
SHORT TITLE	Medicaid Home Modification Gross Receipts	**BILL NUMBER**	House Bill 220
		ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**	**FY26**	**FY27**		
	($137.0)	($132.0)	($137.0)	($144.0)	Recurring	General Fund
	($180.0)	($170.0)	($180.0)	($180.0)	Recurring	Local Governments

Parenthesis ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
$5.5	--	--	$5.5	NR	ITD- Staff Workload Cost
	Minimal	Minimal	Minimal	Recurring	Medical Assistance Division Administration

Parenthesis ( ) indicate expenditure decreases.

Companion to SB36 which seeks a deduction for some or all of the Medicaid practitioner's payments.

Sources of Information

LFC Files

Responses Received From
Human Services Department (HSD)
Taxation and Revenue Department (TRD)
Aging and Long-Term Services Department (ALTSD)

SUMMARY

Synopsis of House Bill 220

House Bill 220 would allow a gross receipts tax deduction to an eligible provider that installs equipment or real property modifications to a residence of a Medicaid recipient to allow that resident to live safely at home. Examples of real property modifications might include installing lifts, walk-in showers, and lowering counters and light switches to accommodate a wheelchair bound recipient. These modifications are allowed pursuant to a Medicaid waiver funding home- and community-based services. This deduction does not require separate reporting or a nontaxable transaction certificate.

The effective date of this bill is July 1, 2023. The bill does not provide a delayed repeal. LFC recommends all new deductions include a delayed repeal.

FISCAL IMPLICATIONS

HSD indicates the following program calculation:

> In 2021, there were approximately 1,341 Medicaid clients who benefited from environmental modifications to their homes, at a total cost of $5,788,099. These clients are members of Managed Care Organization (1,221) or under Fee For Service arrangements (120). Both Agency-Based Community Benefit Providers and Self-Directed Community Benefit members would benefit from the GRT deduction of 8 percent, beginning July 2023.
>
> GRT is currently built into the Medicaid rates [LFC note: apparently, the 8 percent is added irrespective of the actual location], so eliminating GRT would result in a small savings to the Medicaid program since GRT would no longer be added to the rates.
>
> The Fiscal impact would be a change in total computable Medicaid expenditures of -$463,048 (= .08 x -$5,788,099). Based on the 2024 blended FMAP [(federal matching rate)] of 73.76 percent, the Federal Funds impact would be -$341,544 (=73.76 percent x -$463,048) and the general fund impact would be -$121,054 ((1-73.76 percent) x -$463,048).

Based on the underlying data indicating $5.8 million in environmental modifications, the cost of the deduction to the state, counties, and municipalities would be as follows:

			FY24	FY25	FY26	FY27
Total Environmental modifications	Grow Per CREG		$6,350	$6,070	$6,350	$6,500
Total Deduction value	7.10%		$6,350	$6,070	$6,350	$6,500
General Fund	60%		$451	$431	$451	$462
Counties & Munis	40%		($270.0)	($260.0)	($270.0)	($280.0)
MAD savings	8%		$508	$486	$508	$520
Loss of FMAP	73.76%		$375	$358	$375	$384
Gen Fund savings			$133	$128	$133	$136
Net Impact:						
General Fund			($137.0)	($132.0)	($137.0)	($144.0)
Counties & Municipalities			($180.0)	($170.0)	($180.0)	($180.0)
Federal Funds			$375.0	$358.0	$375.0	$384.0
All entities			$58.0	$56.0	$58.0	$60.0

This LFC estimate has been rendered totally consistent with the TRD estimate.

Note that general fund saves a small amount of money by paying the contractors installing the environmental modifications, either equipment or real property modifications, but not reimbursing these contractors for the gross receipts tax liability they would not have to report and pay. On net, however, the federal Medicaid match (FMAP) benefits, while the general fund and the local jurisdictions lose small amounts of revenue.

TRD reiterates the Human Services Department data and explains the methodology:

> In 2021 approximately 1,341 Medicaid recipients had benefited from environmental modifications at the aggregate cost of $5,788,099, the Taxation and Revenue Department (Tax & Rev) applied that annual population and cost per client for the estimate. Assuming the number of recipients will remain constant over the near future, Tax & Rev used the December 2022 Consensus Revenue Estimating Group (CREG) growth rate for gross receipts tax (GRT) to assume inflationary cost increases to the services provided. The impact to the general fund is from the direct impact of the GRT deduction only and is not adjusted for changes to Medicaid state and federal matching funds. Tax & Rev defers to HSD's impact to the general fund as relates to general fund appropriations and federal revenue impacts.

The LFC estimate in the table above includes the impact of the Medicaid FMAP calculation.

SIGNIFICANT ISSUES

HSD notes the following information:

> Medicaid Environmental Modification Services (Emods) are provided under several Medicaid programs: Centennial Care Community Benefit (CB); Developmental Disability Waiver; Mi Via Waiver, Medically Fragile Waiver; and Supports Waiver. Program recipients are allowed five thousand ($5,000) dollars every five years for this service. Before recipients can access Emods, all requests must undergo utilization review for medical necessity.
>
> Under Medicaid programs, the provider's GRT cost incurred for Emods is built into the provider's bid and reimbursed in the total payment to the provider.

Approximately 30 thousand New Mexicans participate in the home-and community-based services program. This program usually involves payments to home health aides on a recurring basis but may also involve an initial installation of equipment home modifications that constitute construction.

Medical Assistance Division (MAD) of Human Services Department overarching concern is the upcoming phase-out of a 6.2 percentage point increase in the federal medical assistance program (FMAP)—federal cost share—scheduled to expire with the end of the federally declared public health emergency. The 6.2 percentage point bump has taken the New Mexico FMAP from 73.26 percent (prior to the pandemic) to 79.46 percent. The overall provider payments for FY24 are estimated at $8.03 billion, split 79.46 percent federal to 20.54 percent state. When the split returns to 73.76 to 26.24, the state will lose about $494 million in federal match money. This is a major issue for MAD. This modest proposal to allow a deduction for equipment and home modifications may be part of a strategy to replace the $494 million.

Additionally, after the public health emergency ends in May, all existing Medicaid recipients will have to recertify to ensure they are still eligible for the program. States who accepted the health-emergency-related enhanced matching rate were required to stop disenrollments from Medicaid. HB214, this year's general appropriations act, contains the following provision:

> The appropriations to the Medical Assistance Program of the Human Services Department assume the state will receive an enhanced federal medical assistance

> percentage rate for those enrolled in the expansion adult category through fiscal year 2024 as provided for in the federal Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010. Should the federal government reduce or rescind the federal medical assistance percentage rates established by the federal Patient Protection and Affordable Care Act, the Human Services Department shall reduce or rescind eligibility for the new adult category.

This bill creates a tax expenditure with a cost that is almost negligible. LFC has serious concerns about the growing risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. Usually, the committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration. In this case, however, action must be taken this session to address the likely loss of almost $500 million in federal match money.

SIGNIFICANT ISSUES

As noted above, the provisions of this bill violate a long-standing tax policy. All construction should be, and with few exceptions is, taxable. Government buildings, buildings for nonprofit organizations, and buildings constructed as part of tax incentive or revenue bond agreements are all taxable. Any tax expenditures relate to sales of tangible personal property, not construction of real property.

TRD expresses similar concerns:

> The bill seeks to aid in reducing the cost of making environmental modifications to Medicaid recipients' homes. Tax & Rev assumes this tax reduction would be passed on to New Mexico Medicaid program’s outlay for these services whereby the state and federal match would be reduced, saving additional general fund dollars. The impact though is not offset for local governments. The Medicaid recipients themselves would continue to have these modifications covered through Medicaid and thus not experience the reduction of the tax due. Tax & Rev suggests including a purpose statement in the bill to make the goal of this deduction more transparent, which would help to evaluate the effectiveness of the deductions.”
>
> While tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures and/or narrowing the tax base, with a negative impact on the general fund; and, (2) increases the burden of compliance on both taxpayers and Tax & Rev. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

Also as noted above, the portion of this bill related to the installation of equipment in the homes of Medicaid recipients are already deductible pursuant to the provisions of Section 7-9-73.1 NMSA 1978. The resultant fiscal impact of the provisions of this bill represent a very small portion of the larger problem, which is to replace the loss of almost $500 million in federal Medicaid match funds. The damage to the tax policy principle may be far more important to the long-term future of state revenues than the fiscal impact might indicate.

ALTSD notes the following:

This proposed legislation offers financial benefits to providers of home and community-based service recipients who perform environmental modifications, including much of the population that ALTSD serves. This GRT deduction will hopefully incentivize providers to engage in environmental modifications services.

New Mexico is ranked 5th highest among U.S. states for poverty rate (24%) for persons with disabilities (U.S. Census Bureau, American Community Survey 2016-2020). Approximately 29% of persons aged 60 years and older in New Mexico have difficulty walking or climbing stairs (Behavioral Risk Factor Surveillance System Survey, 2021. Center for Disease Control and Prevention, with New Mexico Department of Health). Further, 10% of New Mexicans aged 18 years and older with a disability have an ambulatory difficulty (U.S. Census Bureau, American Community Survey 2016-2020); this percentage is higher than the national percentage (8%). Further, based on census projections, it is anticipated that by 2030 New Mexico will be ranked 4th highest in the nation for total senior population per capita (University of New Mexico Geospatial Population Studies). Finally, 71,253 (18%) of our adults 65 years and older are Medicaid-eligible, thereby necessitating innovative ways to pay for the services our older adults need. These data underscore the need for services to help older and disabled adults "age-in-place."

Vulnerable New Mexicans face geographic, economic, language, and cultural barriers in accessing the resources that permit them to remain safely in their own home, e.g., grab bars in showers and accessibility ramps. HB 220 provides access to one such service as an economic incentive to eligible providers.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met since TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

Should HB220 come into effect, ALTSD may pursue outreach to inform its home- and community-based providers of the benefit provided under HB220. The administrative impact should be minimal.

TRD will need to update forms, instructions and publications and make information system changes. These changes will be incorporated into annual tax year 2023 and represent 100 hours, or about one month, and $5,554 of workload costs for TRD's Information Technology.

TECHNICAL ISSUES

TRD suggests the following: "The bill should clarify that on page 2, line 17 'department' means the New Mexico Human Services Department. If enacted, this material would be compiled in the Gross Receipts and Compensating Tax Act, wherein]department" is defined as Tax and Rev. …

Considering the definition of eligible provider in the bill, it is unclear if this deduction should be extended to governmental gross receipts tax as well."

Section 7-9-73.3 NMSA provides a deduction from gross receipts for durable medical equipment. This deduction is quoted in the "Fiscal Implications" section as a reduction in the cost to the general fund. However, this current statute could be the model for all new GRT deductions. This section of law has a purpose section to allow TRD to determine annually if the deduction is meeting its purpose; it has a separate reporting requirement; it has the mandate for TRD to report the cost and benefits to the Legislature; it contains a delayed repeal; and it contains the authority for TRD to breach confidentiality and report claims by individuals to the Legislature.

> Section 7-9-73.3. Deduction; gross receipts tax and governmental gross receipts tax; durable medical equipment; medical supplies.
>
> A. Prior to July 1, 2030, receipts from the sale or rental of durable medical equipment and medical supplies may be deducted from gross receipts and governmental gross receipts.
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> B. The purpose of the deduction provided in this section is to help protect jobs and retain businesses in New Mexico that sell or rent durable medical equipment and medical supplies.
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> C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.
>
> D. The deduction provided in this section shall be taken only by a taxpayer participating in the New Mexico medicaid program whose gross receipts are no less than ninety percent derived from the sale or rental of durable medical equipment, medical supplies or infusion therapy services, including the medications used in infusion therapy services.
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> E. Acceptance of a deduction provided by this section is authorization by the taxpayer receiving the deduction for the department to reveal information to the revenue stabilization and tax policy committee and the legislative finance committee necessary to analyze the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.
>
> F. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the report to the revenue stabilization and tax policy committee and the Legislative Finance Committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

This bill contains none of these features. LFC policy advises that all of the noted features be amended into the bill, with the exception of the waiver of confidentiality.

OTHER SUBSTANTIVE ISSUES

Approximately 97 percent of medical services deductions are incurred within municipal borders. However, environmental modifications that constitute construction are taxable to the location of the installation. The 8 percent reimbursement built into MAD payments to providers adequately covers this reimbursement for medical services providers but overstates the liability for environmental modifications. One positive aspect of the provisions of this bill is to somewhat simplify compliance for the contractors performing the modifications.

POSSIBLE QUESTIONS

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

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

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	
Targeted		
Clearly stated purpose	✘	
Long-term goals	✘	
Measurable targets	✘	
Transparent	✓	
Accountable		
Public analysis	✘	
Expiration date	✓	
Effective		
Fulfills stated purpose	✘	
Passes "but for" test	✘	

Efficient	✘	
Key: ✓ Met ✘ Not Met ? Unclear		

LG/al/ne/hg/mg